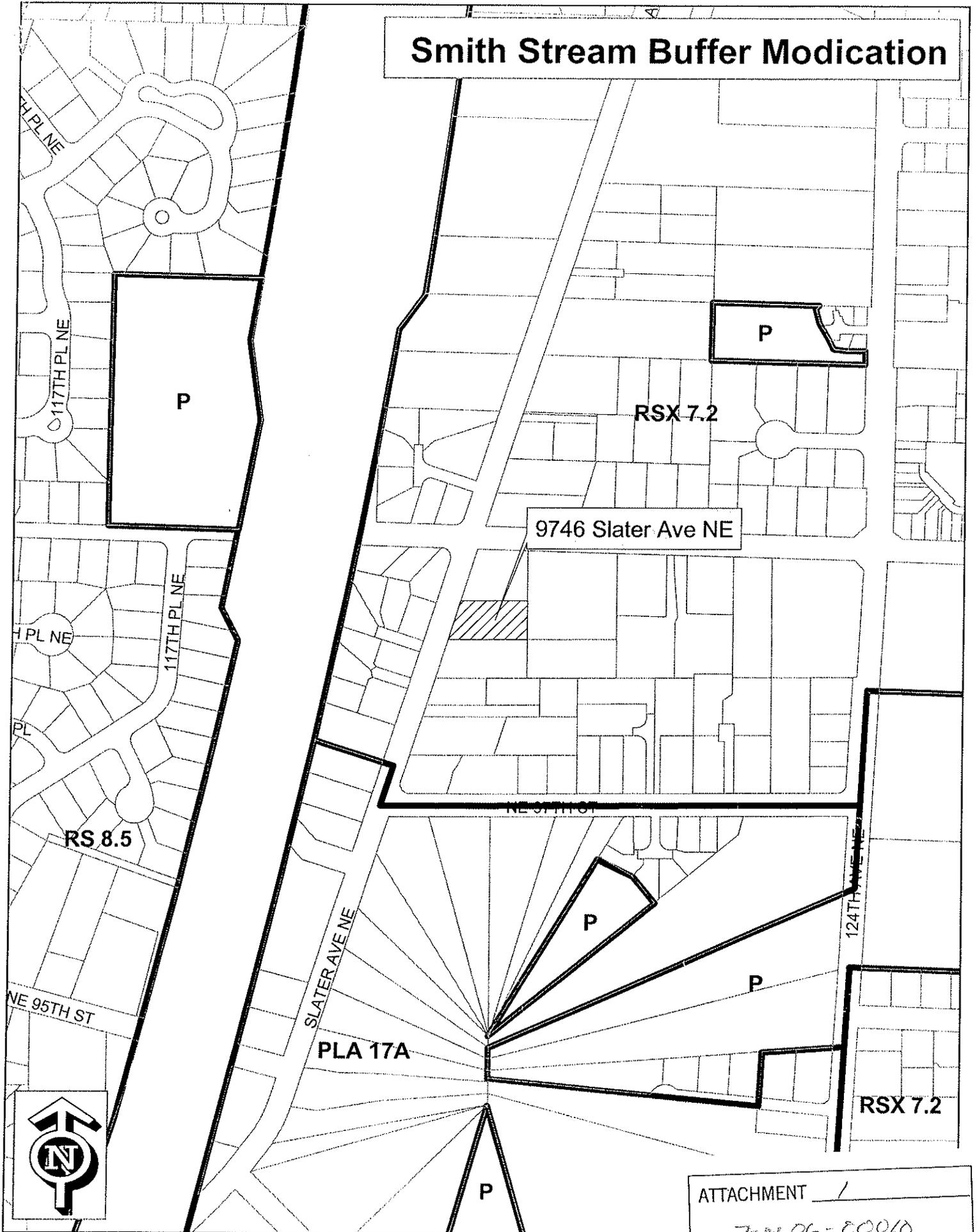
