



**CITY OF KIRKLAND**  
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**ADVISORY REPORT**  
**FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS**

**To:** Kirkland Hearing Examiner

**From:** Adam Weinstein, AICP, Planning & Building Director  
Susan Lauinger, Associate Planner

**Date:** June 11, 2019

**File:** SUB16-02267 & SAR16-01983

**Project:** ORCAS MOON COTTAGES (14-LOT SUBDIVISION AND STREAM & WETLAND BUFFER MODIFICATION)

**I. INTRODUCTION**

**A. APPLICATION**

1. Applicant: Orcas Moon, LLC
2. Site Location: The subject property is located on a vacant parcel bordering 20<sup>th</sup> Ave. (see Attachment 1).
3. Request: The applicant is requesting approval of three land use permits including the following: a 14-lot subdivision; 14 cottage homes; a buffer modification for Type II and III wetland buffers and Class B and C stream buffers (see Attachment 2). The proposal also includes a proposal for a public pedestrian path.
4. Review Process: Process IIA, Hearing Examiner conducts public hearing and makes the final decision.
5. Summary of Key Issues and Conclusions: The key issues for this application are as follows: application vesting (see Section II.B); compliance with subdivision regulations (see Section II.G.1); cottage homes regulations and cottage modifications, (see Section II.G.7); wetland and stream buffer modification regulations (see Section II.G.8); right-of-way improvements as they relate to stream buffers; culvert replacement; public pedestrian pathway; and geohazard areas regulations (see Section II.G.9).

**B. RECOMMENDATIONS**

Based on Statements of Fact and Conclusions (Section II), and Attachments in this report, staff recommends 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.).

2. As part of the recording application for the subdivision, the applicant shall:
  - a. Dedicate sufficient land area to install public improvements as required in Attachment 3 (see Conclusion II.G.2.b).
  - b. Add the NGPE language as shown in Attachment 30 to the final plat plans, including a legal description that encompasses the entire sensitive area and buffer. The legal description shall be prepared by a licensed surveyor (see Conclusion II.G.8.m.(5)).
  - c. Prior to recording the subdivision, install the public pedestrian path through the City park as indicated in the SEPA mitigations in Attachment 9 (Conclusions II.G.4).
  - d. Provide language on the face of the final plat plans that indicates vehicular access will be granted to all lots within the subdivision (see Conclusion II.G.3.b).
3. As part of the application for a Land Surface Modification (LSM) permit the applicant shall complete the following items:
  - a. Prior to final inspection of the Land Surface Modification permit complete the following tasks:
    - (1) Install the mitigation plantings as found in the Talasea Critical Areas report (CAR) dated 10/31/18 and provide an as built of the planted area. The CAR shall first be updated to meet the recommendations in the Watershed memo dated 12/11/18 (see Conclusion II.G.8.m.(3)(a)).
    - (2) Submit a wetland and stream mitigation security document with the required dollar amount to the City as per the updated bond worksheet (see Conclusion II.G.8.m.(3)b).
  - b. Prior to Land Surface Modification (LSM) permit submittal, the applicant shall submit a final grading and retaining wall design prepared by Associated Earth Science, Inc (AESI), (or other qualified geotechnical engineer) for review by the City's Geotechnical consultant the cost of which is born by the applicant (see Conclusion II.G.9.b.(1)).
  - c. The grading plans shall state that a representative of AESI (or other qualified geotechnical engineer) will be on site during grading and retaining wall installation and backfill. AESI (or other qualified geotechnical engineer) shall document their review and the applicant shall submit reports to the City indicating compliance with the geotechnical recommendations and any recommendations by the City's geotechnical consultant (see Conclusion II.G.9.b.(2)).
  - d. Submit a signed and notarized copy of the Geotechnical covenant as shown in Attachment 38 (see Conclusion II.G.9.b.(3)).

- e. Submit an addendum to the arborist report with the Land Surface Modification Permit. This addendum shall show the limits of disturbance for tree numbers: 1033, 1034, 1038, 1039, A, 1019, 20495, 20735 and 20709. The report is subject to City Arborist review. The addendum should include information concerning any culvert replacement where the replacement will affect trees. The high risk Doug Fir shown in Attachment 3 is approved for removal or as a habitat snag (see Conclusion II.G.7.b.(1)).
  - f. The LSM permit shall contain construction plans for the right-of-way improvements that indicate no impervious area will be added within the buffer pursuant to KZC 90.20.4. This criterion may be met by installing pervious materials for right-of-way improvements (see Conclusion II.G.8.m.(2)).
  - g. Submit a new mitigation plan and bond worksheet that adhere to the Watershed recommendations dated 12/11/18 (see Attachment 29). The final mitigation plan and bond worksheet should be reviewed by the City's consultant at the applicant's expense (see Conclusion II.G.8.m.(1)).
  - h. Submit a plan for the surface parking that includes pedestrian paths constructed of materials that are typically found in single-family neighborhoods. The path shall connect units 9-14 to 20<sup>th</sup> Ave (see Conclusion II.G.5.b.(5)).
  - i. Submit with the Land Surface Modification (LSM) plans a geotechnical evaluation of the new culvert design performed by a licensed geotechnical engineer. The evaluation shall be peer reviewed by the City's geotechnical engineer consultant the cost of which is born by the applicant (see Conclusion II.G.9.b.(3)).
4. As part of the building permit submittals the applicant shall complete the following items:
- a. With each building permit for each unit indicate that the cottages will be either 18 feet above Average Building Elevation (A.B.E.) or will have roof pitches of 6:12 on all roof forms if the units will be 25 feet above A.B.E. (see Conclusion II.G.5.a.(3)).
  - b. With each building permit for the garage structures, indicate that the maximum height is no more than 18 feet above A.B.E. (see Conclusion II.G.5.a.(3)).
  - c. Submit an alternate cottage design for unit 4 or 5; the same design features and elements may not be proposed next to one another (see Conclusion II.G.5.b.(4)).
  - d. As part of the building permit applications for garages with 2 and 4 doors, provide a design that is similar to the design shown in Attachment 13 for garages with 3 doors (see Conclusion II.G.5.b.(6)).
5. Prior to issuance of building permit applications, record covenants that achieve the following:
- a. Restrict increases in unit size after initial construction (see Conclusion II.G.5.b.(2)(a)).

- b. State that ADU's are not permitted within the subject development (see Conclusion II.G.5.(2)(b)).
- c. Indicate storage of items which preclude the use of the parking spaces for vehicles is prohibited in the shared detached garage structures (see Conclusion II.G.5.(2)(c)).

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

### A. **SITE DESCRIPTION**

#### 1. Site Development and Zoning:

##### a. Facts:

- (1) Size: 280,556 SF (6.44 acres) after 5,637 SF dedication along 20<sup>TH</sup> Ave NE.
- (2) Land Use: Low Density Residential. The subject property is currently vacant.
- (3) Zoning: RS 12.5. Under KZC Chapter 113 Cottage development regulations, the density can be doubled as long as certain requirements are met such as a maximum size of cottage units, open space and other design requirements (see Section II.G.5). Additionally, per KZC 90.135, the Maximum Development Potential is limited by the sensitive areas on the site. A discussion of Maximum Development Potential can be found in Section II.G.8.
- (4) Terrain and Vegetation: There are three wetlands on site (Wetlands A, B, and D) and one offsite wetland (Wetland C) where the buffer extends on to the Orcas Moon site. There are five streams that flow through the site, labeled as Streams 1, 2,3,4, and 5 (see Attachment 4).

The site has areas mapped as high landslide hazard and seismic hazard areas identified on the City sensitive areas maps, and is heavily vegetated with native trees, shrubs and some invasive species (see Attachment 5).

- b. Conclusions: The density is a constraining factor in this application. The number of cottages is limited by the Maximum Development Potential as per KZC 90.135 and by design factors found in KZC 113 (see Sections II.G.8 and II.G.9). The terrain and vegetation are also constraining factors due to the wetlands, streams and steep topography on the site. The applicant has submitted geotechnical reports and wetland and stream reports, all of which have been peer reviewed by the City's consultants (see Sections II.G.8 and II.G.9 for an analysis of the environmentally sensitive areas on the subject property).

#### 2. Neighboring Development and Zoning:

- a. Facts: The surrounding neighborhood is developed with single-family homes of varying sizes. Some homes are on larger lots with wetland and stream buffers and some are within clustered developments built under Planned Unit Development zoning permits. The adjacent properties are described as follows:

- (1) East: A single-family development with 11 lots that are

clustered away from a wetland and stream on the southern portion of the development. This subdivision was built under a Planned Unit Development (PUD) permit. The zoning designation is RS 12.5.

- (2) West: One single-family home along Forbes Creek Drive is currently under construction in the RS 12.5 zone. This site contains a wetland (Wetland C) and the buffer extends on to the Orcas Moon site. This is a large property created as part of a 3-lot short plat in 1992. There are two existing homes along 20<sup>th</sup> Ave NE that were part of the original short plat.
  - (3) North: Two homes in the RS 8.5 zone and an undeveloped portion of Juanita Bay Park with a large wetland system. Additionally, there is a clustered development to the northeast with 19 lots containing single-family homes built circa 1991.
  - (4) South: Single-family homes in the RS 7.2 zone.
- b. Conclusion: The proposed cottage development is required to be compatible with and not larger in scale than surrounding development. See Section II.G.5.a for an analysis of this criterion.

