



CITY OF KIRKLAND

Planning and Building Department
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ADVISORY REPORT FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

To: Kirkland Hearing Examiner

From: Adam Weinstein, AICP, Planning Director
Kaylie Duffy, Planner

Date: December 11th, 2020

File: APPEAL OF ADSIT SHORT PLAT, 7319 124th Ave NE
FILE NO. SUB20-00171

Hearing Date and Place: Friday, December 11th, 2020, 9:30 a.m.
City Hall Council Chamber
123 Fifth Avenue, Kirkland

I. INTRODUCTION

1. Appellants: William Watson, on behalf of Rosewood of Kirkland Homeowners Association (hereinafter referred to as "Appellant"), residing at 12307 NE 73rd Pl, Kirkland, WA 98033.
2. Actions Being Appealed: The Planning Director's decision to approve a short plat application to subdivide a 21,809 sq. ft. parcel into three (3) single-family lots in the RSX 7.2 zone through an Integrated Development Plan (IDP) process (see **Enclosure 1**).
3. Summary of Issues Under Appeal: Appellant has contested the Planning Director's decision on the following bases: (i) the City failed to address ownership and use rights of the land on NE 73rd Pl; (ii) the City failed to require Merit to apply for a vacation; (iii) the City failed to consider the impact of the Adsit Short Plat on NE 73rd Pl; (iv) the City's decision is vague and failed to articulate whether the Planning Director considered open spaces and rights-of-way in his decision; (v) the City's decision failed to require a detailed plan of the changes to NE 73rd Pl; (vi) the City failed to address the HOA membership issues (see **Enclosure 2**).

II. RULES FOR THE APPEAL HEARING AND DECISION

Pursuant to Chapter 145 of the Kirkland Zoning Code (KZC), the Hearing Examiner must consider the appeal in an open record appeal hearing. The scope of the appeal is limited to the specific elements of the Planning Director's decision disputed in the letter of appeal, and the Hearing Examiner may only consider comments, testimony and arguments on these specific elements.

The Applicant and any person who submitted written comments or information to the Planning Director on the application during the comment period established in the Notice of Application may participate in the appeal hearing; except that a party who signed a petition may not participate in the appeal unless such party also submitted independent written comments or information. The Applicant may submit a written response to an appeal filed by an appellant. Further, the Hearing Examiner, in their discretion, may ask questions of the Appellant, Applicant, parties of record or staff regarding facts in the record, and may request oral argument on legal issues. The Hearing Examiner may reasonably limit the extent of the oral testimony to facilitate the orderly and timely conduct of the hearing.

The person filing the appeal has the responsibility of convincing the Hearing Examiner that the Planning Director made an incorrect decision.

After considering all arguments within the scope of the appeal submitted in writing and given as oral testimony at the hearing by persons entitled to participate in the appeal, the Hearing Examiner shall take one of the following actions:

- Affirm the decision being appealed;
- Reverse the decision being appealed; or,
- Modify the decision being appealed.
- Additionally, given the specific facts of this case, if the Hearing Examiner determines that Appellant is not a person entitled to bring or participate in this appeal pursuant to the requirements in KZC 145.60 and KZC 145.70, then the Hearing Examiner may dismiss the appeal.

The decision by the Hearing Examiner is the final decision of the City.

III. **BACKGROUND AND SITE DESCRIPTION**

1. Site Location: 7319 124th Ave NE
2. Zoning and Land Use: The subject property is zoned RSX 7.2, Low Density Residential, and is currently developed with one (1) single-family residence.
3. Original Proposal: Subdivide a 21,809 sq. ft. parcel into three (3) single-family lots in the RSX 7.2 zone using the Integrated Development Plan (IDP) process.
4. Planning Director Decision: On September 28, 2020, the Planning Director issued a decision of approval for the short plat proposal. The Planning Director's decision was based on findings of consistency with the decisional criteria established for short plats in Kirkland Municipal Code (KMC) Section 22.20.140, and Kirkland Zoning Code (KZC) Section 145.45 (see **Enclosure 1**).
5. Appeal Submitted: On October 15, 2020 the Planning and Building Department received an appeal of the Director's decision from the Appellant (see **Enclosure 2**).
6. Applicant Response: On November 6, 2020 the Applicant provided a response to the letter of appeal in the form of a Motion for Summary Judgement (see **Enclosure 3**).

IV. **STAFF ANALYSIS**

- A. **Appellant is not a person entitled to bring or participate in this appeal pursuant to the requirements in KZC 145.60 and KZC 145.70, and the City requests that the Hearing Examiner dismiss the appeal based upon lack of jurisdiction.**

Prior to addressing the issues raised in this appeal, the City respectfully asks the Hearing Examiner to dismiss the appeal based upon Appellant's failure to meet the exhaustion/standing requirements of KZC 145.60 and KZC 145.70.

KZC 145.60.1 states as follows (emphasis added):

1. Who May Appeal – The decision of the Planning Director may be appealed by:
 - a. The applicant, or
 - b. Any person who submitted written comments or information to the Planning Director on the application **during the comment period established in the Notice of Application.** A party who signed a petition may not appeal unless such party also submitted independent written comments or information.

KZC 145.70 states as follows (emphasis added):

Only those persons entitled to appeal the decision under KZC 145.60 may participate in the appeal; provided, that the applicant may submit a written response to an appeal filed by an appellant, regardless of whether the applicant filed an appeal. These persons may participate in either or both of the following ways:

1. By submitting written comments or testimony to the Hearing Examiner prior to the commencement of the hearing.
2. By appearing in person, or through a representative, at the hearing and submitting oral testimony directly to the Hearing Examiner. The Hearing Examiner may reasonably limit the extent of the oral testimony to facilitate the orderly and timely conduct of the hearing.

Appellant Bill Watson did not submit written comments about the project to the City in a timely manner, despite being clearly advised to do so by the Notice of Application, i.e., the City's public notice, which was posted on the two public notice signs installed on the subject property (see **Enclosure 4**). The two Notices of Application were installed on July 20th, 2020. Pursuant to the City's Notice of Application for the Adsit Short Plat project:

[Public] comments may be provided in writing only. To be considered, written comments must be received prior to 5 p.m. on August 10, 2020. Send written comments to project planner, Kaylie Duffy, 123 5th Avenue, Kirkland, WA 98033 or to e-mail kduffy@kirklandwa.gov. (Emphasis added.)

The Planning Director's decision may be appealed to the Hearing Examiner only by the applicant or those who submitted written comments to the project planner by the comment deadline, as indicated in KZC 145.60. The project planner for the Adsit Short Plat is Ms. Kaylie Duffy, Planner, City of Kirkland. The comment period for the short plat was July 23rd through August 10th, 2020. The Appellant, Bill Watson, did not submit any written comments about the project to the project planner between July 23rd through August 10th, 2020, as set forth below:

On July 13th, 2020, the Planning & Building Department's administrative office specialist forwarded a voicemail from Mr. Watson to Kaylie Duffy. The public notice had not yet been posted on the project site, but Mr. Watson requested information on where access to the new parcels would be taken and what trees would be cut down. Ms. Duffy called Mr. Watson back and left a voicemail detailing the project information that was requested.

On July 20th, 2020, the planning official received another call from Mr. Watson saying that the Rosewood HOA has been paying for the landscape strip along NE 73rd PI for a number of years and asking for someone from the City to come on site to discuss water mains running from the HOA's private residences to water the landscape strip along NE 73 PI. That same day, July 20th, Ms. Duffy forwarded the call to John Burkhalter, the Development Engineering Manager, and Jamie Ward, the Development Engineer assigned to the project for review. Mr. Burkhalter called Mr. Watson back and explained that the landscape strip in question was City right-of-way.

On July 22nd, Ms. Duffy asked the project applicant, Mike Smith of Merit Homes, whether he had received any calls from the Rosewood HOA. Mr. Smith had not received any communication from the Rosewood HOA. Mr. Smith subsequently reached out to Mr. Watson via email on July 22nd and then spoke with him on the phone.

On July 29th, 2020, Mr. Burkhalter hosted an on-site meeting in which representatives from Merit Homes and Mr. Watson attended. Meeting topics included access, existing irrigation, and tree removal. Mr. Smith of Merit Homes stated he would review the following issues: (1) Removal of trees along south side to see if there are opportunities for retention; (2) Intersection of 124th Ave NE and NE 73rd PI to review likely fence locations and possible

landscaping improvements; (3) Access to the western lot to see what opportunities were available to reduce visual impact to the landscaped area. Mr. Smith also asked Mr. Watson for a copy of Rosewood HOA's CC&Rs so that Merit Homes could review those to see whether it would be possible for the new homeowner of Lot 1 of the Adsit Short Plat to join the Rosewood HOA.

At no time between July 23rd to August 10th, 2020, did Appellant submit any written comments to Kaylie Duffy addressing any specific concern with the Adsit Short Plat approval. In fact, he did not do so prior to July 23rd either. Thus, Appellant did not submit any written comments to the City either before or after the public notice sign was posted. Verbal comments at an on-site meeting with someone other than the project planner (Kaylie Duffy) do not substitute for written comments in the record. Comments must be in writing, and must be submitted in a timely manner.

B. The City requests that the Hearing Examiner dismiss the appeal based upon the fact that Appellant is attempting to claim property interests in public right-of-way that are barred as a matter of law.

The TEC Short Plat No. 3 (File No. SPL04-00010) clearly indicates on the face of the plat map that the entirety of Tract A (15,884 sq. ft.) is "public right of way dedicated to the City of Kirkland upon recording of short plat" (see **Enclosure 5**). The plat also contains the following dedication language:

[T]he undersigned . . . do hereby dedicate to the use of the public forever all streets and avenues not shown as private hereon . . . and further dedicate to the use of the public all the easements **and tracts** shown on this short plat for all public purposes as indicated thereon . . .

As indicated on the face of the TEC No. 3 Short Plat, the entirety of Tract A, including the landscaped area in question, was dedicated as City right-of-way upon the recording of the short plat. This language is not ambiguous. The identification of Tract A – which is clearly drawn on the plat map and the size clearly identified on the plat map as 15,884 sq. ft. – is not vague, ambiguous or subject to doubt in any manner.

Additionally, the entirety of Tract A is currently being used as public right-of-way. *Pursuant to the City of Kirkland's Zoning Code, section 5.10.805, a right-of-way is defined as:*

*Land dedicated primarily to **the movement of vehicles and pedestrians and providing for primary access to adjacent parcels**. Secondly, the land provides **space for utility lines and appurtenances and other publicly owned devices**. (Emphasis added.)*

Here, the right-of-way is being used as a street (NE 73rd Pl.) and the remainder for the installation, operation and maintenance of a public storm water system; which are exactly the purposes of a right-of-way as defined by the City's zoning code.

It is irrelevant that not all of Tract A is being used as a street. For instance, the City's standards, at KZC 110.30, required the TEC Short Plat No. 3 developer to provide access to the Rosewood development via a paved street at least 20 feet wide through Tract A. Thus, the developer paved 20 feet of Tract A as an access road to the Rosewood development (NE 73rd Place). This left a 15-foot by 187.78-foot portion of Tract A unused for access purposes. Even if this portion of Tract A had remained unused for any public purpose, it is still right-of-way. The fact is, however, that this portion of Tract A was used for installation of a public stormwater detention vault, as detailed in **Enclosure 6.A** and shown in **Enclosure 6.B**. Thus, the entirety of Tract A has been both legally dedicated as public right-of-way AND used as public right-of-way since the Tec Short Plat No. 3 was recorded.

C. Staff's analysis of the factual findings and conclusions disputed by Appellant.

KZC Section 145.80 requires that staff prepare an analysis of the specific factual findings and conclusions disputed in the letter of appeal. A summary of Appellant's supporting arguments are listed below by topic (following the same order in the appeal letter) and followed by an analysis by Planning Division staff. The full text of Appellant's appeal letter is included in this packet as **Enclosure 2**.

1. Ownership and Use Rights of Land on NE 73rd Pl: Appellant takes issue with Lot 1 of the Adsit Short Plat taking access off of NE 73rd Pl. According to the TEC Short Plat No. 3, the area on NE 73rd Pl where Merit has proposed a driveway entrance for Lot 1 is labeled as "Tract A" and is described as a "public right of way dedicated to the City of Kirkland upon recording of short plat" (see **Enclosure 5**). When the TEC Short Plat No. 3 was approved by the City of Kirkland in 2005, the developer enhanced the space to the south of the NE 73rd Pl right-of-way with a fence, landscaping, and an irrigation system. Appellant contends this evinces the developer's intent that this enhanced space was to be used solely and exclusively as a landscaped area for the common enjoyment of the resulting subdivision. The CC&Rs that govern TEC Short Plat No. 3 explain that the Rosewood HOA is responsible for maintaining the landscape strip to the south of NE 73rd Pl, which Applicant believes is further indication of the developer's intent that the space is reserved solely for the benefit of the TEC Short Plat No. 3.

*Staff Response: The TEC Short Plat No. 3 (File No. SPL04-00010) clearly indicates on the face of the plat map that the entirety of Tract A (15,884 sq. ft.) is "public right of way dedicated to the City of Kirkland upon recording of short plat" (see **Enclosure 5**). The plat also contains the following dedication language:*

*[T]he undersigned . . . do hereby dedicate to the use of the public forever all streets and avenues not shown as private hereon . . . and further dedicate to the use of the public all the easements **and tracts** shown on this short plat for all public purposes as indicated thereon . . .*

*As indicated on the face of the TEC Short Plat, the entirety of Tract A, including the landscaped area in question, was dedicated as City right-of-way upon the recording of the short plat (see **Enclosure 5**).*

*Additionally, the entirety of Tract A is currently being used as public right-of-way. For instance, the City's standards, at KZC 110.30, required the developer to provide access to the Rosewood development via a paved street at least 20 feet wide through Tract A. Thus, the developer paved 20 feet of Tract A as an access road to the Rosewood development (NE 73^d Place). This left a 15-foot by 187.78-foot portion of Tract A unused for access purposes on its southern side. This portion of Tract A was, however, used for installation of a public stormwater detention vault (see **Enclosure 6.B**). Thus, the entirety of Tract A has been used as public right-of-way since Tract A was dedicated to the City.*

*As explained in **Enclosure 2**, Appellant argues that when the developer of their plat filed CC&Rs for their neighborhood (a year after the plat was recorded and after Tract A had been dedicated in full to the City as right-of-way), the developer indicated its "intent" for title to the portion of Tract A that had not been used for street purposes to be granted in full to the Rosewood HOA, simply because the CC&Rs authorize the Rosewood HOA to maintain landscaping in that area.*

- *First, this ignores the fact that a public stormwater system has been installed in this area and, thus, this area of Tract A cannot in any way, shape or form be "owned in full" by the HOA.*

- *Second, property rights are not transferrable via CC&Rs, they must be transferred by deed or dedication on a recorded subdivision (see RCW 58.17.205). This includes the City's public rights-of-way easement rights.*
- *Third, even if property rights were transferrable, or could be reserved via CC&Rs, the CC&Rs here are not relevant to the grantor's intent at the time the grantor dedicated Tract A in its entirety to the City, because they were created a full year after the dedication.*
- *Fourth, even if the CC&Rs were relevant to the grantor's intent at the time of dedication, they do not support an inference that the grantor intended to reserve any portion of Tract A for the sole and perpetual use of the Rosewood HOA. The CC&Rs do not grant the Rosewood HOA any more rights to the "unused right-of-way portion of an improved street" than the HOA already has under City code. See, KMC 19.04.050:*

It is unlawful for any person to either temporarily or permanently use or utilize any portion of a street right-of-way (whether or not improved and including sidewalk or walkway) or fairway, as defined in Section 14.16.020(b), for personal use, place of business or other private use, without first obtaining from the city a street use permit; **provided, however, that this section shall not be construed to prohibit the incorporation of the unused right-of-way portion of an improved street into the landscaping design of the abutting private property.** (Emphasis added.)

*The developer was not attempting to grant or reserve to Appellant any additional property right in this portion of Tract A, it was simply noting a right the HOA already had under the City's code and identifying a process for all owners to share in the costs associated with maintaining this area while it remained unused street-access right-of-way. This appears to have seemed necessary to the developer and the HOA at the time, presumably, because under the City's code only the abutting private property owner has the right to incorporate the unused right-of-way portion of an improved street into their landscaping design. Only one property in the Rosewood HOA actually abuts that portion of Tract A that is currently unused as street-access right-of-way (though it is used by the City for installation, operation and maintenance of a public storm water drainage system). The only personal property "abutting" this portion of Tract A is the property located at 7319 124th Ave NE [tax lot no. 6400700267] (see **Enclosure 4**). The CC&Rs indicate nothing more than that this portion of Tract A, while it remains unused for street purposes, benefits the entire HOA, not just the one abutting one private property owner, and thus all of the members of the HOA should pay for its maintenance (or not – the HOA could also choose not to maintain this area).*

*It is common for property owners to incorporate unused right-of-way portions of an improved street into the landscaping design of their abutting private properties. This happens all throughout the City. It is also quite common for these property owners not to actually know where their property line is located, and not to be aware of the fact that their landscaping has encroached on public right-of-way. This does not change the fact that the right-of-way exists as a recorded public document (here, via the filing of the Tec Short Plat No. 3), thus giving everyone in the world constructive notice of the City's public easement in the property. Attached hereto are several photos showing areas in the City where the abutting private property owner has incorporated the unused right-of-way portion of an improved street into the landscaping design of their private properties (see **Enclosure 7**) Such incorporation does not lead to adverse possession of City right-of-way by a private property owner. (Adverse possession is discussed further below.*

Additionally, there is no evidence either Appellant or the Rosewood HOA has ever paid any property tax for any portion of Tract A, which further negates their argument that they reasonably believed they had the exclusive right to use this property as their own private property.

Finally, as all of Tract A is public right-of-way, Appellant is essentially making an adverse possession claim. Adverse possession cannot be accomplished against public property (see RCW 7.28.090). Thus, Appellant is trying to get through the back door something it cannot take through the front door. Here, all of Tract A is public right-of-way. No part of Tract A is subject to adverse possession, and all of Appellant's attempts to claim private and exclusive ownership of any part of Tract A are without merit.

2. Application for a Vacation: Appellant argues that creation of a driveway from a public street to a private residence is a "private" use of the right-of-way, not a "public" use. Therefore, argues Appellant, because Tract A is a public right-of-way according to TEC Short Plat No. 3 (see **Enclosure 4**), the City of Kirkland should not have approved the driveway portion of the Adsit Short Plat without first requiring Merit Homes to submit an application for a street vacation.

Staff Response: *This argument appears to be made by Appellant as an alternative argument. First Appellant claims the portion of Tract A that is unused for street purposes is private property belonging to the Rosewood HOA. This argument fails. All of Tract A was indisputably dedicated to the City as public right-of-way. Thus, Appellant raises this alternative argument, i.e., that the property is indeed public right-of-way, but that it cannot be used to access private property. Unfortunately for Appellant, this argument also fails. On the contrary, the City has a duty to use the right-of-way for the public benefit, which includes providing access from private property to City streets.*

Pursuant to the City of Kirkland's Zoning Code, section 5.10.805, a right-of-way is defined as:

Land dedicated primarily to the movement of vehicles and pedestrians and providing for primary access to adjacent parcels. Secondarily, the land provides space for utility lines and appurtenances and other publicly owned devices. (Emphasis added.)

The Planning & Building Director approved the Adsit Short Plat knowing that providing a single-family residence with access to the street via a driveway is a core and fundamental use of right-of-way. Appellant's argument to the contrary is incorrect. No street vacation is required because no portion of the public right-of-way is being granted, gifted, or otherwise conveyed to Merit Homes for a private use.

3. Impact of Adsit Short Plat on NE 73rd Place: The Rosewood HOA asserts that they raised concerns regarding the impact of the Adsit Short Plat proposal on NE 73rd PI, but that the City failed to take their concerns into account.

Staff Response: *While the City did not receive any written comments from Appellant within the time period prescribed by law for persons to make written comments, the City clearly did take his verbally expressed concerns into account.*

As noted above, the project planner for the Adsit Short Plat is Kaylie Duffy. On July 13th, 2020, the Planning & Building Department's administrative office specialist forwarded a voicemail from Mr. Watson to Kaylie Duffy. The public notice had not yet been posted on the project site, but Mr. Watson requested information on where access to the new parcels would be taken and what trees would be cut down. Not only was this phone message verbal, but it consisted solely of inquiries and did not express any concern about the Adsit Short Plat.

On July 20th, 2020, the planning official received another call from Mr. Watson saying that the Rosewood HOA has been paying for the landscape strip along NE 73rd PI for a number of years and asking for someone from the City to come on site to discuss water mains

running from the HOA's private residences to water the landscape strip along NE 73rd Pl. That same day, July 20th, Ms. Duffy forwarded the call to John Burkhalter, the Development Engineering Manager, and Jamie Ward, the Development Engineer assigned to the project for review. Again, although these comments were verbal, not written, Mr. Burkhalter called Mr. Watson back and explained that the landscape strip in question was City right-of-way.

On July 29th, 2020, Mr. Burkhalter hosted an on-site meeting in which representatives from Merit Homes and Mr. Watson attended. Meeting topics included access, existing irrigation, and tree removal. Mr. Smith of Merit Homes stated he would review the following issues: (1) Removal of trees along south side to see if there are opportunities for retention; (2) Intersection of 124th Ave NE and NE 73rd Pl to review likely fence locations and possible landscaping improvements; (3) Access to the western lot to see what opportunities are there to reduce visual impact to the landscaped area. Mr. Smith also asked Mr. Watson for a copy of his CC&Rs so that Merit Homes could review those to see whether it would be possible for the new homeowner of Lot 1 of the Adsit Short Plat to join the Rosewood HOA.

On September 1, 2020, Mr. Smith emailed Mr. Watson to tell him that he had reviewed the Rosewood CC&Rs and determined it would be difficult for Lot 1 of the Adsit Short Plat to join the existing HOA. However, Mr. Smith felt it would be relatively straightforward to prepare a Maintenance Agreement that would accomplish the goal of having Lot 1 share in the maintenance costs of the landscape strip on NE 73rd Pl without disturbing the existing HOA agreements (see **Enclosure 8**). This would increase the number of lots sharing costs, which would benefit all the existing Rosewood HOA members. Mr. Smith said that if the Rosewood HOA would be willing to prepare such a Maintenance Agreement, Merit would be willing to review it in good faith, and likely sign it.

Since the proposed Maintenance Agreement for the landscape strip along NE 73rd Pl is a private agreement between the Rosewood Homeowners association and Merit Homes, the City has no interest, rights or obligations in the matter.

Finally, even though Appellant had not submitted written comments to the project planner, Ms. Duffy, she included a summary of his concerns in the Adsit Short Plat staff report (see **Enclosure 1**). Those concerns were listened-to by the City, but because Tract A is public right-of-way, none of Appellant's concerns changed the City's approval conditions for the Adsit Short Plat. While the City believes that a Maintenance Agreement between Merit Homes and the Rosewood HOA would be a good idea, this is ultimately a decision that must be made between the two parties themselves. The City has no authority to require or enforce such a Maintenance Agreement.

4. The Planning & Building Director's Decision: Appellant argues that the Planning & Building Director's Decision did not address whether the City had considered how the Adsit Short Plat would "change the open spaces and rights-of-way on NE 73rd Pl."

Staff Response: As detailed in **Enclosure 3**, the City has a duty to use the right-of-way for the public benefit, which includes providing access from private property to City streets. KZC 5.10.805.

All public improvements associated with this project including street and utility improvements, must meet the [City of Kirkland Public Works Pre-Approved Plans and Policies Manual](#) which can be found on the Public Works Department's page on the City of Kirkland's website or can be purchased from the Public Works Department. In addition, all new driveways must meet the requirements of the Kirkland Driveway Policy R-4 and the Kirkland Intersection Sight Distance Policy R-13, links to which can be found on the City of Kirkland website as well as in the **Enclosure 1** (see pages 8 and 9 of Attachment 3).

While the Zoning Code, Sections 110.10 and 110.25 require the applicant to make half-street improvements in rights-of-way abutting the subject property, where none already exist, the Public Works official determined that the applicant only had to replace any

cracked or deteriorated existing curb on NE 73rd P.. With these replacements, the existing improvements were determined to be adequate on NE 73rd Pl. On the other hand, half-street improvements including curb, gutter, landscape strip with street trees, and a sidewalk were required along the plat's other side, i.e., along 124th Avenue NE.

In sum, the City has complied with all of the code requirements necessary to address open spaces and rights-of-way on the Adsit Short Plat.

5. No Detailed Plans of Changes to NE 73rd Pl: Appellant claims that the City's decision fails to require a detailed plan of the fencing and landscaping along NE 73rd Pl, and that too much discretion is left to the Applicant when it comes to disruption of Appellant's existing improvements in NE 73rd Pl.

Staff Response: Landscaping and fencing are not evaluated during the short plat review process (see KMC 22.28 for information on what must be reviewed by City). The City's codes clearly do not require either landscaping or fencing to be evaluated by the City during short plat review. The City cannot withhold approval of a short plat because of landscaping or fencing concerns.

*Additionally, the City is aware that Merit Homes offered to pursue a Private Maintenance Agreement to address the landscaping along the southern edge of NE 73rd Pl in later stages of development (see **Enclosure 8**). This seems like a very reasonable response to Appellant's concerns regarding landscaping and fencing.*

Further, the Applicant will need to provide detailed plans for construction of required street and utility improvements and have those plans approved by the City through a Land Surface Modification (LSM) permit prior to their installation. The City will review the width and location of the driveway accessing Lot 1 of the Adsit Short Plat at that time, with the LSM permit, to ensure it conforms to City standards. Relocation of the Rosewood mailbox will also be identified as part of the LSM process, although the US Postal Service has final authority for location of mailbox structures.