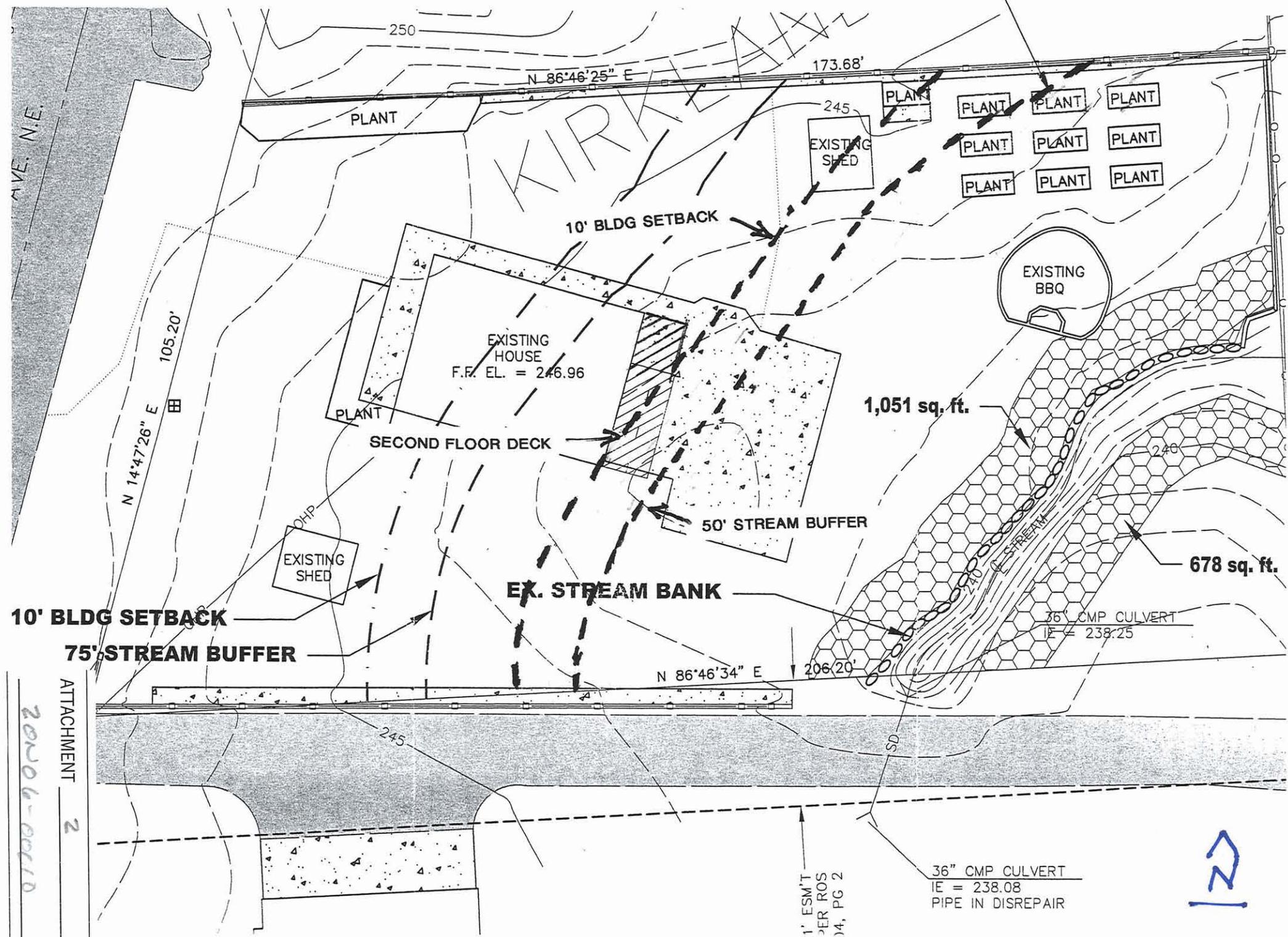


