CITY OF KIRKLAND
Planning and Community Development Department
123 Fifth Avenue, Kirkland, WA 98033 425-587-3225
www.ci.kirkland.wa.us

ADVISORY REPORT
FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

To: Kirkland Hearing Examiner

From: Ronald Hanson, Project Planner (Consultant)
Dawn Nelson, AICP, Planning Supervisor
Eric R. Shields, AICP, Planning Director

Date: June 1, 2007

File: **SMITH STREAM BUFFER MODIFICATION WITH ENHANCEMENT (ZON06-00010)**

Hearing Date and Place: June 21, 2007, 1:00 p.m.
City Hall Council Chamber
123 Fifth Avenue, Kirkland

TABLE OF CONTENTS

Section	Page
Application	2
Recommendations	2
Site Description	4
History	5
Public Comment	6
State Environmental Policy Act (SEPA)	6
Approval Criteria	6
Comprehensive Plan	9
Development Review Committee	9
Subsequent Modifications	10
Appeals and Judicial Review	10
Lapse of Approval	10
Appendices	10
Parties of Record	10

I. INTRODUCTION

A. APPLICATION

1. Applicant: Ken Smith
2. Site Location: 9746 Slater Avenue NE (See Attachment 1).
3. Request: Pursuant to KZC Section 90.100, the applicant is requesting approval of a stream buffer reduction through enhancement for a Class A Stream (Forbes Creek) located in the Forbes Creek Basin (Primary Basin). The proposal reduces the required 75 foot buffer to a minimum of 50 feet to allow the previous improvements made to the existing non-conforming house. See Section II.B., for a description of those improvements. The proposed buffer enhancement plan includes the removal of non-native plant species below the top of the stream bank, and the removal of plant species with enhancement for a distance of 10 feet on both sides above the top of bank (See Section II.F).
4. Review Process: Process IIA, Hearing Examiner conducts public hearing and makes final decision on the Stream Buffer Reduction application.
5. Summary of Major Issues and Recommendations The major issues addressed in this report are compliance with the Development Regulations, compliance with the applicable stream buffer modification requirements and approval criteria, and obtaining the necessary construction permits for previous improvements made to the existing non-conforming house (See Attachment 3, Development Regulations, Section I B, Recommendations, and Sections II.B, and II.F).

B. RECOMMENDATIONS

Based on Statements of Fact and Conclusions (Section II), and Attachments in this report, we recommend approval of this application subject to the following conditions:

1. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Attachment 3, Development Standards, is provided in this report to familiarize the applicant with some of the additional development regulations. This Attachment does not include all of the additional regulations. When a condition of approval conflicts with a development regulation in Attachment 3, the condition of approval shall be followed (See Conclusion II.H.b).
2. Prior to commencing the subject stream buffer enhancement activity, the applicant shall:
   a. Submit the final enhancement plan, and maintenance and monitoring plan incorporating The Watershed Company recommended revisions, for review and approval by the Planning Department (See Conclusion II.F.2). The recommended revisions include:
      (1) Submit a detailed plan for controlling erosion and sedimentation from work below top-of-bank. This should include plans for restabilizing the stream bank after vegetation removal.
      (2) Revise the plan text and drawing to show the accurate square footage of the enhancement area.
      (3) Recalculate the number of plants needed for the spacing specified in Table 2 using the following per-square foot multipliers: 0.012 for trees, 0.040 for shrubs, and 0.111 for ferns.
      (4) Include plans for removing invasive vegetation to the property line on the

right bank.

(5) Consider planting the entire slope on the right bank, both for stability and to prevent reinvasion on non-native species. At a minimum, areas of weed removal should be seeded.

(6) Specify sample plot size for estimating percent cover; clarify methods for estimating percent cover in two strata; and add language to the text requiring a full plant count in all years.

(7) Cleary detail performance standards to include percent cover by native woody plants (80%), maximum cover by invasive weeds (10%), and some standard regarding diversity of native plants (at lease 3 native tree species and 4 native shrub species will be established).

(8) Clearly spell out that monitoring and maintenance is to take place two times in each year. Monitoring is to be twice per year with an annual report completed by a biologist or other professional versed in environmental restoration projects. Maintenance should include weeding of competing grasses and herbs from the base of each plant at least twice per year and more often if invasive weeds become problematic.