*Finally, Appellant argues that Merit is attempting to take Rosewood HOA's property without compensation, which is untrue. As detailed in **Enclosure 4**, it is undisputed that all of Tract A was dedicated to the City as right-of-way in the TEC Short Plat No 3. The dedication contains no language indicating that Tract A is reserved for a purpose other than public right-of-way. Additionally, the entirety of Tract A is being used for right-of-way purposes.*

6. Failure to Address HOA Membership Issues: On July 22, 2020, Ms. Duffy emailed Mr. Watson to explain that the City will "address any issues with the HOA prior to any decisions made on this short plat application" (see **Enclosure 9**). Appellant argues that the City did not consider the impact to the Rosewood HOA of having another home adjacent to their subdivision and that the City should modify its decision to require Lot 1 of the Adsit Short Plat be subject to the same CC&Rs as the Rosewood HOA.

*Staff Response: Ms. Duffy's email of July 22nd does not, and cannot, change the legal requirements of the City Code. Instead, the email does nothing more than advise Appellant that his issues would be "addressed" by the City; the email does not promise any particular outcome nor waive any code requirements. Furthermore, even though Appellant did not submit written comments to Ms. Duffy in a timely manner (as set forth fully above) she included a summary of his verbal concerns in the Adsit Short Plat staff report (see **Enclosure 1**).*

Once again, the City fully addressed all of Appellant's issues with the Adsit Short Plat by explaining that the entirety of "Tract A" is public right-of-way. The City's code (KMC 19.04.050) specifically addresses the right of abutting property owners to use the unused right-of-way portion of an improved street for landscaping, as Appellant and the Rosewood HOA have done. Such use does not constitute adverse possession of the right-of-way. City officials explained this to Appellant multiple times, both over the phone and in person.

Finally, with regard to Appellant's concern here, the City does not have any authority to require or enforce CC&Rs. They are solely private agreements between a developer and future homeowners. Merit Homes has offered to enter into a Maintenance Agreement with Appellant, which seems like a good idea to the City, but not an agreement the City can require.

V. STAFF RECOMMENDATION

Per KZC 145.95, the person filing the appeal has the responsibility of convincing the Hearing Examiner that the Planning Director made an incorrect decision. The Planning Director's decision was based on staff's analysis of the Kirkland Municipal Code (KMC) 22.20.140 and KZC 145.45 criteria listed below:

Kirkland Municipal Code (KMC) Section 22.20.140 states that the Planning Director may approve a short subdivision only if:

1. There are adequate provisions for open spaces, drainage ways, rights-of-way, easements, water supplies, sanitary waste, power service, parks, playgrounds, and schools; and
2. It will serve the public use and interest and is consistent with the public health, safety, and welfare. The Planning Director shall be guided by the policy and standards and may exercise the powers and authority set forth in RCW 58.17.

Kirkland Zoning Code (KZC) Section 145.45 states that the Planning Director may approve a short subdivision only if:

3. It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
4. It is consistent with the public health, safety, and welfare.

Appellant submitted 6 bases of appeal disputing the findings of fact and conclusions as presented in the Director's Decision in **Enclosure 1**. Appellant's comments primarily revolve around (1) requesting that the City reverse its approval of allowing access to Lot 1 being taken off of NE 73rd Pl, or (2) that the City should modify its conditions of approval to require Merit Homes to compensate Rosewood HOA for the "taking of property" (see **Enclosure 2**).

As specified earlier in this report, the 2005 TEC Short Plat No. 3 map labels the area on NE 73rd Pl where Merit Homes has proposed a driveway entrance for Lot 1 as "Tract A," which is described as a "public right of way dedicated to the City of Kirkland" (see **Enclosure 5**). Tract A is City right-of-way. Since Tract A is City right-of-way, Appellant's requests are unlawful and not relevant to the Director's review and approval of the short plat application. Staff's analysis of these comments has not found any evidence to change the issued findings of fact and conclusions, and as such, Staff recommends that the Hearing Examiner uphold the Planning Director's decision for approval with conditions of the Adsit Short Plat.

VI. ENCLOSURES

1. SUB20-00171 Director's Decision, Staff Report, and Attachments
2. Appeal Letter, prepared by appellant, dated October 15, 2020
3. Applicant's Motion for Summary Judgement, dated November 6th, 2020
4. City's Notice of Application for the Adsit Short Plat, dated July 23rd, 2020
5. TEC No.3 Short Plat, dated and approved by the King County Department of Assessment May 23rd, 2005
6. A. City's Reply in Support of Applicant's Motion for Summary Judgement, dated November 18th, 2020
B. Aerial image of subject property and location of vault
7. Examples of landscaping in the City of Kirkland right-of-way
8. Email from Mike Smith of Merit Homes to Bill Watson, dated September 1, 2020
9. Email from Kaylie Duffy, Planner, to Bill Watson, dated July 22nd, 2020


CITY OF KIRKLAND

Planning and Building Department
 123 Fifth Avenue, Kirkland, WA 98033
 425.587.3600 - www.kirklandwa.gov

**CITY OF KIRKLAND
 NOTICE OF DECISION**

OCTOBER 1, 2020

Project Name: Adsit Short Plat
 File No.: [SUB20-00171](#)
 Location: [7319 124th Ave NE](#) (see Attachment 1)
 Applicant: Mike Smith with Merit Homes
 Project Description: Subdivide a 21,809 sq. ft. parcel into 3 single-family lots in the RSX 7.2 zone (see Attachment 2)
 Decisions Included: Short Plat (Process I)
 Project Planner: Kaylie Duffy, Planner
 SEPA Determination: Exempt from SEPA pursuant to WAC 197-11-800(6)(d)
 Department Decision: Approval with Conditions


 Adam Weinstein, Director
 Planning and Building Department

Decision Date:	September 28, 2020
Appeal Deadline:	October 15, 2020

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

How to Appeal: Only the applicant or those persons who previously submitted written comments or information to the Planning Director are entitled to appeal this decision. A party who signed a petition may not appeal unless such a party also submitted independent written comments or information. An appeal must be in writing and delivered, along with fees set by ordinance, to the Planning Department by 5:00 p.m., October 15, 2020. For information about how to appeal, contact the Planning Department at (425) 587-3600. An appeal of this project decision would be heard by the Hearing Examiner.

Comment to City Council: If you do not file an appeal, but would like to express concerns about policies or regulations used in making this decision or about the decision making process, you may submit comments to citycouncil@kirklandwa.gov. Expressing your concerns in this way will not affect the decision on this application, but will enable the City Council to consider changes to policies, regulations or procedures that could affect future applications.

I. CONDITIONS OF APPROVAL

- A. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. Attachment 3, Development Standards, is provided in this report to familiarize the applicant with some of these development regulations. This attachment references current regulations and does not include all of the additional regulations. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. When a condition of approval conflicts with a development regulation in Attachment 3, the condition of approval shall be followed.
- B. Prior to recording the short plat, the applicant shall obtain a demolition permit and remove the existing single-family residence on Lots 2 and 3 and the existing detached garage on Lot 1, (see Section II – Land Use).
- C. As part of the application for a Land Surface Modification Permit, the applicant shall submit a Tree Retention Plan consistent with the approved IDP in Attachment 4 (see Conclusion V.B.2).
- D. As part of the application for a Building Permit the applicant shall submit a Tree Retention Plan consistent with the approved IDP in Attachment 4 (see Conclusion V.B.2).

II. SITE AND NEIGHBORHOOD CONTEXT

Zoning District	RSX 7.2
Shoreline Designation	N/A
Comprehensive Plan Designation	LDR 6, Low Density Residential at six units per acre
Property Size	21,809 SF
Current Land Use	The property is currently developed with an existing single-family residence, detached garage, and wooden shed. Retention of the existing residence and garage would not fully comply with the required setbacks from the proposed short plat lot lines (see Attachment 2). A portion of the northern side of the existing residence would be located over the proposed property line between lots 2 and 3. In addition, the eastern edge of the detached garage would be located over the proposed property line between Lots 1 and 2. Therefore, the applicant should demolish the existing residence and detached garage prior to recording the short plat.
Proposed Lot Sizes (net)	Lot 1: 7,206 SF Lot 2: 7,277 SF

	Lot 3: 7,326 SF
Lot Size Compliance	The RSX 7.2 zone requires a minimum lot size of 7,200 sq. ft. All lots meet the minimum lot size requirements for the zone. See Section V.A below for a compliance analysis.
Terrain	The property is relatively flat, with just over 6 feet of grade change sloping downward from the northwest corner to southeast corner (see Attachment 2).
Trees	<p>There are 11 significant trees on the site and no significant trees located off site that may be affected by the proposed development. Attachment 4 shows the location, tree number, and general health of the trees, as assessed by the applicant's arborist. The applicant is proposing an Integrated Development Plan (IDP) pursuant to KZC Section 95.30.4 & 95.30.5. See Attachment 3, Development Standards, for information on the City's review of the arborist report as well as tree preservation requirements.</p> <p>See Section 5 for an analysis of the IDP on the subject property.</p>
Access	Access to Lot 1 will be taken off of NE 73 rd PI, while access to Lots 2 and 3 will be taken off of 124 th Ave NE.
Neighboring Zoning and Development	
North	RSX 7.2, Single Family Residential
South	RSX 7.2, Single Family Residential
East	RSX 7.2, Single Family Residential
West	RSX 7.2, Single Family Residential

III. PUBLIC NOTICE AND COMMENT

The public comment period for this application ran from July 23, 2020 to August 10, 2020. While no public comments were received in writing during the public comment period, the following topics of concern were received via phone and during an in-person meeting with staff. A brief staff response follows.

- A. Removal of trees along south side of property. Are there any opportunities for retention?

Staff Response: The trees were evaluated by Layton Tree Consulting, LLC and the **City's development review arborist** reviewed their arborist report. There are five trees total along the south property line – 3, 4, 5, 6, and 9. Of these trees, 3, 4, and 5 must be removed due to their proximity to the foundation of the proposed home on Lot 3. Tree 6 has a large cavity on the lower trunk associated with codominant stem failure **and was given a "fair" condition rating, while tree 9** has developed poor form from **lack of sunlight and suppression by adjacent trees and was also given a "fair" condition rating.** Due to health issues, neither tree must be retained.

- B. Can the intersection of NE 73rd PI and 124th Ave NE be reviewed for fence locations and possible landscaping improvements?

Staff Response: The applicant has shown typical landscape improvements including the location of proposed street trees. At this early stage in the project, further **landscape design isn't part of the applicant's workflow. The applicant has stated they** will work with the neighborhood to see what could be done there at later stages in development. Once landscaping is assessed by the applicant, the plan must comply with [KZC 115.135](#), which establishes that areas around all intersections, including the entrance of driveways onto streets, must be kept clear of sight obstruction.

- C. What opportunities are there to reduce visual impacts to the landscaped area near the access point to the western lot?

Staff Response: The applicant has stated that they will remove as little landscaping as possible along NE 73rd PI, while still allowing access and visual appeal to the new home. Only Lot 1 will gain access off of NE 73rd PI.

IV. CRITERIA FOR SHORT PLAT APPROVAL

- A. Facts: Municipal Code Section 22.20.140 states that the Planning Director may approve a short subdivision only if:

1. There are adequate provisions for open spaces, drainage ways, rights-of-way, easements, water supplies, sanitary waste, power service, parks, playgrounds, and schools; and
2. It will serve the public use and interest and is consistent with the public health, safety, and welfare. The Planning Director shall be guided by the policy and standards and may exercise the powers and authority set forth in RCW 58.17.

Zoning Code Section 145.45 states that the Planning Director may approve a short subdivision only if:

3. It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
4. It is consistent with the public health, safety, and welfare.

- B. Conclusions: The proposal complies with Municipal Code Section 22.20.140 and Zoning Code Section 145.45. With the recommended conditions of approval, it is consistent with the Zoning Code and Subdivision regulations and there are adequate provisions for open spaces, drainage ways, rights-of-way, easements, water supplies, sanitary waste, power service, parks, playgrounds, and schools. It

will serve the public use and interest and is consistent with the public health, safety, and welfare because it will add housing stock to the City of Kirkland in a manner that is consistent with applicable development regulations.

V. DEVELOPMENT REGULATIONS

A. Lot Size and Dimension Compliance

The following is a review, in a checklist format, of compliance with the design requirements for subdivisions found in KMC 22.28. All lots comply with the minimum lot size requirements for the zone as proposed or conditioned below.

Complies as proposed	Complies as conditioned	Code Section
KMC 22.28.050 – Lots - Dimensions		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lots are shaped for reasonable use and development
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Minimum lot width is 15' where abutting right-of-way, access easement, or tract

B. Tree Retention

1. Facts:

- a. Municipal Code Section 22.28.180 states that the applicant has the responsibility in proposing a plat to be sensitive with respect to the natural features, including topography, streams, lakes, wetlands, habitat, geologic features and vegetation, of the property. The plat must be designed to preserve and enhance as many of these valuable features as possible.
- b. KMC 22.28.210 states that the applicant shall design the plat so as to comply with the tree management requirements set forth in KZC Chapters 90 and 95 to maximize the chances of survival of trees and associated vegetation designated for retention and minimize potential hazards to life or property.
- c. KZC 95.30.5 requires that with a short plat application, high retention value trees (includes groves) should be retained and protected to the maximum extent possible. Moderate retention value trees should be retained and protected if feasible.
- d. Integrated Development Plan
 - (1) The applicant has submitted an arborist report prepared by Layton Tree Consulting, LLC, dated September 17, 2019 (Updated June 23, 2020) that contains an Integrated Development Plan (IDP) (see Attachment 4). An IDP allows the City to consider all tree retention and removals at the time of plat approval, rather than at the subsequent grading and building permit stages.

- (2) **The City's** Development Review Arborist has reviewed the IDP and determined that the specific standards concerning tree retention, removals and site modification have been met.

2. Conclusion: The proposed Tree Retention Plan complies with the applicable City tree retention requirements. As part of the grading and building permit applications, the applicant should submit a Tree Retention Plan consistent with the approved IDP in Attachment 4.

VI. SUBSEQUENT MODIFICATIONS

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

VII. SHORT PLAT DOCUMENTS – RECORDATION – TIME LIMIT (KMC 22.20.370)

The short plat must be recorded with King County within five (5) years of the date of approval or the decision becomes void; provided, however, that in the event judicial review is initiated, the running of the five (5) years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the recording of the short plat.

VIII. APPENDICES

Attachments 1 through 4 are attached.

1. Vicinity Map
2. Short Plat Map and Integrated Development Plan
3. Development Standards
4. Arborist Report

IX. PARTIES OF RECORD

Applicant: Mike Smith
Merit Homes Inc.
811 Kirkland Ave, Suite 200
Kirkland, WA 98033

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

**Adsit Short Plat
SUB20-00171**

Subject Property



ADSIT SHORT PLAT

A PORTION OF THE SE 1/4, OF THE NW 1/4,
SECTION 9, TOWNSHIP 25 NORTH, RANGE 5 EAST, W.M.
CITY OF KIRKLAND, KING COUNTY, WASHINGTON

ATTACHMENT 1 SHORT PLAT CITY OF KIRKLAND

FILE NO: SUB20-

ACKNOWLEDGEMENTS, DECLARATIONS, DEDICATION, AND RESTRICTIONS (R.C.W. 58.17.165)

KNOW ALL PEOPLE BY THESE PRESENTS THAT WE, THE UNDERSIGNED BEING ALL OF THE OWNERS OF THE LAND HEREBY SHORT SUBDIVIDED, HEREBY DECLARE THIS SHORT PLAT TO BE THE GRAPHIC REPRESENTATION OF THE SHORT SUBDIVISION MADE HEREBY, AND DO HEREBY DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL STREETS AND AVENUES NOT SHOWN AS PRIVATE HEREON AND DEDICATE THE USE THEREOF FOR ALL PUBLIC PURPOSES NOT INCONSISTENT WITH THE USE THEREOF FOR PUBLIC HIGHWAY PURPOSES, AND ALSO THE RIGHT TO MAKE ALL NECESSARY SLOPES FOR CUTS AND FILLS UPON THE LOTS SHOWN HEREON IN THE ORIGINAL REASONABLE GRADING OF SAID STREETS AND AVENUES, AND FURTHER DEDICATE TO THE USE OF THE PUBLIC ALL THE EASEMENTS AND TRACTS SHOWN ON THIS SHORT PLAT FOR ALL PUBLIC PURPOSES AS INDICATED HEREON, INCLUDING BUT NOT LIMITED TO PARKS, OPEN SPACE, UTILITIES AND DRAINAGE UNLESS SUCH EASEMENTS OR TRACTS ARE SPECIFICALLY IDENTIFIED ON THIS SHORT PLAT AS BEING DEDICATED OR CONVEYED TO A PERSON OR ENTITY OTHER THAN THE PUBLIC.

FURTHER, THE UNDERSIGNED OWNERS OF THE LAND HEREBY SHORT SUBDIVIDED WAIVE FOR THEMSELVES, THEIR HEIRS, AND ASSIGNS AND ANY PERSON OR ENTITY DERIVING TITLE FROM THE UNDERSIGNED, ANY AND ALL CLAIMS FOR DAMAGES AGAINST THE CITY OF KIRKLAND, ITS SUCCESSORS AND ASSIGNS WHICH MAY BE OCCASIONED BY THE ESTABLISHMENT, CONSTRUCTION, OR MAINTENANCE, OF ROADS AND/OR DRAINAGE SYSTEMS WITHIN THIS SHORT SUBDIVISION OTHER THAN CLAIMS RESULTING FROM INADEQUATE MAINTENANCE BY THE CITY OF KIRKLAND.

FURTHER, THE UNDERSIGNED OWNERS OF THE LAND HEREBY SHORT SUBDIVIDED AGREE FOR THEMSELVES, THEIR HEIRS AND ASSIGNS TO INDEMNIFY AND HOLD THE CITY OF KIRKLAND, ITS SUCCESSORS AND ASSIGNS, HARMLESS FROM ANY DAMAGE, INCLUDING ANY COSTS OF DEFENSE, CLAIMED BY PERSONS WITHIN OR WITHOUT THIS SHORT SUBDIVISION TO HAVE BEEN CAUSED BY ALTERATIONS OF THE GROUND SURFACE, VEGETATION, DRAINAGE, OR SURFACE OR SUBSURFACE WATER FLOWS WITHIN THIS SHORT SUBDIVISION OR BY ESTABLISHMENT, CONSTRUCTION OR MAINTENANCE OF THE ROADS WITHIN THIS SHORT SUBDIVISION. PROVIDED, THIS WAIVER AND INDEMNIFICATION SHALL NOT BE CONSTRUED AS RELEASING THE CITY OF KIRKLAND, ITS SUCCESSORS OR ASSIGNS, FROM LIABILITY FOR DAMAGES, INCLUDING THE COST OF DEFENSE, RESULTING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY OF KIRKLAND, ITS SUCCESSORS, OR ASSIGNS.

THIS SUBDIVISION DEDICATION, WAIVER OF CLAIMS AND AGREEMENT TO HOLD HARMLESS IS MADE WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF SAID OWNER.

IN WITNESS WHEREOF WE SET OUT HANDS AND SEALS.

MERIT HOMES INC

ITS:

ACKNOWLEDGEMENTS

STATE OF WASHINGTON }
COUNTY OF _____ } SS.

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT _____ IS THE PERSON WHO APPEARED BEFORE ME AND SAID PERSON ACKNOWLEDGED THAT (S)HE SIGNED THIS INSTRUMENT, ON OATH STATED (S)HE WAS AUTHORIZED TO EXECUTE THE INSTRUMENT AND ACKNOWLEDGED IT AS THE _____ OF MERIT HOMES INC, A WASHINGTON CORPORATION, TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTY FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.

DATED THIS _____
SIGNATURE _____
TITLE _____
MY APPOINTMENT EXPIRES _____

LEGAL DESCRIPTION

THE SOUTH 120 FEET OF THE NORTH 170 FEET OF LOTS 6 AND 7, BLOCK 2, ORCHARD HEIGHTS, ACCORDING TO THE PLAT RECORDED IN VOLUME 19 OF PLATS, PAGE 89, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION WITHIN THE SOUTH 130 FEET OF SAID LOT 7;

AND EXCEPT THE WEST 61.3 FEET OF SAID LOT 7;

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR ROADWAY AND UTILITIES OVER THAT PORTION OF THE NORTH 50 FEET OF LOTS 6 AND 7, BLOCK 2, ORCHARD HEIGHTS, ACCORDING TO THE PLAT RECORDED IN VOLUME 19 OF PLATS, PAGE 89, RECORDS OF KING COUNTY, WASHINGTON, ADJOINING ON THE NORTH;

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

RESTRICTIONS

1. THIS SITE IS SUBJECT TO COVENANTS, CONDITIONS, RESTRICTIONS, RECITALS, RESERVATIONS, EASEMENTS, EASEMENT PROVISIONS, DEDICATIONS, BUILDING SETBACK LINES, NOTES, STATEMENTS, AND OTHER MATTERS, IF ANY, AS SET FORTH ON THE PLAT OF ORCHARD HEIGHTS, AN ADDITION TO THE CITY OF SEATTLE, RECORDED UNDER KING COUNTY RECORDING NUMBER 733752.
2. THIS SITE IS SUBJECT TO AN ELECTRICAL TRANSMISSION FACILITIES EASEMENT AS DISCLOSED BY INSTRUMENT RECORDED UNDER KING COUNTY RECORDING NUMBER 2500609.
3. THIS SITE IS SUBJECT TO AN ELECTRICAL TRANSMISSION FACILITIES EASEMENT AS DISCLOSED BY INSTRUMENT RECORDED UNDER KING COUNTY RECORDING NUMBER 2663359.

CITY OF KIRKLAND DEPARTMENT OF PLANNING AND BUILDING

EXAMINED, REVIEWED, AND APPROVED BY THE CITY OF KIRKLAND PURSUANT TO THE SHORT SUBDIVISION PROVISIONS OF TITLE 22 (LAND SUBDIVISION), KIRKLAND MUNICIPAL CODE, THIS _____ DAY OF _____, 20 _____,

DIRECTOR, DEPARTMENT OF PLANNING AND BUILDING

DEPARTMENT OF ASSESSMENT

EXAMINED AND APPROVED THIS _____ DAY OF _____, 20 _____.

KING COUNTY ASSESSOR

RECORDER'S CERTIFICATE

FILED FOR RECORD THIS _____ DAY OF _____, 2020 AT _____ IN BOOK _____ OF SURVEYS AT PAGE _____ AT THE REQUEST OF ROBERT D. WEST.