## **B. HISTORY**

1. Facts: A complete subdivision application was submitted on 12/22/16.
  - a. At the time of application, an older version of KZC Chapter 90, which regulates streams and wetlands and their buffers, was in effect. The current version of Chapter 90 went into effect on 3/1/17. The older version, which is applicable to the Orcas Moon application, can be found as Attachment 6.
  - b. At the time of application, an older version of Chapter 85 Geologically Hazardous areas was in effect. The newest version of Chapter 85 went into effect on 6/30/18. The older version, which is applicable to the Orcas Moon application can be found as Attachment 7.
  - c. Per state law, the Revised Code of Washington (RCW) 58.17.033(1), subdivision applications vest a project in the regulations in effect at the time of subdivision application submittal.
  - d. The initial application included two parcels. The applicant submitted a lot line alteration that was reviewed and approved by city staff and then recorded. The effect of the lot line alteration is that the subject property no longer extends to Forbes Creek Drive.
  - e. The Orcas Moon proposal has changed several times from the initial submittal in 2016. These changes were made in response to public comments and City staff comments concerning compliance with development regulations. With each change, the City's consultants reviewed the changes made within the plans and reports submitted by the applicant. The staff analysis in this report has further information concerning compliance reviews by City consultants and staff.

- f. A summary of the changes to the proposal are as follows: The site design and cottage layout, the project went from 15 to 14 cottages, additional cottage designs were submitted, the buffer modification proposal was changed from buffer averaging to buffer reduction with vegetation enhancement, and the public pedestrian path was moved to the undeveloped park to the west.
2. Conclusion: The applicant submitted a complete subdivision application for the Orcas Moon proposal on 12/22/16, which vests the application in the versions of Chapters 85 and 90 that were in effect at that time. Those versions can be found in Attachments 6 and 7. The staff analysis in this report has further information regarding the various changes to the project and the subsequent reviews by City consultants and staff.

## C. PUBLIC COMMENT

### 1. Facts:

- a. The public comment period ran from 12/21/17 to 1/8/18. There were 51 comments submitted, all in opposition of the project (see Attachment 8). Many of the letters were submitted as a form letter that contained the same comments. The transportation analysis, traffic safety, and some of the storm water issues unique to the subject property were addressed with the SEPA review for the project (see Section II.D); the SEPA memo and City response to traffic is included for reference to these issues (see Attachment 9).

The remaining issues are described below in generalized themes followed by staff response in italics:

#### (1) Comment: General Environmental Concern

Many of the comments submitted discussed the environmental issues on this site and protection for sensitive areas such as high landslide hazard areas, wetlands, streams, and wildlife habitat destruction.

*Staff Response: The review process has been elongated because City staff found that the initial application did not meet code requirements for the protection of sensitive areas and for cottage design criteria. As a result, the City required several changes to the wetland and streams mitigation plans that were proposed, changes to the cottage site and house design, and additional reviews of the landslide hazards in relation to the proposed development.*

*All of the sensitive areas reports submitted were peer reviewed by the City's consultants, The Watershed Company for wetlands and streams, and GeoDesign Inc. Geotechnical Engineers for landslide hazard issues. The peer reviews centered on meeting the code requirements within Chapters 90 and 85. Sections II.G.8 and II.G.9 in this report provide details of how these code sections are met.*

#### (2) Comment: Community Character

Many of the comments expressed concern that the extra traffic and density allowed by the cottage development

regulations will damage the character of the neighborhood.

*Staff Response: The Orcas Moon site is in the RS 12.5 zone. This zone allows a density of one lot per 12,500 square feet. If there were no sensitive areas on site, the 280,556 square feet of land area would allow 22 single-family lots. However, the site is constrained by wetlands and streams. Chapter 90 limits the development on sites through a Maximum Development Potential as discussed in section II.G.8.(4). This requirement dictates how much of the critical area can be included in the density calculation. The percentage of the site in sensitive areas buffers is 58.7% and this requires a development factor of 50% to be applied to the buffer area. When the development factor is applied to Orcas Moon, 15 lots are allowed. Due to the constraints on site, the applicant has chosen to reduce the number of cottage lots to 14 from an original proposal for 15.*

*Cottage regulations allow the density to be twice the maximum number of detached dwelling units allowed in the underlying zone, which in the case of the Orcas Moon project, would allow 44 lots. However, the Maximum Development Potential is the controlling factor for any property with wetlands and streams, therefore the proposal is limited to 15 lots. The applicant can more easily fit the cottage development in the buildable area due to the more flexible allowances in KZC 113 for easement roads, minimum lot size requirements, and because there are no setback requirements between cottages (see Section II.G.5 for cottage requirements analysis and Section II.1 for subdivision requirements).*

*Cottage development design regulations are intended to mitigate the increase of this smaller housing type by allowing it to blend in with the neighborhoods while also providing more affordable housing and variation in sizes. Another cottage development would not be allowed within 1,000 feet of Orcas Moon.*

*Transportation and traffic issues are reviewed as part of the SEPA analysis, and no significant traffic impacts were identified. The City issued a Mitigated Determination of Non-significance on 4/22/19 and that determination was not appealed. The SEPA analysis can be found as Attachment 9, which also includes the City's response to the traffic issues raised during the public comment period.*

- (3) Comment: Critical Areas Report (CAR) and Geotechnical Report errors

The comment letters indicate concern that the Geotechnical report by Associated Earth Sciences Inc. (AESI), dated 7/28/16 was inadequate in addressing landslide hazard issues on site, was too old to be valid and had site plans

that were not easy to read. Additionally, the comment was made that the Critical Areas Report (CAR) by Talasea was inaccurate as to wetland typing and that buffer averaging would not adequately mitigate the intrusion into the sloped areas.

*Staff Response: After public notice letters were submitted about the CAR and geotechnical hazard issues, staff worked through many iterations of both the Critical Areas Reports and geotechnical reports submitted by the applicant. The initial reports for both geotechnical hazards and wetland and stream analysis have been revised many times (see Attachments 19-29, and 31-37). All reports generated by the applicant have been peer reviewed by the City's consultants, and the errors and omissions in the original submittal have been remedied.*

(4) Comment: Cottage Ordinance Compliance

A comment in the form letter expresses concern that the cottage proposal does not "promote a sense of community" and lists specific parts of the ordinance that they feel are not met including: common open space, square footage requirements; homes not abutting common space; prominent parking lots; lack of a community building and lack of house variety. Another concern expressed is that the cottage development is split between two separate areas due to the ravines onsite.

*Staff Response: The initial application materials at public notice distribution did not show compliance with some of the cottage ordinance criteria that are listed in the comment letters. Changes were made to the proposal that alleviate these concerns. The project went from 15 to 14 cottages, changes to the site design were made that better promote a sense of community including common open space changes, the surface parking location changed, and additional cottage designs were added going from 3 cottage designs to 6 designs.*

*The cottages are split into two separate clusters due to the ravines on site, and KZC Chapter 113 allows separation of clusters of cottages with a clear separation between clusters. A full analysis of the cottage regulations is found in Section II.G.5 of this report.*

(5) Comment: Guest Parking

The form letter contains a concern about the project not having enough visitor parking. A suggestion was made that parking should be added to the west side of 5<sup>th</sup> Street.

*Staff Response: Cottage housing is limited in size to address the changing composition of households and the need for smaller, more diverse, and more affordable housing choices. Single-family lots that are not cottage developments are not*

*required to have guest parking and would typically use the city streets for guest parking.*

*Orcas Moon is required to have the same number of parking spaces per unit as a single-family home (2) and is also required to provide guest parking at 10% of the total number of required parking spaces (KZC 105.20.3). The City cannot require the applicant to provide street parking on a street that does not abut their frontage. Public Works is requiring 'No Parking' signs along any part of the site frontage that does not have 24 feet of paving width. Attachment 3, Public Works Standards, which explains the locations along the site's frontage where this condition will occur.*

(6) Comment: Public Pedestrian Path

Some comments expressed concern over the public trail, which at the time of application was planned to be within the Orcas Moon site. The concern was that the trail would propagate crime, loitering, and camping.

*Staff Response: A public pedestrian trail is required by the Zoning and Municipal codes as part of this project. Analysis of the requirements for the trail can be found in Section II.G.4.*

*In the initial application submitted in 2016, the public trail was located on the Orcas Moon site. The site design has changed several times (see Section II.B - History). It was discovered that the public pedestrian path would need substantial retaining walls in order to be a safe walking path and the retaining walls would be within the ravine and critical area buffers. Paths are allowed in the outer half of buffers per KZC Chapter 90. However, this is also a landslide hazard area. For these reasons, Public Works staff recommends placing the path in the undeveloped park to the west called Juanita Bay Park, the cost of which is born by the applicant (see Attachment 10). If crime, loitering or camping occur on or near a public path, the Kirkland Police Department should be called.*

(7) Comment: Muckleshoot Tribe

During the public comment period, Karen Walters, a representative of the Muckleshoot Indian Tribe submitted a letter, which is found in Attachment 8. She requested that we respond to her comments within SEPA review. The Public Works Storm Water staff corresponded with Karen during the comment period for SEPA.

2. Conclusion: The City has satisfied the requirements for public comment on this proposal. All comments are addressed within the staff analysis of this report.

**D. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

1. Facts: A Mitigated Determination of Nonsignificance (MDNS) was issued

on 4/22/19 (see Attachment 11). The SEPA determination was not appealed.