(9) Provide a bond estimate for the work, using industry standards for material and labor

b. Ensure that the installation and maintenance of the mitigation plantings comply with the provisions of KZC 95.45.12 (See Conclusion II.F.2).

c. Submit to the City for review and recording with King County, a signed and notarized hold harmless agreement pertaining to the stream (See Conclusions II.G.4.b).

d. Submit a survey map and legal description showing the outline and dimensions of the Natural Greenbelt Protective Easement (See Conclusion II.G.3.b). The map and legal description shall be prepared by a licensed surveyor. This information shall be provided on 8.5" x 11" paper and consist of the following:

- The survey shall be located on the KCAS or plat bearing system and tied to known monuments.
- A metes and bounds legal description of the stream buffer located on the subject property showing all radii, internal angels, points of curvature, tangent bearings, and lengths of all arcs.
- Surveyor's certificate completed and seal applied.
- On a separate sheet, provide the legal description of the entire parcel.

e. Submit a financial security device to cover the cost of completing the buffer enhancement improvements. The security shall be consistent with the standards outlined in Zoning Code section 90.145 and recalculated using the King County Bond Quantity worksheet for Critical Areas Mitigation (See Conclusion II.G.2.b). The worksheet is available online from King County.

f. Upon project completion, the applicant shall install a permanent 3 to 4 foot tall split rail fence at the upland boundary of the proposed 10 wide vegetative stream buffer located on both the east and west sides of the stream. Installation of the permanent fence must be done by hand where necessary to prevent machinery from entering the stream and its buffer (See Conclusion II.G.1.b).

3. The applicant shall submit proof of a written contract with a qualified professional who will perform the monitoring and maintenance program outlined in Attachment 6 and Attachment 7 (See Conclusion II.F.2.c).

4. Upon completion of the buffer enhancement plan, the maintenance and monitoring work should be reviewed by the City's wetland consultant, the cost of which should be borne by the applicant. Therefore, the applicant should submit proof of a written contract with the City's wetland consultant to cover the review of the annual report prepared by the applicant's consultant for 5 years (See Conclusion II.F2.d).

5. The applicant shall complete the site work approved with the stream buffer enhancement plan by October 15, 2007. If the work is not completed by this date, the Planning Department will re-open the Notice of Civil Infraction, and Notice of Violation and Order to Correct unless a time extension has been granted by the City (See Conclusion II.F.2).

6. The applicant shall submit the necessary building permit(s) to the City of Kirkland by September 1, 2007 for all improvements made to the existing house without the required building permits (See Conclusion II.B.2).

II. FINDINGS OF FACT AND CONCLUSIONS

A. SITE DESCRIPTION

1. Site Development and Zoning:

   1. Facts:

      1) Size: The rectangular shaped site is 19,000 square feet (.44 acres).

      2) Land Use: The site is currently developed with a single family house, concrete patio, barbeque pit, paved sport court, and two small sheds.

      3) Zoning: Single-Family Residential RSX 7.2 zone with a minimum lot size of 7,200 square feet.

      4) Terrain: The property generally slopes downward gently to the east from Slater Avenue NE towards Forbes Creek which flows across the southeast corner of the site.

      5) Vegetation: Vegetation consists primarily of lawn and residential landscaping west of the stream. The area east of the stream is covered with blackberries and other undergrowth.

      6) Sensitive Area: The eastern portion of the site contains a Class A Stream in a Primary Basin (Forbes Creek Basin) requiring a 75 foot wide buffer on each side of the stream with an additional 10 foot building setback from the buffer edge. Pursuant to Kirkland Zoning Code Section 90.100, the applicant is requesting one-third reduction of the buffer with enhancement. Due to the location of the house, and other existing non-conforming improvements located within the proposed 50 foot buffer (patio, barbeque area), it is not practical to enhance the entire remaining 50 foot buffer as normally would be required. Therefore, a modified enhancement plan is proposed.

   2. Conclusion: Size, land use, zoning, terrain and vegetation are not constraining factors in the consideration of this application. However, the site contains a Class A Stream in a Primary Basin which is a constraining factor. The applicant is requesting a one-third reduction in the normally required 75 foot wide buffer with enhancement (Sections II.B, and II.F for more discussion).

2. Neighboring Development and Zoning:

   1. Facts: The subject site is bordered by the following uses:

      North: The area immediately to the north is zoned RSX 7.2 and is developed with single family homes.

      South: The area is zoned RSX 7.2 and is developed with single family homes.

      East: The area is zoned RSX 7.2 and is developed with single family homes.