MANAGER

SUPT. OF RECORDS

NOTES

1. ADDRESSING SHALL BE IN ACCORDANCE WITH KIRKLAND BUILDING DIVISION POLICY MANUAL NUMBER 9.001, ASSIGNMENT OF STREET NUMBERS AND ROAD SIGNAGE.
2. **UTILITY MAINTENANCE:**
EACH PROPERTY OWNER SHALL BE RESPONSIBLE FOR MAINTENANCE OF THE SANITARY SEWER OR STORM WATER STUB, RAIN GARDENS, PERMEABLE PAVEMENT, OR ANY OTHER INFILTRATION FACILITIES (KNOWN AS LOW IMPACT DEVELOPMENT) FROM THE POINT OF USE ON THEIR OWN PROPERTY TO THE POINT OF CONNECTION IN THE CITY SANITARY SEWER MAIN OR STORM WATER MAIN. ANY PORTION OF A SANITARY SEWER OR SURFACE WATER STUB, RAIN GARDEN, PERMEABLE PAVEMENT, OR ANY INFILTRATION FACILITIES, WHICH JOINTLY SERVES MORE THAN ONE PROPERTY, SHALL BE JOINTLY MAINTAINED AND REPAIRED BY THE PROPERTY OWNERS SHARING SUCH STUB. THE JOINT USE AND MAINTENANCE SHALL RUN WITH THE LAND AND WILL BE BINDING ON ALL PROPERTY OWNERS WITHIN THIS SUBDIVISION, INCLUDING THEIR HEIRS, SUCCESSORS AND ASSIGNS.
3. **PUBLIC RIGHT-OF-WAY SIDEWALK AND VEGETATION MAINTENANCE:**
EACH PROPERTY OWNER SHALL BE RESPONSIBLE FOR KEEPING THE SIDEWALK ABUTTING THE SUBJECT PROPERTY CLEAN AND LITTER FREE. THE PROPERTY OWNER SHALL ALSO BE RESPONSIBLE FOR THE MAINTENANCE OF THE VEGETATION WITHIN THE ABUTTING LANDSCAPE STRIP. THE MAINTENANCE SHALL RUN WITH THE LAND AND WILL BE BINDING ON ALL PROPERTY OWNERS WITHIN THIS SUBDIVISION, INCLUDING THEIR HEIRS, SUCCESSORS AND ASSIGNS.
4. **MAINTENANCE OF ON-SITE PRIVATE STORMWATER FACILITIES:**
EACH LOT WITHIN THE SUBDIVISION HAS A STORMWATER FACILITY (INFILTRATION TRENCH, DRY WELLS, DISPERSION SYSTEMS, RAIN GARDEN, AND PERMEABLE PAVEMENT) WHICH IS DESIGNED TO AID STORMWATER FLOW CONTROL FOR THE DEVELOPMENT. THE STORMWATER FACILITY WITHIN THE PROPERTY SHALL BE OWNED, OPERATED AND MAINTAINED BY THE OWNER. THE CITY OF KIRKLAND SHALL HAVE THE RIGHT TO INGRESS AND EGRESS THE PROPERTY FOR INSPECTION OF AND TO REASONABLE MONITORING OF THE PERFORMANCE, OPERATIONAL FLOWS, OR DEFECTS OF THE STORMWATER/FLOW CONTROL FACILITY. IF THE CITY OF KIRKLAND DETERMINES RELATED MAINTENANCE OR REPAIR WORK OF THE STORMWATER FACILITY IS REQUIRED, THE CITY OF KIRKLAND SHALL GIVE NOTICE TO THE OWNER OF THE SPECIFIC MAINTENANCE AND/OR REPAIR WORK REQUIRED. IF THE ABOVE REQUIRED MAINTENANCE OR REPAIR IS NOT COMPLETED WITHIN THE TIME SET BY THE CITY OF KIRKLAND, THE CITY OF KIRKLAND MAY PERFORM THE REQUIRED MAINTENANCE OR REPAIR, OR CONTRACT WITH A PRIVATE COMPANY CAPABLE OF PERFORMING THE STORMWATER FACILITY MAINTENANCE OR REPAIR AND THE OWNER WILL BE REQUIRED TO REIMBURSE THE CITY FOR ANY SUCH WORK PERFORMED. THE OWNER IS REQUIRED TO OBTAIN WRITTEN APPROVAL FROM THE CITY OF KIRKLAND PRIOR TO REPLACING, ALTERING, MODIFYING OR MAINTAINING THE STORMWATER FACILITY.
5. **LOCAL IMPROVEMENT DISTRICT (LID) WAIVER AGREEMENT:** CHAPTER 110.607.B OF THE KIRKLAND ZONING CODE REQUIRES ALL OVERHEAD UTILITY LINES ALONG THE FRONTAGE OF THE SUBJECT PROPERTY TO BE CONVERTED TO UNDERGROUND UNLESS THE PUBLIC WORKS DIRECTOR DETERMINES THAT IT IS INFEASIBLE TO DO SO AT THE TIME OF THE SUBDIVISION RECORDING. IF IT IS DETERMINED TO BE INFEASIBLE, THEN THE PROPERTY OWNER SHALL CONSENT TO THE FORMATION OF A LOCAL IMPROVEMENT DISTRICT, HEREAFTER FORMED BY THE CITY OR OTHER PROPERTY OWNERS. DURING REVIEW OF THIS SUBDIVISION IT WAS DETERMINED THAT IT WAS INFEASIBLE TO CONVERT THE OVERHEAD UTILITY LINES TO UNDERGROUND ALONG THE FRONTAGE OF THIS SUBDIVISION ON 124TH AVENUE NE AND NE 73RD PLACE. THEREFORE, IN CONSIDERATION OF DEFERRING THE REQUIREMENT TO UNDERGROUND THE OVERHEAD UTILITY LINES AT THE TIME OF THE SUBDIVISION RECORDING, THE PROPERTY OWNER AND ALL FUTURE PROPERTY OWNERS OF LOTS WITHIN THIS SUBDIVISION HEREBY CONSENT TO THE FORMATION OF A LOCAL IMPROVEMENT DISTRICT HEREAFTER FORMED BY THE CITY OR OTHER PROPERTY OWNERS.
6. THE PRIVATE WATER AND SEWER EASEMENT SHOWN ON LOT 2 IS TO THE BENEFIT OF THE OWNER OF LOT 3. THE OWNER OF SAID LOT IS HEREBY RESPONSIBLE FOR THE MAINTENANCE OF THEIR RESPECTIVE PRIVATE WATER AND SEWER FACILITIES AND SHALL SHARE EQUALLY IN THE MAINTENANCE RESPONSIBILITIES OF THE PRIVATE WATER AND SEWER FACILITIES USED IN COMMON WITHIN SAID EASEMENT.
7. THE 5' PRIVATE STORM DRAINAGE EASEMENT SHOWN ON LOT 2 IS TO THE BENEFIT OF THE OWNERS OF LOTS 1 AND 2. THE OWNERS OF SAID LOTS ARE HEREBY RESPONSIBLE FOR THE MAINTENANCE OF THEIR RESPECTIVE PRIVATE STORM DRAINAGE FACILITIES AND SHALL SHARE EQUALLY IN THE MAINTENANCE RESPONSIBILITIES OF THE PRIVATE STORM DRAINAGE FACILITIES USED IN COMMON WITHIN SAID EASEMENT.

SURVEYOR'S CERTIFICATE

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF _____

IN _____



ROBERT D WEST, PLS
CERTIFICATE NO. 44653

SHEET INDEX

1. COVER SHEET
2. PROPOSED LOT CONFIGURATION, EASEMENTS AND UTILITIES
3. EXISTING CONDITIONS



CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE
PLANNING
SURVEYING

12100 NE 195th St, Suite 300 Bothell, Washington 98011 425.885.7877

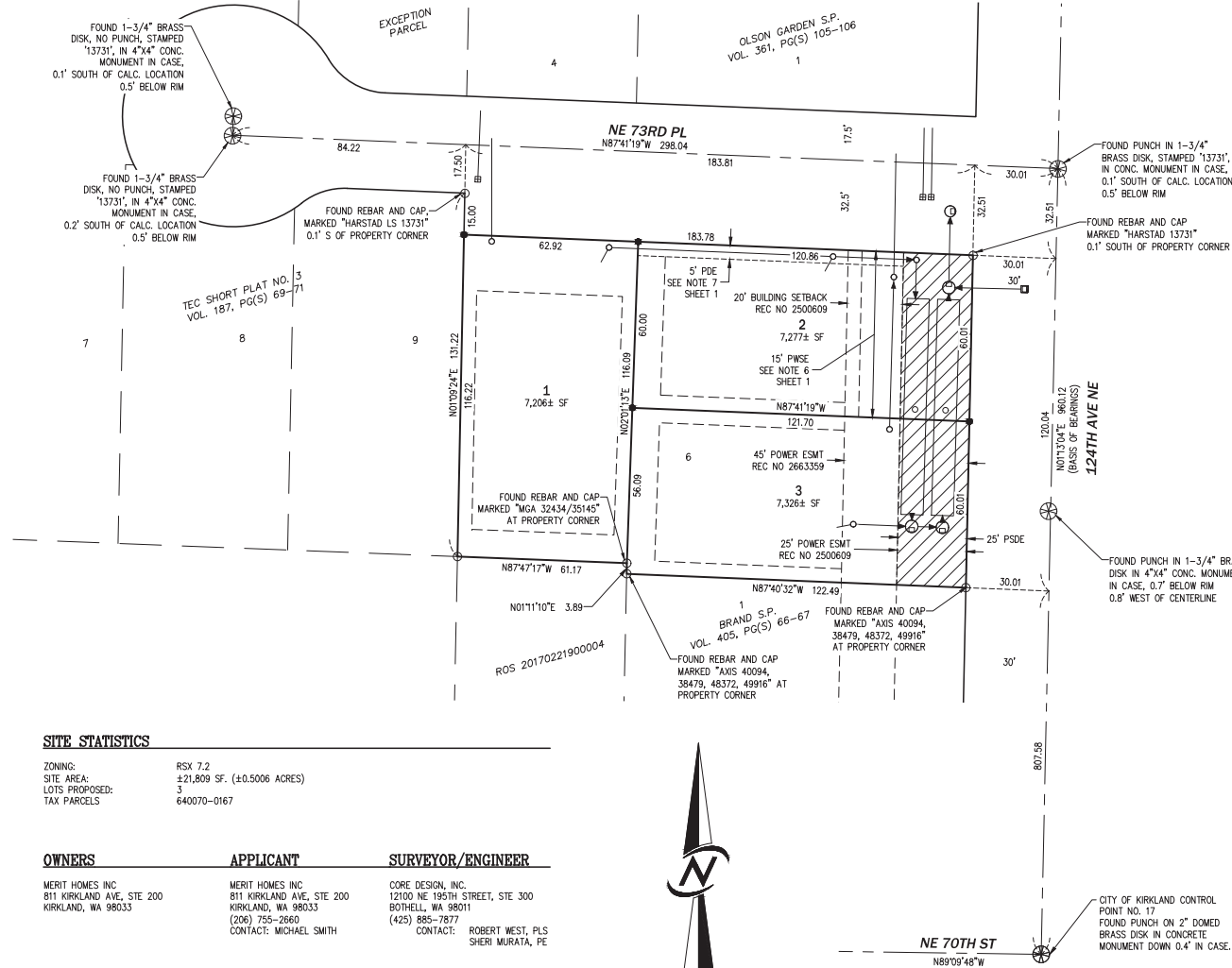
JOB NO. 19165
SHEET 1 OF 3

ADSIT SHORT PLAT

A PORTION OF THE SE 1/4, OF THE NW 1/4,
SECTION 9, TOWNSHIP 25 NORTH, RANGE 5 EAST, W.M.
CITY OF KIRKLAND, KING COUNTY, WASHINGTON

ATTACHMENT 1 SHORT PLAT CITY OF KIRKLAND

FILE NO: SUB20-



SITE STATISTICS

ZONING: RSX 7.2
SITE AREA: ±21,809 SF. (±0.5006 ACRES)
LOTS PROPOSED: 3
TAX PARCELS: 640070-0167

OWNERS

MERIT HOMES INC.
811 KIRKLAND AVE, STE 200
KIRKLAND, WA 98033

APPLICANT

MERIT HOMES INC.
811 KIRKLAND AVE, STE 200
KIRKLAND, WA 98033
(206) 755-2660
CONTACT: MICHAEL SMITH

SURVEYOR/ENGINEER

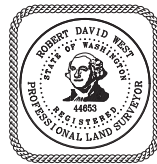
CORE DESIGN, INC.
12100 NE 195TH STREET, STE 300
BOTHELL, WA 98011
(425) 885-7877
CONTACT: ROBERT WEST, PLS
SHERI MURATA, PE



SCALE: 1" = 30'

0 15 30 60

MARCH 11, 2020



BASIS OF BEARINGS

N 01°13'04" E BETWEEN THE FOUND MONUMENTS IN THE CENTERLINE OF 124TH AVE NE AT THE INTERSECTIONS WITH NE 70TH ST & NE 75TH ST PER CITY OF KIRKLAND SHORT PLAT NO. SUB18-00461 FILED UNDER AUDITOR'S FILE NO. 20190531900002, RECORDS OF KING COUNTY, WASHINGTON.

REFERENCES

- RECORD OF SURVEY BY MEAD GILMAN & ASSOC., RECORDED UNDER AUDITORS FILE NO. 20170221900004, RECORDS OF KING COUNTY, WASHINGTON.
- SHORT PLAT NO. SUB18-00461, BRAND SHORT PLAT, RECORDED UNDER VOLUME 405, PAGE(S) 66-67, RECORDS OF KING COUNTY, WASHINGTON.
- SHORT PLAT NO. SPL04-00010, TEC SHORT PLAT NO. 3, RECORDED IN VOLUME 187, PAGE(S) 69-71, RECORDS OF KING COUNTY, WASHINGTON.
- PLAT OF ORCHARD HEIGHTS, RECORDED IN VOLUME 19 OF PLATS, PG(S) 89, RECORDS OF KING COUNTY, WASHINGTON.
- SHORT PLAT NO. SUB16-00944, OLSON GARDEN SHORT PLAT, RECORDED IN VOLUME 361, PAGE(S) 1005-106, RECORDS OF KING COUNTY, WASHINGTON.

SURVEYOR'S NOTES

- ALL TITLE INFORMATION SHOWN ON THIS MAP HAS BEEN EXTRACTED FROM CHICAGO TITLE INSURANCE COMPANY SUBDIVISION GUARANTEE NUMBER 0170104-ETU, DATED FEBRUARY 20, 2020. IN PREPARING THIS MAP, CORE DESIGN, INC. HAS CONDUCTED NO INDEPENDENT TITLE SEARCH NOR IS CORE DESIGN, INC. AWARE OF ANY TITLE ISSUES AFFECTING THE SURVEYED PROPERTY OTHER THAN THOSE SHOWN ON THE MAP AND DISCLOSED BY THE REFERENCED CHICAGO TITLE INSURANCE COMPANY GUARANTEE. CORE DESIGN, INC. HAS RELIED WHOLLY ON CHICAGO TITLE INSURANCE COMPANY'S REPRESENTATIONS OF THE TITLE'S CONDITION TO PREPARE THIS SURVEY AND THEREFORE CORE DESIGN, INC. QUALIFIES THE MAP'S ACCURACY AND COMPLETENESS TO THAT EXTENT.
- THIS SURVEY REPRESENTS VISIBLE PHYSICAL IMPROVEMENT CONDITIONS EXISTING ON MAY 31, 2016. ALL SURVEY CONTROL INDICATED AS "FOUND" WAS RECOVERED FOR THIS PROJECT IN MAY, 2016.
- PROPERTY AREA = 21,809± SQUARE FEET (0.5006± ACRES).
- ALL DISTANCES ARE IN FEET.
- THIS IS A FIELD TRAVERSE SURVEY. A THREE SECOND COMBINED ELECTRONIC TOTAL STATION WAS USED TO MEASURE THE ANGULAR AND DISTANCE RELATIONSHIPS BETWEEN THE CONTROLLING MONUMENTATION AS SHOWN. CLOSURE RATIOS OF THE TRAVERSE MET OR EXCEEDED THOSE SPECIFIED IN WAC 332-130-090. ALL MEASURING INSTRUMENTS AND EQUIPMENT ARE MAINTAINED IN ADJUSTMENT ACCORDING TO MANUFACTURER'S SPECIFICATIONS.

LEGEND

- SET 1/2" REBAR WITH YELLOW PLASTIC CAP STAMPED "CORE 44653"

PSDE PUBLIC STORM DRAINAGE EASEMENT, SEE NOTE ON SHEET 1

PWSE PRIVATE WATER AND SEWER EASEMENT, SEE NOTE 6, SHEET 1

PDE PRIVATE DRAINAGE EASEMENT, SEE NOTE 7, SHEET 1



CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE
PLANNING
SURVEYING

12100 NE 195th St, Suite 300 Bothell, Washington 98011 425.885.7877

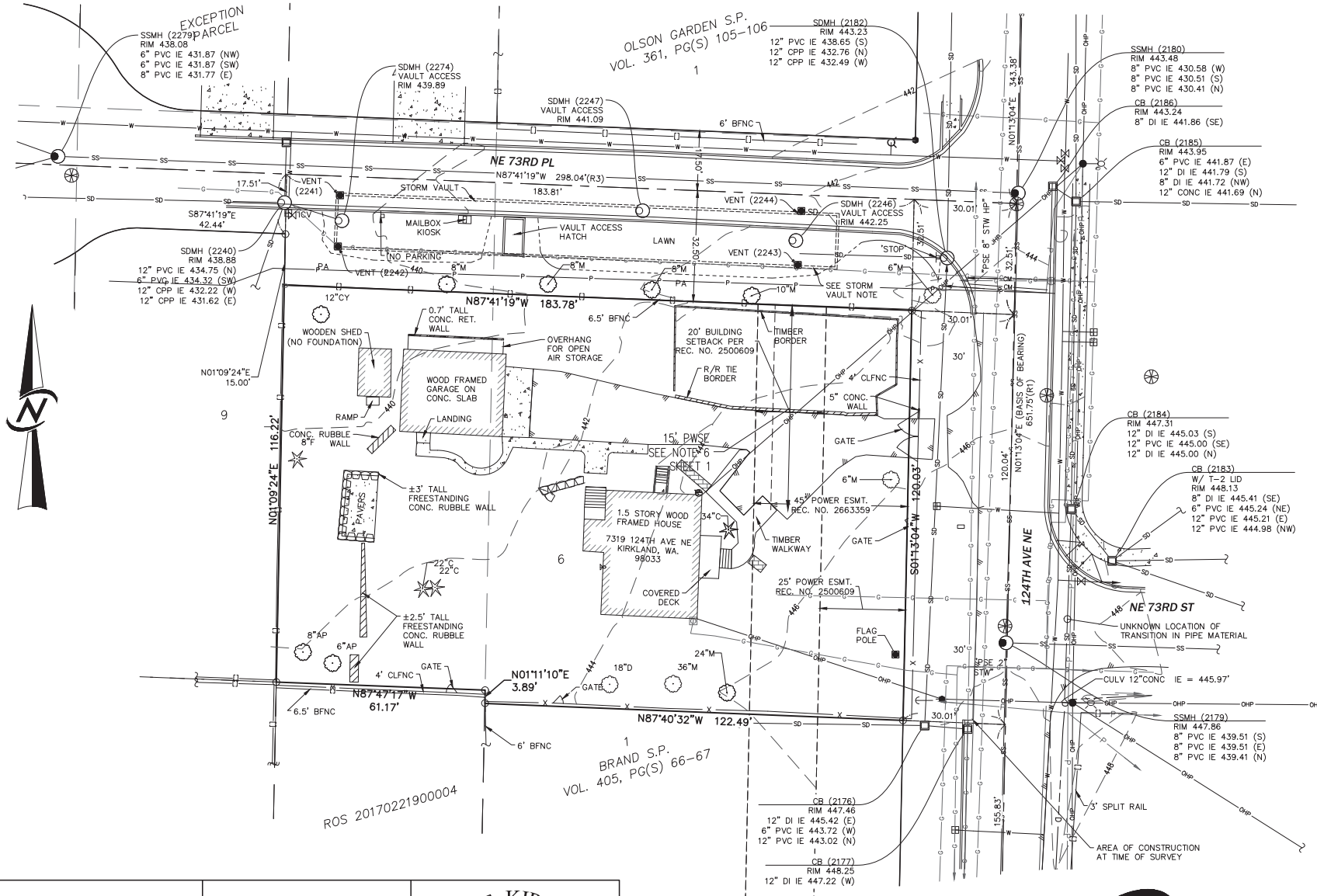
JOB NO. 19165
SHEET 2 OF 3

ADSIT SHORT PLAT

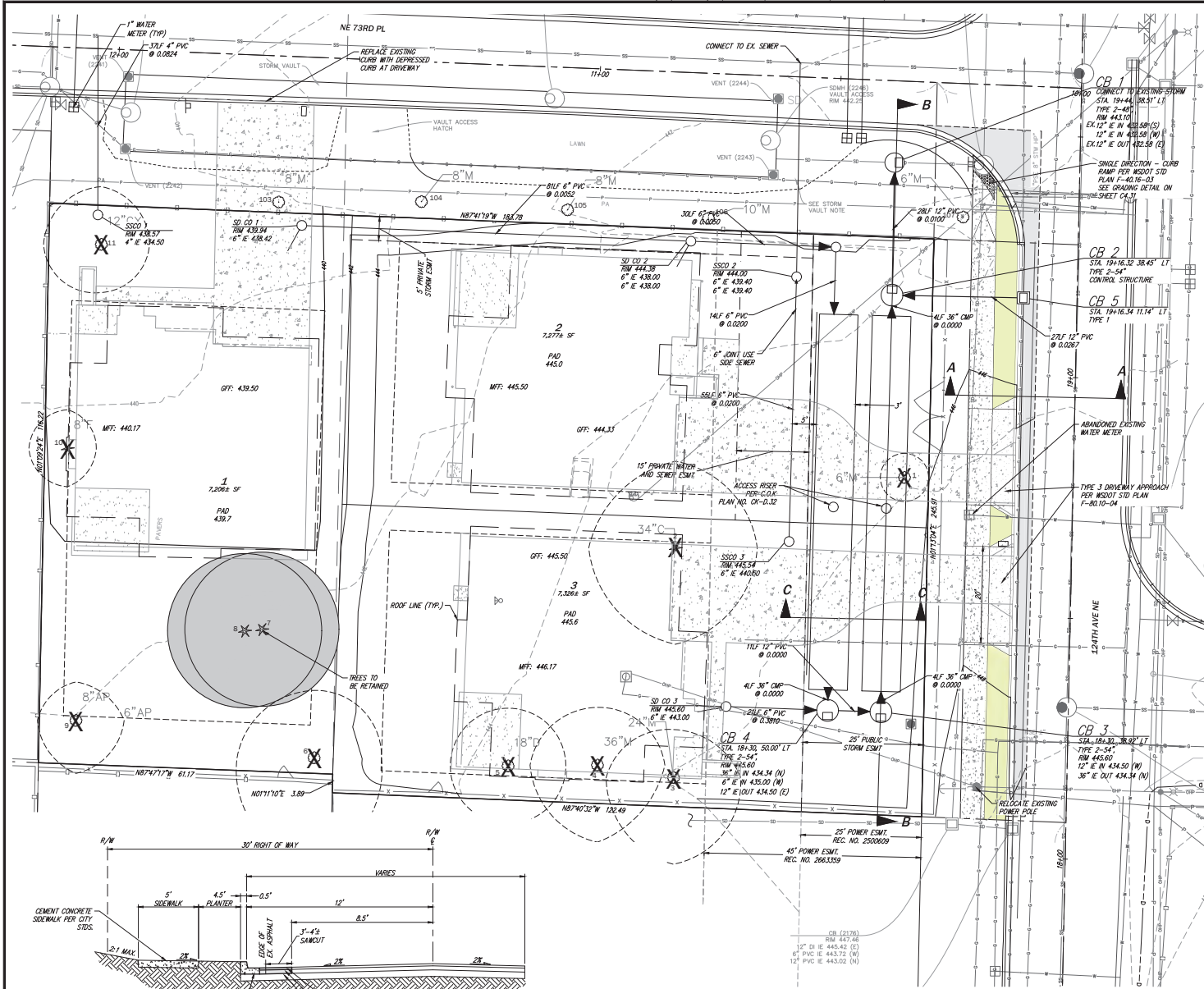
A PORTION OF THE SE 1/4, OF THE NW 1/4,
SECTION 9, TOWNSHIP 25 NORTH, RANGE 5 EAST, W.M.
CITY OF KIRKLAND, KING COUNTY, WASHINGTON

ATTACHMENT 1 SHORT PLAT CITY OF KIRKLAND

FILE NO: SUB20-



SE 1/4, NW 1/4, SEC. 9, TWP. 25N., RGE. 5E., W.M.



DATUM

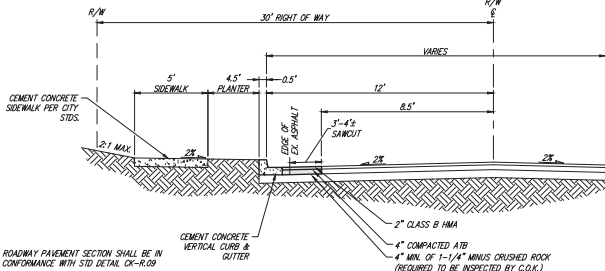
HORIZONTAL: NAD 83/91 PER CITY OF KIRKLAND
VERTICAL: NAVD 88 PER CITY OF KIRKLAND
ORIGINATING BENCHMARK:
CITY OF KIRKLAND MONUMENT NO. 16, FOUND 3" BRASS IN CONCRETE MONUMENT DOWN 1.4" IN CASE, PER CITY OF KIRKLAND SURVEY CONTROL POINT STANDARD DATA SHEET, VISITED 8/2013, AT THE INTERSECTION OF 135ND AVE NE & NE 70TH ST
VERTICAL DATUM: NAVD 88
ELEVATION: 466.28'

TEMPORARY BENCHMARK

- TEMP 'A':
SET MAG NAIL WITH AXIS CONTROL WASHER IN ASPHALT ALONG THE EASTERN SIDE OF 124TH AVE NE, 268' NORTH OF THE INTERSECTION WITH NE 73RD ST.
ELEVATION: 445.47'
- TEMP 'B':
BRASS BOLT IN MONUMENT CASE, STAMPED '13731', 0.5" BELOW RIM, LOCATED AT THE CENTERLINE WEST END OF NE 73RD PL.
ELEVATION: 437.22'

LEGAL DESCRIPTION

LEGAL DESCRIPTION AND EASEMENTS FOR PROPERTY OBTAINED BY TITLE COMMITMENT NO. 0148119-ETL, DATED APRIL 10, 2019, PROVIDED BY CHICAGO TITLE COMPANY:
THE SOUTH 120 FEET OF THE NORTH 170 FEET OF LOTS 6 AND 7, BLOCK 2, ORCHARD HEIGHTS, ACCORDING TO THE PLAT RECORDED IN VOLUME 19 OF PLATS, PAGE 88, RECORDS OF KING COUNTY, WASHINGTON;
EXCEPT THAT PORTION WITHIN THE SOUTH 120 FEET OF SAID LOT 7, AND EXCEPT THE WEST 61.3 FEET OF SAID LOT 7;
TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR ROADWAY AND UTILITIES OVER THAT PORTION OF THE NORTH 50 FEET OF LOTS 6 AND 7, BLOCK 2, ORCHARD HEIGHTS, ACCORDING TO THE PLAT RECORDED IN VOLUME 19 OF PLATS, PAGE 88, RECORDS OF KING COUNTY, WASHINGTON, ADJOINING ON THE NORTH;
SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.



CIVIL ENGINEERING LANDSCAPE ARCHITECTURE PLANNING SURVEYING	
CORE DESIGN	
12100 NE 155th St, Suite 300, Redmond, Washington 98011 425.885.7877	
ROAD AND UTILITY PLAN ADSDIT SHORT PLAT MERIT HOMES	
811 KIRKLAND AVE S SUITE 200 KIRKLAND, WA 98033	
DATE	MARCH 2020 (1ST SUB)
DESIGNED	SHERI H. MARITA, P.E.
DRAWN	STEVE E. SIMMONS
APPROVED	SHERI H. MARITA, P.E.
PROJECT MANAGER	ROBERT D. WEST, P.L.S.
SHEET	OF
C4.01	11
PROJECT NUMBER 19165	



CITY OF KIRKLAND
 Planning and Building Department
 123 5th Avenue, Kirkland, WA 98033
 425.587.3600 - www.kirklandwa.gov

SHORT PLAT DEVELOPMENT STANDARDS LIST

File: SUB20-00171

This application must comply with all applicable standards. The listing below outlines those standards in a typical development sequence.

