

**From:** Scott Morris [<mailto:Scott.Morris@trilogy-international.com>]  
**Sent:** Thursday, September 27, 2018 3:22 PM  
**To:** Planning Commissioners  
**Cc:** Deborah Powers ; Adam Weinstein ; Finn Hill Neighborhood Alliance ; goodwin ; George Finkenstaedt ; rick doylesmith.com  
**Subject:** Comments on Chapter 95 (tree retention and required landscaping)

Dear Commissioners,

Attached please find comments from the Finn Hill Neighborhood Alliance regarding proposed revisions to Chapter 95 of the Kirkland Zoning Code.

Regards,

**Scott Morris**  
**Finn Hill Neighborhood Alliance - President**  
[www.finnhillalliance.org](http://www.finnhillalliance.org) | 206-972-9493  
PO Box 682, Kirkland WA 98083



 [www.facebook.com/finnhillalliance](https://www.facebook.com/finnhillalliance) 



September 25, 2018

Kirkland Planning Commission  
 Kirkland City Hall  
 123 Fifth Avenue  
 Kirkland WA 98033

Re: Code Amendments for Kirkland Zoning Code  
Chapter 95 (Tree Management and Required Landscaping)

Dear Commissioners,

The Finn Hill Neighborhood Alliance (FHNA) notes that, at its meeting on Thursday, the Planning Commission will review proposed amendments to the citywide tree ordinance (Chapter 95) that have “moderate” or “major” policy implications. Earlier this year, FHNA supported Chapter 95 modifications that City staff had recommended as part of the Holmes Point Overlay (HPO) review. We also advocated some additional modifications to clarify Chapter 95 and close enforcement loopholes. (See in particular pages 2 and 3 of our May 22, 2018, letter to the Planning Commission, attached as Appendix A.)

We have not changed our views about these proposed revisions to Chapter 95. Because the Commission is now assessing improvements to Chapter 95 outside of the Holmes Point Overlay context, however, FHNA would like to address Chapter 95 as it relates to Kirkland as a whole (including the portion of Finn Hill that lies outside the Holmes Point Overlay boundary). The following comments reflect observations made to the staff by Finn Hill neighbors (some of whom live in the Holmes Point area, some of whom do not) at a September 18 focus group session about Chapter 95. (The following comments do not respond directly to the staff’s observations in its memo to the Commission of September 21, 2018. FHNA will review that memorandum carefully and provide additional comments if warranted.)

- **Canopy goals:** Chapter 95 references Kirkland’s Urban Forest Strategy Management Plan of 2013 in the ordinance preamble. That plan set a citywide tree canopy coverage goal of 40%.

- **A canopy goal should be stated explicitly in Chapter 95; it should exclude canopy coverage in portions of the City that consist of County or State parks (which are not controlled by the City), and an additional canopy coverage goal of 50% should be established for residential areas.** (A 50% canopy coverage target for residential areas was recommended by American Forests for Puget Sound communities; the American Forest research was the basis for Urban Forest Strategy Management Plan's proposal that Kirkland's citywide canopy goal – inclusive of commercial areas – be set at 40%. FHNA believes that a separate, higher canopy cover goal for residential areas is needed to achieve 40% coverage over the entire city.)
- **We also suggest that the ordinance establish a goal that 50% of its canopy cover should consist of native conifers.** These trees provide superior water transpiration on a year-round basis and their roots reinforce soils, minimizing surface water runoff, erosion, and landslide risks.
- **Tree canopy standards vs. tree credits:** Chapter 95 currently requires that properties undergoing development be planted with new trees at the rate of 30 tree credits per acre. As you know, FHNA and City staff vigorously debated the merits of tree canopy percentages vs. tree credits as metrics in the context of the HPO revision. During that review, staff stated that a tree planting standard of 30 credits per acre would equate to canopy coverage of 30%. FHNA has determined that this conclusion is incorrect for many species of deciduous trees and significantly erroneous in regard to native coniferous trees (whose crowns are generally narrower than those of deciduous trees). Please see Attachment B to our May 22, 2018, letter (appended) for our analysis.
  - **We urge the Commission to recommend that Chapter 95 be revised to express tree planting requirements in terms of canopy coverage.** Doing so is intuitively sensible: it would tie compliance metrics *directly* to the City's policy goals, avoiding significant slippage that would result from reliance on the tree credit standard.
  - The staff has expressed concerns that canopy coverage would be difficult to measure on a lot-by-lot basis because satellite images maybe indistinct. However, the canopy coverage standard would apply principally to the planting of new trees for which satellite imagery would be irrelevant. The developer and the developer's arborist or landscaper would submit a planting plan designed to provide the requisite canopy coverage at the end of a specified period (FHNA recommended 20 years but it could be longer to allow for maturation of slow growing conifers); the plan would be reviewed by the City's own arborist. Since Chapter 95 already requires the submission of tree plans, a switch from tree credits to canopy coverage requirements would entail no significant additional work for builders or City staff.
  - An additional benefit of moving to a canopy coverage standard is that it will give developers an incentive to plant trees in a fashion that maximizes their mature crowns, rather than on planting trees close together in order to meet planting tree credits quota without regard to ultimate canopy result.

- **Integrated Development Plan (IDP):**
  - **All applications for subdivisions and short plats should be processed under the Integrated Development Plan regime** that the Council adopted last year for the Holmes Point area.
  - Additionally, **notices to neighbors of short plats and subdivisions should include the tree plans that are submitted with development applications** or should provide a link for online access to such plans. Otherwise, citizens will be able to comment on tree plans only if they go to Planning Department to view them – an obstacle that defeats the transparency that the IDP is designed to provide.
  
- **Tree retention values:** Chapter 95 currently says that High Retention Value trees (trees in setbacks, specimen trees, trees on slopes, trees in groves) should be retained “to the maximum extent possible” and that Moderate Retention Value trees (healthy trees) should be retained “if feasible”; Low Retention Value trees are those that are not viable or are located in the footprint of development activity. Staff has noted that the definition of Low Retention Value trees may constitute a loophole in that any tree standing where development activity is planned is not considered one worth retaining, despite its condition.
  - **At the very least, the definition of a Low Retention Value tree should be narrowed to encompass only unhealthy trees and trees that cannot feasibly be retained** (i.e. a healthy tree is classed as a Low Retention Value tree only if the staff determines that it is infeasible to retain the tree).
  - **The Commission should engage in a candid discussion with the staff on the practical meaning of “feasible” and “to the maximum extent possible”.** Our review of development plans both within and outside of the HPO indicates that many trees marked for removal could have been saved with some additional design effort and better coordination with utilities. We recognize that City staff is under pressure not to raise needless obstacles to development; however, it appears to us that tree protections have not been enforced in compliance with the language that already appears in Chapter 95.
  - We offer four related observations regarding the preservation of trees during development:
    - Exceptional trees (called Landmark Trees or Heritage Trees or the like in other cities’ tree codes) are not given special status under the Kirkland tree code except insofar as “specimen trees” are classified as High Retention Value trees. **Developers should be given meaningful incentives to protect specimen trees**, perhaps in the form of a bonus to their canopy coverage calculation.
    - Native trees are “encouraged” (and the retention of native conifers is rewarded with the allocation of additional credits to such trees) but no specific requirement is given to promote the planting of new native

- conifers. **The City should specify that a minimum percentage of new plantings (e.g.,50%) must consist of native conifers.**
- FHNA is concerned that **the City does not make adequate efforts to preserve trees where they are located in the path of paved sidewalk or the conventional route of utility lines.** It should preserve healthy trees where feasible or to the maximum extent possible; yet, we have seen numerous instances where their removal is approved to accommodate the shortest utility trench or a standard paved sidewalk (sometimes extending no further down a street than the frontage of a subdivision – i.e. a sidewalk to nowhere). We believe that the City can do better to meet its own tree retention standards.
  - We also note that Chapter 95 empowers City planners to revise the location of driveways and walkways, and to make “minor” adjustments to building footprints for this purpose. **The Commission should discuss with staff candidly whether planners invoke this authority effectively to save healthy trees,** or whether planners have been too confrontation averse. It would be instructive for staff to provide examples of where this has been done successfully (and where it has not been fruitful). **Also, staff should be given power to make more than minor footprint adjustments in order to preserve healthy trees.** This authority could be invoked to preserve specimen trees (see above). Other municipalities, notably Lake Forest Park, give such powers to staff. (FHNA understands that staff cannot abuse its discretion to the point that its deprives an owner of all reasonable economic value of property to be developed. FHNA believes that there is significant room for more effective tree preservation than what the City has achieved to date without exposing the City to a serious claim of a taking of property.)
- **Maintenance of newly planted trees:** Chapter 95 specifies that trees planted to meet tree credit (or canopy coverage) requirements must be maintained for 5 years. As parcels are developed and sold, builders assign this responsibility to private homeowners, who may be unaware of the responsibilities or disinclined to accept them. **To ensure that new plantings are maintained, developers should be required to post a bond for the maintenance or replanting of trees for 5 years.** Having a bond in place would enable the City to ensure that young trees are protected even if developers are no longer available to fulfill their maintenance commitments.
  - **Fencing and signage during development activity:** To discourage fence creep and to put contractors on notice as to applicable fines, staff has recommended that fences be staked to the ground and signs added to the fences stating that they should not be moved. **FHNA strongly supports the staff recommendations and urges that signage state applicable fines for violations and provide enforcement contact numbers so that violations can be promptly reported.** On the other hand, FHNA also urges the City to allow homeowners and builders to access protected areas during development to

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maintain protected trees and foliage. It would be self-defeating if compliance with the fence requirement weakened the health of the trees and shrubs it was designed to promote.

- **Fines:** As part of its HPO review, City staff recommended stiffer fines and business license revocation for tree code violations. **The City should require prompt remediation of violations and it should adopt significantly stiffer penalties for knowing transgressions.** To foreclose builders from seeking relief by claiming ignorance of the law, the City should require applicants for development permits to attest that they are familiar the terms of Chapter 95.

Thank you for considering these comments.

Respectfully submitted,

FINN HILL NEIGHBORHOOD ALLIANCE



Scott Morris, President

Cc: Deb Powers  
Adam Weinstein  
Eric Shields  
Kirkland City Council  
FHNA Board of Directors

Appendix A  
FHNA letter of May 22, 2018, to Planning Commission

(appended following this cover page)



May 22, 2018

Kirkland Planning Commission  
Kirkland City Hall  
123 Fifth Avenue  
Kirkland WA 98033

Re: Code Amendments for Kirkland Zoning Code Chapter 70 (Holmes Point Overlay) and  
Chapter 95 (Tree Management and Required Landscaping) – File CAM18-00080

Dear Commissioners,

Following are comments from the Finn Hill Neighborhood Alliance regarding amendments to the Holmes Point Overlay ordinance. For the most part, we are in agreement with the City staff on the proposed amendments and we are pleased that we were able to resolve several outstanding issues when we met the Planning Department representatives on Monday, May 7, 2018. We continue to appreciate the time that the City staff has dedicated to working with us on HPO amendments.

At this point, we believe that there are four points on which we have been unable to reach full agreement with staff.

Each of these points is presented below. The first is extremely important and is addressed in detail.

**Preservation of existing trees during development activity outside of Protected Natural Areas**

General comment: FHNA and City staff have debated extensively how best to preserve existing trees during the development of properties in the HPO. This is a critical issue to Holmes Point residents because they have seen, time and again, the destruction of mature trees on properties during land clearing activities, leaving hillsides open to erosion and increasing the risk of slides. (See photos in Attachment A.) We have not reached agreement with the staff on how to address

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this issue. In this regard, we believe that the proposed amendments to the HPO are unsatisfactory.