2. Conclusion: The MDNS for this project is the City's final decision for SEPA. The applicant and the City have satisfied SEPA requirements.

#### **E. CONCURRENCY**

1. Facts: The Public Works Department has reviewed the application for concurrency. A concurrency test was passed for water, sewer and traffic on August 22, 2016, which expires 6 years from the date of issuance unless all building permits are issued for buildings approved under the concurrency test. The Notice of Road Concurrency was not appealed.
2. Conclusion: The applicant and the City have satisfied concurrency requirements.

#### **F. APPROVAL CRITERIA**

##### 1. PRELIMINARY PLATS

- a. Facts: Municipal Code section 22.12.230 states that the Hearing Examiner may approve a proposed plat only if:
  - (1) There are adequate provisions for open spaces, drainage ways, rights-of-way, easements, water supplies, sanitary waste, power service, parks, playgrounds, and schools; and
  - (2) It will serve the public use and interest and is consistent with the public health, safety, and welfare. The Hearing Examiner shall be guided by the policy and standards and may exercise the powers and authority set forth in RCW 58.17
- b. Conclusion: The proposal complies with Municipal Code section 22.12.230. With the recommended conditions of approval, it is consistent with the Zoning Code and Subdivision regulations (see Section II) and there are adequate provisions for open spaces, drainage ways, rights-of-way, easements, water supplies, sanitary waste, power service, parks, playgrounds, and schools. It will serve the public use and interest and is consistent with the public health, safety, and welfare because it will add housing stock that is compliant with city regulations.

##### 2. GENERAL ZONING CODE CRITERIA

- a. Fact: Zoning Code section 150.65. states that a Process IIA 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
- b. It is consistent with the public health, safety, and welfare.
  - (1) Zoning Code section 113.45.4 states that a cottage development must demonstrate that:
    - (a) The proposal is compatible with and is not larger in scale than surrounding development with respect to

size of units, building heights, roof forms, setbacks between adjacent buildings and between buildings and perimeter property lines, number of parking spaces, parking location and screening, access and lot coverage.

- (b) Any proposed modifications to provisions of this chapter are important to the success of the proposal as an alternative housing project and are necessary to meet the intent of these regulations.

c. Conclusions:

- (1) The proposal complies with the criteria in KZC section 150.65 3 and is consistent with all applicable development regulations (see Section II and Attachment 3).
- (2) The proposal complies with the criteria in section KZC 113.45.4. It is compatible with, and not larger in scale, than surrounding development and is consistent with all applicable development regulations (see Section II.G.5).

**G. DEVELOPMENT REGULATIONS**

1. SUBDIVISION REQUIREMENTS

- a. Facts: Municipal Code section 22.28.030 requires that all lots meet the minimum size requirements established for the property in the Kirkland Zoning Code. Kirkland Municipal Code (KMC) 22.28.050 requires that lots are shaped for reasonable use and development. The minimum lot width of lots created through the subdivision process is 15 feet where that lot meets the abutting right-of-way, access easement or tract.

- (1) The minimum lot size in the RS 12.5 zone is 12,500 SF.
- (2) KZC Chapter 113 (Cottages) does not require a minimum lot size or minimum lot width for lots created through the subdivision process.
- (3) The applicant is proposing 14 lots. The lot sizes proposed for the cottages range from 1,406 SF to 2,044 SF and the average lot size is 1,753 SF (see Attachment 12). Fourteen parking spaces are being provided in garages and 19 parking spaces are provided as surface parking. All the proposed garages are in shared detached garage structures that have lot numbers corresponding to each cottage as a way of establishing ownership of the garages. The vehicular access is proposed as common tracts and is 24 feet wide where it meets the abutting right-of-way.
- (4) KZC 113.50.3 states that if there is a conflict between the standards set forth in KZC Chapter 113 and Title 22 of the Kirkland Municipal Code, then the standards set forth in KZC Chapter 113 shall control.

- b. Conclusions: Pursuant to KZC 113.50.3, the lot size and lot width requirements found in the Kirkland Municipal Code are not applicable to the Orcas Moon proposal. Therefore, lot size and lot width requirements are reviewed with the cottage criteria

requirements (see Section II.G.5).

2. PROVISIONS FOR PUBLIC AND SEMI-PUBLIC LAND

- a. Facts: Municipal Code section 22.28.020 states that the City may require dedication of land for school sites, parks and open space, rights-of-way, utilities infrastructure, or other similar uses if this is reasonably necessary as a result of the subdivision.
- (1) Zoning Code section 110.60 states that the Public Works Director may require the applicant to make land available, by dedication, for new rights-of-way and utility infrastructure if this is reasonably necessary as a result of the development activity.
  - (2) The site abuts 20<sup>th</sup> Ave., which is a Neighborhood Access type street. KZC Section 110.30-110.50 establishes that this street must be improved with curb, gutter, landscape strip, sidewalk and 20 feet of road paving. Dedication of land area is required to install the public improvements along 20<sup>th</sup> Ave. Per Public Works standards (see Attachment 3):
    - (a) The following dedication will be required: a 20-foot wide strip of land along the frontage of 20<sup>th</sup> Ave. for 290 feet, then tapering back to the existing right-of-way line on a straight-line taper for 50 feet; dedication should encompass all the required improvements.
  - (3) Per KZC 110.75, the City may require or permit a bond under Chapter 175 KZC to ensure compliance with any of the requirements within Chapter 110 of the KZC.
- b. Conclusion: Pursuant to Municipal Code section 22.28.020 and Zoning Code section 110.60, the applicant should dedicate sufficient right of way to encompass all of the required public improvements as indicated in Attachment 3, Public Works Development Standards. The improvements should be installed prior to recording the subdivision. If the applicant chooses to record before the improvements are completed, a bond may be submitted pursuant to Chapter 110.75 of the KZC.

3. VEHICULAR ACCESS

- a. Facts: KMC 22.28.080 requires that all lots have direct legal access as required by KZC 105.10. The City will determine whether access will be by right-of-way or vehicular access easement or tract on a case-by-case basis. KMC 22.28.110 states that if vehicular access within the plat will be provided by means other than rights-of-way, the plat must establish easements or tracts which will provide the legal right of access to each of the lots served. The city may require that the legal right of access be granted to other adjoining properties in order to provide a safe and efficient circulation system within the city.
- (1) KZC 105.10.c establishes that a minimum of 20 feet of unobstructed paving be provided with a vertical cast in place curb with gutters in a 20-foot wide easement.

- (2) Attachment 3, Public Works Development standards indicates that driveway policy R-4 is applicable to the subject property, which requires a 24-foot wide drive aisle.
  - (3) The applicant is proposing access tracts that are 24 feet wide surrounded by a vertical raised curb. All proposed garages and parking areas have direct access to the proposed vehicular tracts.
- b. Conclusions: The application meets the requirements for access. As part of the recording process for the subdivision, a note on the face of the plat should be recorded that provides legal right of access for all cottage residents.
4. PUBLIC PEDESTRIAN ACCESS
- a. Facts: Municipal Code section 22.28.170 establishes that the City may require the installation of pedestrian walkways by means of dedicated rights-of-ways, tracts, or easements if a walkway is indicated as appropriate in the comprehensive plan, if it is reasonably necessary to provide efficient pedestrian access to a designated activity center of the city, or if blocks are unusually long. Pedestrian access shall be provided by dedicated rights-of way, tracts, or easements at the City's option.
- (1) KMC 22.28.070 sets forth that generally, blocks should not exceed 500 feet in length. Blocks that are more than 750 feet in length should allow for midblock pedestrian access.
  - (2) KZC 105.18.1 states that promoting an interconnected network of pedestrian routes within neighborhoods is an important goal within the City, and that installing pedestrian connections and other pedestrian improvements with new development reduces the reliance on vehicles, reduces traffic congestion and promotes nonmotorized travel options and provides health benefits.
  - (3) KZC 105.19.1 states that the City may require the applicant to install pedestrian walkways for use by the general public on the subject property and dedicate public pedestrian access rights where the walkway is reasonable necessary as a result of the development activity, and additionally when (a) a pedestrian connection is indicated as appropriate in either the Comprehensive Plan or nonmotorized Transportation Plan; or designated elsewhere in the City's code; or (b) if it is reasonably necessary to provide efficient pedestrian access to a designated activity center for the City or to transit; (c) if blocks are unusually long; or (d) pedestrian access is necessary to connect between; (i) existing or planned dead end streets, through streets, the Cross Kirkland Corridor, or other pedestrian access walkways.
  - (4) Orcas Moon is located on a block that is approximately 3,120 feet long and with no vehicle or pedestrian connection that goes in a north/south direction (see Attachment 10).
  - (5) Forbes Creek Drive is a Collector Street and also designated

in the Comprehensive Plan as an important pedestrian system link.