KMC refers to Kirkland Municipal Code, KZC refers to Kirkland Zoning Code

TREE PLAN SUMMARY

KMC 22.28.210 & KZC 95.30 Significant Trees.

A Tree Retention Plan was submitted with the short plat in which the location of all proposed improvements were known. Therefore KZC 95.30.4 & 95.30.5 – known as an Integrated Development Plan, or IDP, applies in regards to tree retention. The approved IDP is included as Attachment 4 of the staff report. There are 11 significant trees on the site, of which 2 are viable. These trees have been assessed by staff and **the City's** Arborist. They are identified by number in the following chart.

Lot 1 Tree Density Meeting Requirements: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
Lot Size (SF)	Tree Density Required (round up)	Existing Credits to Remain	Supplemental Trees Required
7,206	5	28.5	0

Lot 1 On-site Significant Tree Typing						
Tree #	DBH	High Retention Value	Moderate Retention Value	Low Retention Value	Proposed for Retention	Tree Density Credit
6	25, 23 (34)			X – invasive		
7*	26		X		Yes	13.5
8*	29		X		Yes	15
9	10		X		No	
10*	9	X			No	
11	14		X		No	
* denotes conifer trees which meet 1.5 times tree density credit per 95.33(1)(b)						

Lot 2 Tree Density Meeting Requirements: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Lot Size (SF)	Tree Density Required (round up)	Existing Credits to Remain	Supplemental Trees Required
7,277	5	0	5

Lot 2 On-site Significant Tree Typing						
Tree #	DBH	High Retention Value	Moderate Retention Value	Low Retention Value	Proposed for Retention	Tree Density Credit
1	6			X – NV	No	
* denotes conifer trees which meet 1.5 times tree density credit per 95.33(1)(b)						

Lot 3 Tree Density Meeting Requirements: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Lot Size (SF)	Tree Density Required (round up)	Existing Credits to Remain	Supplemental Trees Required
7,326	5	0	5

Lot 3 On-site Significant Tree Typing						
Tree #	DBH	High Retention Value	Moderate Retention Value	Low Retention Value	Proposed for Retention	Tree Density Credit
2*	29		X		No	0
3	28		X		No	0
4	37		X		No	0
5	22			X - invasive	No	0
* denotes conifer trees which meet 1.5 times tree density credit per 95.33(1)(b)						

No trees are to be removed with an approved short plat or subdivision permit. Based on the approved IDP, the applicant shall retain and protect all viable trees throughout the development of each single-family lot except for those trees allowed to be removed for the installation of the plat infrastructure improvements *and* construction of the residence and associated site improvements. Modifications to the Tree Retention Plan must be approved per KZC 95.30(6)(b).

PRIOR TO RECORDING

KMC 22.20.362 Short Plat - Title Report. The applicant shall submit a title company certification which is not more than 30 calendar days old verifying ownership of the subject property on the date that the property owner(s) (as indicated in the report) sign(s) the short plat documents; containing a legal description of the entire parcel to be subdivided; describing any easements or restrictions affecting the property with a description, purpose and reference **by auditor's file number and/or recording number**; any encumbrances on the property; and any delinquent taxes or assessments on the property.

KMC 22.20.366 Short Plat - Lot Corners. The exterior short plat boundary and all interior lot corners shall be set by a registered land surveyor. If the applicant submits a bond for construction of short plat improvements and installation of permanent interior lot corners, the City may allow installation of temporary interior lot corners until the short plat improvements are completed.

KMC 22.20.390 Short Plat - Improvements. The owner shall complete or bond all required right-of-way, easement, utility and other similar improvements.

KMC 22.32.010 Utility System Improvements. All utility system improvements must be

designed and installed in accordance with all standards of the applicable serving utility.

KMC 22.32.020 Water System. The applicant shall install a system to provide potable water, adequate fire flow and all required fire-fighting infrastructure and appurtenances to each lot created.

KMC 22.32.030 Stormwater Control System. The applicant shall comply with the construction phase and permanent stormwater control requirements of the Municipal Code.

KMC 22.32.040 Sanitary Sewer System. The developer shall install a sanitary sewer system to serve each lot created.

KMC 22.32.050 Transmission Line Undergrounding. The applicant shall comply with the utility lines and appurtenances requirements of the Zoning Code.

KMC 22.32.080 Performance Bonds. In lieu of installing all required improvements and components as part of a plat or short plat, the applicant may propose to post a bond, or submit evidence that an adequate security device has been submitted and accepted by the service provider (City of Kirkland and/or Northshore Utility District), for a period of one year to ensure completion of these requirements within one year of plat/short plat approval.

<p>LAND SURFACE MODIFICATION AND/OR BUILDING PERMIT REQUIREMENTS</p>
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KZC 85.45 Liability. The applicant shall enter into an agreement with the City, which runs with the property, in a form acceptable to the City Attorney, indemnifying the City for any damage resulting from development activity on the subject property which is related to the physical condition of the property.

KZC 95.35.2.b.(3)(b)i Tree Protection Techniques. A description and location of tree protection measures during construction for trees to be retained must be shown on demolition and grading plans.

KZC 95.34 Tree Protection. Prior to development activity or initiating tree removal on the site, vegetated areas and individual trees to be preserved shall be protected from potentially damaging activities. Protection measures for trees to be retained shall include (1) placing no construction material or equipment within the protected area of any tree to be retained; (2) providing a visible temporary protective chain link fence at least 4 feet in height around the protected area of retained trees or groups of trees until the Planning Official authorizes their removal; (3) installing visible signs spaced no further apart than 15 feet along the protective fence stating **"Tree Protection Area, Entrance Prohibited"** with the City code enforcement phone number; (4) prohibiting excavation or compaction of earth or other damaging activities within the barriers unless approved by the Planning Official and supervised by a qualified professional; and (5) ensuring that approved landscaping in a protected zone shall be done with light machinery or by hand.

KZC 95.45 Tree Installation Standards. All supplemental trees to be planted shall conform to the Kirkland Plant List. All installation standards shall conform to Kirkland Zoning Code Section 95.45.

KZC 110.60.5 Street Trees. All trees planted in the right-of-way must be approved as to species by the City. All trees must be two inches in diameter at the time of planting as measured using the standards of the American Association of Nurserymen with a canopy that starts at least six feet above finished grade and does not obstruct any adjoining sidewalks or driving lanes.

KZC 95.52 Prohibited Vegetation. Plants listed as prohibited in the Kirkland Plant List shall not be planted in the City.

105.10.2 Pavement Setbacks. The paved surface in an access easement or tract shall be set back at least 5 feet from any adjacent property which does not receive access from that easement or tract. An access easement or tract that has a paved area greater than 10 feet in width must be screened from any adjacent property that does not receive access from it. Screening standards are outlined in this section.

KZC 105.47 Required Parking Pad. Except for garages accessed from an alley, garages serving detached dwelling units in low density zones shall provide a minimum 20-foot by 20-foot parking pad between the garage and the access easement, tract, or right-of-way providing access to the garage.

KZC 115.25 Work Hours. It is a violation of this Code to engage in any development activity or to operate any heavy equipment before 7:00 am. or after 8:00 pm Monday through Friday, or before 9:00 am or after 6:00 pm Saturday. No development activity or use of heavy **equipment may occur on Sundays or on the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day.** The applicant will be required to comply with these regulations and any violation of this section will result in enforcement action, unless written permission is obtained from the Planning Official.

KZC 115.40 Fence Location. Fences over 6 feet in height may not be located in a required setback yard. A detached dwelling unit abutting a neighborhood access or collector street may not have a fence over 3.5 feet in height within the required front yard. No fence may be placed within a high waterline setback yard or within any portion of a north or south property line yard, which is coincident with the high waterline setback yard.

KZC 115.42 Floor Area Ratio (F.A.R.) Limits. Floor area for detached dwelling units is limited to a maximum floor area ratio in low density residential zones. See Use Zone charts for the maximum percentages allowed. This regulation does not apply within the disapproval jurisdiction of the Houghton Community Council.

KZC 115.43 Garage Requirements for Detached Dwelling Units in Low Density Zones. Detached dwelling units served by an open public alley, or an easement or tract serving as an alley, shall enter all garages from that alley. Whenever practicable, garage doors shall not be placed on the front façade of the house. Side-entry garages shall minimize blank walls. For garages with garage doors on the front façade, increased setbacks apply, and the garage width shall not exceed 50% of the total width of the front façade. These regulations do not apply within the disapproval jurisdiction of the Houghton Community Council. Section 115.43 lists other exceptions to these requirements.

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

KZC 115.90 Calculating Lot Coverage. The total area of all structures and pavement and any other impervious surface on the subject property is limited to a maximum percentage of total lot area. See the Use Zone charts for maximum lot coverage percentages allowed. Section 115.90 lists exceptions to total lot coverage calculations See Section 115.90 for a more detailed explanation of these exceptions.

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

KZC 115.115 Required Setback Yards. This section establishes what structures, improvements and activities may be within required setback yards as established for each use in each zone.

KZC 115.115.3.g Rockerries and Retaining Walls. Rockeries and retaining walls are limited to a maximum height of four feet in a required yard unless certain modification criteria in this section are met. The combined height of fences and retaining walls within five feet of each other in a required yard is limited to a maximum height of 6 feet, unless certain modification criteria in this section are met.

KZC 115.115.3.n Covered Entry Porches. In residential zones, covered entry porches on dwelling units may be located within 13 feet of the front property line if certain criteria in this

section are met. This incentive is not effective within the disapproval jurisdiction of the Houghton Community Council.

KZC 115.115.3.o Garage Setbacks. In low density residential zones, garages meeting certain criteria in this section can be placed closer to the rear property line than is normally allowed in those zones.

KZC 115.115.3.p HVAC and Similar Equipment: These may be placed no closer than five feet of a side or rear property line, and shall not be located within a required front yard; provided, that HVAC equipment may be located in a storage shed approved pursuant to subsection (3)(m) of this section or a garage approved pursuant to subsection (3)(o)(2) of this section. All HVAC equipment shall be baffled, shielded, enclosed, or placed on the property in a manner that will ensure compliance with the noise provisions of KZC 115.95.

KZC 115.115.5.a Driveway Width and Setbacks. For a detached dwelling unit, a driveway and/or parking area shall not exceed 20 feet in width in any required front yard, and shall be separated from other hard surfaced areas located in the front yard by a 5-foot wide landscape strip. Driveways shall not be closer than 5 feet to any side property line unless certain standards are met.

KZC 115.135 Sight Distance at Intersection. Areas around all intersections, including the entrance of driveways onto streets, must be kept clear of sight obstruction as described in this section.

KZC 145.22.2 Public Notice Signs. Within seven (7) calendar days after the end of the 21-day period following the City's final decision on the permit, the applicant shall remove all public notice signs.

PRIOR TO OCCUPANCY

KZC 95.40 Bonds. The City may require a maintenance agreement or bond to ensure compliance with any aspect of the Landscaping chapter.

KZC 95.50.2.b Tree Maintenance. For detached dwelling units, the applicant shall submit a 5-year tree maintenance agreement to the Planning Department to maintain all pre-existing trees designated for preservation and any supplemental trees required to be planted.

KZC 110.60.6 Mailboxes. Mailboxes shall be installed in the development in a location approved by the Postal Service and the Planning Official. The applicant shall, to the maximum extent possible, group mailboxes for units or uses in the development.

KZC 110.75 Bonds. The City may require or permit a bond to ensure compliance with any of the requirements of the Required Public Improvements chapter.

PUBLIC WORKS CONDITIONS**Permit #: SUB20-00171****Project Name: 3 lot SP Merit****Project Address: 7319 124th AVE NE****Date: 4/9/2020****Public Works Staff Contacts****Jamie Ward, Development Engineer****Phone: 425-587-3809 / E-mail: jward@kirklandwa.gov****General Conditions:**

1. All public improvements associated with this project including street and utility improvements, must meet the [City of Kirkland Public Works Pre-Approved Plans and Policies Manual](#). A Public Works Pre-Approved Plans and Policies manual can be purchased from the Public Works Department, or it may be retrieved from the Public Works Department's page at the City of Kirkland's web site.
2. This project will be subject to [Public Works Permit and Connection Fees](#). It is the applicant's responsibility to contact the Public Works Department by phone or in person to determine the fees. The applicant should anticipate the following fees:
 - Water, Sewer, and Surface Water Connection Fees *
 - Side Sewer Inspection Fee *
 - Septic Tank Abandonment Inspection Fee
 - Water Meter Fee *
 - Right-of-way Fee
 - Review and Inspection Fee
 - Building Permits associated with this proposed project will be subject to the traffic, park, and school impact fees per Chapter 27 of the Kirkland Municipal Code. The impact fees shall be paid prior to issuance of the Building Permit(s). Any existing buildings within this project which are demolished will receive a Traffic Impact Fee credit, Park Impact Fee Credit and School Impact Fee Credit. This credit will be applied to the first Building Permits that are applied for within the project. The credit amount for each demolished building will be equal to the most currently adopted Fee schedule.

** Fee to be paid with the issuance of a Building Permit.*

3. All street and utility improvements shall be permitted by obtaining a [Land Surface Modification \(LSM\) Permit](#), including the required [LSM Checklist](#).
4. Submittal of Building Permits within a subdivision prior to recording:

- Submittal and Issuance of a Building Permit with an existing legal building site prior to subdivision recording.
 - A. Submittal - A Building Permit can be submitted prior to recording of the subdivision for each existing legal building site in the subject subdivision if one the following is met:
 - I. A complete Building Permit shall include all the required utility and street improvement engineering for the legal building site; or,
 - II. A separate complete LSM Permit has been applied for prior to or at the same time that Building Permit is applied for that includes all of the required utility and street improvement engineering.
 - III. The Building Permit shall comply with applicable codes for that legal building site.
 - B. Issuance – The Building Permit will be reviewed and approved for issuance (the Building Department determines when the permit can be issued) by the Public Works Department if the following conditions are met:
 - I. The utility and street improvement engineering was reviewed with the Building Permit; or,
 - II. The LSM is approved before the Building Permit is issued; or,
 - III. The Development Engineer determines that the LSM review is substantially complete to allow the Building Permit issuance. In this case the Development Engineer may opt to add special conditions to the new Building Permit related to utility and street improvement engineering that must be completed prior to final inspection of the Building.
- Submittal of Building Permits within an Integrated Development Plan (IDP): If the subdivision is using the IDP process, the Building Permits for the new homes can only be submitted after the LSM Permit has been submitted, reviewed, and approved. City Council adopted a moratorium interim Ordinance 4584 that prohibits the City from accepting short plat and subdivision applications with phased tree retention review per KZC 95.30.6a. In addition, the applicant will need to meet all HPO requirements per KZC Chapter 70.
- Submittal of a Building Permit within a standard subdivision (non IDP): If the subdivision is not using the IDP process, the Building Permits for the new houses can be applied for after the subdivision is recorded and the LSM permit has been submitted, reviewed, and approved.
- Review of Expedited or Green Building Permits: A new single family Building Permit within a subdivision can only be applied for after the subdivision is recorded and will only be reviewed as an expedited or green building fast track if submitted

electronically through MBP and the LSM permit has been submitted, reviewed, and approved.

5. Subdivision Performance and Maintenance Securities:
 - The subdivision can be recorded in advance of installing all the required street and utility improvements by posting a performance security equal to 130% of the value of work. This security amount will be determined by using the City of Kirkland's Improvement Evaluation Packet (available in either [Excel](#) or [PDF](#)). Contact the Development Engineer assigned to this project to assist with this process.
 - If a recording Performance Security has not yet been posted, then prior to issuance of the LSM Permit a standard right of way restoration security ranging from \$10,000.00 to 30,000.00 (value determined based on amount of ROW disruption) shall be posted with Public Works Department. This security will be held until the project has been completed.
 - Prior to Final Inspection of the Land Surface Modification improvements, there will be a condition of the permit to establish a two year Maintenance security.
6. All civil engineering plans which are submitted in conjunction with a building, grading, or right-of-way permit must conform to the [Public Works Policy G-7, Engineering Plan Requirements](#). This policy is contained in the Public Works Pre-Approved Plans and Policies manual.
7. All street improvements and underground utility improvements (storm, sewer, and water) must be designed by a Washington State Licensed Engineer; all drawings shall bear the engineers stamp.
8. All plans submitted in conjunction with a building, grading or right-of-way permit must have elevations which are based on the King County datum only (NAVD 88).
9. A completeness check meeting is required prior to submittal of any Building Permit applications.
10. Seattle City Light Easements: The applicant shall notify Seattle City Light (SCL) by certified mail, return receipt requested, of their plans to subdivide the property or install improvements with a copy of the notice and the return receipt provided to the City. If the applicant does not provide documentation of SCL approval before recording of the short plat or installation of the improvement in a form acceptable to the City, the property owner shall also sign an agreement to defend, indemnify and hold the City harmless in the event that a dispute arises between SCL and the developer, property owner, or any future property owners.

11. The required tree plan shall include any significant tree in the public right-of-way along the property frontage.

12. All subdivision recording documents shall include the following language:

Utility Maintenance: Each property owner shall be responsible for maintenance of the sanitary sewer, storm water stub, rain garden, permeable pavement, or any infiltration facilities (known as Low Impact Development) from the point of use on their own property to the point of connection in the City sanitary sewer main or storm water main. Any portion of a sanitary sewer, surface water stub, rain garden, permeable pavement, or any infiltration facilities, which jointly serves more than one property, shall be jointly maintained and repaired by the property owners sharing such stub. The joint use and maintenance shall “run with the land” and will be binding on all property owners within this subdivision, including their heirs, successors and assigns.

Public Right-of-way Sidewalk and Vegetation Maintenance: Each property owner shall be responsible for keeping the sidewalk abutting the subject property clean and litter free. The property owner shall also be responsible for the maintenance of the vegetation within the abutting landscape strip. The maintenance shall “run with the land” and will be binding on all property owners within this subdivision, including their heirs, successors and assigns.

If the lots have on-site private storm water facilities, include this language on the subdivision recording document:

Maintenance of On-site Private Stormwater Facilities: Each Lot within the Subdivision has a stormwater facility (infiltration trench, dry wells, dispersion systems, rain garden, and permeable pavement) which is designed to aid storm water flow control for the development. The stormwater facility within the property shall be owned, operated and maintained by the Owner. The City of Kirkland shall have the right to ingress and egress the Property for inspection of and to reasonable monitoring of the performance, operational flows, or defects of the stormwater/flow control facility. If the City of Kirkland determines related maintenance or repair work of the stormwater facility is required, the City of Kirkland shall give notice to the Owner of the specific maintenance and/or repair work required. If the above required maintenance or repair is not completed within the time set by the City of Kirkland, the City of Kirkland may perform the required maintenance or repair, or contract with a private company capable of performing the stormwater facility maintenance or repair and the Owner will be required to reimburse the City for any such work performed. The Owner is required to obtain written approval from the City of Kirkland prior to replacing, altering, modifying or maintaining the storm water facility.

If the project contains LID storm improvements that will be installed as a condition of the new home Building Permit, then include this condition on the Short Plat recording documents:

Installation of Low Impact Development (LID) storm drainage improvements with Building Permits: All LID storm drainage features depicted on Sheet ____ of ____ of issued permit LSM1X-0XXXX shall be installed in conjunction with the construction of each new home on lots X to X. The LID improvements include, but are not limited to the rain gardens and the pervious driveways. The Building Permit for the new single family home on lots X to X will not receive a final inspection until said LID improvements are installed. The pervious access road/Tract serving lots X and X shall be constructed or secured by a performance bond prior to recording of the short plat

Sanitary Sewer Conditions:

1. The existing sanitary sewer main in the right-of-way is adequate to serve the project.
2. Provide a 6-inch minimum side sewer stub to each lot. Side sewers serving the property shall be PVC gravity sewer pipe per Public Works Pre-Approved Criteria. Remove and replace any substandard pipes. Verify existing pipe condition by video inspection if the pipe is to remain.
3. Access for maintenance of the sewer manholes is required. Provide a 15' wide access easement from the right-of-way to each sanitary sewer manhole.
4. The existing septic system shall be abandoned per City standards with a Demo Permit.

Water System Conditions:

1. The existing water main in the right-of-way is adequate to serve the project.
2. Provide a separate 1" minimum water service from the water main to the meter for each lot; City of Kirkland will set the water meter. The water size is determined when the Building Permit is submitted and is sized per the Uniform Plumbing Code. A ¾" meter is typical for a new single-family home, unless otherwise required by the City.
3. The existing water service shall be abandoned at the main, unless approved otherwise by Public Works. Note: The existing water service may be used provided that it is in the right location, is not galvanized or blue poly, and is sized adequately to serve the building (per the Plumbing Code).
4. See Fire Department conditions for fire flow requirements.

Surface Water Conditions:

1. Provide temporary and permanent storm water control in accordance with the [2016 King County Surface Water Design Manual \(KCSWDM\)](#) and the City of Kirkland Addendum (Policy [D-10](#)).
2. **SEE POLICY D-10 for updated storm water design requirements**
3. To determine the drainage review level required, the target impervious surface area is the maximum allowable lot coverage area for the project, plus any offsite improved impervious areas. See Policies [D-2](#) and [D-3](#) in the Public Works Pre-Approved Plans for drainage review information, or contact Kirkland Surface Water staff at (425) 587-3800 for assistance. The Kirkland [Drainage Review Flow Chart](#) is a helpful tool to determine a project's drainage review level. Drainage review levels are summarized below:
 - **Full Drainage Review**
 - Any non-single-family residential project that creates more than 2,000 sf of new and/or replaced impervious surface, or greater than 7,000 sf of land disturbing activity will trigger a Full Drainage Review.
 - Single family residential projects that propose improvements greater than the Simplified thresholds explained above will be subject to a Full Drainage Review.
4. A preliminary drainage report (Technical Information Report) must be submitted with the subdivision application. This must include a downstream analysis for all projects (except for Basic and Simplified Drainage Review projects). Provide a level one off-site analysis per Core Requirement #2 of the KCSWDM.
 - For Simplified Drainage Review, use the Simplified TIR Submittal Template available on the City of Kirkland website. Navigate to the following webpage:
"City of Kirkland Utilities > Storm & Surface Water > Development & Construction"
5. This project is in a Level 2 Flow Control Area, and is required to comply with core drainage requirements in the KCSWDM. Historic (forested) conditions shall be used as the pre-developed modeling condition for design of the stormwater detention system.
6. The project may qualify for an exception to detention if the target surfaces will generate no more than a 0.15 cfs increase in the historic (forested) conditions 100-year peak flow. The 15-minute time step must be used to perform the flow control analysis. Do not use the 1-hour time step. Approved hydrologic modeling programs are MGS Flood and WWHM 2012.
7. Evaluate the feasibility and applicability of dispersion, infiltration, and other stormwater Low Impact Development (LID) Best Management Practices (BMPs) per the KCSWDM. If feasible, stormwater LID BMPs are required to the maximum extent feasible. If LID BMPs are infeasible, pervious pavement cannot be used to reduce overall impervious lot coverage. The Private Maintenance Agreement will be recorded on all projects that construct a stormwater LID BMP or facility, per Policy [D-7](#).

8. Soil information may be necessary for designing LID BMPs per the KCSWDM, and there are other reasons a soil report is necessary for a project (e.g., steep slopes, sensitive areas, etc.). Refer to Policy [D-8](#) for details.
9. Special inspections may be required for LID BMPs on this project. Provide documentation of inspections by a licensed geotechnical professional that the BMP will function as designed.
10. If the project will create or replace more than 5,000 square feet of pollution generating impervious surface (PGIS), provide water quality treatment in accordance with the KCSWDM.
11. Soil Amendment per Pre-Approved Plan E.12 is required for all landscaped areas.
12. Provide a separate storm drain connection to each lot for conveyance. All roof and driveway drainage must be tight-lined to the storm drain system or utilize low impact development techniques on-site.
13. Provide collection and conveyance of right-of-way storm drainage. Extend the storm main along 124th Ave NE, to and through the limits of the property. Provide a plan and profile design for the storm sewer system. Size and material of construction shall be in accordance with the City Kirkland Pre-Approved Plans and Notes. Refer to Policy [D-5](#) for details.
14. A ____ foot wide ____ storm sewer line easement for ____ must be recorded with the property.
15. Provide a 15' wide access easement to the storm detention control manhole; easement must be improved with 10' of asphalt and drainage control to protect against erosion.
16. A storm sewer "Joint Maintenance Agreement" must be recorded with the property for the jointly used storm sewer lines.
17. Construction Stormwater Pollution Prevention Plan (CSWPPP):
 - All proposed projects that will conduct construction activities onsite, or offsite must provide stormwater pollution prevention and spill controls to prevent, reduce, or eliminate the discharge of pollutants (including sediment) to onsite or adjacent stormwater systems or watercourses.
 - Refer to Core Requirement No. 5 in the KCSWDM and Policy [D-12](#).
 - Provide an erosion control report and plan with the Building or Land Surface Modification Permit application. The plan shall be in accordance with the KCSWDM.
 - Construction drainage control shall be maintained by the developer and will be subject to periodic inspections. During the period from May 1 and September 30, all denuded soils must be covered within 7 days; between October 1 and April 30, all

denuded soils must be covered within 12 hours. Additional erosion control measures may be required based on site and weather conditions. Exposed soils shall be stabilized at the end of the workday prior to a weekend, holiday, or predicted rain event.