# Smith Stream Buffer Modication



**EX. ORGANIC GARDEN**



AVE. N.E.

**10' BLDG SETBACK**

**75' STREAM BUFFER**

**10' BLDG SETBACK**

EXISTING HOUSE  
F.F. EL. = 246.96

SECOND FLOOR DECK

EXISTING SHED

50' STREAM BUFFER

EX. STREAM BANK

1,051 sq. ft.

678 sq. ft.

36" CMP CULVERT  
IE = 238.25

$N 86^{\circ}46'34'' E$  206.20'

36" CMP CULVERT  
IE = 238.08  
PIPE IN DISREPAIR

1' ESM'T  
PER ROS  
04, PG 2



20206-0010

ATTACHMENT  
2



## CITY OF KIRKLAND

Planning and Community Development Department

123 Fifth Avenue, Kirkland, WA 98033 425.828.1257

www.ci.kirkland.wa.us

### DEVELOPMENT STANDARDS LIST

**File: Smith Stream Buffer Modification, ZON-06-00010**

#### Zoning Code Standards

90.35 Wetlands and Wetland Buffers. No land surface modification may take place and no improvement may be located in a wetland or within the environmentally sensitive area buffers for a wetland, except as specifically provided in this Section.

90.40 Streams. No land surface modification may take place and no improvements may be located in a stream except as specifically provided in this Section.

90.45 Stream Buffers. No land surface modification may take place and no improvement may be located within the environmentally sensitive buffer for a stream, except as provided in this Section.

90.50 Frequently Flooded Areas. No land surface modification may take place and no improvements may be located in a frequently flooded area, except as specifically provided in Chapter 21.56 of the Kirkland Municipal Code.

95.35 Plant Replacement. The applicant shall replace any plants required by this Code that are unhealthy or dead for a period of two years after initial planting.

90.55.2 Physical Barrier. The applicant shall install a berm, curb, or other physical barrier when necessary to prevent direct runoff and erosion from any modified land surface into any stream, minor lake, or wetland.

115.25 Work Hours. It is a violation of this Code to engage in any development activity or to operate any heavy equipment between the hours of 8 p.m. and 7 a.m., Monday through Saturday, and all day on Sundays or holidays which are observed by the City, unless written permission is obtained from the Planning Official.

115.75.2 Fill Material. All materials used as fill must be non-dissolving and non-decomposing. Fill material must not contain organic or inorganic material that would be detrimental to the water quality, or existing habitat, or create any other significant adverse impacts to the environment.

115.95 Noise Standards. The City of Kirkland adopts by reference the Maximum Environmental Noise Levels established pursuant to the Noise Control Act of 1974, RCW 70.107. See Chapter 173-60 WAC. Any noise, which injures, endangers the comfort, repose, health or safety of persons, or in any way renders persons insecure in life, or in the use of property is a violation of this Code.

150.22.2 Public Notice Signs. Within seven (7) calendar days after the end of the 21-day period following the City's final decision on the permit, the applicant shall remove all public notice signs and return them to the Department of Planning and Community Development. The signs shall be disassembled with the posts, bolts, washer, and nuts separated from the sign board

***Prior to issuance of a grading or building permit:***

ATTACHMENT <u>3</u>
<u>20206-00010</u>

90.55.2 Physical Barrier. The applicant shall install a berm, curb, or other physical barrier when necessary to prevent direct runoff and erosion from any modified land surface into any stream, minor lake, or wetland.

90.70 Natural Greenbelt Protective Easement. The applicant shall submit for recording a natural greenbelt protective easement, in a form acceptable to the City Attorney, for recording with King County.

90.75 Liability. The applicant shall enter into an agreement with the City which runs with the property, in a form acceptable to the City Attorney, indemnifying the City for any damage resulting from development activity on the subject property which is related to the physical condition of the stream, minor lake, or wetland.

95.15.4 Tree Protection Techniques. In order to provide the best possible conditions for the retention of significant trees, the applicant shall construct a temporary but immovable 4 foot high chain-link fence generally corresponding to the drip line of each tree or group of trees shown on the tree retention plan to be retained. Additional tree protection measures may be required of the applicant. The protective fencing must remain in place throughout the demolition, clearing, grading, excavation, and construction processes, including the construction of homes. No grading, operation of heavy equipment, stockpiling, or excavation may occur inside the protective fences.

***Prior to occupancy:***

90.145 Bonds. The City may require a bond and/or a perpetual landscape maintenance agreement to ensure compliance with any aspect of the Drainage Basins chapter or any decision or determination made under this chapter.