- (6) The applicant is required to provide a public pedestrian path as part of the requirements of the proposal. The Orcas Moon site is not the best location for a north/south pedestrian connection due to the steep slopes and wetlands and streams on this site that make it difficult to build a path together with the infrastructure and homes. The Public Works Department has recommended that the developer construct a path through Juanita Bay Park, which is an undeveloped City park property that is located approximately 185 feet west of the Orcas Moon site (see Attachment 10).
- (7) There is an existing asphalt public pedestrian trail, in an east/west direction, that connects 4<sup>th</sup> St and 3<sup>rd</sup> St along 20<sup>th</sup> Ave. (see Attachment 10). The proposed path through the park would link up with the existing asphalt path.
- (8) The completion of the path would provide an important pedestrian connection between the Norkirk and Juanita Neighborhoods. It would allow pedestrians in Norkirk to connect to Forbes Creek Drive, which is designated as an important pedestrian link in the Comprehensive plan because it links with commercial activity centers in Juanita as well as Juanita Beach Park, a popular waterfront park.
- (9) There is a north/south pedestrian connection from Crestwoods Park to Forbes Creek Drive, which is approximately 680 feet east of Orcas Moon; that path includes "The Crestwoods Stairs" trail which as the title describes has many stairs. The proposed path through Juanita Bay Park, while steep in some areas, will be a gentler switchback-style trail.
- (10) The location of the path within the park site was determined in coordination with The Watershed Company who delineated the boundaries for 4 wetlands and 3 streams on the park site. The applicant has submitted a survey showing the proposed location of the pedestrian path, which is located outside of wetland boundaries and outside of stream buffers except where the path connects to Forbes Creek Drive (see Attachment 18 and Section II.G.8). To mitigate the impacts into the wetland buffer areas, mitigation was required with the SEPA determination for the project (see Attachments 11 & 39).
- (11) Per the Public Works development standards, the path will be 3 feet wide and made of soft materials to avoid impacts to the buffer areas and trees.
- (12) An easement will not be required because the path is a public path in a public park.
- (13) A modification to KZC 105.19 is needed because the path will not be on the subject property. The modification criteria found in KZC 105.103.3.b. are as follows: It must be necessary because of the size, configuration, topography, or

location of the subject property; It should provide for equal or improved pedestrian and bicycle safety and convenience; and it should not have a substantial detrimental effect on nearby properties and the City as a whole.

(14) Staff Response to the modification criteria: The topography on the subject property is steeper than in the Park. Additionally, the elongated configuration of the development is not conducive to providing public pedestrian access because there will be significant impact to the buffer areas. There will be no detrimental effect in placing the path in the park because it is likely that more people will use it due to the nature of parks as places for the public, and it will connect to an existing public path and provide an important pedestrian connection between Norkirk and Juanita Neighborhoods. Placing the pedestrian path in the park will provide for improved pedestrian convenience. A public comment submitted during the comment period for Orcas Moon included concern for the possibility of loitering, crime and camping on the public path. The Kirkland Police Department should be called for any illegal activities on any public pedestrian path either in a park or on private property.

b. Conclusion: The City has the authority to require a public pedestrian path as part of the Orcas Moon application; a modification should be granted to place the path in Juanita Bay Park because it meets the modification criteria. Prior to recording the subdivision, the applicant should install the pedestrian path as shown in Attachment 18 and as indicated in the Public Works development standards in Attachment 3. The mitigation plan in SEPA should be followed.

5. COTTAGE DEVELOPMENTS

a. Fact: The following is a review, in a checklist format, of compliance with the parameters and design requirements for cottage developments found in KZC 113.

Complies as proposed	Not Applicable	Complies as conditioned	<b>DEVELOPMENT STANDARDS FOR COTTAGE DEVELOPMENTS</b>
<b>KZC 113.25 – Parameters for Cottages</b>			
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p><u>Maximum Unit Size:</u>            The maximum unit size for each cottage is 1,500 square feet. A cottage may include an attached garage, not to exceed an additional 250 square feet, or detached garage structures not to exceed 1,200 SF.</p> <p><u>Staff Analysis:</u> The proposal has 6 cottage designs (see Attachment 13) distributed throughout the site and 5 garage structures that are detached from the cottage units. No cottages have attached garages.</p>

		<p>Proposed cottage unit sizes (and number of cottages with that design):</p> <p>Design 1: 1,483 SF (X 1)=1,483 SF total          Design 2: 1,474 SF (X 1)= 1,474 SF total          Design 3: 1,484 SF (X 3)= 4,452 SF total          Design 4: 1,469 SF (X 5)= 7,345 SF total          Design 5: 1,188 SF (X 3)= 3,564 SF total          Design 6: 1,499 SF (X 1)= 1,499 SF total</p> <p>Detached garage structures:</p> <p>East cottage cluster has 2 garage structures:</p> <ul style="list-style-type: none"> <li>• 3-car structure: 768 SF</li> <li>• 2-car structure: 528 SF</li> </ul> <p>West cottage cluster has 3 garage structures:</p> <ul style="list-style-type: none"> <li>• 4-car structure: 1,008 SF</li> <li>• 3-car structure: 768 SF</li> <li>• 2-car structure: 528 SF</li> </ul> <p>The applicant is proposing 14 cottage units and 5 garage structures that are detached from the units. The proposed size of each cottage is less than the maximum allowed, which is 1,500 SF. The proposed size of each garage structure is less than the maximum 1,200 SF per garage structure. The cottage units comply with the maximum unit size allowed and the garage structures comply with maximum square footage allowed.</p> <p>KZC 113.25 (Maximum Unit Size) requires that prior to issuance of the building permits a covenant restricting increases in unit size should be recorded.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p><u>Density:</u>          The maximum density allowed for cottage developments is two times the maximum number of detached dwelling units allowed in the underlying zone.</p> <p><u>Staff Analysis:</u> The subject property is within the RS 12.5 zone which requires a minimum lot size of 12,500 SF per unit. The property size of 280,556 SF results in an allowed density of 22.44 units (280,556 SF / 12,500 SF). Per KZC 113.25, footnote #6, when the conversion from detached dwelling units to equivalent units results in a fraction, the equivalent units shall be limited to the whole number below the fraction. Using a base density of 22 units, the cottage development standards allow a maximum number of 44 units. The proposal for 14 units complies with the maximum density for cottage developments in the RS 12.5 zone. However, the subject property is</p>

			limited in density due to the Maximum Development Potential that is required per KZC Chapter 90.135 (see Section II.G.8.(4)).
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p><u>Maximum Floor Area Ratio (FAR.):</u>  Maximum FAR for cottage developments is 0.35.</p> <p><u>Staff Analysis:</u> Per KZC 113.25, footnote #9, FAR regulations are calculated using the "buildable area" of the site, as defined in KZC 90.135. Using the cottage unit sizes and garage structures listed in the "Unit Size" section above, including the garage square footage (3,600 SF), the total FAR is 23,414 SF. The site has critical areas, which means that FAR is calculated using the buildable area, which is 109,609 SF (see Section II.G.8.a (4)). This results in an FAR of 21.3% (23,414 SF / 109,609 SF).</p> <p>The proposal complies with the maximum FAR requirements.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p><u>Development Size:</u>  Minimum: 4 units  Maximum: 24 units  Maximum Cluster: 12 units</p> <p><u>Staff Analysis:</u> The applicant has proposed 14 units; there are 5 units in one cluster and 9 units in the other cluster, which meets the requirements for maximum development size.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p><u>Location:</u>  Developments containing cottage, carriage and/or two/three-unit homes may not be located closer than the distance noted below to another development approved under the provisions of KZC Chapter 113:</p> <p><input type="checkbox"/> 1 to 9 Units: 500 feet  <input checked="" type="checkbox"/> 10 to 19 Units: 1,000 feet  <input type="checkbox"/> 20 to 24 Units: 1,500 feet</p> <p><u>Staff Analysis:</u> The applicant is proposing 14 units, and as such, cannot be within 1,000 feet of another development containing cottages, carriage homes, or two/three-unit homes. At the time the subject application was deemed complete, there were no such developments within 1,000 feet of the subject property. Attachment 14 shows a 1,000 foot buffer around the subject parcel, with past and presently active land use applications shown. Of those land use applications shown within the buffer, none were for cottages, carriage homes, or two/three-unit homes.</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p><u>Minimum Lot Size:</u>  Beyond density restrictions, there is no required minimum lot size for cottage lots created through the subdivision process. The</p>

			<p>applicant is proposing a subdivision and the cottage lot sizes proposed range from 1,406 SF to 2,044 SF with the average lot size being 1,753 SF. The number of allowed units in this cottage proposal is subject to Maximum Development Potential, KZC 90.135.</p> <p><u>Staff Analysis:</u> The applicant is proposing to subdivide the subject property into 14 lots for each cottage and 14 lots for each garage. Lot size requirements found within the subdivision requirements are not applicable to cottages (see Section II.G.1.b). Garage lots may not be used for any other purpose than parking a car (see KZC 113.35.1.c.(4) below).</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p><u>Parking Requirements:</u></p> <p><input type="checkbox"/> Units under 700 SF: 1 space per unit  <input type="checkbox"/> Units between 700 – 1,000 SF: 1.5 spaces per unit  <input checked="" type="checkbox"/> Units over 1,000 SF: 2 spaces per unit</p> <p>Per KZC 105.20, a minimum of 10% of the total number of required parking spaces shall be provided for guest parking. If the required number of guest parking spaces results in a fraction, the applicant shall provide the number of spaces equal to the next higher whole number.</p> <p><u>Staff Analysis:</u> All 14 cottage units are over 1,000 SF and therefore code would require 2 parking spaces per unit. This equates to 28 parking spaces required for the cottage units. Per KZC 105.20, a minimum of 3 parking spaces are required for guest parking. A total of 31 spaces are required.</p> <p>The proposal includes 14 garage spaces and 19 surface parking spaces for a total of 33 parking spaces (see Attachment 2). This meets the minimum base requirement for 28 parking spaces and provides 5 additional spaces for guest parking; note that only 3 stalls are required for guest parking. The east cluster of cottages has 5 garages and 7 surface stalls; the west cluster of cottages has 9 garages and 12 surface parking stalls.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p><u>Minimum Required Yards (from exterior property lines of subject property):</u>  Front: 20 feet  Other: 10 feet</p> <p><u>Staff Analysis:</u> The applicant’s proposal provides a 20 foot setback from the front property line adjacent to 20 Ave. NE, which complies with the minimum required front setback of 20 feet. The proposal provides a 10 foot setback from the east property line, a 147 foot setback from the west property line, and a 215 foot setback from the north property line, all of which comply with the minimum required “other” setback of 10 feet.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p><u>Lot Coverage (all impervious surfaces):</u></p>