Street and Pedestrian Improvement Conditions:

1. The subject property abuts NE 73rd PL and 124th Ave NE. This street is a Neighborhood Access type street. Zoning Code sections 110.10 and 110.25 require the applicant to make half-street improvements in rights-of-way abutting the subject property. Section 110.30-110.50 establishes that this street must be improved with the following:

NE 73rd PL

- A. Replace any cracked or deteriorated curb. Existing improvements are adequate.

124th Ave NE

- A. **Install Type-A concrete curb and gutter. The face of curb shall be 24 feet from the face of curb on the opposite side of street. Widen the street pavement to meet the curb and gutter.**
- B. Install a 4.5-ft landscape strip behind the curb, with street trees 30 feet on-center.
- C. Install a 5-ft wide concrete sidewalk behind the landscape strip.
- D. Remove and replace existing half-street improvements in substandard condition.
- E. Remove obsolete driveway cuts, and replace with new frontage improvements.
- F. Identify and protect trees with retention value in the right-of-way.
- G. Coordinate improvements with planned Kirkland street projects, if any.

2. Access Requirements (KZC Chapter 105.10):
 - A. Since the access is adjacent to a property line, provide a 5-ft setback from the property line to the edge of the paved access.
 - B. The driveway for each lot shall be long enough so that parked cars do not extend into any easement, tract, or right-of-way (20' minimum). The parking pad shall measure 20' by 20'.
3. Meet the requirements of the Kirkland [Driveway Policy R-4](#). Spacing Table from R-4, for reference:

Chart below shows recommended (desirable) and minimum (required) values.

	Street Functional Type		Land Use Category		
			Residential	Multi-family / Non-residential	
			Required	Recommended	Required
Setback from Intersections	Local		50'	75'	75'
	Collector	Unsignalized	75'	75'	75'
		Signalized	100'	200'	150'
	Arterial	Unsignalized	100'	150'	100'
		Signalized	150'	200'	150'
		HAL	150'	200'	150'
Spacing	Local		10'	50'	50'
	Collector		20'	50'	50'
	Arterial		100'	150'	150'
Offset to the Left of Existing Opposing Driveway	Local		NA	NA	NA
	Collector		NA	NA	NA
	Arterial	25-30 MPH	100'	150'	150'
		35 MPH	150'	200'	150'

4. Meet the requirements of the Kirkland [Intersection Sight Distance Policy R.13](#). All street and driveway intersections shall not have any visual obstructions within the sight distance triangle.
5. When three or more utility trench crossings occur within 150 lineal ft. of street length or where utility trenches parallel the street centerline, the street shall be overlaid with new asphalt or the existing asphalt shall be removed and replaced per the City of Kirkland [Street Asphalt Overlay Policy R-7](#).
 - Existing streets with 4-inches or more of existing asphalt shall receive a 2-inch (minimum thickness) asphalt overlay. Grinding of the existing asphalt to blend in the overlay will be required along all match lines.
 - Existing streets with 3-inches or less of existing asphalt shall have the existing asphalt removed and replaced with an asphalt thickness equal or greater than the existing asphalt provided however that no asphalt shall be less than 2-inches thick and the subgrade shall be compacted to 95% density.
6. Prior to the final of the building or grading permit, pay for the installation of stop and street signs at the new intersections.
7. It shall be the responsibility of the applicant to relocate any above-ground or below-ground utilities which conflict with the project, associated street, or utility improvements.
8. Underground all new and existing on-site utility lines and overhead transmission lines. Underground any new off-site transmission lines.
9. Zoning Code Section 110.60.7.b establishes the requirement that existing utility and transmission (power, telephone, etc.) lines on-site and in rights-of-way adjacent to the site must be underground. The Public Works Director may determine if undergrounding

transmission lines in the adjacent right-of-way is not feasible and defer the undergrounding by signing an agreement to participate in an undergrounding project, if one is ever proposed. In this case, the Public Works Director has determined that undergrounding of existing overhead utility on 124th Ave NE is not feasible at this time and the undergrounding of off-site/frontage transmission lines should be deferred with a Local Improvement District (LID) No Protest Agreement. The final recorded subdivision document shall include the following note:

Local Improvement District (LID) Waiver Agreement. Chapter 110.60.7.b of the Kirkland Zoning Code requires all overhead utility lines along the frontage of the subject property to be converted to underground unless the Public Works Director determines that it is infeasible to do so at the time of the subdivision recording. If it is determined to be infeasible, then the property owner shall consent to the formation of a Local Improvement District, hereafter formed by the City or other property owners. During review of this subdivision it was determined that it was infeasible to convert the overhead utility lines to underground along the frontage of this subdivision on (((street name))). Therefore, in consideration of deferring the requirement to underground the overhead utility lines at the time of the subdivision recording, the property owner and all future property owners of lots within this subdivision hereby consent to the formation of a Local Improvement District hereafter formed by the City or other property owners

10. New LED street lights may be required per Puget Sound Energy design and Public Works approval. Contact the INTO Light Division at PSE for a lighting analysis. If lighting is necessary, design must be submitted prior to issuance of a grading or building permit.

Brynja Almazan - Account Sales Manager, Intolight, PUGET SOUND ENERGY
 Tel 253-395-6874 | Cell 206-604-3348 | Fax 425-462-3149
 Email brynja.almazan@pse.com | Website: www.intolight.com

11. A striping plan for the street must be submitted with the building or grading permit.

Related City Website Links

- [City of Kirkland Pre-Approved Plans and Policies](#)
- [Public Works Development Fees](#)
- [Stormwater FAQs](#)
- Application Forms ([Electronic](#), [Paper](#))
- [KZC105 – Private Drive, Private and Pedestrian Walkway Requirements](#)
- [KZC110 - Public Right-of-way Improvement Requirements](#)

FIRE DEPARTMENT COMMENTS

Contact: Todd Anderson @ 425-587-3639; or tanderson@kirklandwa.gov

FIRE FLOW

Fire flow in the area is 1630 gpm, which is adequate for homes up to 3600 sq. ft. Any home built with a gross floor area over 3600 sq.ft. will require sprinklers.

(Per International Fire Code Table B105.1(1) and B105.1(2): 0-3,600 s.f. = 1,000 gpm; 3,601-4,800 s.f. = 1,750 gpm; >4,801 s.f. = 2,000 gpm. Over 5,000 requires sprinklers per local ordinance.)

HYDRANTS

Existing hydrants in the area are adequate to provide coverage for the proposed project.

ACCESS

No issues.

SPRINKLER THRESHOLD

Per Kirkland Municipal Code, all new buildings which are 5,000 gross square feet or larger require fire sprinklers. Included are single family homes, duplexes, and zero lot line townhouses where the aggregate area of all connected townhouses is greater than 5,000 square feet; garages, porches, covered decks, etc, are included in the gross square footage.

(This comment is included in the SUB conditions for informational purposes only.)

ARBORIST REPORT

**Merit Homes
Adsit Short Plat
7319 124th AVE NE
Kirkland, WA**



**Report Prepared by:
Bob Layton
Registered Consulting Arborist #670
Certified Arborist #PN-2714A**

**September 17, 2019
Updated June 23, 2020**

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Attachments

Photos, pages 9 - 16

Tree Summary Table

Tree Conditions/Drip-Line Map

Tree Retention Plan

Assignment

Layton Tree Consulting LLC was contacted by Mike Smith of Merit Homes, and was asked to compile an 'Arborist Report' for a parcel located within the City of Kirkland.

The proposed project encompasses the property at 7319 124th AVE NE. My assignment is to prepare a written report on present tree conditions, which is to be filed with the preliminary permit application.

This report encompasses all of the criteria set forth under the City of Kirkland's tree regulations (Chapter 95 of the Kirkland Zoning Code). The required minimum tree density for the subject parcel (+/- 21,800 sq. ft.) is 15 tree credits.

Date of Field Examination: September 16, 2019

Description

11 significant trees were identified and assessed on the subject property. These are comprised of a mix of planted and native species.

A numbered aluminum tag was attached to the lower trunk of the subject trees. These tag numbers correspond with the numbers on the Tree Summary Table and attached map.

There are a few issues related to neighboring trees. Seven neighboring trees were assessed, whose drip-lines encroach upon the subject property.

Methodology

Each tree in this report was visited. Tree diameters were measured by tape. The tree heights were measured using a Spiegel Relaskop. Each tree was visually examined for defects and vigor. The tree assessment procedure involves the examination of many factors:

The crown or canopy of the tree is examined for current vigor/health by examining the foliage for appropriate color and density, the vegetative buds for color and size, and the branches for structural form and annual shoot growth; and the overall presence of limb dieback and/or any disease issues.

The trunk or main stem of the tree is inspected for decay, which includes cavities, wounds, fruiting bodies of decay (conks or mushrooms), seams, insect pests, bleeding or exudation of sap, callus development, broken or dead tops, structural defects and unnatural leans. Structural defects can include but are not limited to excessive or unnatural leans, crooks, forks with V-shaped crotches, multiple attachments.

The root collar and exposed surface roots are inspected for the presence of decay, insect damage, as well as if they have been injured or wounded, undermined or exposed, or the original grade has been altered.

Based on these factors a determination of viability is made. A 'viable' tree, as defined by the City of Kirkland is "A significant tree (a trunk diameter greater than six inches when measured four and a half feet above ground) that a qualified professional has determined to be in good health, with a low risk of failure due to minimal structural defects, is wind firm if isolated or remains as part of a grove, and is a species that is suitable for its location." Trees considered 'non-viable' are trees that are in poor condition due to disease

and/or pest infestation, age related decline, have significant decay issues and/or cumulative structural defects, which will compromise longevity. The municipal code calls out the City Arborist as the final decision-maker regarding 'viability'.

Judging Condition

The three condition categories are described as follows:

Good – free of significant structural defects, no disease concerns, minor pest issues, no significant root issues, good structure/form with uniform crown or canopy, foliage of normal color and density, average or normal vigor, will be wind firm if isolated or left as part of a grouping or grove of trees, suitable for its location

Fair – minor to moderate structural defects not expected to contribute to a failure in near future, no disease concerns, moderate pest issues, no significant root issues, asymmetric or unbalanced crown or canopy, average or normal vigor, foliage of normal color, moderate foliage density, will be wind firm if left as part of a grouping or grove of trees, cannot be isolated, suitable for its location

Poor – major structural defects expected to cause fail in near future, disease or significant pest concerns, decline due to old age, significant root issues, asymmetric or unbalanced crown or canopy, sparse or abnormally small foliage, poor vigor, not suitable for its location

The attached tree conditions map indicates the 'condition rating' of the subject trees found at the site. The attached Tree Summary Table provides specific information on tree sizes and drip-line measurements.

Judging Retention Suitability

Not all trees necessarily warrant retention. The three retention suitability categories as described in ANSI A300 Part 5 (Standard Practices for the Management of Trees During Site Planning, Site Development and Construction) are as follows:

Good – trees are in good health condition and structural stability and have the potential for longevity at the site

Fair – trees are in fair health condition and/or have structural defects that can be mitigated with treatment. These trees may require more intense management and monitoring, and may have shorter life-spans than those in the "good" category.

Poor – trees are in poor health condition and have significant defects in structure that cannot be mitigated with treatment. These trees can be expected to decline regardless of management. The species or individual tree may possess characteristics that are incompatible or undesirable in landscape settings or be unsuited for the intended use of the site.

Observations

The subject trees are found scattered across the site. The subject trees are described as follows:

Tree #1 is a young bigleaf maple at the front of the property. A large portion of the upper crown has recently died. See picture below. Dieback is believed to be associated with a bacterial disease. It is located beneath the transmission lines. Retention suitability is poor. Overall condition is rated as fair to poor.

Tree #2 is a semi-mature Western red cedar located next to the front of the house. The trunk is actually attached to the house. There are many large exposed surface roots east of the tree in the lawn area. The main trunk forks into codominant (equal diameter) stems. The attachment appears fairly sound with some buildup of included bark. Overall condition is rated as fair.

Trees #3 and #4 are semi-mature to mature bigleaf maple located on the south perimeter. Tree #3 has some major issues. The trunk forks into codominant stems at roughly 12-feet above ground. The north stem has significant decay. There is also significant decay at the root crown associated with *Ganoderma applanatum* and *Kretzschmaria deusta*. It is also of low vigor with noteworthy dieback of upper crown components. The south stem is more structurally sound and of better vigor; however, the extent of basal decay will be problematic in the future. Overall condition is rated as fair to poor.

Tree #4 does not have any outward indicators of internal decay issues. The trunk forks at roughly 8-feet above ground. The forked attachment appears sound. Vigor is fairly good with foliage of normal size and density. Condition is rated as fair to good. There have been recent impacts on the south side. A new foundation was excavated into the drip-line area.

Trees #5 and #6 are semi-mature to mature black locust. Tree #5 has a large old cavity on the lower trunk that extends several feet up into the lower trunk. The degree of decay is noteworthy and problematic. There is also moderate dieback of upper crown components. Overall condition is rated as fair to poor. Tree #6 also has a large cavity on the lower trunk associated with a past codominant stem failure. Decay has not advanced significantly. Woundwood or reaction wood development is good. Vigor is better than #5 with only minor crown dieback. This tree has a large lead or limb that extends several feet onto the neighboring property to the south. Condition is fair.

Trees #7 and #8 are semi-mature Western red cedar in the middle of the backyard. Both are of good vigor. Tree #7 has multiple forks of the main trunk. Tree #8 is free of structural defects. It has a natural lean to the west away from #7. Tree #7 is in fair condition. Tree #8 is in good condition.

Tree #9 is a young to semi-mature plum fruit tree. It has developed poor form from lack of sunlight and suppression by adjacent trees. Overall condition is rated as fair.

Tree #10 is a young Douglas fir located next to the west property line. Vigor is good. No concerning conditions were observed. Condition is good.

Tree #11 is a semi-mature flowering cherry variety. Vigor is fair to poor with sparse foliage and minor dieback of upper crown components. Overall condition is rated as fair.

Neighboring Trees

Tree #101 is a semi-mature Norway maple variety off of the southwest property corner. Vigor is good. No concerning conditions were observed.

Tree #102 is a young to semi-mature flowering cherry variety. It is approximately 10-feet off of the property line. Condition is fair.

Trees #103 through #106 are young red maples planted along the north property line. These have developed typical form. All are of good vigor with no major defects. Tree #103 has decay at the root crown which may compromise longevity. This may be associated with a girdling root.

Tree #107 is a young Japanese maple, located off of the northeast property corner. It appears somewhat stressed. Ground disturbance within a close proximity of the trunk would indicate recent right-of-way work which has disturbed the root system. Looks like there have been irrigation issues. Overall condition is rated as fair.

There are no neighboring tree issues along the south property line.

Discussion/Recommendations (updated 6-23-2020)

The extent of drip-lines (farthest reaching branches) for the subject trees can be found on the tree summary table at the back of this report. These have also been delineated on a copy of the attached site survey (Tree Conditions Map).

The recommended Critical Root Zone (CRZ) measurements can also be found on the tree summary table. These have also been delineated on a copy of the site survey for the possible retention candidates. The CRZ measurements are based on species, age, condition, drip-line, prior improvements, proposed impacts and the anticipated cumulative impacts to the entire root zone. These shall be referenced when determining the feasibility of tree retention.

The proposal is to retain Trees #7 and #8, the two semi-mature Western red cedars. The house on Lot 1 will be constructed north of the subject trees approximately 4 to 5-feet within the driplines. The overall impact to the trees will not be consequential to long-term health. A very minor percentage of the feeder root system will need to be removed. Afford these trees extra protection by positioning tree protection fencing at least 5-feet beyond the dripline on the east, south and west sides.

The planted off-site red maple trees (#104, #105 & #106) will need to be protected to maintain them in good condition. Tree #103 is within a proposed driveway and will have to be removed. There is a proposed storm drain utility south of these trees, roughly 5 to 6-feet from the trunks, well within their driplines. Red maple is known to have fair or medium relative tolerance to construction impacts (root loss, soil disturbance). The trench will need to be carefully excavated using hand tools or an air-spade to protect structural roots and all roots greater than 1 ½" in diameter. These are small, young trees that would be expected to remain in good condition if the proposed work is diligently performed. Trees #104 and #106 may require some minor clearance pruning to construct the house on Lot 2.

The project arborist shall be on-site to monitor any necessary excavation within the driplines of retained trees to ensure impacts are kept as minimal as possible.

Tree Protection Measures

The following guidelines are recommended to ensure that the designated space set aside for the preserved trees are protected and construction impacts are kept to a minimum. Standards have been set forth under Kirkland Zoning Code 95.34 of Chapter 95. Please review these standards prior to any development activity.

- Tree protection fencing shall be erected per attached tree plan prior to moving any heavy equipment on site. Doing this will set clearing limits and avoid compaction of soils within root zones of retained trees.
- Excavation limits shall be laid out in paint on the ground to avoid over excavating.
- Excavations within the drip-lines shall be monitored by a qualified tree professional so necessary precautions can be taken to decrease impacts to tree parts. A qualified tree professional shall monitor excavations when work is required and allowed within the drip-line or critical root zone.
- To establish sub grade for foundations, curbs and pavement sections near the trees, soil shall be removed parallel to the roots and not at 90-degree angles to avoid breaking and tearing roots that lead back to the trunk within the drip-line. Any roots damaged during these excavations should be exposed to sound tissue and cut cleanly with a saw. Cutting tools should be sterilized with alcohol.
- Areas excavated within the drip-line of retained trees shall be thoroughly irrigated weekly during dry periods.
- Preparations for final landscaping shall be accomplished by hand within the drip-lines of retained trees. Large equipment shall be kept outside of the tree protection zones at all times.

Tree Density-Tree Replacement

Tree Density Calculation

Lot Size – +/- 21,800 sq.ft.

$21,800/43,560 \times 30 = 15.01$

Required Minimum Tree Density = 15 tree credits

Existing Tree Credits = 80.5

Tree Credits to be retained = 19.5

Supplemental Trees required = consult with City Planner

For planting and maintenance specifications, refer to chapters 95.50 and 51 of the Kirkland Zoning Code.

Arborist Disclosure Statement

Arborists are tree specialists who use their education, knowledge, training and experience to examine and assess trees, recommend measures to enhance the beauty and health of trees, and attempt to reduce the risks associated with living near trees. Clients may choose to accept or disregard the recommendations of the arborist, or to seek additional advice.

Arborists cannot detect every condition that could possibly lead to the structural failure of a tree. Trees are living organisms that grow, respond to their environment, mature, decline and sometimes fail in ways we do not fully understand. Conditions are often hidden within trees and below ground.

Arborists cannot guarantee that a tree will be healthy and/or safe under all circumstances, or for a specified period of time. Likewise, remedial treatments, like any medicine, cannot be guaranteed. Treatment, pruning and removal of trees may involve considerations beyond the scope of the arborist's services such as property boundaries, property ownership, site lines, disputes between neighbors, and other issues. Arborists cannot take such considerations into account unless complete and accurate information is disclosed to the arborist. An arborist should then be expected to reasonably rely upon the completeness and accuracy of the information provided.

Trees can be managed, but they cannot be controlled. To live near trees is to accept some degree of risk. The only way to eliminate all risk associated with trees is to eliminate all trees.

Photo Documentation

Top of Tree #1, significant dieback



Tree #2, multiple large surface roots in lawn area



Trees #3 > #6 on south perimeter



Tree #3, *Ganoderma* infection at root crown



Base of Tree #1, extensive decay on east side caused by *Kretzschmaria deusta*



Recent impacts to south sides of root zones



Tree #5, large basal cavity



Tree #6, cavity from past co-dominant stem failure



Trees #7 and #8



Tree #9 and neighboring trees #101 and #102



Tree #10 near west property line



Tree #10, looking north from west property line



Tree #11



Tree #11 – upper crown



North property line, looking west at off-site red maples #103 > #106



Off-site Tree #107





Layton Tree Consulting LLC

For: Merit Homes
 Site: 7319 124th AVE NE (Adsit)

Tree Summary Table

Date: 9/16/2019

Tree/ Tag #	Species	DBH (inches)	Height (feet)	Tree Credit	Drip-Line / Critical Root Zone (feet)				Condition	Retention Suitability	Comments	Proposal
					N	S	E	W				
1	bigleaf maple	6	21	1	9/5	7/5	9/5	5/5	fair-poor	poor	recent top dieback, under power lines	Remove
2	Western red cedar	29	67	10.5	18	20	17	18	fair	poor	forked trunk, large exposed surface roots	Remove
3	bigleaf maple	28	84	10	12/10	18/na	14/12	10/14	fair-poor	poor	ganoderma, north stem decayed	Remove
4	bigleaf maple	37	86	14.5	26/12	16	14/14	14/14	fair-good	good	trunk forks at 8 feet, appears sound	Remove
5	black locust	22	80	7	14/12	10	4/12	12/12	fair-poor	poor	large cavity on lower trunk, significant decay	Remove
6	black locust	25,23 (34)	82	13	20/14	22	18/14	20/16	fair	fair	west stem with large cavity	Remove
7	Western red cedar	26	70	9	20/16	20/16	20/16	na	fair	fair	forked top	Save
8	Western red cedar	29	70	10.5	16/16	18/16	na	18/16	good	fair	natural lean west	Save
9	plum	10	20	1	16/8	11	7/8	10	fair	good	poor form, suppressed	Remove
10	Douglas fir	9	36	1	9/8	10/8	10/8	6	good	good	young, good vigor, no concerns	Remove
11	flowering cherry	14	39	3	12	12/10	12/10	12	fair	fair	sparse foliage, stressed, some dieback	Remove
				80.5								
Neighboring Trees												
101	Norway maple	15	62	NA	10/5	6/5	NA	NA	good	good	7 feet off property corner	Protect
102	flowering cherry	12,11 (16)	44	NA	NA	NA	3/0	NA	fair	good	typical, several feet off of property line	Protect
103	red maple	9	33	NA	NA	12/5	NA	NA	fair	good	young, some decay at root crown	Remove
104	red maple	9	33	NA	NA	11/5	NA	NA	good	good	young	Protect
105	red maple	7	34	NA	NA	6/5	NA	NA	good	good	young	Protect
106	red maple	10	36	NA	NA	11/5	13	NA	good	good	young	Protect
107	Japanese maple	4,4,3,3 (7)	12	NA	NA	8/6	10/6	5/6	fair	good	stressed	Protect

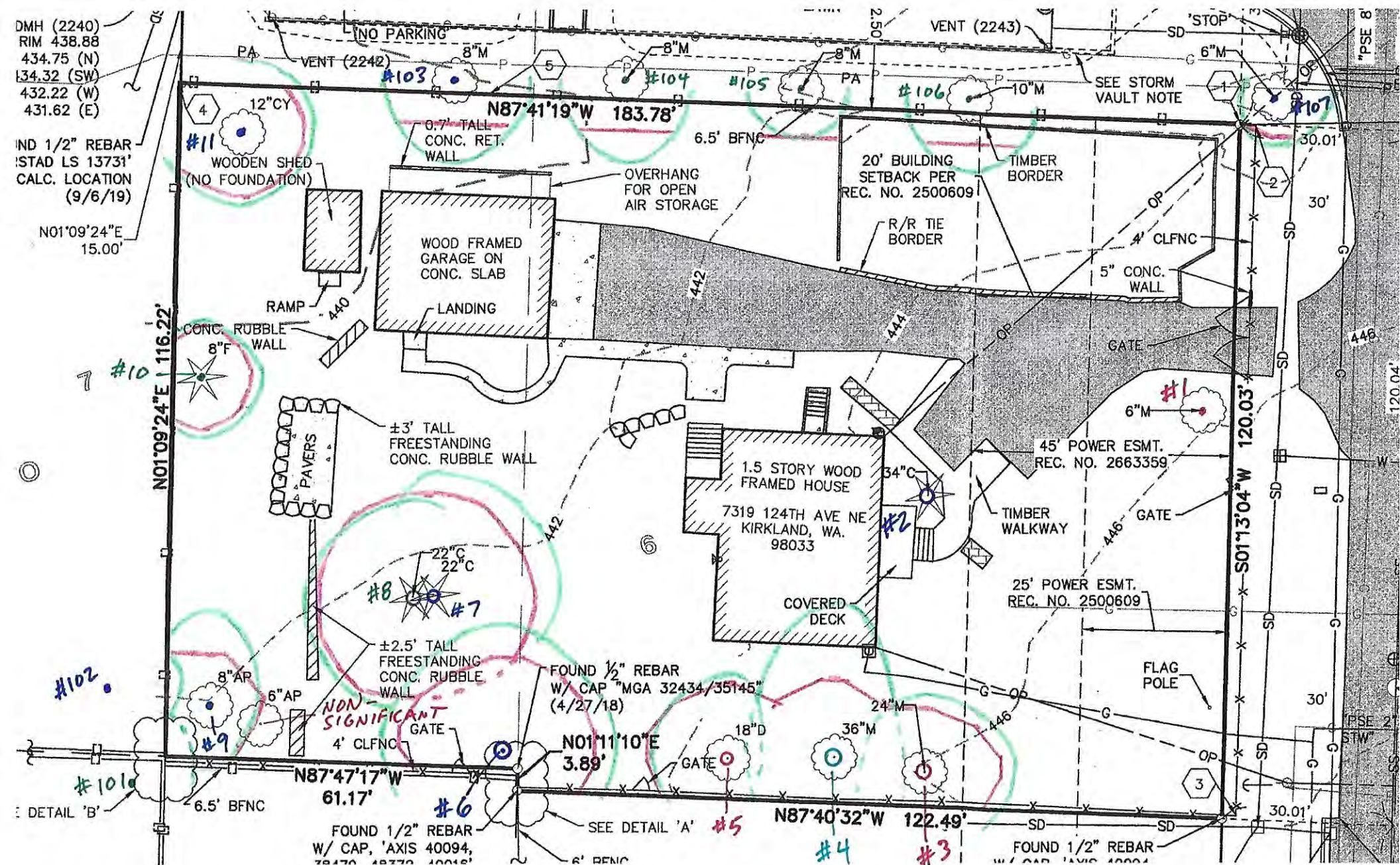
Parcel Trees - Drip-Line and Limits of Disturbance measurements from face of trunk

Trees on neighboring properties - Drip-Line and Limits of Disturbance measurements from property/fence line

Calculated DBH: the DBH is parenthesis is the square root of the sum of the dbh for each individual stem squared
 (example with 3 stems: dbh = square root [(stem1)2 +(stem2)2 +(stem3)2]).

