



**CITY OF KIRKLAND**  
**Planning and Building Department**  
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**ADVISORY REPORT**  
**FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS**

**To:** Kirkland Hearing Examiner

**From:** David Barnes, Project Planner \_\_\_\_\_  
Eric R. Shields, AICP, Planning Director  \_\_\_\_\_

**Date:** February 21, 2018

**File:** ZON16-02288

**Hearing Date and Place:** February 28, 2018 – 7PM  
City Hall Council Chamber  
123 Fifth Avenue, Kirkland

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## **I. INTRODUCTION**

### **A. APPLICATION**

1. Applicant: Greg Rairdon with RC 124<sup>th</sup> LLC
2. Site Location: 13110 NE 126<sup>th</sup> PI ('South Parcel') and vacant parcel 282605-9004 ('North Parcel') (see Attachment 1)
3. Request: The applicant is proposing to construct a two-tiered surface parking area on the southern portion of the North Parcel for storage of vehicles that would be used in conjunction with an existing vehicle service and storage operation located on the South Parcel (see Attachment 2). This application is being reviewed under the Kirkland Zoning Code Chapter 90 regulations that existed September 19, 2016 which is when this application was made to the City. In order to construct these improvements, the applicant requests approval of a Planned Unit Development (PUD) and wetland buffer and stream buffer averaging described below:
  - a. PUD – A request for a preliminary and final (PUD) for compliance with the TL 9B review process requirement and the following modifications to the Kirkland Zoning Code:
    - (1) Complete filling of an onsite Type III wetland (Wetlands C) where not more than 50% of a wetland in a primary basin is allowed to be altered.
    - (2) "Paper" filling 30% of an onsite Type II wetland (Wetland A) where not more than 10% of a wetland in a primary basin is allowed to be altered.
    - (3) Providing **offsite mitigation outside the subject property's drainage basin** through the King County In-Lieu Fee Mitigation Reserves Program (ILF MRP).
    - (4) Reducing a Class C Stream buffer more than the 1/3 reduction allowed (Stream C).
    - (5) Modifying a 10-foot structure setback from Wetland A and Stream C to zero feet.
    - (6) Placing a Class C stream in a pipe (Stream B) where no provisions in the Kirkland Zoning Code allow this specific action.
    - (7) Reducing an off-site Class C steam buffer more than the 1/3 reduction allowed to zero feet.
  - b. Wetland Buffer Averaging – A request to average a Type II wetland buffer (Wetland B) that impacts 1,267 sq. ft. of the wetland buffer (see Attachment 4).
  - c. Stream Buffer Averaging – A request to average a Class C stream buffer (Stream C) that impacts 1,104 sq. ft. of the stream buffer, (see Attachment 4).
2. Review Process: Process IIB, Hearing Examiner conducts public hearing and makes recommendation; City Council makes final decision.
3. Summary of Key Issues and Conclusions: Utilizing the Planned Unit Development (PUD) process in Kirkland Zoning Code Chapter 125 to comply with the TL 9B review process requirement, exceed critical area modification thresholds, and to allow participation in the King County In-Lieu fee (ILF) Mitigation Reserves Program (MRP) as compensatory mitigation instead of providing mitigation onsite or within the same drainage basin as the subject property as required by code.

Compliance with the wetland and stream buffer averaging criteria in KZC Chapter 90 for the proposed encroachments into the southern portion of the buffer for Wetland B and Stream C.

## **B. RECOMMENDATIONS**

1. Based on Statements of Fact and Conclusions (Section II), and Attachments in this report, we recommend approval of this application subject to the following conditions:
2. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Attachment 3, Development Standards, is provided in this report to familiarize the applicant with some of the additional development regulations. This attachment does not include all of the additional regulations. When a condition of approval conflicts with a development regulation in Attachment 3, the condition of approval shall be followed (see Conclusion II.G).
3. Trees shall not be removed or altered except as approved by the Planning Department and if shown to be removed on the applicant's required Tree Retention Plan. Attachment 3, Development Standards, contains specific information concerning tree retention requirements.
4. As part of the application for any development permit, the applicant shall submit:
  - a. Plans that continue to show conformance with the TL9B Special Regulations described under KZC 55.64.035 use listing (see Conclusion II.D.1.d and II.D.1.)
  - b. A revised wetland and stream buffer restoration plan and native restoration plan. The revised plans should not show wetland fencing and signage encompassing any area not shown as wetland or stream buffer area (see Conclusion II.D.1.d).
  - c. An Escarpment Restoration and Escarpment Temporary Impact Area Restoration Plan as shown on the Mitigation Plan and described in the Mitigation Plan Notes (see Conclusion II.D.3).
  - d. A final geotechnical report that acknowledges that the design of the retaining walls will meet the global stability safety factors on the site and adequately mitigate all identified landslide and erosion hazards (see Conclusion II.E.2).
  - e. A statement from an engineer and architect on all grading and building plans that acknowledges the geotechnical reports and the final geotechnical report and that all recommendations have been incorporated into the plans (see Conclusion II.E.2).
  - f. Provide split rail fencing/or retaining walls details that corresponds to the NGPE boundary (see Conclusion II.E.2).
  - g. Protect and retain all viable trees outside of the proposed development envelope during the construction of PUD improvements including parking areas, retaining walls and throughout the development process (see Conclusion II.E.4).



- e. Survey and record a Native Growth Protection Easement (NGPE) that includes the area north of the new retaining walls up to the northern portion of the northern parcel of the subject property (see Conclusion II.E.2).
- f. Install split rail fencing/or retaining walls that corresponds to the NGPE boundary (see Conclusion II.E.2).

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

### **A. SITE DESCRIPTION**

1. Site Development and Zoning:
  - a. Facts:
    - (1) Size: The subject property is a 3.74 acre site consisting of two parcels (North Parcel is 1.54 acres + South Parcel is 2.2 acres) (see Attachment 5).
    - (2) Land Use: The North Parcel is vacant land and the South Parcel is used as an automobile service and storage facility which includes a one-story (10,376 sq. ft.) building with approximately 130 striped parking stalls and associated paved drive aisles surrounding the building.
    - (3) Zoning: The North Parcel is zoned TL9B and the South Parcel is zoned TL9A. The applicant is proposing to expand a current vehicle inventory storage use on the South Parcel into a portion of the North Parcel.
      - The TL9B use zone chart allows vehicle inventory storage under KZC Section 55.54.035 described as follows: A Retail Establishment providing vehicle or boat sales, repair, services, storage, or washing. This use requires a Planned Unit Development, Process IIB review process.
      - See Section II.D for the PUD analysis, and Section II.E.1 for analysis of compliance with the TL 9A and TL9B Use zones.
    - (4) Terrain: The undeveloped North Parcel is at approximately elevation **278' at the north property line and descends southerly to approximately elevation 164' over a distance of 316' (36% slope)**.  
  
The developed South Parcel sits at approximately elevation **164'** at the retaining wall located north of the existing building and **gently descends southerly to 158' over a distance of 163' (3% slope)**. The South Parcel contains a portion of a Class C stream (Stream B) which emanates from the North Parcel (see Attachment 4).  
  
See also Section II.E.2 for additional analysis of steep slope regulations.
    - (5) Vegetation: The subject property contains approximately 472 significant trees. The applicant proposes to remove 112 significant trees to allow for the installation of the additional

vehicle storage area and retaining wall system (see Attachment 6). See also Section II.E.4 for analysis of tree retention regulations.

(6) Wetlands and Streams: The North Parcel contains two Type II wetlands (Wetland A and B), two Type III wetlands (Wetland C and D), and three Class C streams (Streams A, B, and C). The subject property is adjacent to an off-site Class C stream along its western boundary (see Attachment 4). See also Section II.E.3 for additional analysis of the proposed impacts to the streams and wetlands and/or their buffers.

b. Conclusion: Size and land use are not constraining factors in the consideration of this application. Zoning is potentially a constraining factor, as the redevelopment of the northern parcel requires approval **through the City's PUD process for approval**. See Section II.D.1 for an analysis of the PUD criteria as it relates to the TL 9B Special Regulations for the proposed use.