The principal purpose of the HPO was to protect existing trees during the development process. The current ordinance says, *without qualification*, that “all significant trees must be retained” on properties in the Holmes Point area. The ordinance has, to FHNA’s knowledge, never been enforced as it was written. Instead, the standard has been interpreted to require something in the nature of preserving trees where it is reasonable or convenient for a developer to do so. As applied, the tree retention standard has been vague, variable, and mostly ineffective.

FHNA proposal: FHNA is not so naïve as to expect that all significant trees will in fact be retained during development. But we do want an objective standard that ensures that a reasonable quantity of mature trees will protected in the construction process. We have suggested that development should not be permitted to reduce tree canopy to less than 30% over a parcel. This includes the canopy that will be provided in the PNA (covering 25% of the parcel).<sup>1</sup> Our proposal thus requires only a small number of trees on the non-PNA portion of the parcel to be retained. (See our April 24, 2018 letter to the Planning Commission, at page 4, appended as Attachment C.) We are proposing the addition of the following paragraph to the tree retention plan footnotes in Section 95.30:

*(7) Development of a property in the Holmes Point Overlay zone is governed by Chapter 70 and shall ensure that the tree canopy on the property shall not be reduced by development activity below 30% at the time of completion of development.*

The staff has advised us that it will not support any quantitative standard for the retention of existing trees on lots undergoing development. Staff has argued that a minimum retention standard is unnecessary because the Holmes Point area has been downzoned, an IPD regime has been mandated, and because it has proposed language that all High Retention Value Trees shall be retained. The downzone and the implementation of the IDP requirement are significant benefits: the downzone *enables* more trees to be retained and the IDP process requires a developer to *show* at a project’s outset which trees will be felled and which will be retained. However, neither the downzone nor the IDP imposes substantive *requirements* for protecting trees.

The only requirement for the protection of existing trees suggested by staff is the mandate that High Retention value trees be retained. (See staff’s proposed language of Section 70.20.2.a.) This is a very good suggestion. FHNA supports it. But staff has stated that trees will be classified as High Retention Value Trees only if they are located in “required yards and/or required

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<sup>1</sup> When we met with staff on May 7, 2018, we clarified that our proposal seeks to preserve a 30% canopy cover over the entire parcel under development, *including the PNA*. Staff had previously thought that our proposal sought to require a 30% canopy cover over the non-PNA portion of the parcel in addition to whatever canopy cover would be provided in the PNA.

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landscape areas”<sup>2</sup>. Thus, as amended by the staff, the HPO would do nothing to protect trees located outside of required setbacks and yards.

It might be argued that the High Retention Value Tree provision suggested by the staff will result in the protection of existing trees to the extent that a property will retain 30% canopy cover through the development process. If so, the language suggested by FHNA will not be problematic. If the High Retention Value Tree language does not result in the preservation of 30% canopy coverage, however, FHNA’s provision will be needed to ensure that a minimum level of canopy coverage is retained.

Finally, the 30% canopy requirement doesn’t impose new burdens in administration of the HPO. The staff has already recommended that a landscape architect certify in each development’s tree plan that a 50% tree canopy will be achieved in 20 years’ time. Requiring the landscape architect to certify as well that the tree canopy will not be reduced below 30% at the completion of development should not add any meaningful burden to the creation of the tree plan. Note that the language proposed by FHNA has been revised (as compared to what FHNA proposed in its April 24 letter to the Planning Commission) so that it does not prohibit development on properties that have less than 30% canopy coverage at the time development begins. The language prohibits a reduction of existing tree canopy to less than 30% only to the extent that the reduction *results from development activity*.

#### **Protection of significant trees whose Critical Root Zones are impacted during development activity**

FHNA has argued that tree retention plans for projects in the HPO should indicate when the Critical Root Zones of significant trees will be impacted by development activities and should also include an analysis by the developer’s arborist showing why such incursions will not adversely affect the viability of those trees.

We are pleased that the staff’s proposed amendment to Section 95.30.4(5) now requires Critical Root Zones (CRZs) to be indicated on the site plan for each project in the Holmes Point area. However, the staff’s revisions don’t require the site plan to indicate whether the arborist has concluded that CRZ incursions will affect the viability of the affected trees. It’s important that this omission be rectified: while it’s good to show CRZs on tree plans, that information is

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<sup>2</sup> The first sentence of the staff’s proposed amendment to Section 70.20.2.a reads more broadly than what the staff may intend: “All High Retention Value Trees, as defined in Chapter 95 KZC, shall be retained in the garden, lawn, and landscaping portion of the property.” This language appears to protect High Retention Value Trees in all such portions of a property, even in gardens, lawns and landscaping areas not mandated by the general zoning for the property (although such areas seemingly must be set aside as garden, lawn or landscaped areas under the HPO – given that the HPO limits the extent of impervious surface on a lot). FHNA notes that Section 95.10.13.a defines a High Retention Value Tree as a viable tree “located within required yards and/or required landscape areas”. FHNA understands that staff intends to apply High Retention Value Tree protection in the HPO only to viable trees in these “required” yards and landscape areas.

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essentially meaningless without a conclusion as to whether the trees will survive incursions into those CRZs.

FHNA proposal: Accordingly, FHNA recommends that the staff amendment to 95.30.4(5) be supplemented as follows (with FHNA language shown in red italics):

- (5) Indicate limits of disturbance drawn to scale around all trees potentially impacted by site disturbances resulting from grading, demolition, or construction activities (including approximate LOD of off-site trees with overhanging driplines). For properties located in the HPO, Critical Root Zones<sup>3</sup> and Inner Critical Root Zones must be indicated, *and if any disturbance is proposed within such Critical Root Zones, the plan must indicate whether, in the opinion of a qualified tree professional, the affected tree will be viable following such incursion and what aftercare procedures (if any) will be needed for continued viability. The plan will not be approved by the City unless a qualified tree professional appointed by the City concludes in writing that the proposed incursion will not render the tree non-viable and further specifies that the appropriate aftercare procedures (if any) are appropriate and are conditions to the approval of the plan.* If any disturbance is proposed within the Critical Root Zone of significant trees on a neighboring property, the applicant shall provide evidence that the owner of said tree(s) has been notified in writing....

#### **Modification of tree retention plans following the removal of trees previously identified for retention**

Section 95.30.6.3 allows a developer to seek a modification to a tree plan following tree removals that did not comply with the plan. In order to ensure the integrity of tree plans and to dissuade developers from attempting to rectify plan violations after the fact, the standard for granting such modifications in such cases should be high. FHNA has proposed language for a strict modification standard. Without such language in the code, we are concerned that developers could abuse the provision to seek modifications.

FHNA proposal: We therefore recommend that the following subparagraph be added to Section 95.30.6.3:

- (b) The failure to seek modification of the Tree Retention Plan prior to removal of trees in violation of the plan was due to a need to eliminate an imminent threat to safety or property not created by the applicant;*

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<sup>3</sup> A conforming change should be made to the tree retention plan table in Section 95.30.5: the new language that reads "Indicate Inner Critical Root Zones of significant trees on properties in the HPO per 95.10.xx" should be revised as follows: "Indicate Critical Root Zones of significant trees on properties in the HPO per 95.10.2."

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### **Maintenance of replacement trees outside Protected Natural Areas**

The staff's proposed amendment to Section 70.20.8(b) specifies maintenance requirements for non-PNA replacement trees by referring to Section 70.15.2, which describes the terms under which significant trees outside the PNA may be *removed*. The staff's proposed amendment to Section 95.51.4, which specifies maintenance requirements for trees in the Holmes Point area, states that trees outside of PNAs must be maintained pursuant to Sections 70.20.8(b) and 95.23. As noted above, Section 70.20.8(b) refers to Section 70.15.2 – a tree removal section – and Section 95.23 likewise deals with tree removals. There is no clear statement in either Chapter 70 or Chapter 95 setting forth the obligations to *maintain* non-PNA replacement trees.

FHNA proposal: We recommend the addition of appropriate cross-references to Sections 95.51.1-2, which state that required trees must be replaced in kind and maintained for 5 years. Specifically, Section 70.20.8(b) should read:

- b. Non-PNA portions of the lot...shall be maintained per Chapter 70.15.2 KZC *and Chapter 95.51.1-2 KZC.*

And Section 95.51.4 should be revised as follows:

4. Maintenance in Holmes Point Overlay Zone. Trees and vegetation in designated Protected Natural Areas in the Holmes Point Overlay Zone are to be protected in perpetuity pursuant to KZC 70.20.8(a). Significant trees in the remainder of the lot shall be maintained pursuant to KZC 70.20.8(b), KZC 95.23 and *95.51.1-2.*

### **Requirement the tree retention plans include a landscape architect's determination that a 50% tree canopy will be achieved in twenty years**

The staff has recommended that tree retention plans in the Holmes Point Overlay zone include a determination by the developer's landscape architect that the project's tree canopy will be 50% within twenty year's following completion of development activity. As we previously advised the Planning Commission in our April 24 letter, FHNA strongly supports this requirement.

We have asked the City staff whether the landscape architect's conclusion can be based on an assumption that 50 tree credits per acre (the required minimum tree density on non-PNA portions of HPO lots) would equal 50% canopy coverage in twenty years' time. The staff has advised us that this will not be the case and that other, more reliable data regarding canopy coverage will have to be used. This is reassuring and important because FHNA is convinced that tree credits – which reflect trunk diameter – do not equate to tree crowns in a straightforward fashion and therefore cannot be used to predict tree canopy coverage without sophisticated, species-specific refinements. The suitability of tree credits as a proxy for canopy coverage is particularly fraught when applied to native conifers. See Attachment B for an analysis of the unreliability of tree credits as a predictor of canopy coverage.

Thank you for considering these observations on a regulation that is very important to the Holmes Point community.

Respectfully submitted,

FINN HILL NEIGHBORHOOD ALLIANCE



Scott Morris, President

Attachments: Development photos, tree credit/canopy analysis, FHNA letter of April 24 (with attached proposed revisions to Chapters 70 and 95)

Cc: Janice Coogan  
Jeremy McMahan  
Adam Weinstein  
Eric Shields  
Kirkland City Council  
FHNA Board of Directors  
FHNA Ad Hoc Committee on HPO

Attachment A  
Photos showing recent development activity in the Holmes Point Area

Note that although trees have been retained on the perimeters of the properties to be developed (where PNAs are located), the interiors of the properties have been cleared of all trees.

Development at 73<sup>rd</sup> Place NE between NE 118<sup>th</sup> Place and NE 120<sup>th</sup> Street



Development at 68<sup>th</sup> Avenue NE – NE 124<sup>th</sup> Street (north of O.O. Denny Park)



Attachment B

FHNA analysis of the relation between tree credits for deciduous and coniferous trees and tree canopy percentages

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Memorandum  
May 2018

To: Kirkland Planning Commission

From: Finn Hill Neighborhood Alliance (FHNA)

Subject: Kirkland's Tree Credit Requirements Don't Work for Native Conifers

This document summarizes recent calculations to evaluate numerically whether current and proposed tree credit requirements in KZC 95.33 are adequate to meet Kirkland's canopy coverage goals for native conifers in the Holmes Point Overlay (HPO) area. The conclusion is that they are not. The reason they are not is that native conifer growth rates are much slower than those for the non-native deciduous species Kirkland has used to justify the current tree credit requirements.