      West: To the west is Slater Avenue NE and an area zoned RSX 7.2 developed with single family homes.

   2. Conclusion: The neighboring development and zoning are not constraining factors in this proposal.

B. HISTORY

1. Facts: The existing single family home on the site was originally built in 1913 as a 14'x 26' single story residence. An addition was made to the house in 1939 to bring the house to its current main floor dimensions of approximately 36'x 26'. The existing home is non-conforming since it is located within the required 75 foot wide buffer and 10 foot structure setback from Forbes Creek. The home was constructed at its closest point, approximately 50 feet from the stream. The property owner made improvements to the non-conforming house without the necessary construction permits, and within the required stream buffer and buffer setback. The improvements include, but are not limited to, constructing a foundation under the house, raising the height of the house, constructing a basement, and constructing an elevated deck on the east side of the house. The applicant recently submitted information showing that a 10 foot by 20 foot deck has been located on the east side of the house since they moved into the house in 1990.

   With the exception of the deck, none of these improvements were found by the City to be considered normal maintenance and repair, and therefore are not exempted by Chapter 90.20 of the Kirkland Zoning Code from the applicable stream buffer regulations in Kirkland Zoning Code Chapter 90.90 and 90.100. For this reason, Mr. Smith was advised by the City that a stream buffer modification application was required to be submitted.

   The City issued a Notice of Civil Infraction on November 17, 2003, and a Notice of Violation and Order to Correct on November 4, 2003 requiring that a completed application for a stream buffer modification be submitted by November 13, 2003. (File Number ENF02-189). The application was not submitted to the City by the required date resulting in monetary penalties being assessed under the Notice of Civil Infraction. On November 21, 2003, Mr. Smith appealed the Notice of Civil Infraction to the Hearing Examiner (File Number APL03-00009). An appeal hearing was scheduled with the Kirkland Hearing Examiner on February 16, 2006 and a staff report prepared by the Planning Department. See Staff Report (Attachment 4) for a detailed summary of events and actions.

   Prior to the appeal hearing, the applicant withdrew his appeal and agreed to submit the required subject stream buffer modification application.

   The City did not previously proceed with enforcing the lack of required building permits for the improvements made to the house. The Building Department is now, however, requiring that the necessary building permits be obtained.

2. Conclusion: Provided that the stream buffer modification application is approved and the recommended conditions of approval are met, history is not a constraining factor in this application. The applicant should submit and receive approval of the necessary

construction permits and complete the work required with the permit (See Attachment 3, *Building Department Development Standards*).

C. PUBLIC COMMENT

The public comment period for the proposal extended from May 18, 2006 to June 5, 2006. There were two written public comments received by the Planning Department during the above comment period and up to issuance of the subject staff report.

The first is from Duane Oswald who resides at 12045 NE 100th Street, directly north of the subject site. Mr. Oswald is supportive of the proposed improvements to the stream buffer (See Attachment 5a).

The second is from Ravi Dewan who resides at 9724 Slater Avenue NE, one lot south of the subject site. Mr. Dewan is also supportive of the applicant's proposal (See Attachment 5b).

D. STATE ENVIRONMENTAL POLICY ACT (SEPA) & CONCURRENCY

1. Fact: Pursuant to WAC 197-11-800, the proposed Stream Buffer Modification and Enhancement Plan are categorically exempt from SEPA requirements.
2. Conclusion: The applicant and the City have satisfied the requirements of SEPA.

E. GENERAL ZONING CODE CRITERIA

1. Fact: Zoning Code Section 150.65.3 states that a Process IIA application may be approved if:
   a. It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
   b. It is consistent with the public health, safety, and welfare.
2. Conclusion: With the recommended conditions of approval, the proposal complies with the criteria in Section 150.65.3. It is consistent with all applicable development regulations (See Sections II.F and II.G) and the Comprehensive Plan (See Section II.H). In addition, it is consistent with the public health, safety, and welfare because it provides for residential development to occur in a manner consistent with the Comprehensive Plan while satisfying the stream buffer modification development regulations.