The **applicant's** proposal to fill or paper fill the Type II wetland (Wetland A) and two Type III wetlands (Wetland C and D), piping of a Class C stream (Stream B), and encroachment into a Class C stream buffer (off-site stream) are constraining factors in the review of this application. **However, the applicant has proposed through the City's PUD process to mitigate these impacts by participating in the King County In-Lieu Fee Mitigation Reserves Program.** See Sections II.D.1 through 4 for analysis of the PUD, wetland modification, stream buffer modification, and stream piping proposal.

**The applicant's proposal to utilize buffer averaging to reduce and average the buffers for Wetland B and Stream C is not a constraining factor with the approval of the applicant's request.** See Section II.D.3 for analysis and conclusion.

2. Neighboring Development and Zoning:

a. Facts: The subject property is bordered by the following zoning districts and uses:

*North*: RSA 6, Single Family Homes

*South*: TL9A, Commercial Offices

*East*: TL7B and RMA 3.6, Undeveloped Land

*West*: TL9A and P (Park): Tennis Court and Undeveloped Land

b. Conclusion: Neighboring development and zoning are not constraining factors in the review of this application

## **B. PUBLIC COMMENT**

1. The public comment period ran from December 21, 2016 to January 17, 2017. Five public comment emails were received (see Attachment 8). The topics and responses are summarized below:

a. **Rezoning of Property**: One comment received opposed the rezone of subject property.

**Staff Response**: *The subject property is zoned TL9A (South Parcel) and TL9B (North Parcel). The applicant is not proposing a rezone with this PUD application. The proposed vehicle parking/storage use is consistent*

with changes previously made to the TL9B zone in December 2015 (Ordinance No. 4498) to allow uses compatible with the light industrial/offices uses allowed in the adjacent TL9A zone.

- b. **Greenbelt Preservation:** Two comments received expressed concern over the loss of the greenbelt between the subject property and the residential property to the north and wanted to confirm the status of the greenbelt as it relates to this project.

***Staff Response:*** The undeveloped northern parcel that lies between the existing developed southern parcel and the residential property to the north is not a formally established greenbelt area. However, the north parcel does contain steep slopes, four wetlands, and two streams. The redevelopment of a portion of the north parcel, if approved, requires that **the applicant goes through the City's PUD process** given the proposed use. The TL9B Special Regulations also require an expanded buffer greater than 100 feet along the north property line and that it be placed in a recorded, protective easement. The applicant has proposed a 200-foot buffer. The entire 200-foot buffer (approximately 140,521 sq.ft (3.22 acres) will be required to be protected in perpetuity as a Natural Greenbelt Protective Easement (NGPE). See Section II.D.1 for **staff's** PUD analysis and Section II.E.1 for TL9B compliance.

- c. **Critical Area Mitigation Sequencing:** One comment requested additional information about rationale for critical area impacts and the reports including site plans, measures to avoid impacts, and the proposed mitigation for unavoidable impacts to critical areas.

***Staff Response:*** Information in the Critical Area Report submitted by the applicant (see Attachment 7) was provided to the commenter. The Critical Area Report explained the rationale for the impacts, measures to avoid impacts, and included a site plan that showed the impacted critical areas. The site plan also showed where a retaining wall and additional surface parking stall are proposed. The mitigation plan proposes to use the King County In-Lieu Fee Program to mitigate the impacts that cannot be mitigated on-site. See Sections II.D.1 through 4 for further analysis.

## **C. STATE ENVIRONMENTAL POLICY ACT (SEPA) and CONCURRENCY**

- 1. Facts:
  - a. A Mitigated Determination of Non-significance (MDNS) was issued on November 1, 2017. The Environmental Determination is included as Attachment 9.
  - b. The applicant requested a change to the SEPA Determination on November 9, 2017 (see Attachment 10).
  - c. The City agreed **to the applicant's request** and issued a SEPA Addendum on December 13, 2017 (see Attachment 11).
  - d. The Public Works Department has reviewed the application for concurrency. A concurrency test was passed for water, sewer and traffic on November 30, 2016.
- 2. Conclusion: The applicant and City have satisfied the requirements for SEPA and Concurrency.

**D. APPROVAL CRITERIA**

1. Planned Unit Development (PUD)
  - a. KZC Chapter 125 Requirements
    - 1.) Fact: Zoning Code section 125.35 establishes four decisional criteria with **which a PUD request must comply in order to be granted. The applicant’s response to these criteria can be found in Attachment 12. Subsections 1.b through 1.e contain the staff’s findings of fact and conclusions based on these four criteria.**
    - 2.) Conclusions: Based on the following analysis, the application meets the established criteria for a PUD.
  - b. **PUD Criterion 1: The proposed PUD meets the requirements of Zoning Code Chapter 125.**
    - 1.) Facts:
      - a) KZC Chapter 125 sets forth procedures by which a PUD is to be reviewed, the criteria for PUD approval and the Zoning Code provisions that may be modified through a PUD.
      - b) The PUD is being reviewed by the process established by KZC Chapter 125.
      - c) Section 125.20 establishes the code provisions that may or may not be modified. This PUD proposal seeks the following Zoning Code modifications which may be proposed through the PUD process. The table below **explains the applicant’s PUD modification requests and quantifies the impact, if applicable, and shows how the mitigation is being provided.**

<b>Action</b>	<b>PUD Request</b>	<b>KZC Allows</b>	<b>Mitigation Proposed</b>
Construction of a vehicle storage area	N/A	Allowed if proposed under City’s PUD process	Compliance with special regulations in KZC 55.64.035.
Fill one Type III wetland (Wetlands C)	2,161 sq. ft. (100%) and utilize King County ILF MRP to mitigate critical area impacts outside the subject property’s drainage basin.	30% Maximum fill and off-site mitigation is allowed only if in the same drainage basin as the subject property	King County In-Lieu Fee (ILF) Mitigation Reserves Program (MRP)
Fill portion of Type II wetland (Wetland A)	10 sq.ft.	10% Maximum and off-site	King County In-Lieu Fee (ILF) Mitigation Reserves

		mitigation is allowed only if in the same drainage basin as the subject property	Program (MRP)
Paper fill a Type II wetland (Wetland A)	1,120 sq. ft. (30%) and utilize King County ILF MRP to mitigate critical area impacts outside the subject <b>property's</b> drainage basin.	10% Maximum fill and off-site mitigation is allowed only if in the same drainage basin as the subject property	King County ILF MRP
Pipe Class C Stream (Stream B)	54 lineal feet or 268 sq. ft. area	Not allowed by the KZC	King County ILF MRP
Reduce Class C stream buffer by more than 1/3 (Stream C)	1,104 sq. ft./ southern portion of stream buffer	1/3 maximum stream buffer reduction	On-site buffer averaging is being proposed (see Section II.D.3 for analysis.
Impact to Class C Stream buffer related to off-site stream	3,624 sq. ft./Entire width of onsite buffer	1/3 maximum stream buffer reduction	King County ILF MRP
Not providing a 10-foot building buffer structure setback for two Type II Wetland buffers and Class C Stream	Zero-foot setback	10-foot building buffer structure setback required for maintenance purposes	PUD Public Benefits are proposed to mitigate for this request.