In a white paper prepared by Staff in February 2018, entitled *Holmes Point Overlay Code Revision, Tree Density Credits & Canopy Cover*, an example calculation with the non-native deciduous species Red Maple was used to assert that Kirkland's current tree credit requirements are adequate to meet the current citywide canopy coverage requirements of 40% (although the HPO aims to achieve a higher canopy goal). Specifically, using Red Maple for supplemental plantings the white paper calculated canopy coverages 20 years after planting of 100% coverage in the Protected Natural Area (PNA) and 21% coverage in the remainder of a one-acre lot (non-PNA), yielding 42% coverage on an idealized 1-acre lot. (As a side note, there was apparently an arithmetic error in this original calculation, with the correct estimates being 85% in the PNA and 17% in the non-PNA, for an overall lot coverage of 33%, not 42%). The key issue is that when these exact same calculations are made using 20-yr growth rates for native conifer species, the projected canopy coverages fall far short of current or proposed HPO canopy goals, as illustrated in Table 1 below. Note that the conifer growth rates and 20-yr canopy areas used in Table 1 are based on large, long-term U.S. Forest Service statistical databases, specific to western Washington.

*[See table on next page.]*

**Table 1: 20-yr Canopy Areas for Various Tree Species and Credits Req'd for Kirkland's Goals**

Common Name	Spread at planting (ft)	20 yr canopy area, avg (sq ft)*	Non-PNA					PNA
			20 yr non-PNA canopy cover @ 30 credits/acre	20 yr non-PNA canopy cover @ 50 credits/acre	Tree credits/acre req'd for 21% canopy at 20 yrs	Tree credits/acre req'd for 33% canopy at 20 yrs	Tree credits/acre req'd for 50% canopy at 20 yrs	Tree credits/acre req'd for 100% canopy at 20 yrs
Douglas fir	3-4	225	15.5%	25.8%	41	64	97	194
WR Cedar	2-3	127	8.7%	14.6%	72	113	171	343
Hemlock	3-5	148	10.2%	17.0%	62	97	147	294
Red Maple	5-7	245	16.9%	28.1%	37	59	89	178

\*Native conifer growth rates and canopy area at 20 yrs estimated by U.S Forest Service. See <https://www.fs.fed.us/fvs/documents/guides.shtml>, Westside Cascades variant

As an example, note that 97 credits per acre (vs the proposed 50 or the current 30) would be required to achieve Kirkland's proposed 50% canopy cover with Douglas fir in the non-PNA. Moreover, with Douglas fir 194 credits per acre (vs the current 150) would be required to achieve the required 100% canopy in the PNA. The shortfalls are worse for the other two native conifer species in the table. Red Maple is a poor proxy for the predominantly native conifer forests common today in the HPO area, but even Red Maple cannot meet the proposed canopy goals.

Table 2 shows the percent canopy coverage in the non-PNA area required to achieve various overall lot canopy percentages, assuming the required 100% canopy percentage in the PNA. It is clear from Table 2 and the examples in Table 1 that for all conifer species except Douglas fir, the citywide canopy goal of 40% cannot be met, and for proposed total canopy goals of 50% and higher not even the proposed increase to 50 tree credits/acre in the PNA will cause the goals to be met.

**Table 2: Canopy Coverage Required in Non-PNA for Various Total Lot Canopy Goals**

Total Lot Canopy goal (%)	40%	50%	63%
Assumed PNA Canopy (%)	100%	100%	100%
Required non-PNA Canopy (%)	20%	33%	50%

Several conclusions are clear from the above examples:

- The current tree credit requirements for post-development supplemental plantings do not meet Kirkland's current goals for 20 yr canopy area, as stated in KZC Chapter 95.
- The shortfalls in 20-yr canopy area are especially glaring when the native conifer species common in the HPO area and the Finn Hill neighborhood in general are included in the calculations.
- Staff's proposed increase to tree credit requirements (50 credits/acre in non-PNA area) is too low to ensure that Kirkland's canopy goals are met for native conifer species.

**From:** Mike Smith [<mailto:Mike@merithomesinc.com>]  
**Sent:** Monday, October 08, 2018 1:24 PM  
**To:** Deborah Powers <[DPowers@kirklandwa.gov](mailto:DPowers@kirklandwa.gov)>  
**Cc:** Gina Clark <[GClark@mbaks.com](mailto:GClark@mbaks.com)>  
**Subject:** RE: Tree Code at Planning Commission

Good day Deb,

I'm copying Gina at Master Builders on this. Your description of the code as described to the Planning Commission is consistent with how most folks on the private side read it. The problem is that current practice doesn't follow the most important aspect of code guidance - credits.

Planning believes that credits only apply where after-construction trees remaining are below credit requirements, necessitating planting. I see credits as the central, organizing principle of the entire code. Within that context, all the rest of it makes sense. Without credits, there are no standards and the balancing between ownership rights and tree protection is entirely within reviewer discretion.

If Planning Commission is unaware what is happening currently, there is no way they can meaningfully address the code. I think the current planning folks would agree with me though I haven't talked to them about it.

What do you think?

Thanks very much,

Mike

**From:** Mike Smith  
**Sent:** Thursday, October 4, 2018 11:39 AM  
**To:** 'Deborah Powers' <[DPowers@kirklandwa.gov](mailto:DPowers@kirklandwa.gov)>  
**Subject:** RE: Tree Code at Planning Commission - what dates did they hear this issue?

Hi Deb,

I'm reviewing some of the staff memos and I think there's a lack of clarity in how 'credits' are being used. Namely, they aren't, unless site has no trees to begin with.

I think this is an important consideration that the Commission should understand.

I have other concerns as will others, but as we discussed in the meeting that one is paramount.

Do you agree this should be clarified?

Thanks,

Mike

**From:** Deborah Powers <[DPowers@kirklandwa.gov](mailto:DPowers@kirklandwa.gov)>  
**Sent:** Wednesday, September 26, 2018 3:12 PM  
**To:** Mike Smith <[Mike@merithomesinc.com](mailto:Mike@merithomesinc.com)>  
**Subject:** RE: Tree Code at Planning Commission - what dates did they hear this issue?

June 28, July 12, August 9 and Sept 13<sup>th</sup>. All meeting dates are listed on the project [webpage](#).

*Deb Powers*  
*Urban Forester*  
ISA Certified Arborist, ISA Tree Risk Assessment Qualified  
City of Kirkland Planning & Building Department  
p: 425-587-3261  
hrs: Mon-Fri 8am-4:30pm

**From:** Mike Smith [<mailto:Mike@merithomesinc.com>]  
**Sent:** Wednesday, September 26, 2018 2:46 PM  
**To:** Deborah Powers <[DPowers@kirklandwa.gov](mailto:DPowers@kirklandwa.gov)>  
**Subject:** RE: Tree Code at Planning Commission - what dates did they hear this issue?

Thanks for that!

Can you let me know what dates the Planning Commission has heard presentations on the tree code update?

Mike

**From:** Deborah Powers <[DPowers@kirklandwa.gov](mailto:DPowers@kirklandwa.gov)>  
**Sent:** Wednesday, September 26, 2018 11:02 AM  
**To:** Mike Smith <[Mike@merithomesinc.com](mailto:Mike@merithomesinc.com)>  
**Cc:** PlanningInfo <[PlanningInfo@kirklandwa.gov](mailto:PlanningInfo@kirklandwa.gov)>  
**Subject:** RE: Tree Code at Planning Commission - what dates did they hear this issue?

Hi Mike – I have no idea but am cc'ing [planninginfo@kirklandwa.gov](mailto:planninginfo@kirklandwa.gov) to get a response. You can also call the general Planning phone number at 425.587.3600 or inquire at the Planning desk next time you're at City Hall. Good luck in your pursuits!

Best,

*Deb Powers*  
*Urban Forester*  
ISA Certified Arborist, ISA Tree Risk Assessment Qualified  
City of Kirkland Planning & Building Department  
p: 425-587-3261  
hrs: Mon-Fri 8am-4:30pm

**From:** Mike Smith [<mailto:Mike@merithomesinc.com>]  
**Sent:** Wednesday, September 26, 2018 7:43 AM  
**To:** Deborah Powers <[DPowers@kirklandwa.gov](mailto:DPowers@kirklandwa.gov)>  
**Subject:** Tree Code at Planning Commission - what dates did they hear this issue?

Hi Deb,

Also, do you know who at the City is managing the single family code review on possible ADU/duplex/triplex/density changes?

Thanks!

Mike

S. Michael Smith  
MERIT HOMES



Development Manager  
O – 425-578-0604 | M - 206-755-2660  
[Mike@MeritHomesInc.com](mailto:Mike@MeritHomesInc.com) | [www.MeritHomesInc.com](http://www.MeritHomesInc.com) | [Facebook](#)  
811 Kirkland Ave, Suite 200, Kirkland, WA 98033

**From:** Mike Smith [<mailto:Mike@merithomesinc.com>]  
**Sent:** Monday, October 15, 2018 12:13 PM  
**To:** Deborah Powers <[DPowers@kirklandwa.gov](mailto:DPowers@kirklandwa.gov)>  
**Cc:** Gina Clark <[GClark@mbaks.com](mailto:GClark@mbaks.com)>; Adam Weinstein <[AWeinstein@kirklandwa.gov](mailto:AWeinstein@kirklandwa.gov)>  
**Subject:** RE: Tree Code at Planning Commission

Good day Deb,

Thanks for your considered reply. Please see **in-line, below:**

I've worked in the Puget Sound area in land use for 25 years. Most has been as a planner. I've read, interpreted, and argued code interpretation throughout. I can't overstate the current challenge on trees. I can't review feasibility properly because I can't trust our needs are being considered, and therefore can't project what will and won't be allowed.

Jeremy has said outright that no policy could be written setting minimum owner rights such as 'a zoning-compliant home'. Code interpretation could work, but I know those are disfavored. How far will requirements go? I don't know the answer, but since credits aren't being followed there is no code-based limit. Within current interpretations we could be limited to a 1,500 SF basement house based on nothing but Staff opinion. That is an untenable position for the City, and it borders on impossible for us.

I did a ton of research on the code last year for circulation to the Council. At that time, I'm not sure you were following the issue. I've attached the letter that came out of that effort. The messaging to Planning Commission and Council during the adoption process was that credits were the measure of success. That was the premise, City released a public bulletin January 1, 2006 explaining use of credits and I have multiple examples of how review was done in the first couple years after adoption. I listened to and read minutes of the hearings. Credits were the currency of success.

The central idea I'm trying to get across is that credits aren't being used now in the majority of cases there are no review standards – at all. It's as if we couldn't find out allowable height, setback, or FAR allowances until applying for a building permit. It's not how code is supposed to work and it's not what was intended upon adoption. Planning should understand that, so that we're starting from a clear image of what's happening now before considering where to go.

Thanks again,

Mike

**From:** Deborah Powers <[DPowers@kirklandwa.gov](mailto:DPowers@kirklandwa.gov)>  
**Sent:** Friday, October 12, 2018 1:41 PM  
**To:** Mike Smith <[Mike@merithomesinc.com](mailto:Mike@merithomesinc.com)>  
**Cc:** Gina Clark <[GClark@mbaks.com](mailto:GClark@mbaks.com)>; Adam Weinstein <[AWeinstein@kirklandwa.gov](mailto:AWeinstein@kirklandwa.gov)>  
**Subject:** RE: Tree Code at Planning Commission

Hi Mike,

Hope you are well. I disagree that credits are *the* central organizing aspect of Kirkland's tree code. Credits were meant to be the *quantitative* metric for both existing tree retention and minimum replanting requirements. Kirkland's "tree retention values" were meant to work simultaneously as a *qualitative* measure for tree retention. Agree, 100% that this is what the code says. Practice is different. The issue is that credits are not used in project evaluation, unless 'below minimum credits' is pre-existing condition. Some of our lots are required to keep 10x the number of credits specified in code – with grove easement spiderwebbing the entire back yard. Using credits, those qualitative assessments would help to set priorities. Without credits, all the trees become high priority. One of the attorneys we've had look at Kirkland trees – assessing code operation subtracting use of credits observed – without credits there are no standards. And that's exactly right, as practiced today there are no standards. Neighboring tree codes – Redmond, Issaquah, Kenmore, Lake Forest Park, Mercer Island, Sammamish, Woodinville, etc all use both a quantitative and a qualitative manner to prioritize tree retention. Not all use credits (some require retention of a certain percentage of existing trees or use 3:1 tree removal to planting ratios) but they've all defined and prioritized a qualitative measure for tree retention (landmark/heritage trees, groves, specimen, etc) in their code according to what's important to the community. Unfamiliar with other codes, but the basic premise you start with is that there *is a quantitative element that is actually followed*. Without any mechanism of measurement success, practice devolves into near reasonable use territory. That might sound alarmist but I think we're right there.