TREE LOCATOR / CONDITIONS MAP

ATTACHMENT 1



TREE CONDITIONS

- Good

#-FAIR

- FAIR - GOOD

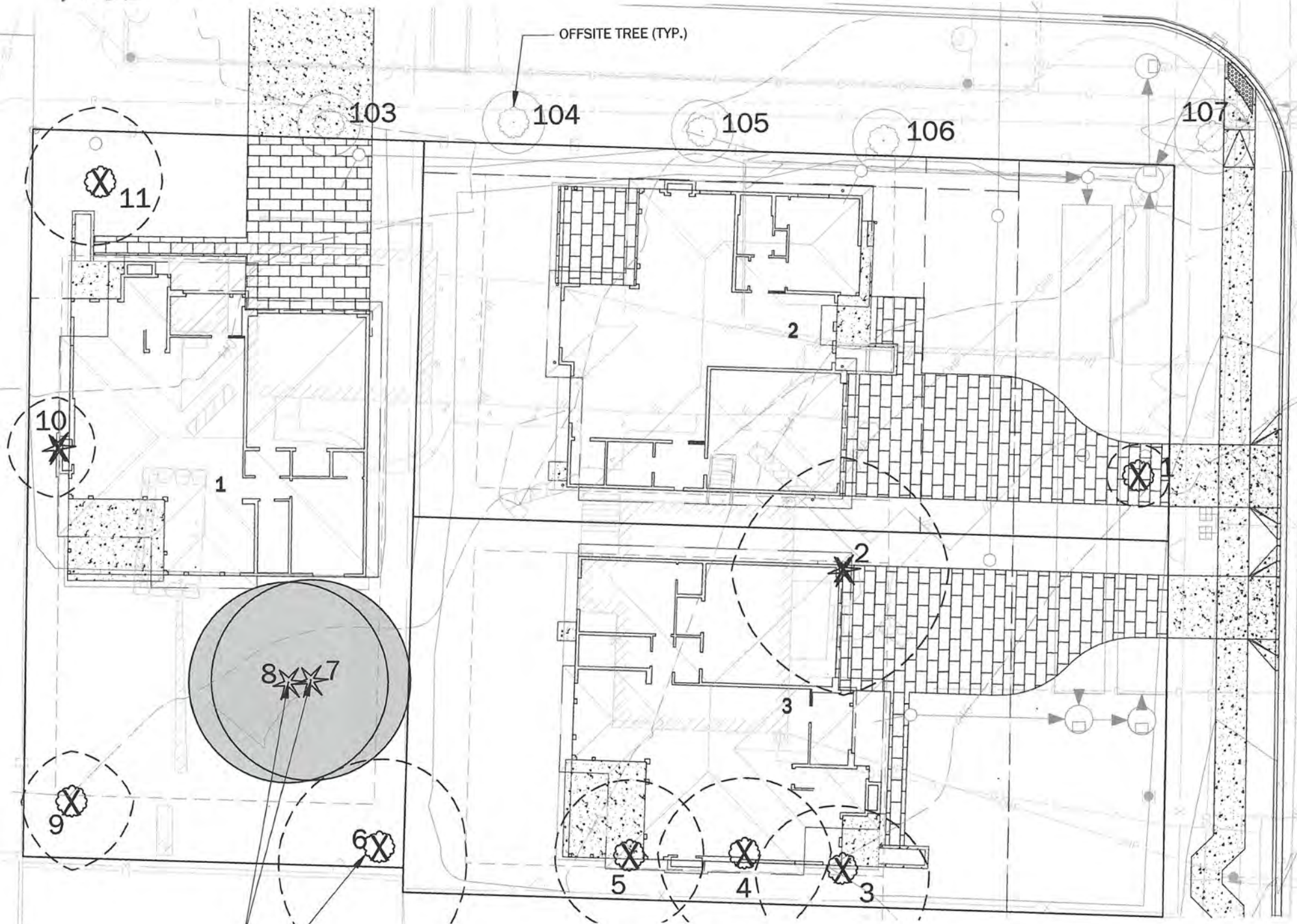
#-FAIR-POOR

- DRIP-LINE
- CRITICAL ROOT ZONE BOUNDARY

APPROX. SCALE
1" = 22⁵⁶

TREE RETENTION PLAN

ATTACHMENT 1



To: Adam Weinstein and Kaylie Duffy, City of Kirkland Planning and Building Department

From: William Watson, on behalf of Rosewood of Kirkland Homeowners Association

Subject: Appeal of Adsit Short Plat - SUB20-00171 (7319 124th Ave NE)

Date: October 15, 2020

We appeal the City's decision to approve, with conditions, a short plat application to subdivide 7319 124th Ave NE as set forth in Adsit Short Plat - SUB20-00171 (Exhibit A - Notice of Decision). The Adsit Short Plat provides for a long driveway to be built over a significant landscaped portion of NE 73rd PL, which is part of an existing subdivision where we all reside. We argue the City's decision to allow for the driveway should be reversed or, alternatively, to be modified with conditions specific to NE 73rd PL.

BACKGROUND

The public comment period for this application ran from July 23, 2020 to August 10, 2020. In July 2020, even before the comment period began, the Rosewood of Kirkland Homeowners Association ("Rosewood HOA"), through its President William Watson, contacted the City of Kirkland Planning and Building Department and the Merit Homes Developer, Mike Smith, to address Rosewood HOA's concerns regarding the Adsit Short Plat. These concerns included: (1) Merit's proposed taking of land on NE 73rd PL for the developer's own benefit by removing mailboxes, fencing, and landscaping; and (2) whether Lot 1 on the Adsit Short Plat would be subject to the same Covenants, Conditions and Restrictions (CC&Rs) as the other properties on NE 73rd PL.

On July 22, 2020, Watson e-mailed City Planner Kayle Duffy and requested a follow-up on Rosewood HOA's concerns. Duffy e-mailed Watson that same day and apologized for her lack of communication, stating "I can assure you that we will address any issues with the HOA prior to any decisions made on this short plat application." (Exhibit B - email from Duffy to Watson). The Planning Director, Adam Weinstein, also left Watson a voicemail on July 22, 2020 to further discuss Rosewood HOA's concerns.

Then, on July 29, 2020 (which was during the public comment period), Watson met with Smith and members of the City Planning Department on-site of 7319 124th Ave NE and NE 73rd PL to address Rosewood HOA's concerns. Smith followed up with an e-mail on July 31, 2020 and August 14, 2020 regarding the access point on NE 73rd PL, stating that Merit would look into the fence/landscaping issues and whether joining the HOA would be possible in the future. (Exhibit C - email from Smith to Watson).

Despite Rosewood HOA's timely raising of these issues before and during the public comment period, and the City's and Merit's promises to address our concerns before approval of the Adsit Short Plat, the City went ahead and issued a notice of decision on September 28, 2020. That decision does not address the issues raised by Rosewood HOA, which are critical to determine before Merit begins destruction of NE 73rd PL.

RIGHT TO APPEAL

Kirkland Zoning Code 145.60(1)(b) provides that the decision of the Planning Director may be appealed by "any person who submitted written comments or information to the Planning Director on the application during the comment period established in the Notice of Application." The provision does not further elaborate on how the written comments must have been submitted, or whether the information provided must be in written form. (Compare with KZC 145.60(2), requiring appeal to be in the form of a letter that must be delivered to the Planning Department).

Here, Rosewood HOA submitted written comments via email and has been providing written and oral information to the City and Merit since July 2020 and through the comment period of July 23, 2020 and August 10, 2020. The e-mail exchanges and phone messages, as well as the on-site meeting, demonstrate that the City was more than aware of Rosewood HOA's concerns but failed to respond in a timely manner, often blaming Covid and working from home for their delays.

ARGUMENT

I. The City should reverse its approval of allowing access to Lot 1 to be taken off of NE 73rd PL

A. The City failed to address ownership and use rights of the land on NE 73rd PL

The City should not have approved the Adsit Short Plat proposal of adding a driveway to Lot 1 via NE 73rd PL. The issue of ownership rights was raised on numerous occasions by Rosewood HOA, and yet was not even referenced or evaluated in the Notice of Decision.

According to TEC Short Plat No. 3, the area on NE 73rd PL that Merit intends to use as a driveway is labeled as "Tract A" and is described as a "public right of way dedicated to the City of Kirkland." (Exhibit D. See also Exhibit E - TEC Short Plat No. 4). RCW 58.08.015 discusses the effect of donation marked on a plat and states:

Every donation or grant to the public. . . marked or noted as such on the plat of the town, or wherein such donation or grant may have been made, shall be considered, to all intents and purposes, as a quitclaim deed to the said donee or donees, grantee or grantees, for his, her or their use, *for the purposes intended by the donor or donors, grantor or grantors, as aforesaid.*

Emphasis added. In *Kiely v. Graves*, 271 P. 3d 226, 230 (Wash. Sup. Ct. 2012), the Washington Supreme Court interpreted RCW 58.08.015 and stated:

The intention of the owner is the very essence of every dedication." *Frye v. King County*, 151 Wash. 179, 182, 275 P. 547 (1929) (quoting *City of Palmetto v. Katsch*, 86 Fla. 506, 510, 98 So. 352 (1923)).

Intent must be adduced from the plat itself. *Id.* When an individual seeks to dedicate a fee interest, "that intent should be clearly stated and the use should be unrestricted..."

Here, all of the surveys and subdivision proposals for NE 73rd PL that were submitted by the grantor, TEC Homes Inc., and which the City approved in 2005, show Tract A as a specific reserved space south of the roadway. (Exhibit F - Final approval of LSM04-00048). Then, rather than paving an extra wide road, the developer enhanced this reserved space by adding a fence, landscaping, and an irrigation system. This evinces an intent that the reserved space was to be used as a fenced landscaped area for the common enjoyment of the subdivision.

Further, the CC&Rs that govern TEC Short Plat No. 3 and TEC Short Plat No. 4 reference Tract A and discuss the purpose of "enhancing and perfecting the value, desirability and attractiveness" of the subdivision. (See Exhibit G - CC&Rs at Page 1). Rosewood HOA is also responsible for maintaining this entrance landscaping. (See CC&Rs at Section 7.11 and Exhibit C "Landscape Maintenance for Tract A"). Again, this shows the developer's intent that the reserved space is for the benefit of the subdivision.

For over a decade, Rosewood HOA has maintained Tract A as intended by the developers. We have paid monthly landscaping fees and repaired the fence as needed. We have also used the grassy area for our benefit and enjoyment. Given all of the effort that went into designing Tract A by the grantor, it is doubtful that the grantor meant for it later to be dug up and used as a driveway for a home in another subdivision. Because the documents convey that Tract A was intended to be used as a reserved landscaped area, the City cannot just give it away to a developer in another subdivision to use as a driveway.

B. The City failed to require Merit to apply for vacation

Because Tract A is a public right of way according to TEC Plat No. 3 and TEC Plat No. 4, the City should not have approved the driveway portion of the Adsit Short Plat without first requiring Merit to submit an application for vacation. RCW 58.17.212 requires "any person interested in the vacation of any subdivision or portion thereof, or any area designated or dedicated for public use" to file an application, setting forth the reasons for vacation and including signatures of various parties. Furthermore, RCW 58.17.212 provides that "if the subdivision is subject to restrictive covenants which were filed at the time of the approval of the subdivision, and the application for vacation would result in the violation of a covenant, the application shall contain an agreement signed by all the parties subject to the covenants providing that the parties agree to terminate or alter the relevant covenants to accomplish the purpose of the vacation of the subdivision or portion thereof." Under the statute, the city must give notice and conduct a public hearing on the application for a vacation, thus allowing the public to weigh in on a specific proposal and to allow the city to make a well-informed decision.

Here, although Merit submitted an application regarding the Adsit Short Plat, it does not appear Merit filed any application for vacation of TEC Short Plat 3 or TEC Short Plat 4. In fact, Merit's Adsit Short Plat paperwork and survey documents do not even reference this public right of way. Therefore, the public was not given proper notice and did not have a chance to weigh in on this specific issue. Nor did the City hold a public hearing on the issue.

Furthermore, due to Merit's failure to follow the proper procedures, Rosewood HOA did not have a chance to explore what would happen to the mailboxes, fence, landscaping, and other improvements on Tract A or how Rosewood HOA CC&Rs would be violated by allowing the landscaped area to be taken over by a driveway. Because Merit and the City failed to comply with the statutory requirements, the City's decision to approve a driveway on NE 73rd PL should be reversed.

C. The City failed to consider the impact of the Adsit short plat on NE 73rd PL

Rosewood HOA raised concerns regarding the impact the Adsit proposal would have on our subdivision, but the City failed to take these matters into account. NE 73rd PL is currently a quiet cul-de-sac that is set back from the main road and is separated from the other houses in the neighborhood by a long fence running along both sides of the street. As mentioned above, the portion of NE 73rd PL that Merit seeks to use as a driveway is not an empty, unkempt area but rather a beautifully landscaped entrance to our subdivision. (See Exhibit H - Picture of Tract A). Pursuant to the CC&Rs, we have maintained this area since the development was built by paying for weekly landscaping, paying for irrigation, and repairing the fence as needed. Allowing Merit to add a driveway over this landscaped area and to allow access to a modern-looking home that is completely out of character from the rest of the subdivision will greatly decrease the aesthetic of our subdivision and may decrease the value of our properties. On the other hand, Merit has already been approved for driveway access off of 124th Ave NE, and there is likely no impact on surrounding subdivisions by having Lot 1's access to be taken off of 124th Ave NE.

D. The City's decision is vague and failed to articulate whether the Planning Director considered open spaces and rights-of-way in his decision

The City's Notice of Decision does not address whether it considered how the Adsit Short Plat would change the open spaces and rights-of-way on NE 73rd PL.

II. In the alternative, the City should modify its conditions of approval

Should the City decide that Merit is entitled to add a driveway over Tract A despite the above issues, it should modify the conditions of approval and require Merit to compensate Rosewood HOA for the taking of property.

A. The City's decision fails to require a detailed plan of the changes to NE 73rd PL

The City indicates in its Notice of Decision that it received questions regarding the fencing and landscaping at the intersection of 124 Ave NE and NE 73rd PL, and at the access point on NE 73rd PL. See Page 4. However, the Staff's responses to these inquiries is simply that the applicant will work with the neighborhood to see what can be done at later stages of development, and that the applicant will remove as little landscaping as possible.

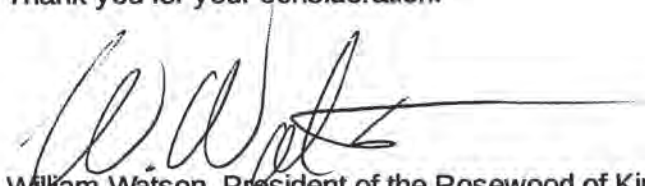
The City's decision leaves entirely too much discretion to Merit. The Adsit Short Plat contemplates significant changes and disruption to NE 73rd PL, including moving our mailboxes, removing fencing, landscaping, and irrigation systems, and adding a driveway of unknown width. Rosewood HOA has attempted to work with Merit since July 2020 to address our concerns, but no progress has been made. In fact, Merit has threatened Rosewood HOA that it will cease negotiations should we exercise our rights to file an appeal.

Given the lack of cooperation by Merit in providing a detailed plan regarding the changes to TEC Short Plat 3 and 4, and Merit's intention to take Rosewood HOA's property without compensation, the City should modify its decision to include a condition that Merit will: 1) meet with the residents of NE 73rd PL to hear our concerns; 2) produce a detailed plan of the changes to NE 73rd PL that must be approved by the City before work can proceed; and 3) guarantee that Merit and its successors will not make any additional changes to NE 73rd PL, and which are to be recorded in public records.

B. The City failed to address the HOA membership issues

Despite Duffy's email to Watson on July 22, 2020 promising to "address any issues with the HOA prior to any decisions made on this short plat application," the City did not consider the impact to Rosewood HOA of having another home within the subdivision. This new home will be using the roadways and enjoying the remaining portions of Tract A. Rosewood HOA has attempted to work with Merit on the HOA issues to no avail. Because of the liabilities and complications involved in having Lot 1 access its property through an established subdivision that is subject to CC&Rs, the City should modify its notice of decision and require that Lot 1 is subject to the same CC&R's as the other lots on NE 73rd PL.

Thank you for your consideration.



William Watson, President of the Rosewood of Kirkland Homeowners Association
12307 NE 73RD PL, Kirkland WA 98033
bill.watson@pjassociation.com

Appeal of Adsit Short Plat - SUB20-00171 (7319 124th Ave NE)

We, the undersigned, add our support and agree to join in this letter of appeal as members of the Rosewood of Kirkland Homeowners Association. Please include us in all further notifications, hearings, and decisions. We assert our rights to continue to participate in this appeal process.



Michelle and Craig Bruney
12304 NE 73rd PL, Kirkland WA 98033
michbruney@gmail.com



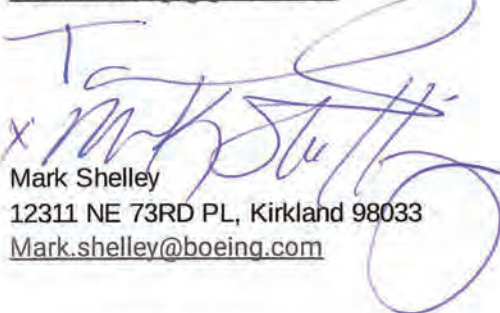
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Joe and Lee Burch
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smcjoe@gmail.com



Versegi Goran and Tamara Supica
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Goran.versegi@gmail.com



Mark Shelley
12311 NE 73RD PL, Kirkland 98033
Mark.shelley@boeing.com



October 1, 2020

Mike Smith
Merit Homes, Inc.
811 Kirkland Avenue, Suite 200
Kirkland, WA 98033
MBP@MeritHomesInc.com

Dear Mr. Smith:

Subject: Adsit Short Plat - Case No. SUB20-00171

The Planning Director, on September 28, 2020, entered his decision on your Process I Short Plat permit application at 7319 124th Avenue NE. His decision is for approval with conditions.

Enclosed is a copy of the Planning Director's decision. The Notice of Approval for this action will be released after the appeal period has lapsed (after October 15, 2020). No activity based on his decision may commence until after that date. In addition, if your project required public notice signs, they must remain in place until you receive written notice from the Planning Department that the signs can be removed.

If you have any questions, please contact me at 425.587.3228. More information is available at www.mybuildingpermit.com.

Sincerely,

PLANNING AND BUILDING DEPARTMENT

A handwritten signature in cursive script that reads "Kaylie Duffy".

Kaylie Duffy
Planner

Enclosures: Planning Director Decision

cc: Case Number: SUB20-00171
Parties of Record (with copy of report/decision)

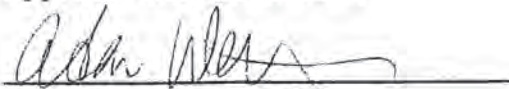


CITY OF KIRKLAND
Planning and Building Department
123 Fifth Avenue, Kirkland, WA 98033
425.587.3600 - www.kirklandwa.gov

CITY OF KIRKLAND
NOTICE OF DECISION

OCTOBER 1, 2020

Project Name: Adsit Short Plat
File No.: SUB20-00171
Location: 7319 124th Ave NE (see Attachment 1)
Applicant: Mike Smith with Merit Homes
Project Description: Subdivide a 21,809 sq. ft. parcel into 3 single-family lots in the RSX 7.2 zone (see Attachment 2)
Decisions Included: Short Plat (Process I)
Project Planner: Kaylie Duffy, Planner
SEPA Determination: Exempt from SEPA pursuant to WAC 197-11-800(6)(d)
Department Decision: **Approval with Conditions**


 Adam Weinstein, Director
 Planning and Building Department

Decision Date:	September 28, 2020
Appeal Deadline:	October 15, 2020

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

How to Appeal: *Only the applicant or those persons who previously submitted written comments or information to the Planning Director are entitled to appeal this decision.* A party who signed a petition may not appeal unless such a party also submitted independent written comments or information. An appeal must be in writing and delivered, along with fees set by ordinance, to the Planning Department by 5:00 p.m., October 15, 2020. For information about how to appeal, contact the Planning Department at (425) 587-3600. An appeal of this project decision would be heard by the Hearing Examiner.

Comment to City Council: If you do not file an appeal, but would like to express concerns about policies or regulations used in making this decision or about the decision making process, you may submit comments to citycouncil@kirklandwa.gov. Expressing your concerns in this way will not affect the decision on this application, but will enable the City Council to consider changes to policies, regulations or procedures that could affect future applications.

I. CONDITIONS OF APPROVAL

- A. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. Attachment 3, Development Standards, is provided in this report to familiarize the applicant with some of these development regulations. This attachment references current regulations and does not include all of the additional regulations. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. When a condition of approval conflicts with a development regulation in Attachment 3, the condition of approval shall be followed.
- B. Prior to recording the short plat, the applicant shall obtain a demolition permit and remove the existing single-family residence on Lots 2 and 3 and the existing detached garage on Lot 1, (see Section II – Land Use).
- C. As part of the application for a Land Surface Modification Permit, the applicant shall submit a Tree Retention Plan consistent with the approved IDP in Attachment 4 (see Conclusion V.B.2).
- D. As part of the application for a Building Permit the applicant shall submit a Tree Retention Plan consistent with the approved IDP in Attachment 4 (see Conclusion V.B.2).

II. SITE AND NEIGHBORHOOD CONTEXT

Zoning District	RSX 7.2
Shoreline Designation	N/A
Comprehensive Plan Designation	LDR 6, Low Density Residential at six units per acre
Property Size	21,809 SF
Current Land Use	The property is currently developed with an existing single-family residence, detached garage, and wooden shed. Retention of the existing residence and garage would not fully comply with the required setbacks from the proposed short plat lot lines (see Attachment 2). A portion of the northern side of the existing residence would be located over the proposed property line between lots 2 and 3. In addition, the eastern edge of the detached garage would be located over the proposed property line between Lots 1 and 2. Therefore, the applicant should demolish the existing residence and detached garage prior to recording the short plat.
Proposed Lot Sizes (net)	Lot 1: 7,206 SF Lot 2: 7,277 SF

	Lot 3: 7,326 SF
Lot Size Compliance	The RSX 7.2 zone requires a minimum lot size of 7,200 sq. ft. All lots meet the minimum lot size requirements for the zone. See Section V.A below for a compliance analysis.
Terrain	The property is relatively flat, with just over 6 feet of grade change sloping downward from the northwest corner to southeast corner (see Attachment 2).
Trees	<p>There are 11 significant trees on the site and no significant trees located off site that may be affected by the proposed development. Attachment 4 shows the location, tree number, and general health of the trees, as assessed by the applicant's arborist. The applicant is proposing an Integrated Development Plan (IDP) pursuant to KZC Section 95.30.4 & 95.30.5. See Attachment 3, Development Standards, for information on the City's review of the arborist report as well as tree preservation requirements.</p> <p>See Section 5 for an analysis of the IDP on the subject property.</p>
Access	Access to Lot 1 will be taken off of NE 73 rd Pl, while access to Lots 2 and 3 will be taken off of 124 th Ave NE.
Neighboring Zoning and Development	
North	RSX 7.2, Single Family Residential
South	RSX 7.2, Single Family Residential
East	RSX 7.2, Single Family Residential
West	RSX 7.2, Single Family Residential

III. PUBLIC NOTICE AND COMMENT

The public comment period for this application ran from July 23, 2020 to August 10, 2020. While no public comments were received in writing during the public comment period, the following topics of concern were received via phone and during an in-person meeting with staff. A brief staff response follows.

- A.** Removal of trees along south side of property. Are there any opportunities for retention?

Staff Response: The trees were evaluated by Layton Tree Consulting, LLC and the City's development review arborist reviewed their arborist report. There are five trees total along the south property line – 3, 4, 5, 6, and 9. Of these trees, 3, 4, and 5 must be removed due to their proximity to the foundation of the proposed home on Lot 3. Tree 6 has a large cavity on the lower trunk associated with codominant stem failure and was given a "fair" condition rating, while tree 9 has developed poor form from lack of sunlight and suppression by adjacent trees and was also given a "fair" condition rating. Due to health issues, neither tree must be retained.

- B.** Can the intersection of NE 73rd PI and 124th Ave NE be reviewed for fence locations and possible landscaping improvements?

Staff Response: The applicant has shown typical landscape improvements including the location of proposed street trees. At this early stage in the project, further landscape design isn't part of the applicant's workflow. The applicant has stated they will work with the neighborhood to see what could be done there at later stages in development. Once landscaping is assessed by the applicant, the plan must comply with KZC 115.135, which establishes that areas around all intersections, including the entrance of driveways onto streets, must be kept clear of sight obstruction.

- C.** What opportunities are there to reduce visual impacts to the landscaped area near the access point to the western lot?

Staff Response: The applicant has stated that they will remove as little landscaping as possible along NE 73rd PI, while still allowing access and visual appeal to the new home. Only Lot 1 will gain access off of NE 73rd PI.