2.) Conclusion: The proposed PUD is consistent with the requirements of KZC Chapter 125.

c. **PUD Criterion 2: Any adverse impacts or undesirable effects of the proposed PUD are clearly outweighed by specifically identified benefits to the residents of the city.**

1.) Facts:

a) Vehicle Storage Use

(1) The applicant is proposing to expand the existing vehicle storage use from the South Parcel onto the North Parcel, which is zoned TL 9B. Pursuant to KZC 55.64.035 (TL9B Use Zone), the **applicant's proposal must comply with the** following special regulations (see Attachment 13):

- This use is allowed only when included in development of the adjoining parcel to the south in TL 9A.
- An expanded buffer, greater than 100 feet, from the **parcel's north** property line must be provided. The buffer must be placed in a recorded, protective easement.
- Impacts to critical areas should be avoided. Where this is not practicable, impacts should be minimized. Mitigation plans may be proposed, based on a complete evaluation incorporating best available science, which result in an equal or greater level of function and value compared to the existing condition. Mitigation plans which provide a greater level of function and value are preferred
- No internal illumination of wall surfaces
- Outdoor loudspeaker systems are prohibited
- Vehicle access to development must be from NE 126th Place

(2) The proposed development addresses the TL9B special regulations by doing the following:

- The north parcel (TL9B) Use Zone is being developed along with the south parcel in the (TL9A) Use Zone
- The proposed development is setback approximately 200 feet from the north boundary of the TL9B zone and the entire undeveloped portion of the subject property will be placed in a Native Growth Protective Easement (NGPE) as part of the Geologically Hazardous Area analysis (see Conclusion II.E.2.b). The on-site streams and wetlands and their buffers will also be placed in a NGPE and protected in perpetuity.
- The **applicant's critical area report** (see Attachment 7, sections 7.2 and 10.0) describes the mitigation sequencing and provides a rationale for the location of the improvements and provides on-site mitigation where possible and where not possible provides off-site mitigation utilizing the King County ILF MRP that will be equal or greater in function and value compared to the existing condition. See also Sections II.D.2 to 4 for the analysis of wetland and stream impacts and compensatory mitigation being provided by the applicant.
- Plans do not show illumination of walls or outdoor loudspeakers
- The vehicular access to the site is only being provided from NE 126<sup>th</sup> Place

b) Critical Areas

(1) The subject property contains four on-site wetlands (A, B, C, and D) and three on-site Class C streams (A, B, and C) and one off-site Class C stream.

- Wetlands A and B are classified as Type II wetlands and are comprised of red alder, black cottonwood, salmon berry, western red cedar, lady fern and skunk cabbage.
- Wetlands C and D are classified as Type III wetlands. Wetland C is comprised of forested scrub-shrub species such as black cottonwood, Himalayan blackberry, Nootka rose, Indian plum, reed canarygrass, and creeping buttercup. Wetland D is comprised of forested, scrub-shrub, and herbaceous species such as black cottonwood, Himalayan blackberry, and piggy-back plant.
- No nesting or denning, breeding were observed in Wetlands A, B, C, or D. The wetland and surrounding buffer are likely utilized by various songbirds, small mammals, common amphibians and reptiles and species suited to life in urban/suburban settings.
- Streams A, B, and C are seasonal features not used by salmonoids or any other fish and lack fish habitat and are classified as riverine, intermittent, streambed, mud systems.

(2) Stream B – Placing the Stream in a Pipe

- A Class C Stream (Stream B) emerges from the hillside and travels a linear distance of approximately 54 feet and ends by spilling over an existing retaining wall and then is collected in a catch basin located in the existing vehicle parking area.
- Criteria does not exist in KZC Chapter 90 for placing a Class C stream in a pipe.
- **The applicant's** biologist describes Stream B, its lack of function and habitat and that piping this non-fish bearing seasonal stream will improve water quality and help prevent erosion on a site that has landslide potential, if not mitigated. See Attachment 7, Section 9.2 of the Critical Area Report and Section II.E.2 for more information about geologically hazardous area analysis.
- The applicant proposes to mitigate for Stream B by participating in the King County ILF MRP where stream enhancement will be performed offsite.

c) Staff has identified that a potential adverse impact or undesirable effect of exceeding the maximum thresholds for impacts to critical areas and/or their buffers and not providing the required mitigation on the subject property is that the goal of no net loss of

wetland function and stream function, value, and size will not be realized at a local level – in Kirkland.

- d) The **applicant's** Critical Area Report and responses to all wetland and stream modifications decisional criteria state that there will not be any known impacts to salmonoid (or any fish as none are present), and no impacts to threatened or endangered wildlife resources (see Attachment 7). See Sections II.D.2 to 4 for further discussion and analysis of critical area modifications.
- e) Participating in the King County ILF MRP has the following key components (see Attachment 14):
- The subject property and the off-site King County mitigation site lie within the Lake Washington/Cedar River Watershed which are both in the same Water Resource Inventory Area (WRIA 8) (see Attachment 15)
  - The required mitigation ratio (mitigation area/impacted area) pursuant to the Kirkland Zoning Code for modifying an onsite wetland is 1.5:1 for Type III wetlands, 2:1 for Type II wetlands, stream buffers at 1:1. The King County ILF MRP requires a minimum compensatory mitigation equal or greater in function and value than the loss of the on-site critical areas.
  - KZC 90.55.4(a) requires that the wetland and stream mitigation and enhancement and creation be monitored and maintained for 5 years while the King County ILF MRP requires that new wetlands and stream buffers be monitored and maintained in perpetuity
- f) Section 90.55 of the Kirkland Zoning Code stipulates no net loss of wetland function resulting from compensatory mitigation for filling Type II and III wetlands in a primary drainage basin, but does require an increase in function and value when mitigation of those onsite wetland impacts are performed off-site.
- g) There are significant differences in functions and values of lower quality Type II or III wetlands as contrasted with higher quality Type I wetlands. Type III wetlands may have been altered or degraded and do not have the necessary characteristics or components to provide high level values to water quality, nor do they have significant vegetation to support wildlife habitat.

For comparison purposes, Type I wetlands are defined as containing one-quarter acres of organic soils, or 10 acres in size and having three or more wetland classes and contain habitat that is valuable to threatened or endangered species; or that contain threatened or endangered plant species. In addition, Type I wetlands provide significant benefits to the environment in relation to water quality for fish, habitat and greater quantities of native soils and vegetation to support habitat and wildlife. Type II wetlands do not meet any

of the criteria for Type I wetlands, yet provide significant habitat function and value.

- h) According to the Watershed Company, the best available science approach to wetland mitigation has recently changed and biologists have determined that the enhancing or creating highly functional regional wetlands typically provide greater environmental benefit to storm water, fish, wildlife and habitat than retaining smaller and lower functioning wetlands.
- i) The applicant has proposed the following benefits to outweigh any adverse or undesirable effects as a result the PUD modification requests (see Attachment 16, Public Benefit Memo):
  - Mitigating the wetland and stream impacts through the King County ILF MRP
  - Construct a public sidewalk (810 lineal feet) and driveway ramps, cross walk across from the subject property on the south side of 126<sup>th</sup> PL NE between 132nd Avenue NE and 128<sup>th</sup> Avenue Lane NE.
  - Enhance approximately 9,954 sq. ft. of a Type II wetland buffer (Wetland B) and Class C stream buffer (Stream C). In addition, replace an area inundated with invasive plant species and restore approximately 4,250 sq. ft. outside of the sensitive area buffers with native plant species. Both enhancement and restoration areas total approximately 14,204 sq. ft. in area and will be cleared of invasive vegetation and replanted with native trees (conifers) and shrubs (see Attachment 18 for Mitigation Map and Mitigation plan notes).
  - Compliance with the TL9B Special Regulations as described in Subsections (1) and (2) above.
  - Provide 11,309 sq. ft. of additional buffer between Wetland A and Wetland B, beyond the code required 2,371 sq. ft. of area required for wetland and stream buffer averaging required in KZC 90.60.2.a.1 and 90.100.1.a. See Section II.D.3 for analysis.

## 2.) Conclusion:

- a. There is minimal loss of wetland function that comes as a result of filling all of Wetland C (Type III) due to its low functional value. Although Wetland A (Type II) has a higher functional value than a Type III wetland, only 10 square feet will actually be filled and therefore will retain a significant portion of its environmental value. The piping of Stream B is not impactful to the site because the stream does not contain fish, does not have habitat that support fish, prevents erosion of a high landslide area and will place collected water into a vault that will improve water quality prior to **releasing into the City's stormwater system.**

b. The adverse or undesirable effects of the proposed PUD are being adequately mitigated by the following public benefits:

- **Public Facilities:** 810 lineal feet of sidewalk and related improvements on the south side of NE 126<sup>th</sup> Place
- **Enhance or rehabilitate natural features that the City could not require the applicant to preserve, enhance or rehabilitate through development of the subject property without a PUD:** Restoration of significant onsite wetland and stream buffer (Wetland B and Stream C) and native restoration area (14,204 sq. ft. total area)
- **Superior Buffering:**

Provide 11,309 sq. ft. of additional buffer between Wetland A and B beyond the 2,371 sq.ft. required for buffering averaging of Wetland B and Stream C

Provide additional 100 feet of buffer, beyond the code required 100 feet as measured from the proposed development and the northern boundary of the TL9B use zone

The special regulations were designed to minimize the impact of the redevelopment of the TL9B Use Zone listing as described in KZC 55.54.035. The applicant has demonstrated with their proposal that it complies with special regulations for the TL9B Use zone.