In regards to Planning Commission understanding of the issues – what exactly do you feel they aren't aware of? It may be more effective for you/Master Builders to communicate directly with the Commission. I have a feeling Planning Commission thinks credits are actually being used now. Even that we're debating between a 'canopy system' and a 'credit system' says that a baseline presumption is that we are using some system. I've repeatedly heard that Staff is not balancing property rights against desire for tree retention – but it is inescapable that's the entirety of review, and absent some objective measure, that balancing is ongoing - entirely without code guidance.

I believe Gina is coordinating with the Planning Commission on getting some meetings set up.

Let me know if you have additional questions about the city-wide tree code revision. Will do!

Best,

*Deb Powers*

*Urban Forester*

ISA Certified Arborist, ISA Tree Risk Assessment Qualified

City of Kirkland Planning & Building Department

p: 425-587-3261

hrs: Mon-Fri 8am-4:30pm



October 13, 2017

Kirkland City Council  
123 – 5<sup>th</sup> Ave.  
Kirkland, WA 98033

Re: Tree Code and History  
SHORT FORM 1/2

Honorable Councilmembers,

Although we do not see it posted on the Council website, Merit Homes understands a Council study session is planned for Tuesday, October 17 regarding trees. As a top homebuilder in the City, we have tremendous interest in this issue. Late last year, we conducted a detailed review of the City's code history on trees. Upon finding out it was to be studied by the full Council soon, we decided to refresh the memo created then, in hopes that a clearer path can be found.

This letter is introductory, and companion to a longer analysis provided concurrently.

Over 12 years of operation and update with the 2005 tree code, City Council has repeatedly emphasized the use of credits in assessing development project compliance, and the relationship to broader goals of Citywide canopy coverage. The code itself is well-organized and clear.

Merit Homes is one of the most active builders in Kirkland. We have over 15 active projects right now and interact with the tree code daily. Nobody in our office can explain how tree reviews are done now, nor can we predict how any given site will be treated. As a result, every job involves tremendous guesswork on how to navigate what we see as arbitrary application of the rules.

Certainty is a top priority for us and out of every regulation we deal with, trees are - *by far* - the most difficult issue we deal with.

Our hope is a meaningful dialog can be opened and that some measure of predictability can be restored.

Thanks very much for your consideration,

S. Michael Smith,  
Development Manager



October 13, 2017

Kirkland City Council  
123 – 5<sup>th</sup> Ave.  
Kirkland, WA 98033

Re: Tree Code and History  
LONG FORM 2/2

Honorable Councilmembers,

Although we do not see it posted on the Council website, Merit Homes understands a Council study session is planned for Tuesday, October 17 regarding trees. As a top homebuilder in the City, we have tremendous interest in this issue. Late last year, we conducted a review of the City's code history on trees. Upon finding out it was to be studied by the full Council soon, we decided to refresh the memo created then, in hopes that a clearer path can be found.

This letter is the full version of a shorter statement provided concurrently.

### **Early interest in trees leads to Code update**

Kirkland has a history of preserving tree canopy within its borders. Starting in the new millennium, expansion was studied in a constructive, bottom-up fashion:

- 2001 – City completes first Tree Management Review, with recommendations to improve tree canopy
- 2003 – 40% canopy goal adopted in Natural Resources Management Plan
- 2005 – 40% canopy goal incorporated with GMA Comprehensive Plan update

The Growth Management Act requires agencies to synchronize their comprehensive plans and land use codes. That alignment is evident with the 2005 Comprehensive Plan and code update efforts the same year. Early code work identified tree density and tree credits as desirable measurement tools.

Planning Commission discussion of the update was held on at least five occasions under File IV-03-101:

[5-26-17 planning commission minutes](#) – *Commission agrees with density concept*

[7-14-05 planning commission minutes](#) – *Continued discussion of density approaches, consensus that a tree credit/density requirement should apply in the case of redevelopment or new development*

[7-28-05 planning commission minutes](#) – *Further discussion of credit/density approaches*

[8-11-05 Planning Commission minutes](#) – *Public hearing; Short plats to apply minimum tree density; particulars of credit/density methods discussed; regarding 40% canopy requirement, noted roughly 32% canopy cover - goal to retain and enhance canopy; recommendation to Council to adopt code*

[8-25-05 Planning Commission minutes](#) – *Minor adjustments to recommendation*

Audio recordings are available online, some of which are intelligible. From the 5-26 transcript, it appears at least one earlier meeting was held, though online archives don't go back far enough to affirm. These meetings carefully reviewed credits as *the* regulatory basis to achieve compliance with 30 credits per acre tied to 40% canopy coverage (according to Purpose section of original adoption - Ordinance 4010). Of three options, Planning Commission forwarded 'Alternative 2', with credit provisions, later considered by Council:

[11-1-05 Council minutes adopting Ord 4010](#)

[12-13-05 Council minutes adopting Ord 4026](#)

New Chapter 95 became effective 1-1-06.

### **Early practice**

A public release bulletin dated effective 1-1-06 was released - titled "**Notice to Our Customers – New Tree Regulations – Short Plats and Subdivisions**" (attached). This document included a detailed explanation of the new credit/density provisions, including an example of application.

It appears first application of the new code was produced by Brian Gilles in a report for the Dawson Short Plat, SPL06-0001 and dated 1-18-06. Mr. Gilles had been active in the Planning Commission process. This report included analysis of tree credits, citing Ordinance 4010. Merit does not have staff review nor decision, but the initial report is clear in its use of credits in appraising compliance with the newly minted tree code.

We do have other decisions showing how the new tree code was applied soon after passage: The "Arr Short Plat" – file number SPL06-00024, decision 11/13/06, was a Merit short plat of 3 lots on .69 acres:

### **B. Recommendations**

*3.e. "Pursuant to Kirkland Zoning Code Section 95.35.5, the applicant shall provide a minimum of 21 tree credits for the short plat site. If after selecting the trees to be retained at each phase in the development, the site falls below the minimum required tree density, replanting of trees will be required to meet the minimum density*

### **E. Development Regulations – analysis**

*2.a.7. "Kirkland Zoning Code Section 95.35.5 establishes minimum tree density requirements. For a short plat or subdivision, with an approved Tree Plan III, the tree density shall be calculated based on the entire site area excluding existing City right-of way, or areas to be dedicated as City right-of-way. The minimum tree density is 30 tree credits per acre. The gross site area is 30,031 square feet or .69 acres. Based on the requirement of 30 tree credits per acre, the proposed short plat site must provide a minimum of 21 tree credits.*

*2. b.1. "The applicant has provided a Tree Plan III with the short plat application that has been reviewed by the City's Arborist. There are 37 viable trees on the site, 21 Type 1 trees and 16 Type 2 trees. The minimum of 21 tree credits is met for the short plat."*

We also have the full Casady Short Plat decision and appeal, SPL06-00014/APL06-00015, dated 10/23/06 and 12/28/06 respectively. That project was reviewed consistently with Gilles' initial report and Arr.

These three illustrations show, at the time when logic, approach, and hearings were fresh in the minds of all - that tree density and credits were paramount – as presented to, and decided by Planning Commission and Council.

## Code Revisions

Minor revisions were made to the tree code nearly every year of its existence, through Ordinances 4010, 4026, 4030, 4037, 4097, 4121, 4226, 4238, 4252, 4281, 4286, 4350, 4372, 4408, 4437, 4476, 4491, 4495, 4547, and 4551. Nearly all were minor updates and none meaningfully revised original compliance strategy.

There are a couple of highlights out of 12 years of revisions. Ordinance 4238, adopted 3-2-10, resulted from a concerted update effort and numerous Planning Commission and Council hearings, beginning in 2008 and mostly occurring in 2009. That history is all available in the City archives. Mostly, it was an organizational effort, with some minor amendments. The most complete narrative of the focus I could find is in a [Study Session memo to HCC 8-10-09](#).

This document went to the Houghton Community Council, explaining overall City goals and process. Neither this document nor strikeout/underline version of Ordinance 4238 meaningfully changed compliance principles. However, this revision marks the first appearance of a table under KZC 95.30 outlining which types of projects carry certain reporting and documentation requirements. In this table appears language surrounding 'maximum extent possible or feasible'.

This language was not new with Ordinance 4238, in fact near-identical language appeared in Ordinance 4010 – *in the same section as discussion of credits* (Original KZC 95.35.1). This table did not meaningfully change spirit, intent, purpose, nor execution – however it is important because this is the verbiage relied upon by staff when questioned why credits are no longer used in review.

The other revision highlight is much newer, having been adopted 12-13-16. Ordinance 4547 isn't notable for its changes, rather for its reinforcement of credit-based review of tree compliance. In that version, KZC 95.33.1 states: *"In calculating tree density credits, tree credits may be rounded up to the next whole number from a .5 or greater value.* Further, KZC 95.33.1.b. provides that *"Existing native conifers (or other conifer species as approved by the Urban Forester) shall count 1.5 times credits for retention."* And finally, 95.33.1 table guidance added clarification on credit calculation methodology. This revision is less than a year old.

## Canopy

Throughout the years, City has made best efforts to track progress toward the 40% canopy coverage goal. In 2003, coverage estimate was 32%. Comprehensive Plan estimate in the 2010 "Performance Measures" report under the "Environment" section, a finding of 36% coverage was found. The same figure was published in June, 2011 - "Urban Tree Canopy Assessment Report". However, the July, 2013 "Urban Forestry Strategic Management Plan" found the goal to have been exceeded at 40.7%.

**2013 Urban Forest Management Plan**, adopted by Resolution R-4986, 7/2/13. A few excerpts:

**Growth and Community Vision** – Page 6; *"The link between growth, environmental degradation and an alarming loss of tree canopy cover in the Puget Sound region prompted many jurisdictions to act on a local level (American Forests, 1998). Kirkland responded with changes to its Comprehensive Plan, including the community's vision of the natural environment with a specific goal to "work toward increasing Kirkland's tree cover to 40 percent" (V-8 Policy NE-3.1). "Recognizing that the highest percentage of tree canopy was on private property, the Kirkland City Council adopted a comprehensive tree protection ordinance in late 2005 with the intent to slow the loss of tree canopy city-wide. To restore the declining native forests in City parks, the Cascade Land Conservancy partnered with the City (now Forterra) to prepare a 20-Year Forest Restoration Plan that was adopted by the City Council in 2008."*

**City of Kirkland Comprehensive Plan** – page 17 – *“The Comprehensive Plan reflects Kirkland’s intent to meet the requirements of the GMA and attain the community’s vision of the future. When Kirkland’s Comprehensive Plan was updated in 2005, it included direction to meet a citywide 40 percent tree canopy cover goal (Policy NE-3.1). This goal has played a key role in increasing tree canopy cover over the previous decade.”*

**Tree Protection Codes** - page 17- *“In late 2005, the City established a tree protection ordinance by adopting Chapter 95 of the Kirkland Zoning Code (KZC). The purpose of this ordinance is to support the Comprehensive Plan’s city-wide 40 percent canopy goal. The code establishes a permit process and standards for the protection and replacement of trees on private and public property.”*

#### **5. Current Performance Assessment** – *“Criteria: Existing Canopy Cover Status; Page 45*

##### **Performance - Optimal**

**Current Status** - 40.7% canopy cover following the 2011 annexation; consequently the City has met its 40% canopy goal. *The City can shift towards maintaining its canopy cover and achieve acceptable levels of urban forest health and sustainability.* (emphasis added)

**Benefit** - *Optimized ecosystem services and equality between zoning, land use, watersheds or business district canopy cover % goals.”*

In brief summary, the 2013 study found that City had surpassed its 40% coverage goal and that ongoing regulatory measures could shift to a focus on maintenance of that canopy rather than expansion.