CITY OF KIRKLAND  
123 FIFTH AVENUE, KIRKLAND, WASHINGTON 98033-6189 (425) 587-3225

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Date: 3/5/2007

DEVELOPMENT STANDARDS

CASE NO.: ZON06-00010

PCD FILE NO.:ZON06-00010

\*\*\*BUILDING DEPARTMENT CONDITIONS\*\*\*

A permit is required to construct, enlarge, alter, repair, move, demolish or change the occupancy of a building or structure. Buildings must comply with 2003 editions of the International Residential, Building, Mechanical and Fire Codes and the Uniform Plumbing Code as adopted and amended by the State of Washington and the City of Kirkland if the permit is applied for prior to July 1st, 2007. On July 1st, 2007, the 2006 editions of the above codes will take affect.

Structure must comply with latest editions of the Washington State Energy Code (WAC 51-11); and the Washington State Ventilation and Indoor Air Quality Code (WAC 51-13).

Structures must be designed for seismic design catagory D, wind speed of 85 miles per hour and exposure B.



## CITY OF KIRKLAND

Planning and Community Development Department

123 Fifth Avenue, Kirkland, WA 98033 425.587.3225

www.ci.kirkland.wa.us

### MEMORANDUM

**To:** Sue Tanner, Hearing Examiner

**From:** *JT* Judd Tuberg, Code Enforcement Officer

**Date:** Feb. 8, 2006

**Subject:** Appeal of Kenneth S. Smith Re Department of Planning And Community Development (hereinafter entitled DPCD) File No. ENF 02-189 (COM 02-00398) -Case (Formal File) No. APL03-00009.

#### I. INTRODUCTION

City of Kirkland staff ("staff") offer this staff report with regard to the above-referenced Code enforcement matter.

#### II. ISSUES PRESENTED

1. Whether Kenneth S. Smith has made continuing improvements to a residence located in a 75-foot wide Class A stream buffer, and/or a 10-foot building setback from the buffer edge at 9746 Slater Avenue NE, Kirkland, WA, since the Notice of Civil Infraction was issued on Nov. 17, 2003, without a required stream buffer modification approved by a Process IIA Review, in violation of Chapter 90, Sections 90.90, and/or 90.100, Kirkland Zoning Code.

NOTE: The City is not proceeding at this time with enforcing the lack of a required Building Permit against Kenneth S. Smith for activities in violation of Chapter 21.08.010, Kirkland Municipal Code.

2. Whether Appellant Kenneth S. Smith achieved the Corrective Action required in the Notice of Violation and Order to Correct issued by DPCD to him on Nov. 4, 2003, on or before 8:00 AM November 13, 2003, or thereafter, by submitting to DPCD a completed application for a stream buffer modification with a Process IIA Review for the affected/relevant 75-foot Class A stream buffer at 9746 Slater Avenue NE, Kirkland, WA to resolve the on-going, continuing, and subsequent improvement violations made by Kenneth S. Smith to that portion of the residence located in a 75-foot wide Class a stream

ATTACHMENT

*4*

*ZON 06-00010*

buffer, and/or a 10-foot building setback from the buffer edge at 9746 Slater Avenue NE, Kirkland, WA

3. Whether Kenneth S. Smith is responsible for \$500.00 in monetary penalties assessed by a Notice of Civil Infraction issued by DPCD on Nov. 17, 2003, per ENF 02-189 at the rate of \$100.00 per day from Nov. 17, 2003, through a portion of Nov. 21, 2003, (the date the appeal of the Notice of Civil Infraction was received by DPCD on Kenneth S. Smith's behalf), and for monetary penalties accruing beyond the date of the decision of the Hearing Examiner arising from the appeal hearing scheduled for Feb. 16, 2006, until such time as the violation of the required stream buffer modification at 9746 Slater Avenue NE, Kirkland, WA is certified as corrected by DPCD.

### III. STATEMENT OF FACTS

Kenneth S. Smith has resided at 9746 Slater Ave NE, Kirkland, WA since approx. 1991, and purchased the property on Nov. 25 1997. Kenneth S. Smith operates Kenwest Concrete in Kirkland.

On May 2, 2001, DPCD Planner Diana DuCroz wrote a 2-page letter to Ken Smith advising him that the presence of a stream to the east of the existing house imposed a 75 foot buffer from the stream bank and a 10-foot setback from the buffer edge per Kirkland's sensitive area regulations.