When all of the impacts and public benefits (above) are considered, the benefits **clearly outweigh the impacts of the applicant's** proposal. **The applicant's** participation in the King County ILF MRP requires wetland and stream buffer mitigation that meets or **exceeds the City's own requirements**. In addition, the wetland creation and stream buffer enhancement plantings will be maintained in perpetuity; which over the long term will have a greater positive effect on the regional watershed (WRIA8 – Lake Washington/Cedar River Watershed) which includes in its boundary the City of Kirkland. This type of regional mitigation reflects the best available approach to mitigating wetland and stream buffer impacts.

d. **PUD Criterion 3: The applicant is providing one or more of the following benefits to the City as part of the proposed PUD:**

- ◆ The applicant is *providing public facilities* that could not be required by the City for development of the subject property without a PUD.
- ◆ The proposed PUD will *preserve, enhance or rehabilitate natural features of the subject property* such as significant woodlands, wildlife habitats or streams that the City could not require the applicant to preserve, enhance or rehabilitate through development of the subject property without a PUD.
- ◆ The design of the *PUD incorporates active or passive solar energy*

systems.

- ◆ The *design of the proposed PUD is superior* in one or more of the following ways to the design that would result from development of the subject property without a PUD:
  - Increased provision of open space or recreational facilities.
  - Superior circulation patterns or location or screening of parking facilities.
  - Superior landscaping, buffering, or screening in or around the proposed PUD.
  - Superior architectural design, placement, relationship orientation of structure.
  - Minimum use of impervious surfacing materials.
- 1) Facts: The applicant is proposing, from the benefits listed above, to provide public facilities that could not be required by the City for development of the subject property without a PUD and rehabilitation of a Type II wetland/Class C Stream buffers and restoration of an area adjacent to the wetland and stream buffers that the City could not require the applicant to preserve, enhance or rehabilitate through the development of the subject property without a PUD, and mitigating impacts to Wetland D, a non-regulated wetland. The proposed benefits are described below:
  - a) The applicant has agreed to construct a public sidewalk and four ADA ramps across from the subject property on the south side of 126<sup>th</sup> PL NE between 132 Avenue NE and 128<sup>th</sup> Lane NE (see Attachment 16). Currently, the lack of an improved sidewalk makes it difficult for users that are in wheel chairs or walkers as the path is comprised of dirt and gravel. The new sidewalk provides a connection that allows pedestrians to use the proposed sidewalk in a westerly direction and then use an applicant proposed cross walk to cross the street to the existing sidewalk on the west side of 128<sup>th</sup> Lane NE. The existing sidewalk on 128<sup>th</sup> Lane NE connects directly to the Cross Kirkland Corridor.
  - b) The applicant has not proposed to modify the northern portion of the Type II wetland and Class C stream buffer (Wetland B and Stream A) with the development proposal. However, as a public benefit, the applicant has proposed to enhance 9,954 sq. ft. of the buffer north of Wetland B and Stream A (see Attachment 17). An additional 4,250 sq. ft. area north of the buffer for Wetland B and Stream A will be restored by removing invasive plants and planting of native trees and shrubs. The buffer enhancement and the restoration plan will provide an additional 14,204 sq. ft. of new native vegetation between the proposed development and the residential homes to the north.
  - c) The Watershed Company has reviewed and agrees with the wetland and stream buffer enhancement and the native restoration plans (see Attachment 17). These plans provide additional protection to Wetland B and Stream A. The Watershed Company recommends that the wetland/stream Buffer split rail fencing and signage should not include the native restoration area as it is not wetland buffer and

should not be demarcated as such (see Attachment 18).

- d) The applicant has chosen to mitigate the impact of filling Wetland D using the King County ILF MRP even though the filling of Wetland D is not regulated under Chapter 90 of the Kirkland Zoning Code.
- e) **The applicant's proposal provides 200** feet of buffering between the proposed development and the residential homes to the north which is 100 feet more than required by code.
- f) **The applicant's** buffer modification proposal provides an additional 11,309 sq. ft. of buffer between Wetland A and B. Buffer averaging requires 2,371 sq.ft. of buffer to be provided and the applicant has proposed providing a total of 13,680 square feet.
- g) Although not required, the applicant is proposing to enhance the buffer for Stream A and Wetland B as shown on the Mitigation Map (See Attachment 18). The applicant is proposing to enhance the pursuant to KZC 90.60.2.a(2) and KZC 90.100.1(b). These code sections requires the following components of an enhancement plans when considering wetland and stream buffer modification through enhancement:
  - The applicant shall demonstrate through enhancing the buffer (by removing invasive plants, planting native vegetation, installing habitat features such as downed logs or snags or other means) the reduced buffer will function at a higher level that the standard existing buffer.
  - A buffer enhancement pan shall at a minimum shall provide the following: (1) a map locating the area of enhancement; (2) a planting plan that uses native species, including ground cover shrubs, and trees; and (3) a monitoring and maintenance program prepared by a qualified professional consistent with the standards in KZC 90.55(4).
- g) Pursuant to KZC 90.55(4), when approving a wetland or stream buffer modification, the City would require the applicant to provide:
  - A performance security to ensure the approved plan was implemented.
  - A monitoring and maintenance security to ensure that the approved plan was properly monitored and maintained for five years.
  - Split rail fencing be permanently installed to delineate the boundaries of the wetland and stream buffers
  - Signage to be mounted on the split rail fence which describes the presence of an environmentally sensitive area.
- h) KZC Section 90.95 requires that prior to beginning development activities, the applicant shall install a 6-foot-high construction-phase chain link fence or equivalent fence, as approved by the Planning Official, along the upland boundaries of the entire wetland and stream buffer with silt screen fabric installed per City standard.

- i) KZC Section 90.150 requires consistent with law, the applicant shall dedicate development rights, air space, or grant a greenbelt protection or open space easement to the City to protect sensitive areas and their buffers.
  - j) KZC Section 90.155 states that prior to issuance of a building permit, 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 claims, actions, liability and damages to sensitive areas arising out of development activity on the subject property.
- 2) Conclusion: Staff concludes that the proposal includes five public benefits instead of the code minimum of one: public facilities, enhancement of a Type II wetland and Class C stream buffers, mitigating for the loss of Wetland D, an unregulated wetland, using the King County ILF MRP, providing superior buffers in two separate areas that could not otherwise be required in the redevelopment of the subject property. The proposed PUD meets the criteria of KZC 125.35.3 if the following project requirements are completed:
- a) With the submittal of any development permits, the applicant should continue to show conformance with the TL9B Special Regulations described under KZC 55.64.035 use listing.
  - b) The applicant should submit a revised wetland and stream buffer restoration plan and native restoration plan (see Attachment 17), with the grading permit for the project.
  - c) The applicant should construct 810 lineal feet of sidewalk and related improvements along the south side of NE 126<sup>th</sup> Place prior to the final of any development permits (see Attachment 16).
  - d) Prior to issuance of any development permit, the applicant should enter into an agreement with the City that runs with the property, in a form acceptable to the City Attorney, indemnifying the City from claims, actions, liability and damages to sensitive areas arising out of development activity on the subject property.
  - e) The applicant should provide a performance security prior to the issuance of any development permits to ensure that the on-site wetland and stream buffer are enhanced.
  - f) The applicant should install a 6-foot-high construction-phase chain link fence or equivalent fence, as approved by the Planning Official, along the upland boundaries of the entire wetland and stream buffer with silt screen fabric installed per City standard.
  - g) The applicant should provide a five year monitoring and maintenance security for the on-site wetland and stream buffer enhancement prior to final approval of any development permits.
  - h) The applicant should dedicate development rights, air space, or grant a greenbelt easement or open space easement to the City to protect

sensitive areas and their buffers prior to final approval of any development permits.

e. **PUD Criterion 4:**

1. Fact: Any PUD which is proposed as special needs housing shall be reviewed for its proximity to existing or planned services (i.e., shopping centers, medical centers, churches, parks, entertainment, senior centers, public transit, etc.
2. Special needs housing is not proposed and therefore PUD Criterion 4 is not applicable.