#### **Transition to now**

In 2005, the Comprehensive Plan aspired to achieve a canopy-coverage goal of 40% and a companion ordinance was passed using tree credits as a measure to aspirationally *increase* performance toward that goal. 30 credits per acre was the tool, and accomplished that goal.

#### **Current Practice**

Current guidance still expresses canopy coverage intent in now-retrospective terms:

##### **KZC 95.05 Purpose and Intent** (current code)

1. *“Trees and other vegetation are important elements of the physical environment. They are integral to Kirkland’s community character and protect public health, safety and general welfare. Protecting, enhancing, and maintaining healthy trees and vegetation are key community values. **Comprehensive Plan Policy NE-3.1 describes working towards achieving a City-wide tree canopy coverage of 40 percent.**”* (emphasis added)

**2016 Comprehensive Plan Environment Element - Policy E-2.1:** *“Strive to achieve a healthy, resilient urban forest with a citywide 40 percent tree canopy coverage.”*

As they have throughout the current regime, code and comprehensive plan align on the goal. There was one requirement for retention in 2005, unchanged to today – preservation of 30 tree credits per acre to attain a 40% tree canopy coverage, City-wide.

Where official, Council-adopted guidance finds the primary goal (canopy) to have been met, and recommends *decreasing* the intensity of tree preservation requirements, current practice is quite the opposite. Two elements conspire – 1) credits have been largely abandoned, resulting in 2) total number of mandated ‘save’ trees often far exceeding actual code requirement.

A few examples:

- Petra short plat SUB15-01226 decision 10/21/15 - Detailed review by City Arborist - No credit analysis
- Eos E. short plat SUB15-01218 decision 11/24/15 - Detailed review by City Arborist - No credit analysis
- Opus short plat SUB15-01570, decision 1/28/16 – Detailed review by City Arborist - No credit analysis
- Koi short plat SUB16-00171 decision 9/28/16 - Detailed review by City Arborist - No credit analysis
- NoKi short plat SUB16-0140 decision 10/11/16 - Detailed review by City Arborist - No credit analysis

### Summary

Planning Commission and Council provided clear direction regarding tree policy in 2005, which was faithfully interpreted and implemented for some time after original adoption. Since, there has been sufficient regulatory 'drift' as to be unrecognizable from its outset.

General logic would indicate that a goal achieved would beg new ambition. That could be a mere reframing of the 40% *in new voicing to clarify its having been reached and desiring not slipping below*. Or now maybe a 45% goal is appropriate. It cannot be said there is an official goal now.

*Purpose and intent* is a frequently misused concept, tossed around to fill in spaces between clear language of the law. As the courts would express it, that concept is valid where language is lacking. In such case, they would find legislative history elemental to any finding. That is what I've tried to do here – refresh where we've been to inform those decisionmakers empowered to correct course. I can find no council-directed guidance away from credit-based review and in fact recent reinforcement of same.

I'm not an attorney but have read the law. Kirkland's code is quite clear and specific in its use of credits and density in decisions. We are told a phrase as amorphous and open-ended as 'maximum extent feasible' is intended to *replace* clear requirements. The specific overrules the general. KZC 95.33.1 spends 435 words explaining usage of credits. Are we to overrule that with 'maximum extent feasible'?

The code is also to be read to harmonize its various parts. Council's adopted position accomplishes that neatly. Finally, it is a strain to imagine a standard effectively expressed as 'whatever we ask of you' upheld.

Trees are Merit's most challenging legal issue. There is no effective, consistent way to describe current practice. None. Every single project, we guess and do our best to skirt the worst of what might bite us. Predictability is our best friend and this issue presents less of it than anything else we do. We've been looking for an opportunity to have this discussion for well over a year.

We appreciate the City's consideration of this issue. If this review has missed important aspects of the code evolution or practice we look forward to being further enlightened. The proper approach is to get back to Council's intent with clear-minded reviews. This would make life much easier on City and applicants.

It is less our goal to reduce standards than it is to clarify them. If Council decided to double the code requirement, it would be far easier to deal with than our daily experience.

Thanks very much for your consideration,

S. Michael Smith,  
Development Manager



\*\*\*\*\***Notice to Our Customers**\*\*\*\*\*

**New Tree Regulations – Short Plats & Subdivisions**

Effective January 1, 2006

Purpose of the new tree regulations

Trees and other vegetation are important elements of the physical environment which protect public health, safety and general welfare in a variety of ways. These regulations establish a process and standards to provide for the protection, preservation, replacement, proper maintenance and use of significant trees, associated vegetation and woodlands located in the City of Kirkland. **For Short Plats and Subdivisions, the regulations require retention of viable trees within the required setbacks and in potential preserved groves. The site is required to meet a minimum density of tree coverage on the subject property following construction of the project. These requirements are discussed in Section 95.35.2.B.3 of the Kirkland Zoning Code (KZC) and are summarized below.**

Helpful definitions to complete the tree plans described below:

1. **Significant Tree:** A tree that is at least 6" in diameter at breast height (DBH) (The diameter or thickness of a tree trunk measured at 4.5 feet from the ground).
2. **Dripline:** The distance from the tree trunk that is equal to the furthest extent of the tree's crown.
3. **Impact:** A condition or activity that affects a part of a tree, including the trunk, branches, and critical root zone.
4. **Qualified Professional:** An individual that possesses and demonstrates the ability to perform tree risk assessments and prescribe appropriate measures necessary for the preservation of trees during development; must at a minimum be certified by the International Society of Arboriculture (ISA).
5. A **Type 1 Tree** is a viable tree that meets at least one of the following criteria:
  - i. Landmark tree (pre-designated);
  - ii. Specimen tree (very good to excellent condition and free of major defects);
  - iii. Tree groves and associated vegetation to be set aside as preserved groves;
  - iv. Trees on slopes of at least 10%; or
  - v. Trees that are a part of a grove that extends into adjacent property.

**Permit Submittal Requirements – Short Plats and Subdivisions**

***The following information is required for all permits in order for the application to be deemed complete. Incomplete applications will not be accepted.***

**Tree Plan III** shall be submitted with short plat and preliminary subdivision permit applications and subsequent Land Surface Modification permit applications. *The approved Tree Plan III will later be used to comply with the Tree Plan I requirement for the single-family building permit application of each lot.*

- A. The following information must be incorporated on the site plan:
  1. Surveyed location of all significant trees;
  2. A tree inventory prepared by a qualified professional including a numbering system of existing significant trees (with corresponding tags on trees), measured driplines, size (DBH), species and tree status (removed or retained) based on health, risk of failure and suitability of species (see criteria in KZC 95.35.2.C) for all significant trees; and
  3. Approximate trunk location and dripline of significant trees that are on adjacent property with driplines extending over the subject property line.
- B. Tree Plan III shall include a report from a qualified professional detailing:
  1. An indication and discussion, for each tree, of whether it is proposed to be retained or removed, and the risk of failure and suitability of species;

2. Limits of disturbance around viable trees; and
  3. Special instruction for work within the critical root zone of viable trees;
  4. Location and type of protection measures for viable trees.
- C. Utilizing the information from the tree survey, inventory and report, the applicant must submit a site plan showing:
1. The proposed development activity – including location of lot lines, easements and roads
  2. Location and limits of disturbance of viable trees to be retained according to the tree inventory, report, and City's determination of tree types
  3. Trees being removed for proposed development or trees being removed that are not viable
  4. Tree density calculations of retained trees compared to the minimum tree density for the site; The required minimum tree density is 30 tree credits per acre. Use the following formula to determine the required tree density:  
**(Project size in square feet\*/43,560) X 30 = Required minimum tree density**  
 \* excluding existing public right-of-way, areas to be dedicated as public right-of-way and access easements or tracts not counted in lot area

For example, the minimum tree density for a 15,000 square foot parcel is 10 tree credits and for 30,000 square feet, it is 21 tree credits.

Use the following chart to calculate the tree density for existing trees that are going to be retained.

Tree Density for Existing Significant Trees (Credits per minimum diameter - DBH)					
DBH	Tree Credits	DBH	Tree Credits	DBH	Tree Credits
3-5"	0.5				
6-10"	1	24"	8	38"	15
12"	2	26"	9	40"	16
14"	3	28"	10	42"	17
16"	4	30"	11	44"	18
18"	5	32"	12	46"	19
20"	6	34"	13	48"	20
22"	7	36"	14	50"	21

5. If the calculated tree density is below the minimum, indicate the type, size and location of the supplemental trees needed to meet the density requirement. Supplemental trees must be at least 6 feet tall if they are conifers or 2-inch caliper if they are deciduous or broad-leaf evergreens. They are worth one tree credit each. Larger supplemental trees may be awarded additional credits.
- D. Additional Requirements:
1. The applicant shall pursue applicable variations to development as outlined in KZC 95.35.4.A.2 and 3 for the retention of Type 1 trees in required yards.
  2. Prior to permit approval, the applicant shall provide a final plan showing tree density calculations, retained trees, trees to be removed, and any required supplemental trees to meet the minimum tree density. The plan must describe the details of site preparation, the installation of new trees, and the maintenance measures necessary for the long-term survival and health of all trees on site pursuant to KZC 95.45 and KZC 95.50.
  3. A description and location of tree protection measures during construction for trees to be retained must be shown on demolition and grading plans, and protections measures must be in accordance with KZC 95.35.6.
  4. Prior to plat recording, the applicant shall submit a five year preservation and maintenance agreement pursuant to KZC 95.50.

**Note: This is an overview of tree requirements, for more details and information visit our website at <http://www.ci.kirkland.wa.us/depart/planning/trees.htm> or request a copy of Ordinance 4010.**

**From:** [bronson874@aol.com](mailto:bronson874@aol.com) [<mailto:bronson874@aol.com>]  
**Sent:** Wednesday, October 17, 2018 2:36 PM  
**To:** Deborah Powers <[DPowers@kirklandwa.gov](mailto:DPowers@kirklandwa.gov)>  
**Subject:** tree code

Ms. Powers:

I am relieved that the City of Kirkland has finally taken steps to revise the tree code. I have been concerned for several years about the process which allows developers to gradually remove all the trees from a lot, especially in the South Rose Hill and Bridle Trails areas known for their beautiful old trees. Developers have been able to remove some trees at each stage of development, building and landscaping until there are no trees left. This must stop with a plan that includes tree management and preservation from the first stage of planning and development with stiff penalties for failure to follow the rules. Just replacing with planting new small trees is not enough.

I have lived in this neighborhood for more than 50 years and I am shocked at the wanton attitude toward trees. Developers don't care, neither do landscapers, all more interested in making a buck than the environment. A change in the code to preserve trees will come none too soon. We need trees for clean air, peace of mind, privacy and many other attributes.

Please keep me informed as this code change moves forward. I will be glad to testify in favor of trees and stiffer regulations and penalties at a future hearing.