She pointed out that according to these regulations, no improvements may be located in a stream buffer, with exceptions made for routine repair and maintenance, and concluded that Ken Smith's proposal per Building Permit application BLD01-00211 for crawl space and attic additions to the house are located within the stream buffer, are not considered to be routine repairs as drawn on his plans, and cannot be approved unless he first obtains a stream buffer modification.

On June 4, 2001, Planner Diana DuCroz wrote a 1-page letter to Ken Smith, re Building Permit Application BLD01-00211, 9746 Slater Ave NE, advising him that although he was permitted to make necessary repairs and maintenance to the portions of the existing home that are with the stream buffer, any additional remodeling, such as increasing the height of the roof cannot be approved. She further advised him that when revising plans and/or submitting his new plans, he needed to provide information establishing that any proposed changes to his existing home (such as new crawl space) are necessary to repair and maintain his home.

Building permit application BLD01-00211 expired on 3-19-02, and was not issued or approved by the City of Kirkland. The plans were returned to the applicant.

On Dec. 10, 2002, Building Inspector Mark Kaifer issued a City of Kirkland Building Dept. Correction Notice/Stop Work to Ken Smith at 9746 Slater Ave. NE, Kirkland, WA indicating that Mark Kaifer had inspected the house structure and formally notifying Ken

Smith 1) "Do Not Continue Work", and 2) "Submit Plans To The City of Kirkland For Review And Approval Within 7 Working Days Or A Stop Work Order Will Be issued And An Investigative Fee Will Be Charged", and "Disclose All Work Being Done Including Repair And New Construction". Note that Mark Kaifer, Building Dept. Inspector, took 2 color photographs of 1) south side and east side and 2) north side and east side of house at 9746 Slater Ave. NE, Kirkland, WA on 12-10-02, documenting continuing improvements to house located in the required 75-foot buffer from the stream bank.

On Dec. 10, 2002, Judd Tuberg, and Diana DuCroz, Planning Dept, and Mark Kaifer, Building Dept Inspector met with Ken S. Smith at Kirkland City Hall to request Ken S. Smith to stop all improvements to residence at 9746 Slater Ave. NE, Kirkland, WA until a stream buffer modification from DPCD is obtained by Ken S. Smith. Planner Diana DuCroz explained the procedures required for a stream buffer modification to Ken S. Smith, and asked him to stop making any further improvements to the residence at 9746 Slater Ave. NE.

On Feb. 10, 2003, Planner Diana DuCroz wrote a 2-page letter to Ken Smith, re Building Permit Application BLD02-01288, 9726 Slater Ave, advising him that approx half of his existing house was situated in the 75-foot Class A stream buffer, and a 10-foot building setback from the buffer edge. She further advised him that raising the existing home and creating new living area underneath the house did not fall within the definition of normal and routine repair and maintenance, and that to make changes beyond normal and routine repair and maintenance to any portion of the house located in the stream buffer, he must obtain a stream buffer modification. Because he had already built some of the proposed improvements, he would be required to apply for a stream buffer modification in order to correct the zoning code violation.

On July 15, 2003, Planning Supervisor Dawn Nelson wrote a 3-page letter to Ken Smith regarding Building Permit Application BLD02-01288 at 9746 Slater Ave NE, Kirkland, WA in which she advised Ken Smith in specific detail re 5 improvement items, and reiterated that a substantial amount of work had occurred within the stream buffer on the 9745 property without an approved stream buffer modification. She further advised Ken Smith that in order to avoid commencement of DPCD enforcement proceedings, with potential monetary penalties, he must provide a written statement to DPCD by August 1, 2003, agreeing to apply for a stream buffer modification or reasonable use permit.

Building Permit Application BLD02-01288 expired on 12-17-03, and was not issued or approved by the City of Kirkland.

Subsequently, Ken Smith did not submit a completed application to DPCD for a stream buffer modification or a reasonable use permit.

Ken Smith, did however, continue thereafter to actively make improvements to that portion of his residence located in the 75-foot wide Class A stream buffer setback, and/or

a 10-foot building setback from the stream buffer edge at 9746 Slater Avenue NE, Kirkland, WA, in violation of chapter 90, Kirkland Zoning Code.