F. STREAM BUFFER MODIFICATION

1. Facts:
   a. Forbes Creek, which is a Class A stream, flows through the easterly portion of the site. The subject site is located in the Forbes Creek Drainage Basin, a Primary Basin. A 75 foot stream buffer is required.
   b. Kirkland Zoning Code Section 90.100 allows stream buffers to be reduced through one of two means, either by buffer averaging or buffer reduction with enhancement. A combination of these two buffer reduction approaches can not be used. Stream buffers cannot be reduced at any point by more than one-third of the normally required buffer.
   c. The applicant is requesting approval of a one-third buffer reduction with enhancement. The normally required 75 foot wide buffer is proposed to be reduced to 50 feet in width.
   d. The applicant submitted a stream buffer enhancement plan prepared by L.C. Lee and Associates and Adolfson Associates, Inc (See Attachment 6), which has been reviewed by the City's Consultant, The Watershed Company. The Watershed Company has recommended several revisions to the enhancement plan (See Attachment 7).

e. Fact: KZC Section 90.100.2 establishes nine decisional criteria for reducing a stream buffer. A stream buffer modification may only be granted when the proposed development is consistent with all of the following criteria:

1. It is consistent with *Kirkland's Streams, Wetlands and Wildlife Study* (The Watershed Company, 1998) and the *Kirkland Sensitive Areas Regulatory Recommendations Report* (Adolfson Associates, Inc. 1998).
2. It will not adversely affect water quality.
3 It will not adversely affect fish, wildlife, or their habitat.
4. It will not have an adverse effect on drainage and/or storm water detention capabilities.
5. It will not lead to unstable earth conditions or create erosion hazards or contribute to scouring action.
6. It will not be materially detrimental to any other property in the area of the subject property or to the City as a whole.
7. Fill material does not contain organic or inorganic material that would be detrimental to water quality or to fish, wildlife, or their habitat.
8. All exposed areas are stabilized with vegetation normally associated with native wetland buffers, as appropriate.
9. There is no practicable or feasible alternative development proposal that results in less impact to the buffer.

2. Conclusion: Pursuant to the attachments included with this report, including the Stream Buffer Modification and Enhancement Plan, and applicant's response to the modification criteria (Attachment 6), and the report from The Watershed Company (Attachment 7), the proposed development is consistent with the above criteria for a stream buffer modification subject to the following conditions.

a. The applicant should follow the enhancement and maintenance plan as identified in Attachment 6 with the recommended changes outlined by The Watershed Company in Attachment 7. As provided in the applicant's enhancement plan, work should occur during the dry months. To avoid planting during the warmest months (July and August), the applicant should complete the approved work associated with the enhancement plan by October 15, 2007.

b. The installation and maintenance of the mitigation plantings should comply with the provisions of KZC 95.45.12. These specifications should be provided on the construction drawings.

c. The applicant should submit proof of a written contract with a qualified professional who will perform the monitoring and maintenance program outlined in Attachment 6 and Attachment 7.

d. Upon completion of the buffer enhancement plan, the maintenance and monitoring work should be reviewed by the City's wetland consultant, the cost of which should be borne by the applicant. Therefore, the applicant should submit proof of a written contract with the City's wetland consultant to cover the review of the annual report prepared by the applicant's consultant for 5 years.

G. DEVELOPMENT REGULATIONS

1. Stream Buffer Fence or Barrier

   a. Facts: Zoning Code Section 90.95 requires the applicant to install either (1) a permanent three to four-foot-tall split rail fence; or (2) permanent planting of equal barrier value; or (3) equivalent barrier, as approved by the Planning Official between the upland boundary of all stream buffers and the developed portion of the site.

   b. Conclusions: Upon project completion, the applicant should install a permanent 3 to 4 foot tall split rail fence at the upland boundary of the proposed 10 foot wide vegetated stream buffer located on both the east and west sides of the stream.

2. Bonds and Securities

   a. Facts.

      (1) Kirkland Zoning Code Section 90.145 establishes the requirement for the applicant to submit a performance or maintenance bond to ensure compliance with any aspect of the Drainage Basin regulations contained in Chapter 90 of the Kirkland Zoning Code or any decision or determination made pursuant to the chapter.

      (2) The applicant has submitted a preliminary estimate for the security costs (See Attachment 6) which has been reviewed by the City's stream consultant, The Watershed Company (See Attachment 7). The Watershed Company identified that the bond amount should be recalculated using the King County Bond Quantity worksheet for Critical Areas Mitigation.

   b. Conclusions:

      (1) In order to ensure that the stream enhancement work is completed in compliance with the approved plans, the applicant should submit a financial security device to the Planning Department to cover the cost of completing the improvements. The security shall be consistent with the standards outlined in Zoning Code Section 90.145.