Sincerely,

MB  
Melinda Bronsdon  
12229 NE 64th St  
Kirkland, WA 98033  
[bronson874@aol.com](mailto:bronson874@aol.com)  
425-827-5708

**From:** Scott Morris [<mailto:Scott.Morris@trilogy-international.com>]  
**Sent:** Monday, October 29, 2018 9:17 PM  
**To:** Deborah Powers <[DPowers@kirklandwa.gov](mailto:DPowers@kirklandwa.gov)>  
**Cc:** Adam Weinstein <[AWeinstein@kirklandwa.gov](mailto:AWeinstein@kirklandwa.gov)>  
**Subject:** Message from TRILOGY INTERNA (4254585955)

Deb,

Thanks for the citation 95.33, Deb. The key sentence, I assume, is:

The required minimum tree density is 30 tree credits per acre for single-family homes, cottages, carriage units, two/three-unit homes, short plats, and/or subdivisions and associated demolition and land surface modification.

This is an interesting sentence: it appears to say that any home site must have a tree density of at least 30 credits per acre, regardless of whether the site is undergoing development activity. But I assume the sentence means that the minimum tree density requirement applies only in connection with the *development* of a short plat, subdivision or with a land surface modification. (I'm not sure whether the tree density requirement also applies to the construction of a single home. The sentence is worded so that it would apply, but the tree plan table at 95.33.5 for "minor" development activity suggests otherwise.)

If tree density requirements apply only in the context of development activity, as appears to be the case, I cannot understand what arguments favor using a tree credit system over a canopy measurement system, given that the City's stated goal is to achieve a specific tree canopy percentage.

I've heard City staff say that credits are much easier to administer than canopy calculations. But how can that be so? And for whom? No one is asking individual homeowners either to count credits *or to* estimate tree canopy in regard to the removal of their trees in non-development contexts. The tree density requirement doesn't apply in those situations. The only time when tree density is an issue is when development is contemplated. And when development is contemplated, a tree plan is required by 95.30. And an arborist must prepare it. See 95.30.4. Is it difficult for an arborist to calculate existing tree canopy and to forecast predicted canopy that newly planted trees will provide? And is it hard for the City's staff to analyze an arborist report that includes canopy calculations?

I've heard comments that canopy calculations can be inaccurate, particularly if satellite imagery is used. But why would satellite imagery be used if an arborist is required to map each significant tree and describe that tree's health? Given the tree-by-tree detail that a tree report already requires, the arborist should have seen each existing tree with his or her own eyes and should be able to calculate each tree's canopy visually.

Admittedly, an arborist's estimates of existing canopy coverage might be somewhat inaccurate and predictions of future canopy coverage may be subject to debate – but those inaccuracies are insignificant when compared to the irrelevant or misleading data provided by tree credits. We know that credits have no direct relation to canopy. And we also know that each species of tree has a different canopy potential: a mature red maple has a crown that is much bigger than that of a mature cedar, etc. So how can we make any conclusion about the tree canopy over a property if all we know is that it has a tree density of 30 credits per acre? The only way that credits can be used to predict canopy is by

adjusting minimum required credits on a species by species basis. That would be extremely cumbersome to administer. And even then, a credit system would be highly inaccurate because canopies of newly planted trees will be affected by how closely the new trees are sited adjacent to each other. The current credit systems doesn't regulate that. However, a canopy-based tree plan would clearly have to account for how canopy will be affected by the spacing between newly planted trees.

I suppose someone might argue that if Kirkland's tree canopy is 40% or better today, we should thank the tree credit system for that happy result and that we shouldn't tinker with the system. But that's superstitious thinking. It's like saying I make the sun rise every day because I rub a rabbit's foot. The fact that two things are happening at the same time does not mean that they are causally connected.

In fact, simple arithmetic tells us that the current density requirement of 30 credits per acre does not equate to a 40% canopy cover even when one applies credits to broad-crowned deciduous trees. If Kirkland actually does have a 40% tree canopy that's because it picked up a lot of parkland when it annexed Finn Hill and because it has done a good job planting trees in public rights of way (and those trees have grown in the past decade). But Kirkland can't create any new wooded parkland and it will only lose canopy as vacant land is developed. The existing tree credit system will not be adequate to preserve Kirkland's tree canopy.

In short, I can think of no merit to the tree credit system. By contrast, switching to tree density policy that is based on canopy percentages is (a) aligned with the City's tree canopy objectives, while credits are not, (b) is no more burdensome to administer than a tree credit system, and (c) is more accurate than a credit system.

If I am missing a key point, please set me straight.

Regards,

**Scott Morris**

**Finn Hill Neighborhood Alliance - President**

[www.finnhillalliance.org](http://www.finnhillalliance.org) | 206-972-9493

PO Box 682, Kirkland WA 98083



[www.facebook.com/finnhillalliance](https://www.facebook.com/finnhillalliance)



**Scott Morris**

Trilogy International Partners LLC

155 108<sup>th</sup> Ave NE, Suite 400

Bellevue WA 98004

Email: [scott.morris@trilogy-international.com](mailto:scott.morris@trilogy-international.com)

Desk: 425-458-5955

Cell: 206-972-9493  
Fax: 425-458-5998

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**From:** Deborah Powers [<mailto:DPowers@kirklandwa.gov>]  
**Sent:** Wednesday, October 17, 2018 2:22 PM  
**To:** Scott Morris <[Scott.Morris@trilogy-international.com](mailto:Scott.Morris@trilogy-international.com)>  
**Cc:** Adam Weinstein <[AWeinstein@kirklandwa.gov](mailto:AWeinstein@kirklandwa.gov)>  
**Subject:** RE: Message from TRILOGY INTERNA (4254585955)

### [KZC 95.33 Tree Density Requirement](#)

*Deb Powers*  
*Urban Forester*  
ISA Certified Arborist, ISA Tree Risk Assessment Qualified  
City of Kirkland Planning & Building Department  
p: 425-587-3261  
hrs: Mon-Fri 8am-4:30pm

**From:** Scott Morris [<mailto:Scott.Morris@trilogy-international.com>]  
**Sent:** Tuesday, October 16, 2018 10:02 PM  
**To:** Deborah Powers <[DPowers@kirklandwa.gov](mailto:DPowers@kirklandwa.gov)>  
**Subject:** RE: Message from TRILOGY INTERNA (4254585955)

Thanks, Deb, for your responses below.

In regard to the use of tree credits for retention requirements, where do those requirements appear in Chapter 95?

**Scott Morris**  
Trilogy International Partners LLC  
155 108<sup>th</sup> Ave NE, Suite 400  
Bellevue WA 98004

Email: [scott.morris@trilogy-international.com](mailto:scott.morris@trilogy-international.com)  
Desk: 425-458-5955  
Cell: 206-972-9493  
Fax: 425-458-5998

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**From:** Deborah Powers [<mailto:DPowers@kirklandwa.gov>]  
**Sent:** Tuesday, October 16, 2018 12:20 PM  
**To:** Scott Morris <[Scott.Morris@trilogy-international.com](mailto:Scott.Morris@trilogy-international.com)>; Adam Weinstein

<[AWeinstein@kirklandwa.gov](mailto:AWeinstein@kirklandwa.gov)>

**Subject:** Re: Message from TRILOGY INTERNA (4254585955)

Hi Scott,

I don't have much time for a chat prior to tomorrow's presentation, so see answers to your questions below in red. The purpose of the presentation is to relay possible changes to Chapter 95 and answer questions. Since we garnered a lot of useful info from FHNA at the 9/18 stakeholder meeting, staff is not seeking additional feedback from FHNA tomorrow night (I noticed the FHNA e-newsletter mentions that).

Public comment, including FHNA's 9/25 letter to the Planning Commission will be addressed in the Nov 8th PC meeting memo. Same thing - I don't have time to go point-by-point right now, nor is it appropriate to respond on behalf of the PC without being directed to do so.

While there are many points of agreement between staff/FHNA in the letter, most differing points of view aren't new, having been discussed in HPO code revision meetings last year. Canopy vs credits were covered in detail at the June 28 Planning Commission meeting, so you could delve into that memo for specifics - happy to field those questions tomorrow too.

Have a great day and see you tomorrow evening.

Best,

Deb Powers

---

**From:** Scott Morris <[Scott.Morris@trilogy-international.com](mailto:Scott.Morris@trilogy-international.com)>

**Sent:** Tuesday, October 16, 2018 6:27 AM

**To:** Deborah Powers

**Subject:** RE: Message from TRILOGY INTERNA (4254585955)

Hi, Deb.

Thanks for your message and for the update on the Council briefing. I was on vacation last week, so please excuse my late reply.

Would it be possible to arrange a short call today? **Apologies, I'm in meetings most of the day.** Among other things, I'd like to see if the City staff disagrees with portions of FHNA's letter to the Planning Commission besides our comments on credits vs. canopy percentages.

And, as to the credits vs. canopy issue, I'd like to find out more precisely why we continue to disagree. As I understand the tree ordinance, credits matter only in regard to fulfilling a requirement for new plantings in the case of property development (and not in cases where a

homeowner is required to replace a tree that the homeowner has removed). **Correct, however credits are used for retention requirements too.** In the case of property development, isn't the builder already required to submit a tree plan, in which case an arborist ~~or landscape architect~~ will be involved? **Yes, arborist.** If so, I would think that the tree professional would be well equipped to deal with canopy calculations. **No.**

Finally, I'd like to chat about our neighborhood meeting on Wednesday. We've tentatively set aside 20 minutes for your overview. Will that work and do you have a Power Point that you would like to present? **Yes, am planning to bring PPT on a flashdrive**

Thanks,

**Scott Morris**

**Finn Hill Neighborhood Alliance - President**

[www.finnhillalliance.org](http://www.finnhillalliance.org) | 206-972-9493

PO Box 682, Kirkland WA 98083



[www.facebook.com/finnhillalliance](https://www.facebook.com/finnhillalliance)



**From:** Deborah Powers [<mailto:DPowers@kirklandwa.gov>]

**Sent:** Wednesday, October 10, 2018 4:43 PM

**To:** Scott Morris <[Scott.Morris@trilogy-international.com](mailto:Scott.Morris@trilogy-international.com)>

**Cc:** Adam Weinstein <[AWeinstein@kirklandwa.gov](mailto:AWeinstein@kirklandwa.gov)>; Jeremy McMahan <[JMcMahan@kirklandwa.gov](mailto:JMcMahan@kirklandwa.gov)>

**Subject:** FW: Message from TRILOGY INTERNA (4254585955)

Hi Scott,

Apologies for my delayed response. I was out of the office for a conference last week, and seem to have temporarily lost my voice following a bad cold. I wanted to follow up to your message though, albeit via email:

1. Councilmember Pascal and I met a week and a half ago regarding questions he had on the City-wide tree code amendments. While CM Pascal asked to use the 9/25 FHNA letter to the Planning Commission as a reference, we did not go point-by-point or cover every topic in the letter. The general conversation centered around canopy vs. credits and was consistent with the same discussions staff has had with the FHNA over the past few years.
2. I'm not too sure what's meant by "talking past each other." Could you please clarify?

3. The tree code amendments are on the November 20 City Council meeting agenda, not October 16. The project [webpage](#) will reflect updated public meetings by early next week.

We'll have an opportunity to discuss more at next week's FHNA meeting – but feel free to email me any questions in the meantime.