On Nov. 4, 2003, Judd Tuberg, DPCD Code Enforcement Officer, did issue and serve a Notice of Violation and Order to Correct to Kenneth S. Smith, 9746 Slater Avenue NE, Kirkland, WA by Certified Mail return receipt requested.

On Nov. 17, 2003, Judd Tuberg, DPCD Code Enforcement Officer, did issue and serve a Notice of Civil Infraction with attendant monetary penalties of \$100.00 per day to Kenneth S. Smith, 9746 Slater Avenue NE, Kirkland, WA by Certified Mail return receipt requested.

On Nov. 21, 2003, Ken S. Smith filed an appeal of the Notice of Civil Infraction with DPCD through his attorney, Wesley J. Edmunds, Jr.

\$500.00 monetary penalties against Kenneth S. Smith had accrued at the rate of \$100.00 per day from Nov. 17, 2003, through Nov. 21, 2003, (or portion thereof) when the appeal was received by DPCD on Nov. 21, 2003.

On Dec.2, 2003, attorney Wesley N. Edmunds, Jr. contacted Planning Supervisor Dawn Nelson and advised her he would be meeting with Scott Stewart of L.C.& Associates to start the work for a stream buffer modification application for the residential site at 9746 Slater Ave. NE, Kirkland, WA.

A complete application for a stream buffer modification from Kenneth S. Smith, attorney Wesley J. Edmunds, or from Scott Stewart of L. C. Lee & Associates was not subsequently received by DPCD.

In conclusion, continuing improvements have been made over several years by Kenneth S. Smith to that portion of his residence/house at 9746 Slater Ave NE, Kirkland, WA located in a 75-foot wide stream buffer and 10-foot stream buffer setback without an approved stream buffer modification, in violation of Chapter 90, Kirkland Zoning Code. These improvements include but are not limited to constructing a substantial foundation under the residence, raising the height of the residence, constructing a significant basement area under the house, adding/constructing an approx. 10 foot by 26 foot wide elevated deck structure onto the rear east side of residence, and adding/constructing an elevated deck structure on the south side of the residence.

None of these improvements by Kenneth S. Smith were made pursuant to a required City of Kirkland building permit. Please note that the only building permit issued to Kenneth S. Smith for the 9746 site was BLD04-00663 issued Aug. 3, 2004, which authorized a change of the roof only on the west end of residence at 9746 Slater Ave NE, Kirkland, WA - limited to taking out the hip, and putting in a vaulted gable.

#### IV. LEGAL ANALYSIS

The numerous improvements made to that portion of the residence at 9746 Slater Ave NE, Kirkland, WA by Kenneth S. Smith in a required 75-foot wide stream buffer and 10-foot stream buffer setback are not exempted by Chapter 90.20, Kirkland Zoning Code, from the applicable stream buffer regulations in Chapter 90.90 and 90.100, Kirkland Zoning Code because they went beyond normal routine repair or maintenance. The Kirkland Zoning Code does not define repair or maintenance, so we must refer to the common meaning of the words. The Webster's dictionary definition of repair is "to restore to a sound condition after damage or injury" while the definition of maintain is "to preserve or keep in a given existing condition". For example, the area under the approx. east half of residence has been altered from crawl space that did not have sufficient head room or egress to be considerable habitable to space that is now habitable. Therefore, the foundation work and other improvements that were done (as noted in the concluding paragraph of the STATEMENT OF FACTS above) go beyond restoring or preserving the condition that previously existed.

Because Kenneth S. Smith's foundation work related to raising the height of the residence, and created a significant basement area within the stream buffer and stream buffer setback was not repair or maintenance, and an approved stream buffer modification from the DPCD was required to comply with Chapter 90.90, and/or 90.100, Kirkland Zoning Code, based on the facts of this code enforcement case.

Kenneth S. Smith has failed to obtain an approved stream buffer modification, despite frequent notifications and requests by the City of Kirkland that he submit a completed application for a stream buffer modification to DPCD.

The definition of "improvement" is provided by chapter 5.10.390, Kirkland Zoning Code, which states "Improvement - Any structure or manmade feature." .....