      (2) In order to ensure continued compliance with the stream buffer enhancement plan, the applicant should submit to the Planning Department a financial security device to cover all monitoring and maintenance activities that will need to be done including consultant site visits, reports to the Planning Department, and any vegetation that needs to be replaced. The security shall be consistent with the standards outlined in Zoning Code Section 90.145.

      (3) The security amounts should be recalculated using the King County Bond Quantity worksheet for Critical Areas Mitigation.

3. Natural Greenbelt Protective Easement

   a. Fact: Zoning Code Section 90.150 requires the applicant to grant an easement or agreement to the City to protect sensitive areas and their buffers.

b. Conclusion: The applicant should sign and notarize a Natural Greenbelt Protective Easement (NGPE) acknowledging the presence of sensitive areas on the property and agreeing to protect those areas consistent with the provisions in the Kirkland Zoning Code. This document should contain a survey map and a metes and bounds legal description (based on City of Kirkland standards) of the sensitive area's buffer located on the subject property.

4. Hold Harmless - Streams

a. Fact: Kirkland Zoning Code Section 90.155 establishes that prior to issuance of a land surface modification permit or a building permit, whichever is issued first, the applicant shall enter into an agreement with the City that runs with the property, in a form acceptable to the City Attorney, indemnifying the City from any claims, actions, liability and damages to sensitive areas arising out of development activity on the subject property. The applicant shall record this agreement with the King County Department of Elections and Records.

b. Conclusion: The applicant should sign and notarize a covenant that holds the City harmless against any future claims that may arise as a result of the development of the property.

H. COMPREHENSIVE PLAN

1. Fact: The subject property is located within the North Rose Hill Neighborhood. Figure NRH-4 on page XV.F-7 designates the subject property for low-density residential with a maximum allowable density of 6 dwelling units per acre (See Attachment 8). The 19,000 square foot site is currently developed with one single family home. The existing density is 2.3 dwelling units per acre.

   The Natural Environment Section of the North Rose Hill Neighborhood on page XV.F-3 indicates that new development should be located and designed to preserve and enhance the health, safety, drainage, habitat, and aesthetic functions provided by sensitive areas. In particular, substantial setbacks and protection measures should be provided around all streams and wetlands. The proposed stream buffer modification with enhancement plan, once completed, will help improve these stream functions.

2. Conclusion: The proposal is consistent with the Comprehensive Plan.

I. DEVELOPMENT REVIEW COMMITTEE

1. Fact: Additional comments and requirements placed on the project are found on the Development Standards Sheet, Attachment 3.

2. Conclusion: The applicant should follow the requirements set forth in Attachment 3.

III. SUBSEQUENT MODIFICATIONS

Modifications to approved permit may be requested and reviewed pursuant to the applicable modification procedures and criteria in effect at the time of the requested modification.

IV. APPEALS AND JUDICIAL REVIEW

The following is a summary of the deadlines and procedures for appeals. Any person wishing to file or respond to an appeal should contact the Planning Department for further procedural information.

A. APPEALS TO CITY COUNCIL

Section 150.80 of the Zoning Code allows the Hearing Examiner's decision to be appealed by the applicant and any person who submitted written or oral testimony or comments to the

Hearing Examiner. The appeal must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5:00 p.m., _____, fourteen (14) calendar days following the postmarked date of distribution of the Hearing Examiner's decision on the application.

B. JUDICIAL REVIEW

Section 150.130 of the Zoning Code allows the action of the City in granting or denying this zoning permit to be reviewed in King County Superior Court. The petition for review must be filed within 21 calendar days of the issuance of the final land use decision by the City.

V. APPENDICES

Attachments 1 through 8

1. Vicinity Map
2. Site Plan
3. Development Standards
4. Planning Department Staff Report (APL03-00009)
5. Public Comment Letters
    a. Letter from Duane Oswald
    b. Letter from Ravi Dewan
6. Stream Buffer Modification and Enhancement Plan dated February 28, 2006 by L.C. Lee & Associates
7. Letter from The Watershed Company dated August 21, 2006
8. North Rose Hill Neighborhood Land Use Map

VI PARTIES OF RECORD

Ken Smith, 9746 Slater Avenue NE, Kirkland, Wa. 98033
Duane Oswald, 12045 NE 100th Street, Kirkland, Wa. 98033
Ravi Dewan, 9724 Slater Avenue NE, Kirkland, Wa. 98033
Department of Planning and Community Development
Department of Public Works
Department of Building and Fire Services

A written decision will be issued by the Hearing Examiner within eight calendar days of the date of the open record hearing.