2. MODIFICATION OF WETLANDS

a. Facts:

- (1) There are four wetlands on the subject property with the following classifications and size are located in a primary drainage basin (see Attachment 4):
  - Wetland A - Type II – 3,790 sq.ft.
  - Wetland B - Type II – 2,122 s.ft.
  - Wetland C – Type III – 2,161 sq.ft.
  - Wetland D – Type III – 459 sq.ft.
- (2) The applicant requests the following:
  - Fill 10 square feet of Wetland A
  - Paper fill 1,120 sq.ft. of Wetland A
  - Completely fill Wetland C (2,162 sq.ft)
  - Completely fill Wetland D (459 sq.ft)
- (3) Pursuant to KZC 90.20.3, Type III wetlands in a primary basin are exempt from regulation if they are 1,000 sq. ft. or less.
- (4) Wetland D is a Type III wetland and is 459 square feet in area. It is exempt from the regulations in KZC Chapter 90 based on KZC 90.20.3.
- (5) Zoning Code section 90.55.1 establishes ten decisional criteria for approving an improvement or land surface modification in a Type II or III wetland. **The applicant's response to the criteria is included in Attachment 7, section 8.1.**
  - It will not adversely affect water quality
  - It will not adversely affect fish, wildlife, or their habitat
  - It will not have an adverse effect on drainage and/or storm water detention capabilities
  - It will not lead to unstable earth conditions or create erosion hazard or contribute to scouring actions
  - It will not be materially detrimental to any other property or to the City as a whole
  - It will result in a land surface modification of no more than ten percent for Type II wetlands and fifty percent for Type III wetlands on the subject property
  - Compensatory mitigation is provided in accordance with the table in subsection (4) of this section

- Fill material does not contain organic or inorganic material that would be detrimental to water quality or fish and wildlife habitat
  - All exposed areas are stabilized with vegetation normally associated with native wetland buffers, as appropriate
  - There is no practicable or feasible alternative development proposal that results in less impact to the wetland or its buffer
- (6) KZC 90.55.3 allows 10% of a Type II wetland and 50% of a Type III wetland to be filled in a primary basin.
- (7) The applicant proposes to fill 10 sq. ft. and paper fill 1,120 sq. ft. (30%) of a Type II wetland (Wetland A) and to fill 2,161 sq. ft. (100%) of a Type III wetland (Wetland C)
- (8) The proposed wetland fill exceeds the code requirements in KZC 90.55.3 for Type II and Type III wetlands and the applicant has requested a **modification through the City's PUD process** to exceed these code limitations (see Section II.D).
- (9) The required compensatory mitigation pursuant to the Kirkland Zoning Code for modifying an on-site wetland is 1.5:1 for Type III wetlands, 2:1 for Type II wetlands and 1:1 for stream buffers. The King County ILF MRP compensates for losses of wetland and stream functions using the **Department of Ecology's** compensatory methodology that calculates the loss of critical area function (debit) and then requires that credits are purchases at an approved mitigation site to compensate for the loss of function and values on the subject property (see Attachment 19, King County ILF MRP Appendix G).
- (10) **The applicant proposes through the City's PUD process to compensate** for filling the Type III and Type II wetlands using the King County ILF **MRP's methodology for on-site wetland mitigation** and not using the compensatory mitigation ratios described in KZC 90.55.4.
- (11) The applicant submitted a final biological report on February 6<sup>th</sup> 2018 titled **"Critical Areas Report and Detailed Mitigation Plan for RC 124<sup>th</sup> LLC"**, prepared by Wetland Resources, Inc (see Attachment 7) which requests the wetland modifications and explains the how the applicant complies with the request and how mitigation is being proposed.
- (12) **The Watershed Company (the City's consultant) has** completed a final review on February 8<sup>th</sup> 2018 of **the applicant's** biological report titled **"Critical Areas Report and Detailed Mitigation Plan for RC 124<sup>th</sup> LLC"** and agrees with it and recommends the City accept it (see Attachment 18).
- (13) KZC Section 90.150 requires that consistent with law, the applicant shall dedicate development rights, air space, or grant a greenbelt protection or open space easement to the City to protect sensitive areas and their buffers.
- b. Conclusions: Based on a review **of the applicant's** Critical Area Report and Detailed Mitigation Plan for RC 124<sup>th</sup> LLC, **the Watershed Company's review, King County's ILF MRP compensatory mitigation methodology and requirements, and Sections II.D.1.c and II.D.1.d,** the proposed wetland

modification is consistent with the criteria described in Subsection 2.a(5) above, subject to the following conditions:

1. Prior to issuance of any development permits, the applicant should provide proof of acceptance in the King County ILF MRP.
2. Prior to issuance of any development permits, the applicant should provide proof of payment into the King County ILF MRP.
3. If the applicant is not accepted into the King County ILF MRP, the applicant should submit to City staff an alternative critical area mitigation proposal that fully addresses the critical area mitigation required by this PUD. City staff is authorized to approve such alternative mitigation utilizing the minor modification provisions pursuant to KZC 125.60 and KZC 152.125.
4. Prior to final inspection of any development permits, the applicant should dedicate development rights, air space, or grant a greenbelt protection or open space easement to the City to protect sensitive areas and their buffers.

3. MODIFICATION OF A TYPE II WETLAND BUFFER AND A CLASS C STREAM BUFFER

a. Facts:

- (1) Wetland B is classified as a Type II Wetland and is 2,122 sq. ft. in area and Stream C is classified as a Class C stream and both are located in a primary drainage basin.
- (2) An existing escarpment, approximately 2,688 sq. ft. in size and a proposed escarpment restoration area approximately 3,759 sq. ft. in size, are located south and west of Wetland B and Stream C and lie partially within their buffers.
- (3) The southern portion of Wetland B lies within the southern portion of Stream C.
- (4) KZC 90.45.1 requires a 75-foot buffer for Wetland B and KZC 90.90 requires a 35-foot buffer for Stream C.
- (5) KZC sections 90.60.2.a.1 and KZC 90.100.1.a allow buffer averaging for wetland and stream buffers with a maximum reduction of 1/3 of the required buffer width.
- (6) KZC sections 90.60.2.a.1 and KZC 90.100.1.a require the new buffer area be equal in size and quality to the area being reduced.
- (7) The maximum buffer reduction for Wetland B is 25 feet, and 11.66 feet for Stream C.
- (8) The applicant proposes to reduce the buffer for Wetland B from 75 to 50 feet (1,267 sq. ft.), which equals the maximum 1/3 reduction.
- (9) The applicant proposes to reduce the buffer for Stream C from 35 feet to 0 feet (1,104 sq. ft.), which exceeds the maximum reduction.

- (10) **The applicant proposes through the City's PUD process to compensate for exceeding the maximum 1/3 stream buffer reduction for Stream C as required in KZC 90.100.1.a. See Section II.D.1 for analysis.**
- (11) Zoning Code sections 90.60.2.b and 90.100.2 establishes nine decisional criteria for approving an improvement or land surface modification in a Type II wetland buffer and similar criteria for a Class C stream buffer. The applicant's response to the criteria for both the wetland, the stream and escarpment areas are included as Attachment 7, section 8.2.
- It is consistent with *Kirkland's Streams, Wetlands and Wildlife Study* (The Watershed Company, 1998) and the *Kirkland Areas Regulatory Recommendations Report* (Adolfson Associates, Inc., 1998)
  - It will not adversely affect water quality
  - It will not adversely affect fish, wildlife, or their habitat
  - It will not have an adverse effect on drainage and/or storm water detention capabilities
  - It will not lead to unstable earth conditions or create erosion hazard or contribute to scouring actions
  - It will not be materially detrimental to any other property or to the City as a whole
  - Fill material does not contain organic or inorganic material that would be detrimental to water quality or fish and wildlife habitat
  - All exposed areas are stabilized with vegetation normally associated with native wetland buffers, as appropriate
  - There is no practicable or feasible alternative development proposal that results in less impact to the wetland or its buffer
- (12) The applicant submitted a final biological report on February 6th 2018 **titled "Critical Areas Report and Detailed Mitigation Plan for RC 124th LLC", prepared by Wetland Resources, Inc** (see Attachment 7) which requests the wetland and buffer modification and explains the how the applicant complies with the request and how mitigation is being proposed.
- (13) **The Watershed Company (the City's consultant) has completed a final review on February 8<sup>th</sup> 2018 of the applicant's biological report titled "Critical Areas Report and Detailed Mitigation Plan for RC 124<sup>th</sup> LLC" and agrees with the wetland and stream buffer modification and recommends the City accept it (see Attachment 18).**
- (14) The applicant proposes to repair an escarpment within the **southwestern portion Wetland B and Stream C's buffer pursuant to a recommendation from the applicant's geotechnical engineer that the area needs to be stabilized and reinforced with a planted soil slope** (see Attachment 20 (geotechnical letter and Mitigation Map). See Section **II.E.2 for further discussion of the site's compliance with the City's Geologically Hazardous Area code requirements.**
- (15) KZC Sections 90.60.2.a.1 and 90.100.1.a require that the area of the

buffer resulting from buffer averaging is equal in size and quality to the buffer area being reduced, which in this case is equal to 2,371 sq. ft.