IV. CRITERIA FOR SHORT PLAT APPROVAL

- A.** Facts: Municipal Code Section 22.20.140 states that the Planning Director may approve a short subdivision only if:

1. There are adequate provisions for open spaces, drainage ways, rights-of-way, easements, water supplies, sanitary waste, power service, parks, playgrounds, and schools; and
2. It will serve the public use and interest and is consistent with the public health, safety, and welfare. The Planning Director shall be guided by the policy and standards and may exercise the powers and authority set forth in RCW 58.17.

Zoning Code Section 145.45 states that the Planning Director may approve a short subdivision only if:

3. It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
4. It is consistent with the public health, safety, and welfare.

- B.** Conclusions: The proposal complies with Municipal Code Section 22.20.140 and Zoning Code Section 145.45. With the recommended conditions of approval, it is consistent with the Zoning Code and Subdivision regulations and there are adequate provisions for open spaces, drainage ways, rights-of-way, easements, water supplies, sanitary waste, power service, parks, playgrounds, and schools. It

will serve the public use and interest and is consistent with the public health, safety, and welfare because it will add housing stock to the City of Kirkland in a manner that is consistent with applicable development regulations.

V. DEVELOPMENT REGULATIONS

A. Lot Size and Dimension Compliance

The following is a review, in a checklist format, of compliance with the design requirements for subdivisions found in KMC 22.28. All lots comply with the minimum lot size requirements for the zone as proposed or conditioned below.

Complies as proposed	Complies as conditioned	Code Section
KMC 22.28.050 – Lots - Dimensions		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lots are shaped for reasonable use and development
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Minimum lot width is 15' where abutting right-of-way, access easement, or tract

B. Tree Retention

1. Facts:

- a. Municipal Code Section 22.28.180 states that the applicant has the responsibility in proposing a plat to be sensitive with respect to the natural features, including topography, streams, lakes, wetlands, habitat, geologic features and vegetation, of the property. The plat must be designed to preserve and enhance as many of these valuable features as possible.
- b. KMC 22.28.210 states that the applicant shall design the plat so as to comply with the tree management requirements set forth in KZC Chapters 90 and 95 to maximize the chances of survival of trees and associated vegetation designated for retention and minimize potential hazards to life or property.
- c. KZC 95.30.5 requires that with a short plat application, high retention value trees (includes groves) should be retained and protected to the maximum extent possible. Moderate retention value trees should be retained and protected if feasible.
- d. Integrated Development Plan
 - (1) The applicant has submitted an arborist report prepared by Layton Tree Consulting, LLC, dated September 17, 2019 (Updated June 23, 2020) that contains an Integrated Development Plan (IDP) (see Attachment 4). An IDP allows the City to consider all tree retention and removals at the time of plat approval, rather than at the subsequent grading and building permit stages.

- (2) The City's Development Review Arborist has reviewed the IDP and determined that the specific standards concerning tree retention, removals and site modification have been met.

2. Conclusion: The proposed Tree Retention Plan complies with the applicable City tree retention requirements. As part of the grading and building permit applications, the applicant should submit a Tree Retention Plan consistent with the approved IDP in Attachment 4.

VI. SUBSEQUENT MODIFICATIONS

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

VII. SHORT PLAT DOCUMENTS – RECORDATION – TIME LIMIT (KMC 22.20.370)

The short plat must be recorded with King County within five (5) years of the date of approval or the decision becomes void; provided, however, that in the event judicial review is initiated, the running of the five (5) years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the recording of the short plat.

VIII. APPENDICES

Attachments 1 through 4 are attached.

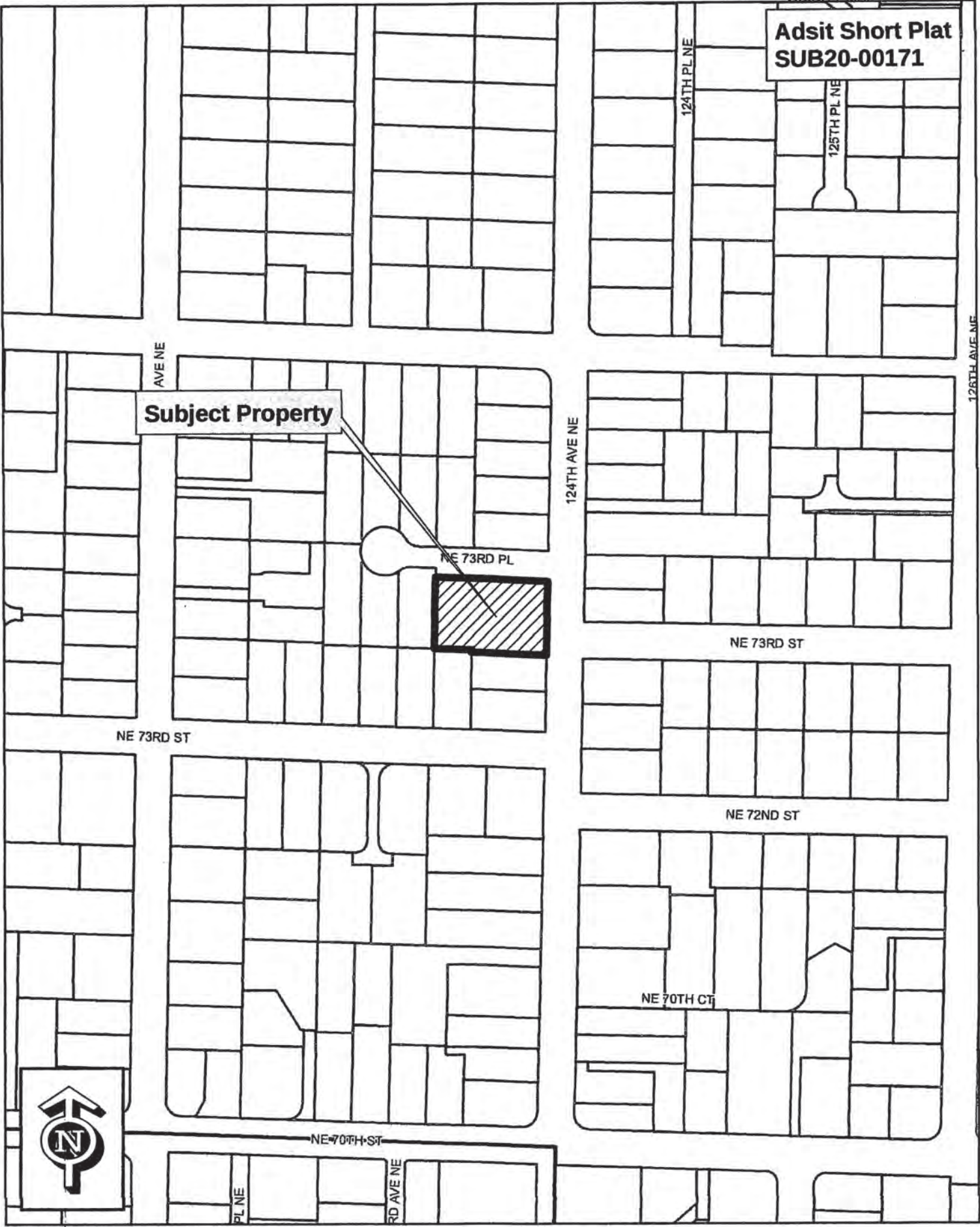
1. Vicinity Map
2. Short Plat Map and Integrated Development Plan
3. Development Standards
4. Arborist Report

IX. PARTIES OF RECORD

Applicant: Mike Smith
Merit Homes Inc.
811 Kirkland Ave, Suite 200
Kirkland, WA 98033

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

**Adsit Short Plat
SUB20-00171**



ADSIT SHORT PLAT

A PORTION OF THE SE 1/4, OF THE NW 1/4,
SECTION 9, TOWNSHIP 25 NORTH, RANGE 5 EAST, W.M.
CITY OF KIRKLAND, KING COUNTY, WASHINGTON

ACKNOWLEDGEMENTS, DECLARATIONS, DEDICATION, AND RESTRICTIONS (R.C.W. 58.17.165)

I, HERBY, DO HEREBY DECLARE THAT WE, THE UNDERSIGNED BEING ALL OF THE OWNERS OF THE LAND HEREBY SHORT SUBDIVIDED, HEREBY DECLARE THIS SHORT PLAT TO BE THE GRAPHIC REPRESENTATION OF THE SHORT SUBDIVISION MADE HEREBY, AND DO HEREBY DEDICATE TO THE USE OF THE PUBLIC FOREVER ALL STREETS AND ALLEYS NOT SHOWN AS PRIVATE HEREIN AND DEDICATE TO THE USE THEREOF FOR ALL PUBLIC PURPOSES NOT INCONSISTENT WITH THE USE THEREOF FOR PUBLIC HIGHWAY PURPOSES, AND ALSO THE RIGHT TO MAKE ALL NECESSARY SLOPES FOR CUTS AND FILLS UPON THE LOTS SHOWN HEREIN IN THE ORIGINAL REASONABLE GRADINGS OF SAID STREETS AND ALLEYS, AND FURTHER DEDICATE TO THE USE OF THE PUBLIC ALL THE EASEMENTS AND TRACTS SHOWN ON THIS SHORT PLAT FOR ALL PUBLIC PURPOSES AS DEDICATED HEREIN, INCLUDING BUT NOT LIMITED TO PARKS, OPEN SPACE, UTILITIES AND DRAINAGE UNLESS SUCH EASEMENTS OR TRACTS ARE SPECIFICALLY IDENTIFIED ON THIS SHORT PLAT AS BEING DEDICATED OR CONVEYED TO A PERSON OR ENTITY OTHER THAN THE PUBLIC.

FURTHER, THE UNDERSIGNED OWNERS OF THE LAND HEREBY SHORT SUBDIVIDED WAIVE FOR THEMSELVES, THEIR HEIRS, AND ASSIGNS AND ANY PERSON OR ENTITY DERIVING TITLE FROM THE UNDERSIGNED, ANY AND ALL CLAIMS FOR DAMAGES AGAINST THE CITY OF KIRKLAND, ITS SUCCESSORS AND ASSIGNS WHICH MAY BE OCCASIONED BY THE ESTABLISHMENT, CONSTRUCTION, OR MAINTENANCE OF ROADS AND/OR DRAINAGE SYSTEMS WITHIN THIS SHORT SUBDIVISION OTHER THAN CLAIMS RESULTING FROM INADEQUATE MAINTENANCE BY THE CITY OF KIRKLAND.

FURTHER, THE UNDERSIGNED OWNERS OF THE LAND HEREBY SHORT SUBDIVIDED AGREE FOR THEMSELVES, THEIR HEIRS AND ASSIGNS TO INDEMNIFY AND HOLD THE CITY OF KIRKLAND, ITS SUCCESSORS AND ASSIGNS, HARMLESS FROM ANY DAMAGE, INCLUDING ANY COSTS OF DEFENSE, CLAIMED BY PERSONS WITHIN OR WITHOUT THIS SHORT SUBDIVISION TO HAVE BEEN CAUSED BY ALTERATIONS OF THE GROUND SURFACE, VEGETATION, DRAINAGE, OR SURFACE OR SUBSURFACE WATER FLOWS WITHIN THIS SHORT SUBDIVISION OR BY ESTABLISHMENT, CONSTRUCTION OR MAINTENANCE OF THE ROADS WITHIN THIS SHORT SUBDIVISION. PROVIDED, THIS WAIVER AND INDEMNIFICATION SHALL NOT BE CONSTRUED AS RELINQUISHING THE CITY OF KIRKLAND, ITS SUCCESSORS OR ASSIGNS, FROM LIABILITY FOR DAMAGES INCLUDING THE COST OF DEFENSE, RESULTING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY OF KIRKLAND, ITS SUCCESSORS, OR ASSIGNS.

THIS SUBDIVISION DEDICATION, WAIVER OF CLAIMS AND AGREEMENT TO HOLD HARMLESS IS MADE WITH THE FREE CONSENT AND IN ACCORDANCE WITH THE DESIRES OF SAID OWNERS.

IN WITNESS WHEREOF WE SET OUT HANDS AND SEALS.

HERBY HOMES INC.

ITS:

ACKNOWLEDGEMENTS

STATE OF WASHINGTON }
COUNTY OF _____ } ss.

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT _____ IS THE PERSON WHO APPEARED BEFORE ME AND SAID PERSON ACKNOWLEDGED THAT (S)HE SIGNED THIS INSTRUMENT, ON DATE STATED (S)HE WAS AUTHORIZED TO EXECUTE THE INSTRUMENT AND ACKNOWLEDGED IT AS THE ACT OF HERBY HOMES INC., A WASHINGTON CORPORATION, TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTY FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.

DATED THIS _____

SIGNATURE _____

TITLE _____

MY APPOINTMENT EXPIRES _____

SURVEYOR'S CERTIFICATE

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT AT THE REQUEST OF _____

BY _____

ROBERT D. WEST, PLS.
CERTIFICATE NO. 44843



LEGAL DESCRIPTION

THE SOUTH 130 FEET OF THE NORTH 170 FEET OF LOTS 6 AND 7, BLOCK 2, ORCHARD HEIGHTS, ACCORDING TO THE PLAT RECORDED IN VOLUME 19 OF PLATS, PAGE 66, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION WITHIN THE SOUTH 130 FEET OF SAID LOT 7;

AND EXCEPT THE WEST 61.3 FEET OF SAID LOT 7;

TOGETHER WITH A NON-EXCLUSIVE EASEMENT FOR ROADWAY AND UTILITIES OVER THAT PORTION OF THE NORTH 30 FEET OF LOTS 6 AND 7, BLOCK 2, ORCHARD HEIGHTS, ACCORDING TO THE PLAT RECORDED IN VOLUME 19 OF PLATS, PAGE 66, RECORDS OF KING COUNTY, WASHINGTON, ADJOINING ON THE NORTH;

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

RESTRICTIONS

1. THIS SITE IS SUBJECT TO COVENANTS, CONDITIONS, RESTRICTIONS, RECOALS, RESERVATIONS, EASEMENTS, EASEMENT PROVISIONS, DEDICATIONS, BUILDING SETBACK LINES, NOTES, STATEMENTS, AND OTHER MATTERS, IF ANY, AS SET FORTH ON THE PLAT OF ORCHARD HEIGHTS, AN ADDITION TO THE CITY OF SEATTLE, RECORDED UNDER KING COUNTY RECORDING NUMBER 737552.
2. THIS SITE IS SUBJECT TO AN ELECTRICAL TRANSMISSION FACILITIES EASEMENT AS DISCLOSED BY INSTRUMENT RECORDED UNDER KING COUNTY RECORDING NUMBER 2500609.
3. THIS SITE IS SUBJECT TO AN ELECTRICAL TRANSMISSION FACILITIES EASEMENT AS DISCLOSED BY INSTRUMENT RECORDED UNDER KING COUNTY RECORDING NUMBER 2663350.

CITY OF KIRKLAND DEPARTMENT OF PLANNING AND BUILDING

EXAMINED, REVIEWED, AND APPROVED BY THE CITY OF KIRKLAND PURSUANT TO THE SHORT SUBDIVISION PROVISIONS OF TITLE 32 (LAND SUBDIVISION), KIRKLAND MUNICIPAL CODE, THIS _____ DAY OF _____, 20____.

DIRECTOR, DEPARTMENT OF PLANNING AND BUILDING

DEPARTMENT OF ASSESSMENT

EXAMINED AND APPROVED THIS _____ DAY OF _____, 20____.

KING COUNTY ASSESSOR:

RECORDER'S CERTIFICATE

FILED FOR RECORD THIS _____ DAY OF _____, 2020 AT _____ IN BOOK _____ OF SURVEYS AT PAGE _____ AT THE REQUEST OF ROBERT D. WEST.

MANAGER

SUPT. OF RECORDS

NOTES

1. ADDRESSING SHALL BE IN ACCORDANCE WITH KIRKLAND BUILDING DIVISION POLICY MANUAL NUMBER 2.001, ASSIGNMENT OF STREET NUMBERS AND ROAD SIGNAGE.
2. UTILITY MAINTENANCE.
EACH PROPERTY OWNER SHALL BE RESPONSIBLE FOR MAINTENANCE OF THE SANITARY SEWER OR STORM WATER STUML, RAIN GARDENS, PERMEABLE PAVEMENT, OR ANY OTHER INFILTRATION FACILITIES (KNOWN AS LOW IMPACT DEVELOPMENT) FROM THE POINT OF USE ON THEIR OWN PROPERTY TO THE POINT OF CONNECTION IN THE CITY SANITARY SEWER MAIN OR STORM WATER MAIN. ANY PORTION OF A SANITARY SEWER OR SURFACE WATER STUML, RAIN GARDEN, PERMEABLE PAVEMENT, OR ANY INFILTRATION FACILITIES, WHICH ADJUTLY SERVES MORE THAN ONE PROPERTY, SHALL BE JOINTLY MAINTAINED AND REPAIRED BY THE PROPERTY OWNERS SHARED SUCH STUML. THE JOINT USE AND MAINTENANCE SHALL BEGIN WITH THE LAND AND WILL BE ENDING ON ALL PROPERTY OWNERS WITHIN THIS SUBDIVISION, INCLUDING THEIR HEIRS, SUCCESSORS AND ASSIGNS.
3. PUBLIC RIGHT-OF-WAY SIDEWALK AND VEGETATION MAINTENANCE.
EACH PROPERTY OWNER SHALL BE RESPONSIBLE FOR KEEPING THE SIDEWALK ADJUTING THE SUBJECT PROPERTY CLEAN AND LITTER FREE. THE PROPERTY OWNER SHALL ALSO BE RESPONSIBLE FOR THE MAINTENANCE OF THE VEGETATION WITHIN THE ADJUTING LANDSCAPE STRIP. THE MAINTENANCE SHALL BEGIN WITH THE LAND AND WILL BE ENDING ON ALL PROPERTY OWNERS WITHIN THIS SUBDIVISION, INCLUDING THEIR HEIRS, SUCCESSORS AND ASSIGNS.
4. MAINTENANCE OF ON-SITE PRIVATE STORMWATER FACILITIES.
EACH LOT WITHIN THE SUBDIVISION HAS A STORMWATER FACILITY (INFILTRATION TRENCH, DRY WELLS, DISPERSSION SYSTEMS, RAIN GARDEN, AND PERMEABLE PAVEMENT) WHICH IS DESIGNED TO AID STORMWATER FLOW CONTROL FOR THE DEVELOPMENT. THE STORMWATER FACILITY WITHIN THE PROPERTY SHALL BE OWNED, OPERATED AND MAINTAINED BY THE OWNER. THE CITY OF KIRKLAND SHALL HAVE THE RIGHT TO INGRESS AND EGRESS THE PROPERTY FOR INSPECTION OF AND TO REASONABLE MONITORING OF THE PERFORMANCE, OPERATIONAL FLOWS, OR DEFECTS OF THE STORMWATER/FLOW CONTROL FACILITY. IF THE CITY OF KIRKLAND DETERMINES RELATED MAINTENANCE OR REPAIR WORKS OF THE STORMWATER FACILITY IS REQUIRED, THE CITY OF KIRKLAND SHALL GIVE NOTICE TO THE OWNER OF THE SPECIFIC MAINTENANCE AND/OR REPAIR WORK REQUIRED. IF THE ABOVE REQUIRED MAINTENANCE OR REPAIR IS NOT COMPLETED WITHIN THE TIME SET BY THE CITY OF KIRKLAND, THE CITY OF KIRKLAND MAY PERFORM THE REQUIRED MAINTENANCE OR REPAIR, OR CONTRACT WITH A PRIVATE COMPANY CAPABLE OF PERFORMING THE STORMWATER FACILITY MAINTENANCE OR REPAIR AND THE OWNER WILL BE REQUIRED TO REIMBURSE THE CITY FOR ANY SUCH WORK PERFORMED. THE OWNER IS REQUIRED TO OBTAIN WRITTEN APPROVAL FROM THE CITY OF KIRKLAND PRIOR TO REPLACING, ALTERING, OR REMOVING OR MAINTAINING THE STORMWATER FACILITY.
5. LOCAL IMPROVEMENT DISTRICT (LID) WAIVER AGREEMENT. CHAPTER 11A.06.730 OF THE KIRKLAND ZONING CODE REQUIRES ALL OVERHEAD UTILITY LINES ALONG THE FRONTAGE OF THE SUBJECT PROPERTY TO BE CONVERTED TO UNDERGROUND UNLESS THE PUBLIC WORKS DEPARTMENT DETERMINES THAT IT IS UNFEASIBLE TO DO SO AT THE TIME OF THE SUBDIVISION RECORDING. IF IT IS DETERMINED TO BE UNFEASIBLE, THEN THE PROPERTY OWNER SHALL CONSENT TO THE FORMATION OF A LOCAL IMPROVEMENT DISTRICT, HEREINAFTER FORMED BY THE CITY ON OTHER PROPERTY OWNERS DURING REVIEW OF THIS SUBDIVISION IF IT WAS DETERMINED THAT IT WAS UNFEASIBLE TO CONVERT THE OVERHEAD UTILITY LINES TO UNDERGROUND ALONG THE FRONTAGE OF THIS SUBDIVISION ON 124TH AVENUE NE AND NE 73RD PLACE, THEREFORE, IN CONSIDERATION OF DEFERRING THE RELOCATION TO UNDERGROUND THE OVERHEAD UTILITY LINES AT THE TIME OF THE SUBDIVISION RECORDING, THE PROPERTY OWNER AND ALL FUTURE PROPERTY OWNERS OF LOTS WITHIN THIS SUBDIVISION HEREBY CONSENT TO THE FORMATION OF A LOCAL IMPROVEMENT DISTRICT HEREINAFTER FORMED BY THE CITY OR OTHER PROPERTY OWNERS.
6. THE PRIVATE WATER AND SEWER EASEMENT SHOWN ON LOT 2 IS TO THE BENEFIT OF THE OWNER OF LOT 3. THE OWNER OF SAID LOT IS HEREBY RESPONSIBLE FOR THE MAINTENANCE OF THEIR RESPECTIVE PRIVATE WATER AND SEWER FACILITIES AND SHALL SHARE EQUALLY IN THE MAINTENANCE RESPONSIBILITIES OF THE PRIVATE WATER AND SEWER FACILITIES USED IN COMMON WITHIN SAID EASEMENT.
7. THE 5' PRIVATE STORM DRAINAGE EASEMENT SHOWN ON LOT 2 IS TO THE BENEFIT OF THE OWNERS OF LOTS 1 AND 2. THE OWNERS OF SAID LOTS ARE HEREBY RESPONSIBLE FOR THE MAINTENANCE OF THEIR RESPECTIVE PRIVATE STORM DRAINAGE FACILITIES AND SHALL SHARE EQUALLY IN THE MAINTENANCE RESPONSIBILITIES OF THE PRIVATE STORM DRAINAGE FACILITIES USED IN COMMON WITHIN SAID EASEMENT.