			<p>Maximum allowed lot coverage is 50% of the lot area.</p> <p><u>Staff Analysis:</u> Lot coverage is calculated using the entire development site of 280,556 SF, which would allow a lot coverage total of 140,278 SF. Due to the sensitive areas on site that cannot be built upon, the site is unlikely to reach the 50% lot coverage threshold. Preliminary calculations completed by staff indicate that approximately 47,506 SF will be covered with impervious surfaces, which would be 16% lot coverage. The applicant is required to provide a final lot coverage calculation with the land surface modification permit.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p><u>Height:</u></p> <p><u>Dwelling Units</u>  Where minimum roof slope of 6:12 for all parts of the roof above 18 feet are provided:</p> <ul style="list-style-type: none"> <li>• RS zones – 25 feet maximum above Average Building Elevation (A.B.E.).</li> <li>• RSA and RSX zones – 27 feet maximum above A.B.E.</li> </ul> <p>Where minimum roof slope of 6:12 for all parts of the roof above 18 feet is <u>not</u> provided, the maximum height is 18 feet above A.B.E:</p> <p><u>Accessory Structures</u></p> <ul style="list-style-type: none"> <li>• One (1) story, not to exceed 18 feet above A.B.E.</li> </ul> <p><u>Staff Analysis:</u> The subject property is within the RS 12.5 zone and the dwelling units are subject to a maximum height of 25 feet above A.B.E. if each unit provides a minimum roof slope of 6:12. The applicant has provided plans for 2-story cottage structures, but the plans do not indicate the pitch of the roof or the height of the units above A.B.E. (see Attachment 13). The applicant has provided a plan for the 1-story detached garage structures that do not indicate the height above A.B.E.  With each building permit, the applicant will be required to provide information to show compliance with this requirement.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p><u>Common Open Space:</u>  Minimum required common open space is 400 square feet per unit.</p> <p><u>Staff Analysis:</u> The applicant’s proposal includes 14 units, which results in a common open space minimum requirement of 5,600 SF.</p> <p>The applicant’s proposal plans indicate the following common open space areas: the east cluster of 5 cottages has 2 common open space areas totaling 2,237 SF; the west cluster of 9 cottages has 3 common open space areas totaling 3,373 SF (see Attachment 2, page 4). The total common open space area is 5,610 SF.</p>

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p><u>Attached Covered Porches:</u>  Each unit must have a covered porch with a minimum area of 64 square feet per unit and a minimum dimension of 7 feet on all sides.</p> <p><u>Staff Analysis:</u> The applicant has provided detailed dimensions of the proposed covered entry porches (see Attachment 13). Each unit includes a covered porch of at least 64 SF and minimum dimensions of 7 feet on all sides.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p><u>Accessory Dwelling Units (ADUs):</u>  Not permitted as part of a cottage, carriage or two/three-unit home development.</p> <p><u>Staff Analysis:</u> The applicant has not proposed any ADUs with the cottage development proposal. The applicant should record a covenant stating that ADUs are not permitted within the cottage development prior to issuance of the building permits for any units.</p>
Complies as proposed	Not Applicable	Complies as conditioned	<b>DESIGN GUIDELINES FOR COTTAGE DEVELOPMENTS</b>
<p><b>KZC 113.35.1.a – Orientation of Dwelling Units</b>  <i>Dwellings within a cottage housing development should be oriented to promote a sense of community, both within the development, and with respect to the larger community, outside of the cottage project. A cottage development should not be designed to "turn its back" on the surrounding neighborhood.</i></p>			
Complies as proposed	Not Applicable	Complies as conditioned	<b>Code Section</b>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>1) Where feasible, each dwelling unit that abuts a common open space shall have a primary entry and/or covered porch oriented to the common open space.</p> <p><u>Staff Analysis:</u> There are two clusters of cottages (east and west). The west cluster includes 3 separate common open space areas; the east cluster includes 2 common open space areas.</p> <p>The east cluster has 5 cottages. Units 1, 3, and 5 have covered entry porches that face the open space area. Units 2 and 4 do not directly abut a common open space area but have been designed to have covered entry porches with paths a short distance to the common area.</p> <p>The west cluster has 9 cottages. Units 9, 10 11, 12 &amp; 14 have covered entry porches that face the common open space area. Units 7, and 8 have covered entry porches that face 20<sup>th</sup> Ave, which is the primary entry for these units. The back sides of these units face the</p>

			<p>common open space. There are covered entries over each door facing the common open space.</p> <p>Due to the sensitive area constraints on this site, the shape and length of the buildable area makes it challenging for all covered entry porches to directly face the common open space, but of those that do not, there are paths to the common areas that are a short distance walk.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>2) Each dwelling unit abutting a public right-of-way (not including alleys) shall have an inviting facade, such as a primary or secondary entrance or porch, oriented to the public right-of-way. If a dwelling unit abuts more than one (1) public right-of way, the City shall determine to which right-of-way the inviting facade shall be oriented.</p> <p><u>Staff Analysis:</u> Units 6, 7, and 8 abut the 20<sup>th</sup> Ave NE public right-of-way, and the primary entrances and covered porches are oriented south towards the right-of-way. The color renderings in Attachment 15 "view A" shows that these units have covered porches and inviting façades that face the public street with design elements that match the single-family character of the neighborhood.</p>
<p><b>KZC 113.35.1.b - Required Common Open Space</b></p> <p><i>Common open space should provide a sense of openness, visual relief, and community for cottage developments. The space must be outside of wetlands, streams and their buffers, and developed and maintained to provide for passive and/or active recreational activities for the residents of the development.</i></p>			
Complies as proposed	Not Applicable	Complies as conditioned	<b>Code Section</b>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>1) Each area of common open space shall be in one (1) contiguous and usable piece with a minimum dimension of 20 feet on all sides.</p> <p><u>Staff Analysis:</u> The west cluster has 3 common open space areas all meeting the requirement for 20 feet on all sides. The east cluster has two common open space areas, all meeting the common opens space dimensional requirement of 20 feet on all sides.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>2) Land located between dwelling units and an abutting right-of-way or access easement greater than 21 feet in width may not serve as required common open space, unless the area is reserved as a separate tract, and does not contain pathways leading to individual units or other elements that detract from its appearance and function as a shared space for all residents.</p>

			<p><u>Staff Analysis:</u> The common open spaces are reserved as tracts and the pathways that surround the common open space are not part of the open space tract.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>3) Required common open space may be divided into no more than two (2) separate areas per cluster of dwelling units.</p> <p>The applicant's proposal is to divide the required common open space into 2 separate areas in the east cluster and 3 separate areas in the west cluster.</p> <p><u>Staff Analysis:</u> The buildable area is narrow and long due to the constraints of the steep slopes and wetlands and streams on site. Given the width of the buildable area, staff deems that the site design for common open space is reasonable. The City is recommending a modification be granted to locate 3 separate common open space areas in the west cluster of units. See section II.G.6 below for the analysis of the modification criterion.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>4) Common open space shall be located in a centrally located area and be easily accessible to all dwellings within the development.</p> <p><u>Staff Analysis:</u> The common open space areas in both clusters have centrally located common open space areas that are easily accessible to all dwelling units. Ten of the 14 units have direct access to the common areas and 3 of units have short pathways to the areas. Unit 6 is the only unit that does not have a path or direct access to a common area. The occupants of that unit would need to walk 40 feet across the drive aisle to the nearest common open space.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>5) Fences may not be located within required open space areas.</p> <p><u>Staff Analysis:</u> The applicant's proposal does not include any fences within the required open space areas.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>6) Landscaping located in common open space areas shall be designed to allow for easy access and use of the space by all residents, and to facilitate maintenance needs. Where feasible, existing mature trees should be retained.</p> <p><u>Staff Analysis:</u> The applicant has submitted a landscaping plan (see Sheet 10 of Attachment 2). The landscape plan includes a mix of native and common plants and trees typically found in single-family neighborhoods in Kirkland. Existing trees within the buildable area will not be able to be retained due to the significant grading that will occur to install infrastructure, but mature trees within the surrounding sensitive areas buffers will be retained (see Attachment 2, sheet 5).</p>