Best,

*Deb Powers*

*Urban Forester*

ISA Certified Arborist, ISA Tree Risk Assessment Qualified

City of Kirkland Planning & Building Department

p: 425-587-3261

hrs: Mon-Fri 8am-4:30pm

**From:** Cisco Unity Connection Messaging System [<mailto:unityconnection@kirklandwa.gov>]

**Sent:** Thursday, October 04, 2018 9:55 AM

**To:** Deborah Powers <[DPowers@kirklandwa.gov](mailto:DPowers@kirklandwa.gov)>

**Subject:** Message from TRILOGY INTERNA (4254585955)

**From:** Gina Clark [<mailto:GClark@mbaks.com>]  
**Sent:** Wednesday, October 31, 2018 10:08 AM  
**To:** Deborah Powers <[DPowers@kirklandwa.gov](mailto:DPowers@kirklandwa.gov)>; Adam Weinstein <[AWeinstein@kirklandwa.gov](mailto:AWeinstein@kirklandwa.gov)>  
**Subject:** Comment Letter and attachments

Hi, Deb.

Attached is our comment letter and two attachments. Please let me know if I should send directly to the Planning Commissioners if I've missed the opportunity to include in the packet.

Many thanks for all of your help.

This is a high level letter. I'm now diving deeper to see if I can get deeper to Adam's point...more definitions, more examples and how do I steer away from the language of "just make it clearer and more predictable." Working on it so we can find agreement!

Gina



**Gina Clark**

King County Manager  
Master Builders Association of King and Snohomish Counties

**p** 425.460.8224 **c** 425.435.8990  
335 116<sup>th</sup> Ave. SE | Bellevue, WA 98004  
[mbaks.com](http://mbaks.com)

Find us on [f](#) [t](#) [in](#) [i](#)

Kirkland Tree Code Example  
LaWana Quayle  
DR Horton

### **Single Family Residential Project**

We are currently developing three adjacent single family lots in Houghton that DR Horton began processing in October of 2017. The project requires demolition of a Single-family home, a shop/garage, installation of frontage improvements (LSM), installation of wet and dry utilities, and tree retention. Homes were custom designed for the neighborhood and lot size, so not standard DR Horton product

I originally met with two planners and the city arborist/urban forester to discuss a comment from the ROW planner regarding redesigning a home to save a tree in the ROW regarding the LSM permit. I pointed out the tree would be near storm and water improvements. In response, the planner said we only needed to “wow” the sidewalk around the tree and ignored direct construction impacts to the tree.

I again reached out to the city to preemptively meet with one planner and the arborist/urban forester to ensure our upcoming building permit submittal would meet all requirements. I was told I needed an updated arborist report because the city urban forester didn't like the format/layout of our report. I was also told I would need to resubmit at which point they would decide they wanted more changes. The planner also suggested we significantly reduce the size of the home to allow more trees to be retained. Grove status was not mentioned at that meeting.

All three lots of the project exceeded the tree retention credit requirements in the code by an **approximate factor of ten**. City staff said that didn't matter; the size of the homes should be reduced to allow more trees to be retained.

After project redesign, building permit submittal and multiple permit comments from the city, I met with city staff including direct supervisors to clarify any issues, but did not receive a definitive answer as to why the project once again did not meet retention standards or why tree credits were not being applied. I was told that we now had a “grove” across two of the lots and needed to have the arborist update their report to evaluate the tree closest to a foundation.

As a result, we have now made over 4 design modifications to the house and site plans at a cost of approximately \$10,000 between consultant and staff time. We also had to contract the arborist for another visit and two report rewrites at a cost of approximately \$1500 - \$2000. The arborist report stated that one of the trees in the “grove” has a 20% chance of surviving past five years due to construction activity. City staff still required retention of the tree. The refusal to allow us to remove a tree extremely close (6') to the foundation means we will spend double the cost in that area for utility and foundation trenching to use a smaller excavator and hand dig near that tree critical root zone.

We were then later told one of our building permits would not be issued until we had a legal description recorded for the grove. I asked to be educated where that was required in code and did not receive an answer from staff.

Overall, we are late on permit issuance by approximately 7 weeks, have made at least four (4) rounds of plan adjustments related to trees, expended unbudgeted costs, and cannot find in code the requirements we are being asked to comply with. We are simply looking for more certainty and transparency in the code and an application of the tree credit system in a fair and equitable way as it already exists in the code.

### **Plat Example**

We purchased a property that was developed as a subdivision in October 2018. The property is seven (7) lots with an average lot size of 7000 square feet.

During feasibility (due diligence before purchase) we were informed by the seller of a “grove” retained on the entire west property line. The retention of the grove would meet the retained tree credit requirement for the subdivision.

We have submitted for building permits. The city planner has since told us we are now required to plant trees on each lot to meet a tree credit requirement in addition to the existing grove, for a total of sixty-one (61) trees across seven (7) lots in addition to the existing grove. The lots are not big enough to support that many mature trees as they begin to grow and at full maturity several years out.

The cost for landscape design in addition to the trees will be approximately \$27,000. These fees were not accounted for in the original feasibility study. DR Horton still had plans to landscape the lots but not at that tree density level since it will be unmanageable for future homeowners and the lots are not capable of handling that many mature trees.

Essentially city planners have double applied the code to this project, with DR Horton meeting the retained tree credit requirement for the subdivision through the grove as well as through the additional planting of sixty-one (61) trees to meet a separate tree planting requirement. This discussion has caused delays to the permitting schedule and cost the developer additional unbudgeted money.

Unfortunately, when pressed to show which section of code requires the additional sixty-one trees despite grove compliance, we did not receive an answer from the city.

Again, what DR Horton would like to work with city staff, Planning Commission and Council is code language that helps define certainty of application and make requirements and application clearer for both applicant and city.

**Tree issues – 2-lot short subdivision - Building Permit**

This building permit was part of a 2-lot short plat, which Preliminary Decision required Trees 103, 105, 106, and 107 to be saved in a grove. Three trees in the other lot were similarly required to be saved in a separate grove. Where code specifies this lot requires 5 total credits, the grove required by this decision equals 41 credits (820% of requirement).

At building permit stage, 2 other retentions were required – 101 and 108.

Important note – ‘Saving a tree’ goes beyond ‘not cutting it down’ – it also precludes digging, improvements, or any site work within a perimeter around the tree. So a ‘save tree’ has a much larger area of challenge than just avoiding the visible portions.

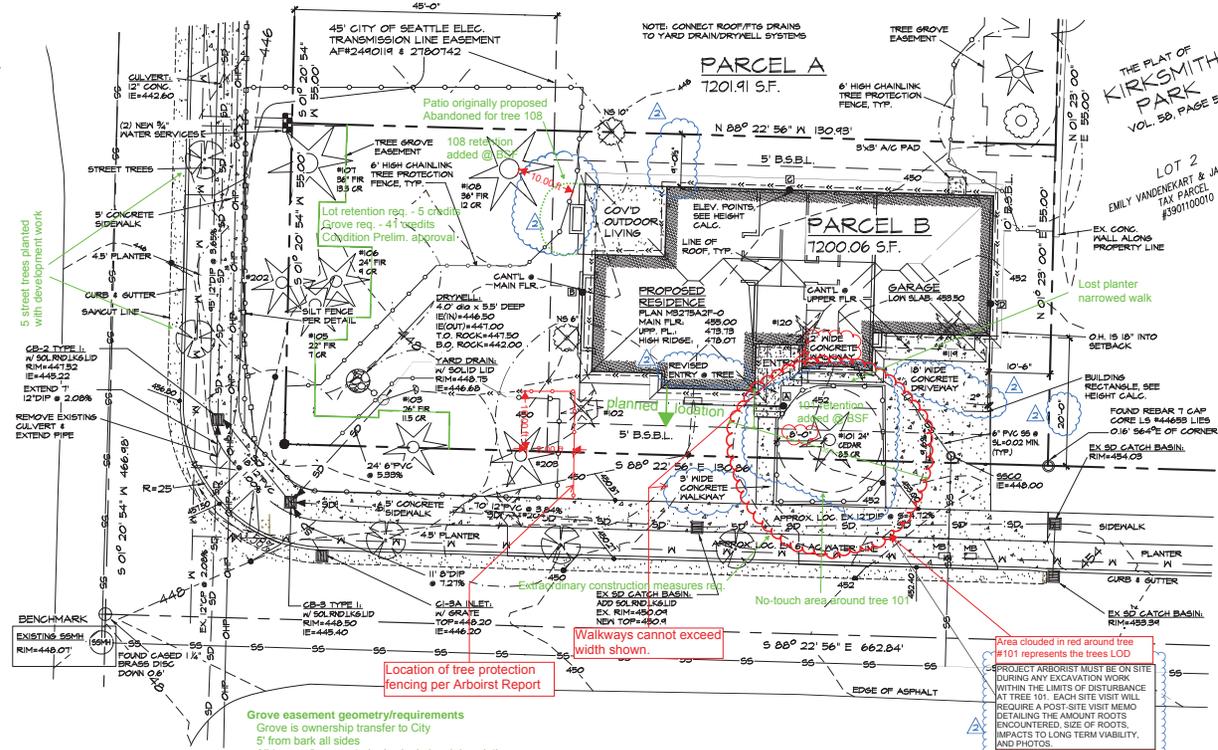
In this case, Trees 101 and 108 ‘squeezed’ the building platform from the south and the northeast. From the south, Tree 101 forced the home seven feet north, considerably reducing the rear yard. Improvements in the front were pushed away from the tree. Without showing both site plans, the easiest place to see this is that the walk between driveway and front entry was both shoved against the front façade (should have a planter between), and narrowed to two feet in width.

The home’s original position placed improvements outside Tree 108’s influence area. Our customers like paved patios adjoining the covered outdoor space – it’s a fixture of ours. At first submittal, one was proposed west of the ‘Covered Outdoor Living’ area, visible on the plan. After Tree 101 pushed the home north, the patio was deemed by Staff too close to Tree 108, necessitating removal of the patio.

In sum, Merit feels our building has been materially compromised by the forced changes, and these examples don’t capture all the challenges we see. We have lots with similar credit values where entire rear yards are given to the City for tree preservation (while requiring 1,000% + retention). Our clients want a lawn for their kids to play, in those cases we can’t give it to them. Those cases bring the grove easements, which are given to the City free of charge and in perpetuity.

We are told credits are strictly a minimum. Once met, there are no standards of success. Here, 820% of code credits were required to be saved with the Preliminary Decision. At Building Permit, it was decided another 390% would be required on top of the 820% - at great cost. No analysis of any kind was performed to justify the additional requirements, and there is no upward limit of what might be required to save.

We know the required changes caused delays in schedule. We know the outcome is inferior from our viewpoint and our potential clients. Accurate figures are difficult, though on a similar lot with a lost back yard the sales price lost was estimated at \$50,000. Builders are accustomed to expensive requirements, but good faith requires those costs be tethered to legitimate policy. These conditions fail that test.