Based on the testimony by the Planning Dept., and by the Building Dept., together with numerous exhibits consisting of letters, emails, governmental records, maps and photographs, to be presented before the Hearing Examiner at 9:00 AM, Feb. 16, 2006, the Planning Dept, City of Kirkland, will prove a long-standing and continuing history of improvements by Kenneth S. Smith to that portion of the residence at 9746 Slater Avenue NE, Kirkland, WA located in a 75-foot wide stream Class A stream buffer, and/or a 10-foot building setback from the stream buffer edge, in violation of Chapter 90, sections 90.100 and/or 90.100 Kirkland Zoning Code.

Monetary Penalties are established for violations of the Kirkland Zoning Code by chapter 170, Section 170.25.2 & 3, Kirkland Zoning Code, which states:

2. "Monetary Penalty - The amount of the monetary penalty per day or portion thereof for each violation is as follows:

a. First Violation: \$100.00;

3. Continued Duty To Correct – Payment of a monetary penalty pursuant to this chapter does not relieve a person of the duty to correct the violation as ordered by the applicable department director”.....

#### V. CONCLUSION

DPCD Staff respectfully request that the Notice of Civil Infraction (per ENF 02-189) issued by DPCD on Nov 17, 2003, to Kenneth S. Smith be upheld, and that monetary penalties of \$100.00 per day from Nov. 17, 2003, through Nov. 21, 2003 (\$500.00 total monetary penalties) be imposed on Kenneth S. Smith, together with the imposition of prospective monetary penalties against Kenneth S. Smith until the violations of Chapter 90, sections 90.90 and/or 90.100 Kirkland Zoning Code at 9746 Slater Avenue NE, Kirkland, WA are certified as corrected by DPCD.

**From:** OSWALD, DUANE W  
**Sent:** Friday, June 02, 2006 10:33 AM  
**To:** 'ronhanson@comcast.net'  
**Subject:** FW: File No. ZON06-00010, Smith Stream Buffer Modification

Hi Ron,

In the last few days, I have had the opportunity to discuss this project with my neighbor Ken Smith. I feel very comfortable with his plans for this project, and in fact, am very impressed with the extent of the proposed improvements involving the stream buffer enhancements. And, while the project does not have any direct affect on my property, I can only applaud Ken on his concern about our wetland areas in the North Rose Hill neighborhood in general, as well as his specific plans for the improvement and protection of the stream as it crosses through his property.

I have resided in my home since 1986, with Ken moving next door in about 1990. I have seen nothing but continued improvements to his property over the years, to the point today where it is one of the most charming residences and properties in the neighborhood.

I would further hope that anyone else making comment about the project has the correct information in order to properly assess the enhancements and their positive affect to the wetland area. Regretfully, there are negative examples of damage to this stream in other areas of Rose Hill, so it should be important that anyone commenting (positive or negative), be properly informed of what the enhancements involve. I personally highly hope that Ken receives a go-ahead from the city of Kirkland regarding these positive proposed modifications.

Duane Oswald  
12045 N.E. 100th Street  
Kirkland, Washington 98033  
Day phone: 425-376-7727  
Home: 425-822-6499

**From:** Ravi Dewan <ravidewan@yahoo.com>  
**To:** ronwhanson@comcast.net  
**Subject:** File No. ZONO6-00010  
**Date:** Tue, 6 Jun 2006 16:32:08 +0000

To Whom It May Concern:

In treference to the above mentioned modification, I am pleased to see that the City is allowing a long time resident of Kirkland, the permission to care for his own part of the stream. We live along the stream at 9724 Slater Avenue NE, and have seen conflicting decisions made on this stream. Whereas some new developers have been allowed to raze it to the ground, other older residents have not been permitted to use their own property to enhance their environment. I commend Kenneth for standing up for his rights and know that we will not suffer any consequence from the peaceful use of his own property.

Sincerely,

Ravi Dewan  
9724 Slater Avenue NE  
Kirkland, WA 98033  
(425) 822-3202

**Ravi Dewan**  
Ekta Interiors

P.O. Box 1386, Kent, WA 98032

cell: (206) 714-6026  
Fax: 425-889-0315

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ZONO6-00010