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>7) Unless the shape or topography of the site precludes the ability to locate units adjacent to the common open space, the following standards must be met:</p> <ul style="list-style-type: none"> <li>a) The open space shall be located so that it will be surrounded by cottages or two/three-unit homes on at least two (2) sides;</li> <li>b) At least 50 percent of the units in the development shall abut a common open space. A cottage is considered to “abut” an area of open space if there is no structure between the unit and the open space.</li> </ul> <p><u>Staff Analysis:</u> The common open space in the east cluster has 1 common area surrounded by cottages on 3 sides and another common area that is adjacent to only 1 cottage (see Attachment 2).</p> <p>Of the 3 common open space areas in the west cluster, 1 area is bordered by cottages on 3 sides, and another is bordered by cottages on 2 sides. The common area closest to 20<sup>th</sup> Ave. is bordered by cottages on only 1 side.</p> <p>The shape of both clusters is elongated due the ravines and steep slopes on site and thus the site design is limited by the topography which makes it challenging to meet this criterion (see Attachment 2, sheet 2).</p> <p>Staff finds the common open space locations and site design in relation to the cottages reasonable given the constraints of the topography on the subject property. Ninety-two percent of the cottages abut a common open space and the open spaces are spread throughout the site for all cottage residents.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>8) Surface water management facilities shall be limited within common open space areas. Low Impact Development (LID) features are permitted, provided they do not adversely impact access to or use of the common open space for a variety of activities. Conventional stormwater collection and conveyance tools, such as flow control and/or water quality vaults are permitted if located underground.</p> <p><u>Staff Analysis:</u> The applicant has submitted a stormwater plan shown on Sheet 8 in Attachment 2. The submitted plan indicates the storm water will be conveyed in underground pipes and will flow to a storm water vault that is approximately 200 feet from the cottages.</p>
<p><b>KZC 113.35.1.c – Shared Detached Garages and Surface Parking Design</b>  <i>Parking areas should be located so their visual presence is minimized, and associated noise or other impacts do not intrude into public spaces. These areas should also maintain the single-family character along public streets.</i></p>			

Complies as proposed	Not Applicable	Complies as conditioned	Code Section
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>1) Shared detached garage structures may not exceed four (4) garage doors per building, and a total of 1,200 square feet.</p> <p><u>Staff Analysis:</u> The applicant has proposed detached garage structures in both clusters of cottages. There are two structures with 2 garages, 2 structures with 3 garages and 1 structure with 4 garages. The largest structure holds 4 garages and is 1,008 SF (see Attachment 13). No detached garage structure exceeds 1,200 SF.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>2) For shared detached garages, the design of the structure must be similar and compatible to that of the dwelling units within the development.</p> <p><u>Staff Analysis:</u> The plans provided in Attachment 13 indicate the design of a garage structure with 3 garages and the design is compatible to the design of the cottages. The applicant should provide similar designs for the 2 and 4 car garage structures.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>3) Shared detached garage structures and surface parking areas must be screened from public streets and adjacent residential uses by landscaping or architectural screening.</p> <p><u>Staff Analysis:</u> The east cluster has garages that face at a diagonal toward 20<sup>th</sup> Ave., but the dumpster area is in front of the garages as seen from the street. Both the dumpster and the garages are screened with vegetation as shown in Attachment 2, page 10. The west cluster has garage structures that are screened from view by units 6, 7, and 8 and are also screened with vegetation.</p> <p>Additionally, surface parking areas are screened from adjacent residential uses by landscaping and a drop in topography in combination with the distance of the parking areas from 20<sup>th</sup> Ave. (see the applicant's proposed landscaping plan shown on Sheet 10 in Attachment 2).</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p>4) Shared detached garage structures shall be reserved for the parking of vehicles owned by the residents of the development. Storage of items which preclude the use of the parking spaces for vehicles is prohibited.</p>

			<p><u>Staff Analysis:</u> The applicant should submit a covenant or similar legal document to be recorded with the subdivision that indicates this requirement is met.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p>5) Surface parking areas may not be located in clusters of more than four (4) spaces. Clusters must be separated by a distance of at least 20 feet.</p> <p><u>Staff Analysis:</u> The applicant has proposed 3 separate surface parking areas in the west cluster, 2 with 4 spaces, 1 with 3 spaces, and one parallel parking space; each cluster is separated by at least 20 feet. The east cluster has 2 surface parking areas, 1 with 4 spaces, 1 with 2 spaces, and one parallel parking space and all are separated by 20 feet.</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>6) The design of carports must include roof lines similar and compatible to that of the dwelling units within the development.</p> <p><u>Staff Analysis:</u> The applicant has not proposed any carports.</p>
<p><b>KZC 113.35.1.d-h – Miscellaneous Cottage Development Design Standards and Guidelines</b></p>			
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p><u>Low Impact Development:</u>  The proposed site design shall incorporate the use of low impact development (LID) strategies to meet stormwater management standards. LID is a set of techniques that mimic natural watershed hydrology by slowing, evaporating/transpiring, and filtering water, which allows water to soak into the ground closer to its source. The design should seek to meet the following objectives:</p> <ol style="list-style-type: none"> <li>1) Preservation of natural hydrology.</li> <li>2) Reduced impervious surfaces.</li> <li>3) Treatment of stormwater in numerous small, decentralized structures.</li> <li>4) Use of natural topography for drainageways and storage areas.</li> <li>5) Preservation of portions of the site in undisturbed, natural conditions.</li> <li>6) Reduction of the use of piped systems. Whenever possible, site design should use multifunctional open drainage systems such as vegetated swales or filter strips which also help to fulfill landscaping and open space requirements.</li> </ol> <p><u>Staff Analysis:</u> The Public Works Department has approved a stormwater detention vault as necessary infrastructure to capture all of the on-site stormwater. As part of the Land Surface Modification Permit (LSM) the applicant should provide plans that utilize LID improvements unless deemed infeasible by a qualified Geotechnical Engineer due to landslide hazard conditions.</p>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p><u>Two/Three-Unit Homes and Carriage Units within Cottage Projects:</u></p>

			<p>Two/three-unit homes and carriage units may be included within a cottage housing development. Design of these units should be compatible with that of the cottages included in the project.</p> <p><u>Staff Analysis:</u> The applicant is not proposing any two/three-unit homes within the cottage development proposal.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p><u>Variation in Unit Sizes, Building and Site Design:</u>  Cottage projects should establish building and site design that promotes variety and visual interest that is compatible with the character of the surrounding neighborhood.</p> <p>1) Projects should include a mix of unit sizes within a single development.</p> <p>2) Proposals are encouraged to provide a variety of building styles, features and site design elements within cottage housing communities. Dwellings with the same combination of features and treatments should not be located adjacent to each other.</p> <p><u>Staff Analysis:</u> The proposed units range in size from 1,188 SF to 1,499 SF. There are 6 cottage designs proposed. The design materials used are not indicated, but the plans provided indicate that the cottage homes will be of similar style to single-family homes found in the neighborhoods of Kirkland (see Attachments 13 and 15). The varying designs have been situated so that no two home styles are adjacent to each other. The exception to this is units 4 and 5. The applicant should redesign unit 4 or Unit 5 so that they do not have the same combination of features and treatments.</p>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<p><u>Private Open Space:</u>  Open space around individual dwellings should be provided to contribute to the visual appearance of the development, and to promote diversity in landscape design.</p> <p><u>Staff Analysis:</u> As shown in Attachment 2, all units have private landscaped areas around all units.</p>
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<p><u>Pedestrian Flow through Development:</u>  Pedestrian connections should link all buildings to the public right-of-way, common open space and parking areas.</p> <p><u>Staff Analysis:</u> The east cluster of cottages has a walkway that runs the length of the development to 20<sup>th</sup> Ave. Each cottage has direct access to the path, which also leads to the parking areas, common open spaces and right-of-way. The west cluster has a series of pathways. Units 6, 7 and 8 all have direct path access to 20<sup>th</sup> Ave., and to the parking area, and units 7 and 8 also abut common open space. Units 9 -14 have pathways that go to the common open space and to the garages, but not directly to the right-of-way. The occupants of these units will need to walk through the surface</p>

			parking area to get to the right-of-way. The applicant should provide a clear pedestrian path through the parking area that connects residents of these cottages to 20 <sup>th</sup> Ave NE. This could be achieved by adding raised pavers or other accepted pedestrian improvements to the surface parking areas where the hard paths end. The path materials used through the surface parking area should be typical to single-family home construction rather than striping or other styles of pedestrian access as found in commercial or multi-family developments.
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b. Conclusions: With approval of the modification (see Section 6 below), and the conditions of approval, the applicant's proposal complies with the cottage development standards, provided that the items below are submitted:

- (1) The applicant should submit plans with the land surface modification and building permits consistent with those shown in Attachments 2 and 13 and the analysis in Section II.G.5.a.
- (2) Prior to issuance of building permits for any of the units, the applicant should record covenants that:
  - (a) Restrict any increases in unit size after initial construction;
  - (b) State that ADUs are not permitted within the subject development; and
  - (c) Indicate storage of items which preclude the use of the parking spaces for vehicles is prohibited in the shared detached garage structures.
- (3) The applicant should submit plans with the building permits for each unit that indicate that the cottages will be either 18 feet above A.B.E. or will have roof pitches of 6:12 on all roof forms. Additionally, each building permit for garage structures should indicate that the maximum height is no more than 18 feet above A.B.E.
- (4) Prior to submitting building permits for units 4 and 5, submit an alternate design for either unit so that the same design features and elements are not proposed next to one another.
- (5) As part of the Land Surface Modification (LSM) Permit, the applicant should submit a plan for the surface parking that includes pedestrian paths constructed of materials that are typically seen with single-family homes; the path should make a clear connection for units 9-14 to 20<sup>th</sup> Ave.
- (6) As part of the building permit applications for garages with

2 and 4 doors, provide a design that is similar to the design shown in Attachment 13 for garages with 3 doors.