- (16) To compensate for the proposed buffer loss of Wetland B and Stream C (2,371 sq. ft.), the applicant proposes to designate 13,680 sq. ft. of new buffer area between Wetland A and Wetland B/Stream C (see Mitigation Plan Attachment 17).
- (17) KZC Section 90.95 requires that prior to beginning development activities, the applicant shall install a 6-foot-high construction-phase chain link fence or equivalent fence, as approved by the Planning Official, along the upland boundary of the entire stream buffer with the silt screen fabric installed per City standard.
- (18) KZC Section 90.150 requires that consistent with law, the applicant shall dedicate development rights, air space, or grant a greenbelt protection or open space easement to the City to protect sensitive areas and their buffers.
- (19) KZC Section 90.155 states that prior to issuance of any building permit, 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.

b. Conclusions: Based on a **review of Wetland Resource's Critical Area Report and Detailed Mitigation Plan**, review by the Watershed Company, Sections II.D.1.c and II.D.1.d, the proposed wetland and stream buffer modifications provide new buffer area greater than five times the area being lost, and are consistent with the criteria described in Subsection 3.a(11) above, subject to the following conditions:

- 1. As part of any development permits, the applicant should include the Escarpment Restoration and Escarpment Temporary Impact Area Restoration Plan as shown on the Mitigation Plan and described in the Mitigation Plan Notes (see Attachment 17).
- 2. Prior to issuance of any development permits, the applicant should 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.
- 3. Prior to beginning development activities, the applicant should install a 6-foot-high construction-phase chain link fence or equivalent fence, as approved by the Planning Official, along the upland boundary of the entire stream and wetland buffer with the silt screen fabric installed per City standard.
- 4. Prior to final inspection of any development permits, the applicant should dedicate development rights, air space, or grant a greenbelt protection or open space easement to the City to protect sensitive areas and their buffers.

#### 4. BUFFER MODIFICATION FOR AN OFF-SITE CLASS C STREAM

##### a. Facts:

- (1) On offsite stream classified as a Class C stream is located adjacent to the subject property's western property line. The subject property is located within a primary drainage basin.
- (2) KZC 90.90 requires a 35-foot buffer for Class C streams.
- (3) **The stream's buffer area is accurately shown on the applicants Critical Area Mitigation Map** and it extends onto the subject property.
- (4) The area along the subject property's western property line within the off-site stream buffer has been used as a parking area that consists of crushed gravel and parking stall markings. The terrain in this area slopes upward from the southwest property line toward the north (see Attachment 5, Existing site conditions).
- (5) **The applicant's biologist** has described the on-site stream buffer area as degraded and lacking of significant vegetation which results in little to no protection to fish or wildlife habitat.
- (6) KZC 90.100.1.b allows buffer reductions through buffer enhancement with a maximum reduction of 1/3 of the required buffer width.
- (7) The maximum buffer reduction allowed is 11.66 feet which would require a buffer of 23.33 feet.
- (8) The existing graveled parking area lies within the stream buffer of the off-site stream and is proposed to be paved with asphalt. This area would serve as a ramp from the lower portion of the site up to the second tier of **parking stalls as shown in the applicant's development proposal (see Attachment 2)**.
- (9) Zoning Code section 90.100.2 establishes nine decisional criteria for approving an improvement or land surface modification in an environmentally sensitive area buffer for a stream. The applicant's response to the criteria is included in section 8.2 of Attachment 7.
  - It is consistent with *Kirkland's Streams, Wetlands and Wildlife Study* (The Watershed Company, 1998) and the *Kirkland Areas Regulatory Recommendations Report* (Adolfson Associates, Inc., 1998)
  - It will not adversely affect water quality
  - It will not adversely affect fish, wildlife, or their habitat
  - It will not have an adverse effect on drainage and/or storm water detention capabilities
  - It will not lead to unstable earth conditions or create erosion hazard or contribute to scouring actions
  - It will not be materially detrimental to any other property or to the City as a whole
  - Fill material does not contain organic or inorganic material that would be detrimental to water quality or fish and wildlife habitat

- All exposed areas are stabilized with vegetation normally associated with native stream buffers, as appropriate
  - There is no practicable or feasible alternative development proposal that results in less impact to the wetland or its buffer
- (10) The applicant proposes to reduce the buffer for the off-site Class C stream from 35 feet to 0 feet (3,624 sq.ft.), which exceeds the maximum reduction.
- (11) The applicant submitted a final biological report on February 6<sup>th</sup> 2018 titled **"Critical Areas Report and Detailed Mitigation Plan for RC 124<sup>th</sup> LLC", prepared by Wetland Resources, Inc** (see Attachment 7) which requests the off-site stream buffer modification the how the applicant does not comply all aspects of the request and how mitigation is being proposed.
- (12) **The Watershed Company (the City's consultant) has completed a final review on February 8<sup>th</sup> 2018 of the applicant's biological report titled "Critical Areas Report and Detailed Mitigation Plan for RC 124<sup>th</sup> LLC" and agrees with it and recommends the City accept it** (see Attachment 18).
- (13) **The applicant's proposal will provide some protection of the off-site Class C stream over the existing conditions due to curbing that will not permit untreated stormwater from entering the offsite stream as it does now.**
- (14) **The applicant proposes through the City's PUD process to compensate for exceeding the maximum 1/3 stream buffer reduction required in KZC 90.100.1.b 9. See section II.D.1 for analysis.**
- (15) **The applicant proposes through the City's PUD process to compensate for the loss of on-site buffer from the off-site stream by participating in the King County ILF MRP and not using the buffer reduction mitigation requirements described in KZC 90.100.1.b.**
- (16) KZC Section 90.150 requires that consistent with law, the applicant shall dedicate development rights, air space, or grant a greenbelt protection or open space easement to the City to protect sensitive areas and their buffers.
- b. Conclusions: **Based on a review by Wetland Resource's Report, Critical Area Report and Detailed Mitigation Plan, the Watershed Company's review, King County's ILF MRP compensatory mitigation requirements, and Sections II.D.1.c and II.D.1.d, the proposed stream buffer modification is consistent with the criteria described in Subsection 4.a(9) above, subject to the following conditions:**
1. Prior to issuance of any development permits, the applicant should provide proof of acceptance in the King County ILF MRP.
  2. Prior to issuance of any development permits, the applicant should provide proof of payment into the King County ILF MRP.

3. If the applicant is not accepted into the King County ILF MRP, the applicant should submit to City staff an alternative critical area mitigation proposal that fully addresses the critical area mitigation required by this PUD. City staff is authorized to approve such alternative mitigation utilizing the minor modification provisions pursuant to KZC 125.60 and KZC 152.125.
4. Prior to final inspection of any development permits, the applicant should dedicate development rights, air space, or grant a greenbelt protection or open space easement to the City to protect sensitive areas and their buffers.

5. GENERAL ZONING CODE CRITERIA

- a. Facts: Zoning Code section 152.70.3 states that a Process IIB application may be approved if:
  - (1) It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
  - (2) It is consistent with the public health, safety, and welfare.
- b. Conclusion: The proposal complies with the criteria in section 152.70.3. It is consistent with all applicable development regulations (see Section II.E) and the Comprehensive Plan (see Section II.F). In addition, **the applicant's proposal to** participate in the King County ILF MRP has no direct bearing on public health, safety, and welfare and is therefore consistent with this criterion.