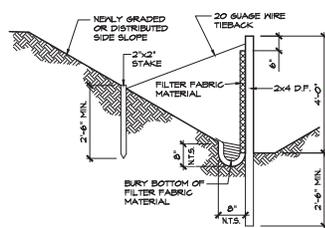
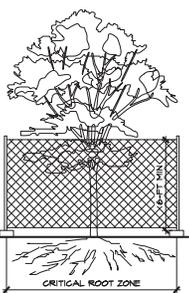


**SITE PLAN**  
SCALE: 1" = 10'-0"

Red comments - from City  
Blue comments - Architectural change note  
Green comments - from Merit  
Dark blue comments - from Merit

**NOTES:**

- MINIMUM SIX (6) FOOT HIGH TEMPORARY CHAINLINK FENCE SHALL BE PLACED AT THE CRITICAL ROOT ZONE OR DESIGNATED LIMIT OF DISTURBANCE OF THE TREE TO BE SAVED. FENCE SHALL COMPLETELY ENCLOSE TREES. METAL FENCE POSTS SHALL BE 3" DIA. ONLY. AND POST OR SPIKES INTO MAIN ROOTS. MODIFICATIONS TO FENCE MATERIAL AND LOCATION MUST BE APPROVED BY PLANNING OFFICIAL.
- TREATMENT OF ROOTS EXPOSED DURING CONSTRUCTION FOR ROOTS OVER ONE (1) INCH DIAMETER DAMAGED DURING CONSTRUCTION SHALL BE CLEAN STRIP AND TO REMOVE DAMAGED PORTION OF ROOT. ALL EXPOSED ROOTS SHALL BE TEMPORARILY COVERED WITH SHARP EDGED TO PREVENT DRYING AND COVERED WITH SOIL AS SOON AS POSSIBLE.
- NO STOCKPILING OF MATERIALS, VEHICULAR TRAFFIC OR STORAGE OF EQUIPMENT OR MATERIAL SHALL BE ALLOWED WITHIN THE LIMIT OF THE FENCING. FENCING SHALL NOT BE MOVED OR REMOVED UNLESS APPROVED BY THE CITY PLANNING OFFICIAL. WORK WITHIN PROTECTION FENCE SHALL BE DONE MANUALLY UNDER THE SUPERVISION OF THE ON-SITE ARBORIST AND WITH PERMITS APPROVAL BY THE CITY PLANNING OFFICIAL.
- FENCING SIGNAGE AS DETAILLED ABOVE MAY BE POSTED EVERY FIFTY FEET ALONG THE FENCE. SIGN TO BE MINIMUM 18" X 24" AND MADE OF WATERPROOF MATERIAL.



**TREE PLAN**

TREE DENSITY CALCULATION	
Lot #	2
Tree No. / Existing Credits	101 8.5
These 4 trees required to save overhanging canopies + grove	103 11.5
41 credits (820% of code)	105 7
Added at BSF	106 9
101 and 108 also required to stay - 19.5 credits	107 13.5
	108 12
<b>Total SAVED Tree Credits</b>	<b>61.5</b>
Supplemental Planting Required	1.230% of code requirement

**TREE PLAN (See KZC 95.35 for assistance)**

Integrated | Major | Minor

Arborist report attached to permit (place corresponding tree tag #s on site plan)

LOT'S DENSITY CALCULATION (rounded up to the nearest whole number)

Lot Area (sq. ft.)	7200.06	/ 43,560 (sq. ft.)	X	30	=	5	Req. min. tree density credits
--------------------	---------	--------------------	---	----	---	---	--------------------------------

1 TREE PROTECTION FENCE SCALE: NOT TO SCALE CITY OF KIRKLAND No. GK-R-44

2 SILT FENCE CROSS SECTION SCALE: NOT TO SCALE

**OWNER**  
MERIT HOMES  
911 KIRKLAND AVE SUITE 200  
KIRKLAND, WA 98033  
PHONE: 425-605-0541  
CONTACT: GREG GRIFFIS  
EMAIL: Greg@MeritHomesInc.com

**ARCHITECT**  
TROY CLYMER  
ARCHITECTS NORTHWEST INC  
18415 - 142ND AVE NE / SUITE 100  
WOODVILLE, WA 98012  
PHONE: 425-485-4400

**ENGINEER**  
MITCHELL ENGINEERING, INC  
7821 168th AVE NE  
ARCHBOLD, WA 98052  
PHONE: 425-861-7581  
CONTACT: MIKE MITCHELL  
EMAIL: MITCHELL@ENGINEERING.COM@GMAIL.NET

**LEGAL DESCRIPTION**  
LOT 2, TAFT

City of Kirkland  
Reviewed by R Brain  
07/31/2018

LOT 2  
EMILY VANDENKART & JAC FUENT  
#3301100010

**ARCHITECTS NORTHWEST**  
3805-AZURA AVENUE SUITE 300  
WOODVILLE, WA 98012  
OFFICE: (425) 485-4900 FAX: (425) 487-4585  
CELL: (425) 297-2555 WWW.ARCHITECTSNORTHWEST.COM

**MERIT HOMES**

DESIGNED BY: DATE: TROY CLYMER 2/18/18  
REVIEWED BY: DATE: JRA 6/5/18  
DATE: JRA 1/10/14

PROJECT MANAGER: TROY CLYMER  
DATE: JRA 6/5/18  
DATE: JRA 7/9/18

CHECKED BY: DATE: 4/20/17  
DATE: 4/20/17  
DATE: 01-30-05

**AO A9**

WWW.WOODVILLEOFFICE.COM  
#180015



October 30, 2018

Honorable Colleen Cullen, Chair  
Kirkland Planning Commission  
123 5<sup>th</sup> Avenue  
Kirkland, WA 98033

RE: KZC Chapter 95 Update Tree Protection Ordinance

Dear Chair Cullen and Planning Commissioners:

The Master Builders Association of King and Snohomish Counties (MBAKS) is pleased to provide comment regarding updates to the Tree Protection Ordinance Chapter 95 Kirkland Zoning Code (KZC). With nearly 2,900 members, MBAKS is the largest local homebuilder's association in the United States. Our members are dedicated to working with local jurisdictions to build quality, accessible housing while ensuring they comply with codes that strive to preserve community character and protect the environment.

MBAKS has been meeting with city staff to discuss proposed ordinance updates, including what works in the current code and what should be amended. We appreciate staff's time and effort, consideration of our feedback, the openness of process, and striving to craft an ordinance with greater clarity to make implementation easier for the city and applicant compliance more straightforward.

Although a draft amended ordinance is not yet completed, MBAKS offers these starting point suggestions as we collectively work to improve KZC Chapter 95:

**95.25:** MBAKS supports clarifying the code to reflect current green building standards to incentivize sustainable site development. MBAKS would like to offer our Built Green team, the largest Built Green program in the United States, as a resource to the city, to provide data, regulatory updates, best practices, and incentive programs to help the city as it updates its code.

**95.30.5(3):** As discussed during the Holmes Point Overlay Amendment, the MBA opposes amended language requiring all high retention value trees be "required to be retained" rather than "to the maximum extent possible," and if it is also still being considered, we are also opposed if a property owner needs to "exhaust all variations and incentives allowed by code in KZC 95.32 to retain trees "with the only remedy being variance review." MBAKS does not believe there is an issue with high value trees not being retained to the maximum extent possible by its members, and that more



restrictive regulations are unnecessary. In addition, variance review is costly and time consuming, adding to the cost of homes and the shortage of housing.

**95.33.4:** MBAKS does not support limiting the number of points/tree credits for the use of arborvitae on a site. Each site and landscape plan have unique characteristics and value and should be scored and given points as such. Consider incentives for planting non-arborvitae species or clearly defining what is “excessive use” of arborvitae (percentage of landscape on site?) within the code to give clearer direction to applicants when designing their landscape plans.

**95.57:** If the city is to specify where preferred appropriate locations for trees are to be retained, and distances from landscape features/hardscapes, we would urge additional discussion with industry, including landscape architects and arborists, before codifying any language. While industry does not want trees planted in inappropriate locations where they become a hazard or reduce normal life expectancy, we also do not want to see the use of footprint and property by homeowners/property owners, or house size or design, unduly limited by the city by overly burdensome regulation.

**95.60:** MBAKS agrees with the city there is needed clarity for retention and replanting requirements. The city has a good tree credit system. What is at odds is how the system is interpreted and even more so, whether the tree credit is even used by the city. There are competing systems within the city’s own code; one that is telling developers and builders they can simply get credits and comply with the tree retention and replanting requirements if they retain a certain amounts of trees.

Then there’s another system that requires such things as preservation of heritage trees, retention of high value trees, and grove maintenance. These often take precedence over tree credits, leaving discretion, room for interpretation, multiple rounds of review, unplanned cost increases, and project delays. This is often the biggest hurdle nearly every developer and builder must jump with the city and it leaves the most unanswered questions at feasibility.

MBAKS is also researching additional ways to find clarity and predictability and to reduce the need for interpretation and staff discretion in the process. MBAKS believes that continuing to refine the definitions of heritage trees and high values would help. But MBAKS believes that time and additional in-person discussions with stakeholders at the same table to explore together potential options, impacts and how implementation for all sides might work in practice is the best way to resolve what seems to be one of the greatest sticking point moving forward.



**95.61:** MBAKS supports keeping the payment in-lieu of planting new trees and would support updating the code with industry standards for in-lieu payment methodology.

**95.64.10:** MBAKS supports preservation of heritage trees where it does not limit the development potential of a property or constitute a constitutional taking of land or property rights. The heritage tree must also be worthy of retention. Trading tree credits, establishing a heritage tree mitigation bank, offering built green incentives, and/or simplifying the heritage tree retention definition so it's clearer when and why a tree should be preserved are examples of how to increase the preservation of heritage trees.

**95.65:** The industry does not support including landscape architects in the design review process to help assure greater tree canopy cover goals are achieved. This is not the role of a landscape architect. There are no standards in their industry to support this and it significantly increases costs for development review.

**95.68:** While we understand the environmental, sustainability, biological, and climate importance and impacts of tree species diversity, further inclusion in the broader discussion and goals of the city if required on private land are necessary if the city plans to impose code requirements on developers, builders and private property owners.

**95.71** The Built Green team at MBAKS is a valuable resource to help the city with data, best practices and regulations to help competing interests of light and shade often found when tree canopy and solar compete. MBAKS is pleased to offer the city assistance with developing rules and regulations to balance sustainable energy needs and goals.

**95.73:** MBAKS members represent a wide spectrum of the development industry. While integrated development plans (IDP) work for large developers and builders who often clear large subdivisions with many plats, they often don't work for smaller parcels with fewer plats or smaller projects. MBAKS does not support a blanket one-size fits all IDP code amendment but instead would urge the city to adopt an amendment that offers some flexibility depending on the type of project or parcel size.

**95.75:** There's been much discussion of whether a tree density credit or tree canopy cover methodology for retention/planting requirements is preferred. MBAKS supports the staff's conclusion that canopy cover is best assessed on a citywide basis, but that tree density credits should be used on a lot-by-lot basis. The need to switch to a more expensive and less detailed, even with advances in technology, canopy survey isn't warranted as stated in the staff notes on page 11 of the Planning Commission Report



of the Holmes Point Overlay hearing, that even by simply using the current tree credit requirements as adopted under today's code, it has "contributed to a significant increase (4.4 percent, or 299 acres) in City-wide tree canopy cover between 2002 and 2010."

**95.77:** MBAKS suggests holding off codifying increasing citywide tree retention/replanting requirements for several reasons, especially since the very updates being discussed in KCZ Chapter 95 may move the city towards increased canopy cover without further unduly burdensome regulation and cost, particularly on industry.

In addition, a full Urban Canopy Assessment is currently underway that will assess citywide canopy cover as well as canopy cover in neighborhoods, parks and single family residential, the data from which will be used to gauge the effectiveness of tree codes and compare to previous tree canopy assessments (completed in 2010). The full report and data will be available by the end of the year.

MBAKS would like to thank staff for holding off from making additional changes to KCZ Chapter 95 earlier in the year as part of the HPO amendments, waiting instead until the HPO amendment process was complete, the intern report was released, initial meetings with stakeholders about Chapter 95 had taken place, and the Urban Canopy Assessment was almost complete. Although there is still much dialogue to be had with staff, Planning Commission and Council, MBAKS feels we are in a more informed position to be having these discussions than we would have been three or four months ago.

We look forward to continuing to work with the city on this important and complex issue, and are here to help as industry update, clarify and simplify the tree protection ordinance.

Thank you for your consideration. If you have any questions, please feel free to contact me at [gclark@mbaks.com](mailto:gclark@mbaks.com) or (425) 460-8224.

Sincerely,



Gina Clark

Government Affairs, King County Manager  
Master Builders Association of King and Snohomish Counties

cc: Amy Walen, Mayor  
Adam Weinstein, Deputy Planning Director  
Deb Powers, Urban Forester