6. COTTAGE REGULATIONS MODIFICATIONS

a. Facts:

(1) Per KZC 113.45.3, applicants may request minor modifications to the general parameters and design standards for cottage developments. The Planning Director or Hearing Examiner may modify the requirements if all of the following criteria are met:

- The site is constrained due to unusual shape, topography, easement or critical areas.
- The modification is consistent with the objectives of this chapter.
- The modification will not result in a development that is less compatible with neighboring land uses.

(2) The proposal requires approval of a modification to KZC 113.35.1.b(3) which requires that each cluster of cottages have no more than 2 separate common open space areas. The west cluster has 3 separate areas.

(3) The site is constrained due to the topographic challenges and wetlands and streams on site; the site design is long and narrow to accommodate the ravines and wetland and stream buffers.

(4) A modification to this section is consistent with KZC Chapter 113 because the intent of providing common open space is met and the open spaces are spread throughout the development for easy access for all cottage residents.

(5) The view from the neighborhood into the cottage site is limited due to the shape of the development and one additional open space area is not likely to affect the neighborhood in an adverse manner.

b. Conclusion: Staff recommends approval of a modification to KZC 113.35.1.b(3) because the proposal for 3 common open space areas in the west cluster meets the modification criteria.

7. TREE RETENTION

a. Facts: Regulations regarding the retention of trees can be found in Chapter 95 of the Kirkland Zoning Code.

(1) The applicant has elected an Integrated Development Plan (IDP), which requires that all improvements including utilities and house footprints must be known at the time of subdivision application.

(2) Attachment 2, pages 5 and 6 shows the trees that will be removed for the development due to construction impacts. The applicant has submitted 2 arborist reports by Favero Greenforest dated 7/22/16 and 11/20/17 (see Attachments 16 and 17). The second report shows the current proposal and its relation to the construction impacts.

- (3) The City's arborist recommends that an addendum to the arborist report be submitted with development permits to determine the limits of disturbance for tree numbers: 1033, 1034, 1038, 1039, A, 1019, 20495, 20735 and 20709 (see Attachment 3).
- (4) The City Arborist also recommends the following conditions be added to the proposal:
  - (a) Provide an arborist evaluation for any trees near culverts that will be replaced.
  - (b) The high risk Doug Fir tree in the wetland buffer is approved for removal or cut to a height that will be safe should it fall.

b. Conclusions:

- (1) As part of the land surface modification permit, the applicant should submit an addendum to the arborist report for tree numbers 1033, 1034, 1038, 1039, A, 1019, 20495, 20735 and 20709 that establish the limits of disturbance and location of protective tree fencing. The addendum should include information concerning any culvert replacement where the replacement will affect trees. The high risk Doug Fir is approved for removal or habitat snagging.

8. ENVIRONMENTALLY SENSITIVE AREAS-STREAMS AND WETLANDS

- a. Facts: Municipal Code section 22.28.200 establishes that the City may require that any area adjacent to a Class A, B and C stream, or a wetland be kept in its natural or pre-existing state if reasonably necessary to prevent hazards to persons or property, or to protect unique and valuable environments. Municipal Code section 22.28.180 states that the applicant has the responsibility in proposing a plat to be sensitive with respect to the natural features, including topography, streams, lakes, wetlands, habitat, geologic features and vegetation, of the property. The plat must be designed to preserve and enhance as many of these valuable features as possible.

- (1) Chapter 90 of the Kirkland Zoning Code governs development on sites with wetlands and streams on or near them. The Orcas Moon proposal was submitted as a complete subdivision application on 12/22/16. During that time, an older version of Chapter 90 was in effect (see Attachment 6); the updated version became effective on 3/1/17.
- (2) The site is in the Forbes Creek Basin, a Primary basin, and contains 3 wetlands (Wetlands A, B and D) and a buffer for an adjacent wetland to the west (Wetland C). Wetlands A and C are Type II wetlands requiring a 75-foot wide buffer. Wetlands B and D are Type III wetlands requiring a 50-foot wide buffer. All buffers require a 10 foot building buffer setback (see Attachment 4).

- (3) The site contains 5 streams (Streams 1,2,3,4, & 5). Streams 1-4 are Class B streams requiring a 60 foot wide buffer; Stream 5 is a Class C stream requiring a 35 foot wide buffer. All buffers require a 10 foot building buffer setback.
  - (4) KZC Section 90.135 requires that the following formula, called Maximum Development Potential, will determine the number of units on a site which contains a stream and/or its buffer:  
$$\text{Maximum Dwelling Unit Potential} = \left( \frac{\text{the buildable area}}{\text{the prescribed minimum lot area per unit}} + \frac{\text{the buffer area}}{\text{the prescribed minimum lot area per unit}} \right) \times \text{the development factor}.$$
  - (5) The minimum lot size per unit is 12,500 SF. Based on the survey provided by the applicant, the subject property contains 286,193 SF (prior to dedication) of which 109,609 SF is buildable area, 8,502 SF is wetland/stream area, and 168,082 SF is wetland/stream buffer area. The percentage of the site in sensitive area buffers is 58.7%. KZC 90.135 requires a development factor of 50% be applied to the stream buffer area. Per the formula shown above, the maximum development potential for the subject property is 15.49 dwelling units.
  - (6) The applicant proposes to build 14 cottage units in two clusters to minimize disturbance to the steep slopes and wetlands and streams. The proposal includes a buffer modification to reduce the buffer widths by one-third. Per KZC 90.60.1 (wetlands) and 90.100.1 (streams), buffers may be modified by no more than one-third of the required buffer width. The 10-foot wide building buffer setback may not be modified.
  - (7) Additionally, the sidewalk and street improvements are within the buffers for stream numbers 1, 2, and 3 and Wetland A. Per KZC 90.20.4 infrastructure improvements are exempt from the requirements in KZC Chapter 90, including being exempt from stream and wetland buffer regulations, as long as the improvements will not add impervious coverage. The City requires that public improvements such as sidewalks and street improvements that are within buffer areas be constructed of pervious materials.
- b. Zoning Code sections 90.60.2 (wetlands) and 90.100.2 (streams) establish nine criteria for modifying a wetland or stream buffer, which are as follows:
- 1) It is consistent with Kirkland's streams, wetlands, and wildlife study (The Watershed Co, 1999), and the Kirkland's Sensitive Areas Report (Adolfson, 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 an erosion hazard or contribute to scouring actions;
  - 6) It will not be materially detrimental to any other property or 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 stream buffers, as appropriate; and
  - 9) There is no practicable or feasible alternative development proposal that results in less impact to the buffer
- c. As part of the application, a report is required to be prepared by a qualified professional and that report is required to be peer reviewed by the City's wetland consultant, the cost being born by the applicant. The report is required to assess the habitat, water quality, storm water detention, ground water recharge, and erosion protection functions of the buffer. The report also needs to assess the effects of the proposed modification on those functions and address the nine (9) criteria listed above.
- d. The applicant initially submitted a Critical Areas Report (CAR) by Talasea that did not meet the standards as set forth in the Zoning Code. The City's consultant reviewed that report and made recommendations as to how to meet the zoning code criteria. As described in Section I.B (History) of this report, the proposal subsequently changed several times in order to meet all of the requirements associated with the proposal. From the initial submittal and with the changes to the application, a total of 5 Critical Area Reports were submitted by the applicant:
- Attachment 19 Talasea CAR report dated 7/21/16
  - Attachment 20 Talasea CAR report dated 5/31/17
  - Attachment 21 Talasea CAR report dated 11/9/17
  - Attachment 22 Talasea CAR report dated 7/20/18
  - Attachment 23 Talasea CAR report dated 10/31/18
- e. The City's consultant, The Watershed Company, peer reviewed each Talasea report making recommendations with each change in the proposal. The 6 Watershed peer review memos are as follows:
- Attachment 24 Watershed memo dated 9/2/16
  - Attachment 25 Watershed memo dated 12/1/16
  - Attachment 26 Watershed memo dated 7/21/17
  - Attachment 27 Watershed memo dated 1/2/18
  - Attachment 28 Watershed memo dated 6/22/18
  - Attachment 29 Watershed memo dated 12/11/18

- f. The final Watershed memo dated 12/11/18 recommends some minor changes to the last mitigation plan by Talsea submitted on 10/31/18. The recommendations include: additions to the bond quantity worksheet, changes to the performance measures and updates to the monitoring and maintenance schedule (see Attachment 29).
- g. KZC 90.145 states that the Planning Official shall require a performance or maintenance security to ensure compliance with any part of Chapter 90. As per Watershed's final review, changes in the bond quantity worksheet are needed.
- h. KZC 90.50 (wetlands) and 90.95 (streams) requires that a upon project completion, the applicant installs a permanent 3-4 foot tall split rail fence between the upland boundary of all wetland and stream buffers and the developed portion of the site.
- i. KZC 90.150 requires the applicant to dedicate the development rights or dedicate an open space or greenbelt easement to the City to protect sensitive areas (see Attachment 30). Land survey information shall be provided for this purpose in a format required by the city.
- j. The applicant has proposed replacement of the north section of culvert for stream 2 (see Attachment 2, page 8). KZC 90.20 allows general exceptions for normal and routine maintenance or repair of structures if the footprint of the structure is not increased. The existing culvert is 12 inches in diameter and is located underground. The new culvert would be located in the same place and is proposed at 18 inches in diameter for better flow of the storm water that goes to the stream and the culvert. No portion of the culvert is proposed to be above grade.
- k. Stream 3 at the northern terminus has an existing 12-inch diameter culvert. The applicant is proposing a second culvert outside of stream and wetland buffers; the second culvert would catch any storm flow that the existing culvert cannot handle. The new culvert is not located in any buffer areas.
- l. At the direction of the Public Works Department, the public pedestrian path required with the project is proposed to be placed within Juanita Bay Park (see Attachment 10). KZC 90.70 states that "the city may develop access through a wetland and its buffer in conjunction with a public park". There are 4 wetlands and 3 streams in proximity to the proposed trail as follows:

Name	Classification	Buffer width
Wetland A	Type 2	75 feet

Wetland B	Type 2	75 feet
Wetland C	Type 3	50 feet
Wetland D	Type 2	75 feet
Stream A	Class B	60 feet
Stream B	Class C	35 feet
Stream C	Class C	35 feet

The Watershed Company helped to locate the path by working with the applicant, Parks Department staff and Public Works Department staff to find the location that would provide the most protection for the streams and wetlands (see Attachment 39). The path location does not extend into any stream buffers within the park, but 90 feet of the trail extends into Wetland B and C's buffers. These two wetlands are close together and have overlapping buffers (see Attachment 18). At the northern terminus of the path, 107 feet of the trail extends into the buffer for wetland A. The Zoning Code does not give specific guidance for mitigating impacts to the wetland buffers within City parks. Therefore, mitigation was handled with the SEPA review (see Attachment 9).

m. Conclusions: The proposal complies with the Maximum Development Potential per KZC 90.135 requirements. With the changes recommended by the Watershed Company memo dated 12/1/18, the application for buffer modification of streams and wetlands meets the Zoning Code requirements in KZC Chapter 90 (see Attachment 6) provided that the following conditions have been met:

- (1) As part of the Land Surface Modification (LSM) permit the applicant should submit a new mitigation plan and bond worksheet that adheres to the Watershed recommendations in Attachment 29. The final mitigation plan and bond worksheet should be reviewed by the Watershed company at the applicant's expense.
- (2) The LSM permit should contain construction plans for the right-of-way improvements that indicate no impervious area will be added within the buffer pursuant to KZC 90.20.4. This criterion may be met by installing pervious materials for right-of-way improvements.
- (3) Prior to recording the subdivision:
  - (a) Install the mitigation plantings as found in the Talasea Critical Areas report dated 10/31/18. The

- CAR should first be updated to meet the recommendations in the Watershed memo dated 12/11/18.
- (b) Submit a security/bond document with the required dollar amount to the City as per the updated bond worksheet (see Subsection (1) above). Submit a contract with a
  - (c) Submit a Natural Greenbelt Protection Easement (NGPE) document as shown in Attachment 30 encompassing the entire sensitive area and buffer. The legal description shall be prepared by a licensed surveyor.
- (4) The culvert replacement for Stream 2 is exempt from Chapter 90 because there is no footprint increase with a culvert. No portion of the culvert should be above grade. The second culvert proposed from Stream 3 complies with Chapter 90 because it is located outside of any buffer area.
  - (5) The public pedestrian trail location complies with the KZC 90.70 for locating pedestrian access through wetland buffers within parks.

9. GEOLOGICALLY HAZARDOUS AREAS

- a. Facts: KZC Chapter 85 establishes criteria for approving development within Geologically Hazardous Areas. As discussed in Section I.B - History, the Orcas Moon application vests in a version of Chapter 85 that was effective at the time of complete subdivision application submittal (see Attachment 7). The City's sensitive area maps show that the site is encumbered by moderate and high landslide hazard areas and areas with potential for liquefaction (see Attachment 5).
  - (1) KZC 85.15 sets forth the submittal requirements for development within a landslide hazard, seismic hazard or erosion hazard zone. A geotechnical report must be prepared by a qualified geotechnical engineer that describes how the proposal affects the slopes on site based on the soil classifications, test pit logs and other criteria.
  - (2) KZC 85.25 states that the City may require funding of a 3<sup>rd</sup> party geotechnical engineer to review the recommendations made by the applicant's engineer. The cost of the 3<sup>rd</sup> party engineer is born by the applicant.
  - (3) The applicant submitted a geotechnical evaluation with the initial application prepared by Associated Earth Sciences, Inc (AESI) dated 7/21/16. The City required that report to be evaluated by a 3<sup>rd</sup> party geotechnical engineer consultant, GeoDesign, Inc. The City's consultant made recommendations and requested new data and reports by AESI. As a result of the peer review, a total of 4 reports were submitted by AESI:

- Attachment 31 AESI report dated 7/28/16
  - Attachment 32 AESI report dated 2/20/18
  - Attachment 33 AESI report dated 5/1/18
  - Attachment 34 AESI report dated 10/29/18
- (4) The City's consultant, GeoDesign, Inc. peer reviewed the AESI reports. Those reviews are found in the following attachments:
- Attachment 35 GeoDesign, Inc. report dated 4/3/18
  - Attachment 36 GeoDesign, Inc. report dated 8/21/18
  - Attachment 37 GeoDesign, Inc. report dated 11/15/18
- (5) The City's consultant made the following recommendations based on peer review of the AESI reports (see Attachment 37):
- (a) The final grading plan should be reviewed by GeoDesign, Inc.
- (b) A representative of AESI should be on site during grading operations, foundation and retaining wall construction, utility installation and backfilling. AESI should submit reports detailing these items for the City's files.
- (c) Once the retaining wall designs are finalized, they should be peer reviewed for conformance with the geotechnical engineer recommendations.
- (6) The applicant is proposing an additional 18" diameter culvert system located adjacent to the vault access road which terminates prior to reaching Forbes Creek Drive (see Attachment 2, page 8). The new culvert is not located in any wetland or stream buffer. The culvert has not been evaluated by a Geotechnical Engineer.
- (7) KZC 85.45 requires that prior to issuance of any development permits, the applicant enter into an agreement indemnifying the City for any damage resulting from development activity on the subject property (see Attachment 38).
- b. Conclusions: The application is subject to Chapter 85 requirements in effect at the time of their complete application submittal (see Attachment 7 and Section II.B.1.b). Prior to grading permit submittal, the applicant should submit a final grading and retaining wall design prepared by AESI for review by the City's Geotechnical consultant, the cost of which is born by the applicant.

- (1) The grading plans should state that a representative of AESI will be on site during grading and retaining wall installation and backfill. AESI should create a report indicating compliance with their recommendations and incorporate any recommendations made by the City's peer review consultant.
- (2) Prior to issuance of any development permits, the applicant should sign and submit to the City for recording the Geohazard covenant as shown in Attachment 38.
- (3) Submit with the Land Surface Modification (LSM) plans a geotechnical evaluation of the new culvert design performed by a licensed geotechnical engineer. The evaluation should be peer reviewed by the City's geotechnical engineer consultant the cost of which is born by the applicant.

#### **H. 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. 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**

##### Appeal to the City Council:

Section 150.80 of the Zoning Code allows the Hearing Examiner's decision to be appealed by the applicant or any person who submitted written comments or oral testimony to the Hearing Examiner. A party who signed a petition may not appeal unless such party also submitted independent written comments or information. 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. following the postmarked date of distribution of the Hearing Examiner's decision.

#### **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. For more information on the judicial review process for land use decision, see Chapter 36.70 C RCW.

**V. LAPSE OF APPROVAL**

Under KZC 150.135:

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 150.130, 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 seven (7) years after the final approval on the matter, or the decision becomes void.

Under KMC 22.16.010 Final Plat – Submittal – Time limits:

If the Final Plat is not submitted to the City Council within the time limits set forth in RCW 58.17.140 it shall be void.

**VI. APPENDICES**

Attachments 1 through 38 are attached.

1. Vicinity Map
2. Applicant's site design plans
3. Development Standards
4. Wetland and Stream buffer map prepared by Talsea
5. The City's landslide hazard map
6. KZC Chapter 90 in effect prior to 3/1/17
7. KZC Chapter 85 in effect prior to 6/30/18
8. All public comments
9. SEPA memorandum and Public Works response to traffic
10. Public Pedestrian Path location
11. SEPA Determination
12. Plat plans
13. Cottage design plans
14. Cottage buffer map
15. Cottage color renderings
16. Arborist report by Favero Greenforest dated 7/22/16
17. Arborist report by Favero Greenforest dated 11/20/17
18. Applicant's park path plans
19. Talasea CAR dated
20. Talasea CAR dated
21. Talasea CAR dated
22. Talasea CAR dated
23. Talasea CAR dated
24. Watershed peer review memo dated
25. Watershed peer review memo dated
26. Watershed peer review memo dated
27. Watershed peer review memo dated

28. Watershed peer review memo dated
29. Watershed peer review memo dated
30. Native Growth Protection Easement (NGPE) Official City Document
31. AESI report dated
32. AESI report dated
33. AESI report dated
34. AESI report dated
35. GeoDesign, Inc. peer review dated
36. GeoDesign, Inc. peer review dated
37. GeoDesign, Inc. peer review dated
38. Geohazards covenant, Official City Document
39. Watershed Memos for Park Path

**VII. PARTIES OF RECORD**

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

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