**E. DEVELOPMENT REGULATIONS**

1. TL 9A and TL9B Use Zone

a. Facts:

- (1) The developed south parcel lies within the TL9A Use Zone and the north undeveloped parcel lies in the TL9B Use Zone and pursuant to KZC 55.61 and 55.64, the development must comply with the following development standards:
  - Required Yards
  - Lot Coverage
  - Height of Structure
  - Landscaping
  - Signage
  - Required Parking
- (2) The review process for redevelopment proposed within the TL9B zoning district for an automotive related use is a Planned Unit Development (PUD), Process IIB. See PUD Section II.D.1.b, c, and d for analysis and compliance with the TL9B Special Regulations in KZC 55.64.035 for a retail establishment providing vehicle or boat sales, repair, services, storage, or washing.
- (3) Pursuant to KZC 56.61.180 (TL9A Use Zone), the applicant's proposal must comply with the following special regulations:
  - Outdoor vehicle or boat storage areas must be buffered as

- required for parking area in KZC 95.45
- Vehicle or boat sales are permitted on parcels abutting 132<sup>nd</sup> Avenue NE only
- Lighting Regulations in KZC 115.85(2)
- No internal illumination of wall surfaces
- Outdoor loudspeaker systems are prohibited

(4) The proposed retaining walls perform the function of buffering the site from the outdoor vehicle storage areas.

b. Conclusions:

1. Based on preliminary review by staff, the proposal complies with the general regulations and development standards in KZC 55.61 and KZC 55.64.
2. Prior to final of approval of subsequent grading and building permits, the applicant should continue to show full compliance with KZC 55.61 and KZC 55.64.

2. Geologically Hazardous Areas

a. Facts:

- (1) Kirkland Zoning Code Chapter 85 (Critical Areas: Geologically Hazardous Areas) require that a proposed development activity comply if a Landslide, Erosion or Seismic Hazard is either mapped on **the City's Geologically Hazardous Area Map or if site conditions** on the subject property exist that warrant compliance.
- (2) **The City's Geologically Hazardous Area Map shows that a high** landslide area primarily exists on the northern parcel and partially on the upper portion of the southern parcel of the subject property. A seismic hazard area is also mapped on the southern parcel of the subject property in the area of an existing building and parking and circulation area (see Attachment 21).
- (3) The applicant submitted a geotechnical report (see Attachment 22) that evaluates the existing site conditions and the potential construction of a retaining wall system and a two-two tiered parking area for surface vehicle inventory storage.
- (4) **The applicant's geotechnical report examined the subject property** for high landslide, seismic, and erosion hazards.
- (5) The geotechnical report determined the following:
  - A high landslide hazard area exists on the northern parcel of the subject property
  - An erosion hazard areas exists on the northern parcel of the subject property
  - A seismic hazard area does not exist on the southern parcel **as shown on the City's Geologically Hazardous Area Map as** the high density of the soil is not susceptible to liquefaction
  - An onsite unstable bare soil escarpment (2,688 sq. ft. in area) is present on the northern parcel located between

Wetland A and Wetland B/Stream C.

- (6) The geotechnical reports explain that the landslide hazard and erosion hazards can be mitigated with onsite work to replace unstable soil with stable soil and the addition of the retaining wall system and planned drainage installed to control stormwater.
  - (7) The report also states that final designs of the walls will need evaluation by the geotechnical engineer for global stability and adequate factors of safety as part of the review of the building permit for the retaining walls.
  - (8) An addendum to the original geotechnical report (see Attachment 20) was also submitted and explains how the applicant intends to mitigate the onsite unstable bare soil escarpment, to prevent future erosion and enhance slope stability.
  - (9) Pursuant to KZC 85.25.1, the City can require implementation of geotechnical recommendations to mitigate identified impacts, along with a written acknowledgement on the face of the plans signed by the architect, engineer, and/or designer that he/she has reviewed all geotechnical recommendations and incorporated these recommendations into the plans.
  - (10) Pursuant to KZC 85.25.4, the City can require retention of significant vegetation adjacent to a high landslide area.
  - (11) The high landslide portion of the slope, with the exception of the new retaining walls and surface parking area, is retaining significant vegetation as this area also contains other critical areas such as wetlands and streams that will be enhanced and protected.
  - (12) Pursuant to KZC 85.25.8, the City may require an NGPE on the property between the proposed upper retaining wall and the northern property line of the northern parcel.
  - (13) Pursuant to KZC 85.45, prior to issuance of any development permit, the City can require the applicant to enter into an agreement and record it with King County, 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 property.
- b. Conclusion: There are no any constraining factors related to slope stability and erosion if all of the geotechnical recommendations in Attachment 20 and 22 are followed. Therefore, the applicant should:
1. At the time of submittal of development permits:
    - (a) Submit a final geotechnical report that acknowledges that the design of the retaining walls meet global stability safety factors on the site and adequately mitigate all identified landslide and erosion hazards.

- (b) Provide a statement from engineer and architect on all grading and building plans that acknowledge the geotechnical reports and the final geotechnical report and that all recommendations have been incorporated into the plans.
    - (c) Provide split rail fencing/or retaining walls details that corresponds to the NGPE boundary.
  - 2. Prior to issuance of any development permit:
 

The applicant should sign and record a geologically hazardous area covenant.
  - 3. Prior to final inspection of any development permit:
    - (a) Survey and record a Native Growth Protection Easement (NGPE) that includes the area north of the new retaining walls up to the northern portion of the northern parcel of the subject property.
    - (b) Install split rail fencing/or retaining walls that correspond to the NGPE boundary.
- 3. Environmentally Sensitive Areas – Off-site Wetland
  - a. Facts:
    - (1) **The City’s Sensitive Area Map shows an off-site wetland along the submit property’s western property line and this is shown on the City’s GIS Aerial Mapping sensitive area layer (see Attachment 23)**
    - (2) The applicant submitted stream and wetland reports and mitigation plans prepared by Wetland Resources dated September 14<sup>th</sup> 2016, and revisions on December 16<sup>th</sup> 2016, May 1<sup>st</sup> 2017, and August 31<sup>st</sup> 2017, and a final report dated February 6, 2018 that incorporated all recommendations from the Watershed Company reviews (see Attachment 7).
    - (3) The applicant requested permission from the property owner to the west to enter the property to verify the off-site wetland and its boundaries. The owners of the property declined permission to enter. The neighboring property owner provided wetland data sheets from Soundview Environmental and stated in their letter that a wetland did not exist on the property due to lack of wetland soils (see Appendix F of Attachment 7).
    - (4) The City has identified a Wetland Resources Inc report dated September 26, 2014 which identifies the off-site wetland as a Type II wetland which requires a 75 foot buffer and a 10-foot buffer setback. Page four of the report provides a map which shows that the wetland and its buffer does not encroach onto the **applicant’s property (see Attachment 24)**.
    - (5) The Watershed Company reviewed all of the Wetland Resources

Reports and plans for compliance with Kirkland Zoning Code Chapter 90 and agreed with the stream and wetland ratings, locations, boundaries and provided decisional criteria (see Attachment 18).

- (6) The Watershed Company has also reviewed the off-site wetland report (see Attachment 24), agrees with it, and has determined that this is the best information available as they do not have permission to enter the neighboring property (see Attachment 18).
  - (7) **Staff agrees with the Watershed Company's findings and accepts** the September 26, 2014 Wetland Resources Inc. report as valid.
- b. Conclusion: Based on the September 26, 2014 Wetland Resources **Report, the Watershed Company's review** of it, staff concludes that the off-site Type II wetland is not a constraining factor as its buffer does not encroach onto the subject property.

#### 4. Natural Features - Significant Vegetation

a. Facts:

- (1) Regulations regarding the retention of trees can be found in Chapter 95 of the Kirkland Zoning Code.
- (2) The applicant has submitted a Tree Retention Plan, prepared by a certified arborist (see Attachment 6). **The City's Arborist requested** that the arborist report also examine the wind firmness of the trees that will remain on the subject property after the proposed development is complete. This wind firmness analysis has been included the **applicant's** arborist report (see Attachment 25).
- (3) **The City's Arborist has reviewed** the Tree Retention Plan and has **made specific recommendations concerning the applicant's** Tree Retention plan (see Attachment 26), including the following:
  - Retain grove of western red cedars along the western perimeter of the northern parcel
  - Remove noxious weed and replant with natives on the northern parcel
  - Work with neighboring property owner to the west to potentially remove cottonwood trees that will be impacted by the retaining wall along the western property line.
- (4) A grove of western red cedars have been identified **by the City's** Arborist on the northern portion of the subject property. This grove is located north of all proposed site improvements and within the Native Growth Protective Easement as required in Section II.E.3.
- (5) KZC 95.51.3 requires an applicant who has a grove of trees identified for preservation on an approved Tree Retention Plan pursuant to KZC [95.30](#)(2) shall provide prior to occupancy the legal

instrument acceptable to the City to ensure preservation of the grove and associated vegetation in perpetuity.

- (6) The grove of trees is located north of all proposed site improvements and within the Native Growth Protective Easement as required in Section II.E.2.
  - (7) Native plants will be installed on the northern parcel where invasive plants are removed for wetland/stream buffer enhancement and native restoration plans (see Attachment 17, Mitigation plan and Mitigation Plan notes).
  - (8) **The City's Arborist has identified** cottonwood trees and their driplines located on the neighboring property along the subject **property's** western property line.
- b. Conclusions: Based upon staff review of the applicant' **tree** retention plan, arborist report, proposed enhancement and native restoration plans, the **City Arborist's review, the applicant's proposal is consistent** with the requirements in KZC 95 with the following conditions:
1. The grading permit and building permit submittals should be consistent with the Tree Retention Plan. The applicant should retain all viable trees outside of the proposed development during the construction of PUD improvements including parking areas, retaining walls and throughout the development process.
  2. As part of the submittal of development permits, the applicant should show the cottonwood trees and their driplines along the western property line where the construction of the retaining wall is proposed.

## **F. COMPREHENSIVE PLAN**

1. Facts:
  - a. The subject property is located within the Totem Lake neighborhood. Figure TL-2 on the Totem Lake Business District Land Use Map designates the **subject property's south parcel as Industrial and the north parcel as** mixed use Commercial/Medium Density Residential (see Attachment 27).
  - b. **The applicant's proposal** would expand the existing light industrial use (south parcel) as allowed in conjunction with the redevelopment of the designated commercial use (north parcel) which would create more economic activity and jobs in the Totem Lake Business District.
  - c. **The applicant's** proposes to maintain a vegetated buffer on the slope, protect critical areas on the subject property, and where on-site mitigation is not possible will provide off-site mitigation. The off-site mitigation will be provided through participation in the King County ILF MRP to enhance regional critical areas in the same watershed as the subject property (WRIA8).

d. **The following Comprehensive Plan Policies apply to the applicant’s proposal:**

- Comprehensive Plan, Environment Element Policy States: *Use a system-wide approach to effectively manage natural systems in partnership with affected State, regional, and local agencies as well as federally recognized tribes.*
- Comprehensive Plan, Land Use Element Policy TL-3.5 states: *Strengthen the district’s light industry/office areas through supporting expansion of existing uses and welcoming redevelopment of these uses, while enabling them to evolve into innovative centers for commerce and employment.*
- The Totem Lake Business District Subarea Policy TL-8.1 states: *Maintain existing vegetation in high or moderate landslide areas. In all landslide areas, most of the existing vegetation should be preserved in order to help stabilize the slopes as well as maintain natural drainage patterns. In particular, areas with significant existing vegetation, such as the wooded ridge along NE 116th Street and the hillside northeast of Totem Lake (Figure TL-4), should retain vegetative cover to the maximum extent possible.*
- The Totem Lake Business District Subarea Policy TL-36.1 states: *Support the continued existence of light industry/office uses in the eastern portion of the business district.*
- Totem Lake Business District Subarea Policy TL-36.2 states: *Development of the land north of NE 126th Place should be subject to standards to protect critical areas. These standards have been incorporated into the Special Regulations for the TL9B Use Zone listing for Vehicle Inventory Storage pursuant to KZC 55.64.035.*

2. Conclusion: **The applicant’s proposal** expands an existing use thereby strengthening the Totem Lake Business District. It also maintains significant on-site vegetation and uses a system-wide approach towards managing natural systems. **The applicant’s proposal is** consistent with the Comprehensive Plan.

**G. DEVELOPMENT STANDARDS**

1. Fact: Additional comments and requirements placed on the project are found on the Development Standards, Attachment 3.
2. Conclusion: The applicant should follow the requirements set forth in Attachment 3.

**III. SUBSEQUENT MODIFICATIONS**

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

**IV. CHALLENGES AND JUDICIAL REVIEW**

The following is a summary of the deadlines and procedures for challenges and appeals. Any

person wishing to file or respond to a challenge or appeal should contact the Planning Department for further procedural information.

**A. CHALLENGE**

Section 152.85 of the Zoning Code allows the Hearing Examiner's recommendation to be challenged by the applicant or any person who submitted written or oral comments or testimony to the Hearing Examiner. A party who signed a petition may not challenge unless such party also submitted independent written comments or information. The challenge must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5:00 p.m., \_\_\_\_\_, seven (7) calendar days following distribution of the Hearing Examiner's written recommendation on the application. Within this same time period, the person making the challenge must also mail or personally deliver to the applicant and all other people who submitted comments or testimony to the Hearing Examiner, a copy of the challenge together with notice of the deadline and procedures for responding to the challenge.

Any response to the challenge must be delivered to the Planning Department within seven (7) calendar days after the challenge letter was filed with the Planning Department. Within the same time period, the person making the response must deliver a copy of the response to the applicant and all other people who submitted comments or testimony to the Hearing Examiner.

Proof of such mail or personal delivery must be made by affidavit, available from the Planning Department. The affidavit must be attached to the challenge and response letters, and delivered to the Planning Department. The challenge will be considered by the City Council at the time it acts upon the recommendation of the Hearing Examiner.

**B. JUDICIAL REVIEW**

Section 152.110 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 twenty-one (21) calendar days of the issuance of the final land use decision by the City.

**V. LAPSE OF APPROVAL**

Under 152.115 :

The applicant must begin construction or submit to the City a complete building permit application for the development activity, use of land or other actions approved under this chapter within five (5) years after the final approval of the City of Kirkland on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per KZC 152.110, the running of the five (5) years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the required development activity, use of land, or other actions.

The applicant must substantially complete construction for the development activity, use of land, or other actions approved under this chapter and complete the applicable conditions listed on the notice of decision within nine (9) years after the final approval on the matter, or the decision becomes void.

## **VI. APPENDICES**

Attachments 1 through 27 are attached.

1. Vicinity Map
2. Development Site Plan
3. Development Standards
4. Critical Area Site Plan (from Wetland Resources Critical Area Report and Detailed Mitigation Plan)
5. Survey
6. Tree Retention Plan
7. Critical Area Report and Detailed Mitigation Plan prepared for RC 124<sup>th</sup> LLC, by Wetland Resources dated February 6, 2018
8. Public Comments
9. SEPA Determination
10. Applicant request for SEPA addendum
11. SEPA Addendum
12. Applicants Response to PUD Criteria
13. TL9B Use Zone Special Regulations
14. King County ILF MRP Information
15. WRIA8 Map
16. Public Benefit Memo prepared by Van Ness Feldman dated July 31, 2017
17. Mitigation Map and Mitigation Planting notes
18. Watershed Company Final Review dated February 9, 2018
19. King County ILF/MRP Credit/Debit Methodology
20. Addendum to Geotech report prepared by Zipper Geo Associates, dated August 29, 2017
21. City of Kirkland Geologic Hazard Map
22. Geotech Report prepared by Zipper Geo Associates, dated December 2, 2016
23. City of Kirkland GIS Aerial Mapping sensitive area layer for off-site wetland
24. Wetland Reconnaissance of Off-site Wetland prepared by Wetland Resources, dated September 26, 2014
25. Arborist Report prepared by American Forest Management, dated November 8, 2016
26. City Arborist Review and Recommendations
27. City of Kirkland Comprehensive Plan Map

## **VII. PARTIES OF RECORD**

Applicant  
Parties of Record  
Planning and Building Department  
Department of Public Works

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