SHEET INDEX

1. COVER SHEET
2. PROPOSED LOT CONFIGURATION, EASEMENTS AND UTILITIES
3. EXISTING CONDITIONS



CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE
PLANNING
SURVEYING

12100 NE 195th St, Suite 300 Bothell, Washington 98011 425.885.7877

JOB NO. 19165
SHEET 1 OF 3

A PORTION OF THE SE 1/4, OF THE NW 1/4,
SECTION 9, TOWNSHIP 25 NORTH, RANGE 5 EAST, W.M.
CITY OF KIRKLAND, KING COUNTY, WASHINGTON



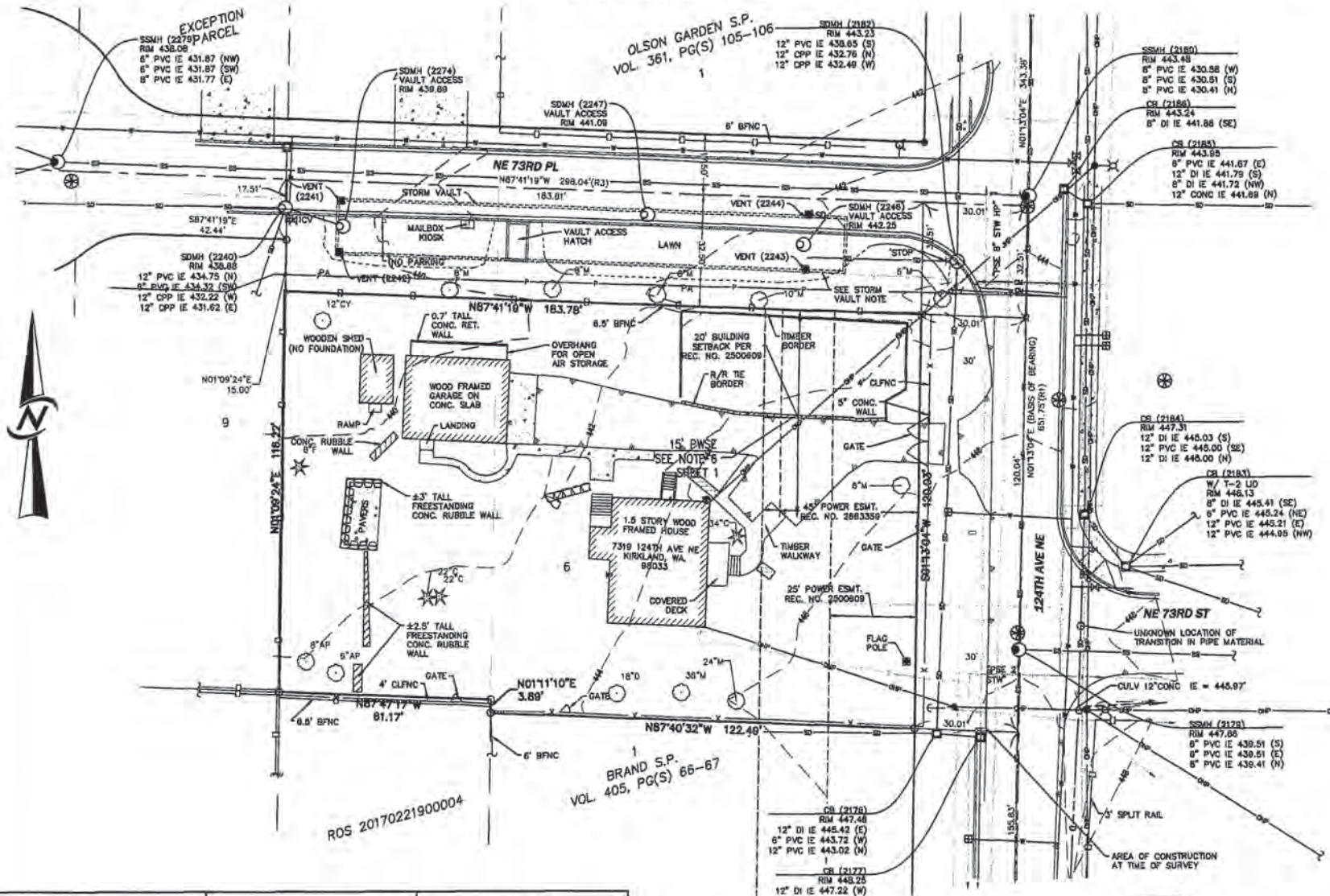
JOB NO. 19165
SHEET 2 OF 3

ADSIT SHORT PLAT

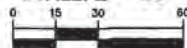
A PORTION OF THE SE 1/4, OF THE NW 1/4,
SECTION 9, TOWNSHIP 25 NORTH, RANGE 5 EAST, W.M.
CITY OF KIRKLAND, KING COUNTY, WASHINGTON

SHORT PLAT
CITY OF KIRKLAND

FILE NO: SUB20-



SCALE: 1" = 30'



MARCH 11, 2020



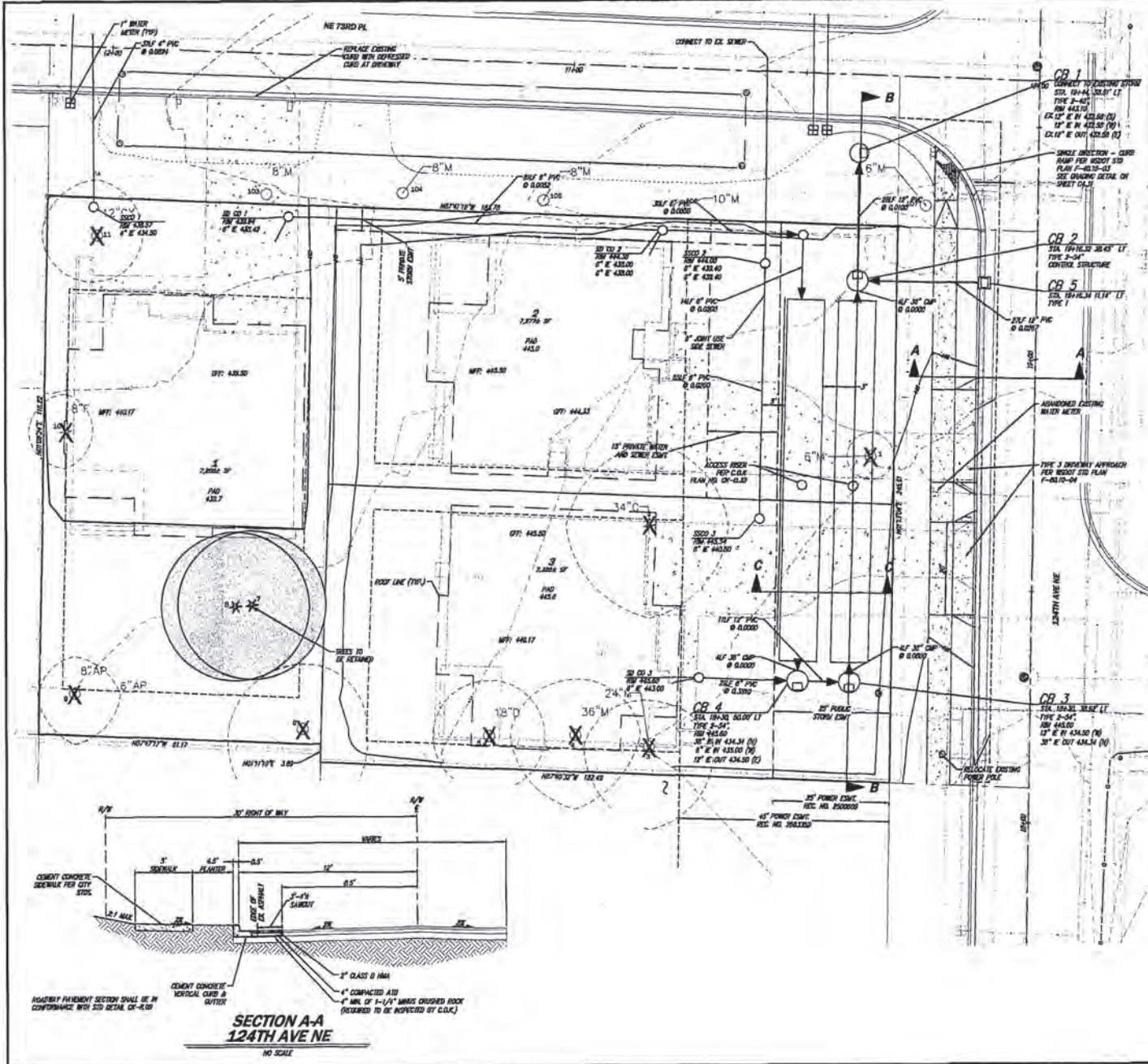
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SURVEYING

12100 NE 195th St, Suite 300 Bothell, Washington 98011 425.885.7877

JOB NO. 19165

SHEET 3 OF 3

SE 1/4, NW 1/4, SEC. 9, TWP. 25N., RGE. 5E, W.M.



SCALE: 1" = 10'

DATUM

HORIZONTAL: NAD 83/91 PER CITY OF KIRKLAND
VERTICAL: NAD 83 PER CITY OF KIRKLAND

ORIGINALING GEOMARK:
CITY OF KIRKLAND INCORPORATION NO. 16, FOUND 3" GRASS IN CONCRETE
INCORPORATION DOOR 1.4" IN CASE, PER CITY OF KIRKLAND SURVEY CONTROL
POINT STANDARD DATA SHEET, ISSUED 8/20/13.
AT THE INTERSECTION OF LINDA AVE NE & NE 70TH ST
VERTICAL DATUM NAD 83
ELEVATION 465.6'

TEMPORARY BENCHMARK

- SET WING NAIL WITH AXIS CONTROL WASHER IN ASPHALT ALONG THE
 EASTERLY SIDE OF 124TH AVE NE, AXIS NORTH OF THE INTERSECTION WITH
 NE 30RD S/E.
 ELEVATION: +45.47'
- ITEM 3'
 BRASS DISK IN MONUMENT CASE, STAMPED "3.0701", 0.5" BELOW FNL. LOCATED
 AT THE CENTERLINE WEST END OF NE 30RD PL.
 ELEVATION: +37.22'

LEGAL DESCRIPTION

LEGAL DESCRIPTION AND EASEMENTS FOR PROPERTY OBTAINED BY TITLE
COMMITMENT NO. 0148119-ETLL DATED APRIL 10, 2019, PROVIDED BY CHICAGO
TITLE COMPANY.

THE SOUTH 120 FEET OF THE NORTH 150 FEET OF LOTS 8 AND 2, BLOCK 2, ORDAINED HEREIN, ACCORDING TO THE PLAT RECORDED IN VOLUME 10 OF PLATS, PAGE 68, RECORDS OF KING COUNTY, WASHINGTON, EXCEPT THAT PORTION WITHIN THE SOUTH 130 FEET OF SAID LOT 2; AND EXCEPT THE WEST 63.5 FEET OF SAID LOT 2; TOGETHER WITH A HIGH-COLLUSIVE EASEMENT FOR HIGHWAY AND UTILITIES OVER THAT PORTION OF THE NORTH 150 FEET OF LOTS 8 AND 2, BLOCK 2, ORDAINED HEREIN, ACCORDING TO THE PLAT RECORDED IN VOLUME 10 OF PLATS, PAGE 68, RECORDS OF KING COUNTY, WASHINGTON, ADJOINING ON THE NORTH.

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

DATE	MARCH 2020 (1ST SUB)	SHEET	OF
DESIGNED BY	SHER H. MERTHA, P.E.	C4.01	11
DRAWN	STEVE E. SHAWNS	PROJECT NUMBER 19165	
APPROVED	SHER H. MERTHA, P.E.		
	ROBERT B. WEST, P.L.S.		
	PROJECT MANAGER		
ROAD AND UTILITY PLAN ADSTI SHORT PLAT MERIT HOMES 611 ARROWHEAD LANE, SUITE 200 APPLETON, WI 54912		 CIVIL ENGINEERING LANDSCAPE ARCHITECTURE PLANNING SURVEYING 12101 NE 119th St, Suite 200, Appleton, Wisconsin 54911 414.843.7977	
			
NO. _____ ADDRESS _____ CITY _____ STATE _____ ZIP _____		NO. _____ ADDRESS _____ CITY _____ STATE _____ ZIP _____	



CITY OF KIRKLAND
Planning and Building Department
123 5th Avenue, Kirkland, WA 98033
425.587.3600 - www.kirklandwa.gov

SHORT PLAT DEVELOPMENT STANDARDS LIST

File: SUB20-00171

This application must comply with all applicable standards. The listing below outlines those standards in a typical development sequence.

KMC refers to Kirkland Municipal Code, KZC refers to Kirkland Zoning Code

TREE PLAN SUMMARY

KMC 22.28.210 & KZC 95.30 Significant Trees.

A Tree Retention Plan was submitted with the short plat in which the location of all proposed improvements were known. Therefore KZC 95.30.4 & 95.30.5 – known as an Integrated Development Plan, or IDP, applies in regards to tree retention. The approved IDP is included as Attachment 4 of the staff report. There are 11 significant trees on the site, of which 2 are viable. These trees have been assessed by staff and the City's Arborist. They are identified by number in the following chart.

Lot 1 Tree Density Meeting Requirements: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>			
Lot Size (SF)	Tree Density Required (round up)	Existing Credits to Remain	Supplemental Trees Required
7,206	5	28.5	0

Lot 1 On-site Significant Tree Typing						
Tree #	DBH	High Retention Value	Moderate Retention Value	Low Retention Value	Proposed for Retention	Tree Density Credit
6	25, 23 (34)			X – invasive		
7*	26		X		Yes	13.5
8*	29		X		Yes	15
9	10		X		No	
10*	9	X			No	
11	14		X		No	

* denotes conifer trees which meet 1.5 times tree density credit per 95.33(1)(b)

Lot 2 Tree Density Meeting Requirements: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Lot Size (SF)	Tree Density Required (round up)	Existing Credits to Remain	Supplemental Trees Required
7,277	5	0	5

Lot 2 On-site Significant Tree Typing						
Tree #	DBH	High Retention Value	Moderate Retention Value	Low Retention Value	Proposed for Retention	Tree Density Credit
1	6			X – NV	No	
* denotes conifer trees which meet 1.5 times tree density credit per 95.33(1)(b)						

Lot 3 Tree Density Meeting Requirements: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Lot Size (SF)	Tree Density Required (round up)	Existing Credits to Remain	Supplemental Trees Required
7,326	5	0	5

Lot 3 On-site Significant Tree Typing						
Tree #	DBH	High Retention Value	Moderate Retention Value	Low Retention Value	Proposed for Retention	Tree Density Credit
2*	29		X		No	0
3	28		X		No	0
4	37		X		No	0
5	22			X - invasive	No	0
* denotes conifer trees which meet 1.5 times tree density credit per 95.33(1)(b)						

No trees are to be removed with an approved short plat or subdivision permit. Based on the approved IDP, the applicant shall retain and protect all viable trees throughout the development of each single-family lot except for those trees allowed to be removed for the installation of the plat infrastructure improvements *and* construction of the residence and associated site improvements. Modifications to the Tree Retention Plan must be approved per KZC 95.30(6)(b).

PRIOR TO RECORDING

KMC 22.20.362 Short Plat - Title Report. The applicant shall submit a title company certification which is not more than 30 calendar days old verifying ownership of the subject property on the date that the property owner(s) (as indicated in the report) sign(s) the short plat documents; containing a legal description of the entire parcel to be subdivided; describing any easements or restrictions affecting the property with a description, purpose and reference by auditor's file number and/or recording number; any encumbrances on the property; and any delinquent taxes or assessments on the property.

KMC 22.20.366 Short Plat - Lot Corners. The exterior short plat boundary and all interior lot corners shall be set by a registered land surveyor. If the applicant submits a bond for construction of short plat improvements and installation of permanent interior lot corners, the City may allow installation of temporary interior lot corners until the short plat improvements are completed.

KMC 22.20.390 Short Plat - Improvements. The owner shall complete or bond all required right-of-way, easement, utility and other similar improvements.

KMC 22.32.010 Utility System Improvements. All utility system improvements must be

designed and installed in accordance with all standards of the applicable serving utility.

KMC 22.32.020 Water System. The applicant shall install a system to provide potable water, adequate fire flow and all required fire-fighting infrastructure and appurtenances to each lot created.

KMC 22.32.030 Stormwater Control System. The applicant shall comply with the construction phase and permanent stormwater control requirements of the Municipal Code.

KMC 22.32.040 Sanitary Sewer System. The developer shall install a sanitary sewer system to serve each lot created.

KMC 22.32.050 Transmission Line Undergrounding. The applicant shall comply with the utility lines and appurtenances requirements of the Zoning Code.

KMC 22.32.080 Performance Bonds. In lieu of installing all required improvements and components as part of a plat or short plat, the applicant may propose to post a bond, or submit evidence that an adequate security device has been submitted and accepted by the service provider (City of Kirkland and/or Northshore Utility District), for a period of one year to ensure completion of these requirements within one year of plat/short plat approval.

LAND SURFACE MODIFICATION AND/OR BUILDING PERMIT REQUIREMENTS

KZC 85.45 Liability. The applicant shall enter into an agreement with the City, which runs with the property, in a form acceptable to the City Attorney, indemnifying the City for any damage resulting from development activity on the subject property which is related to the physical condition of the property.

KZC 95.35.2.b.(3)(b)i Tree Protection Techniques. A description and location of tree protection measures during construction for trees to be retained must be shown on demolition and grading plans.

KZC 95.34 Tree Protection. Prior to development activity or initiating tree removal on the site, vegetated areas and individual trees to be preserved shall be protected from potentially damaging activities. Protection measures for trees to be retained shall include (1) placing no construction material or equipment within the protected area of any tree to be retained; (2) providing a visible temporary protective chain link fence at least 4 feet in height around the protected area of retained trees or groups of trees until the Planning Official authorizes their removal; (3) installing visible signs spaced no further apart than 15 feet along the protective fence stating "Tree Protection Area, Entrance Prohibited" with the City code enforcement phone number; (4) prohibiting excavation or compaction of earth or other damaging activities within the barriers unless approved by the Planning Official and supervised by a qualified professional; and (5) ensuring that approved landscaping in a protected zone shall be done with light machinery or by hand.

KZC 95.45 Tree Installation Standards. All supplemental trees to be planted shall conform to the Kirkland Plant List. All installation standards shall conform to Kirkland Zoning Code Section 95.45.

KZC 110.60.5 Street Trees. All trees planted in the right-of-way must be approved as to species by the City. All trees must be two inches in diameter at the time of planting as measured using the standards of the American Association of Nurserymen with a canopy that starts at least six feet above finished grade and does not obstruct any adjoining sidewalks or driving lanes.

KZC 95.52 Prohibited Vegetation. Plants listed as prohibited in the Kirkland Plant List shall not be planted in the City.

105.10.2 Pavement Setbacks. The paved surface in an access easement or tract shall be set back at least 5 feet from any adjacent property which does not receive access from that easement or tract. An access easement or tract that has a paved area greater than 10 feet in width must be screened from any adjacent property that does not receive access from it. Screening standards are outlined in this section.

KZC 105.47 Required Parking Pad. Except for garages accessed from an alley, garages serving detached dwelling units in low density zones shall provide a minimum 20-foot by 20-foot parking pad between the garage and the access easement, tract, or right-of-way providing access to the garage.

KZC 115.25 Work Hours. It is a violation of this Code to engage in any development activity or to operate any heavy equipment before 7:00 am. or after 8:00 pm Monday through Friday, or before 9:00 am or after 6:00 pm Saturday. No development activity or use of heavy equipment may occur on Sundays or on the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day. The applicant will be required to comply with these regulations and any violation of this section will result in enforcement action, unless written permission is obtained from the Planning Official.

KZC 115.40 Fence Location. Fences over 6 feet in height may not be located in a required setback yard. A detached dwelling unit abutting a neighborhood access or collector street may not have a fence over 3.5 feet in height within the required front yard. No fence may be placed within a high waterline setback yard or within any portion of a north or south property line yard, which is coincident with the high waterline setback yard.

KZC 115.42 Floor Area Ratio (F.A.R.) Limits. Floor area for detached dwelling units is limited to a maximum floor area ratio in low density residential zones. See Use Zone charts for the maximum percentages allowed. This regulation does not apply within the disapproval jurisdiction of the Houghton Community Council.

KZC 115.43 Garage Requirements for Detached Dwelling Units in Low Density Zones. Detached dwelling units served by an open public alley, or an easement or tract serving as an alley, shall enter all garages from that alley. Whenever practicable, garage doors shall not be placed on the front façade of the house. Side-entry garages shall minimize blank walls. For garages with garage doors on the front façade, increased setbacks apply, and the garage width shall not exceed 50% of the total width of the front façade. These regulations do not apply within the disapproval jurisdiction of the Houghton Community Council. Section 115.43 lists other exceptions to these requirements.

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

KZC 115.90 Calculating Lot Coverage. The total area of all structures and pavement and any other impervious surface on the subject property is limited to a maximum percentage of total lot area. See the Use Zone charts for maximum lot coverage percentages allowed. Section 115.90 lists exceptions to total lot coverage calculations See Section 115.90 for a more detailed explanation of these exceptions.

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

KZC 115.115 Required Setback Yards. This section establishes what structures, improvements and activities may be within required setback yards as established for each use in each zone.

KZC 115.115.3.g Rockeries and Retaining Walls. Rockeries and retaining walls are limited to a maximum height of four feet in a required yard unless certain modification criteria in this section are met. The combined height of fences and retaining walls within five feet of each other in a required yard is limited to a maximum height of 6 feet, unless certain modification criteria in this section are met.

KZC 115.115.3.n Covered Entry Porches. In residential zones, covered entry porches on dwelling units may be located within 13 feet of the front property line if certain criteria in this

section are met. This incentive is not effective within the disapproval jurisdiction of the Houghton Community Council.

KZC 115.115.3.o Garage Setbacks. In low density residential zones, garages meeting certain criteria in this section can be placed closer to the rear property line than is normally allowed in those zones.

KZC 115.115.3.p HVAC and Similar Equipment: These may be placed no closer than five feet of a side or rear property line, and shall not be located within a required front yard; provided, that HVAC equipment may be located in a storage shed approved pursuant to subsection (3)(m) of this section or a garage approved pursuant to subsection (3)(o)(2) of this section. All HVAC equipment shall be baffled, shielded, enclosed, or placed on the property in a manner that will ensure compliance with the noise provisions of KZC 115.95.

KZC 115.115.5.a Driveway Width and Setbacks. For a detached dwelling unit, a driveway and/or parking area shall not exceed 20 feet in width in any required front yard, and shall be separated from other hard surfaced areas located in the front yard by a 5-foot wide landscape strip. Driveways shall not be closer than 5 feet to any side property line unless certain standards are met.

KZC 115.135 Sight Distance at Intersection. Areas around all intersections, including the entrance of driveways onto streets, must be kept clear of sight obstruction as described in this section.

KZC 145.22.2 Public Notice Signs. Within seven (7) calendar days after the end of the 21-day period following the City's final decision on the permit, the applicant shall remove all public notice signs.

PRIOR TO OCCUPANCY

KZC 95.40 Bonds. The City may require a maintenance agreement or bond to ensure compliance with any aspect of the Landscaping chapter.

KZC 95.50.2.b Tree Maintenance. For detached dwelling units, the applicant shall submit a 5-year tree maintenance agreement to the Planning Department to maintain all pre-existing trees designated for preservation and any supplemental trees required to be planted.

KZC 110.60.6 Mailboxes. Mailboxes shall be installed in the development in a location approved by the Postal Service and the Planning Official. The applicant shall, to the maximum extent possible, group mailboxes for units or uses in the development.

KZC 110.75 Bonds. The City may require or permit a bond to ensure compliance with any of the requirements of the Required Public Improvements chapter.



PUBLIC WORKS CONDITIONS

Permit #: SUB20-00171

Project Name: 3 lot SP Merit

Project Address: 7319 124th AVE NE

Date: 4/9/2020

Public Works Staff Contacts

Jamie Ward, Development Engineer

Phone: 425-587-3809 / E-mail: jward@kirklandwa.gov

General Conditions:

1. All public improvements associated with this project including street and utility improvements, must meet the City of Kirkland Public Works Pre-Approved Plans and Policies Manual. A Public Works Pre-Approved Plans and Policies manual can be purchased from the Public Works Department, or it may be retrieved from the Public Works Department's page at the City of Kirkland's web site.
2. This project will be subject to Public Works Permit and Connection Fees. It is the applicant's responsibility to contact the Public Works Department by phone or in person to determine the fees. The applicant should anticipate the following fees:
 - o Water, Sewer, and Surface Water Connection Fees *
 - o Side Sewer Inspection Fee *
 - o Septic Tank Abandonment Inspection Fee
 - o Water Meter Fee *
 - o Right-of-way Fee
 - o Review and Inspection Fee
 - o Building Permits associated with this proposed project will be subject to the traffic, park, and school impact fees per Chapter 27 of the Kirkland Municipal Code. The impact fees shall be paid prior to issuance of the Building Permit(s). Any existing buildings within this project which are demolished will receive a Traffic Impact Fee credit, Park Impact Fee Credit and School Impact Fee Credit. This credit will be applied to the first Building Permits that are applied for within the project. The credit amount for each demolished building will be equal to the most currently adopted Fee schedule.

** Fee to be paid with the issuance of a Building Permit.*

3. All street and utility improvements shall be permitted by obtaining a Land Surface Modification (LSM) Permit, including the required LSM Checklist.
4. Submittal of Building Permits within a subdivision prior to recording;



- Submittal and Issuance of a Building Permit with an existing legal building site prior to subdivision recording.
 - A. Submittal - A Building Permit can be submitted prior to recording of the subdivision for each existing legal building site in the subject subdivision if one the following is met:
 - I. A complete Building Permit shall include all the required utility and street improvement engineering for the legal building site; or,
 - II. A separate complete LSM Permit has been applied for prior to or at the same time that Building Permit is applied for that includes all of the required utility and street improvement engineering.
 - III. The Building Permit shall comply with applicable codes for that legal building site.
 - B. Issuance – The Building Permit will be reviewed and approved for issuance (the Building Department determines when the permit can be issued) by the Public Works Department if the following conditions are met:
 - I. The utility and street improvement engineering was reviewed with the Building Permit; or,
 - II. The LSM is approved before the Building Permit is issued; or,
 - III. The Development Engineer determines that the LSM review is substantially complete to allow the Building Permit issuance. In this case the Development Engineer may opt to add special conditions to the new Building Permit related to utility and street improvement engineering that must be completed prior to final inspection of the Building.
- Submittal of Building Permits within an Integrated Development Plan (IDP): If the subdivision is using the IDP process, the Building Permits for the new homes can only be submitted after the LSM Permit has been submitted, reviewed, and approved. City Council adopted a moratorium interim Ordinance 4584 that prohibits the City from accepting short plat and subdivision applications with phased tree retention review per KZC 95.30.6a. In addition, the applicant will need to meet all HPO requirements per KZC Chapter 70.
- Submittal of a Building Permit within a standard subdivision (non IDP): If the subdivision is not using the IDP process, the Building Permits for the new houses can be applied for after the subdivision is recorded and the LSM permit has been submitted, reviewed, and approved.
- Review of Expedited or Green Building Permits: A new single family Building Permit within a subdivision can only be applied for after the subdivision is recorded and will only be reviewed as an expedited or green building fast track if submitted

electronically through MBP and the LSM permit has been submitted, reviewed, and approved.

5. Subdivision Performance and Maintenance Securities:
 - The subdivision can be recorded in advance of installing all the required street and utility improvements by posting a performance security equal to 130% of the value of work. This security amount will be determined by using the City of Kirkland's Improvement Evaluation Packet (available in either Excel or PDF). Contact the Development Engineer assigned to this project to assist with this process.
 - If a recording Performance Security has not yet been posted, then prior to issuance of the LSM Permit a standard right of way restoration security ranging from \$10,000.00 to 30,000.00 (value determined based on amount of ROW disruption) shall be posted with Public Works Department. This security will be held until the project has been completed.
 - Prior to Final Inspection of the Land Surface Modification improvements, there will be a condition of the permit to establish a two year Maintenance security.
6. All civil engineering plans which are submitted in conjunction with a building, grading, or right-of-way permit must conform to the Public Works Policy G-7, Engineering Plan Requirements. This policy is contained in the Public Works Pre-Approved Plans and Policies manual.
7. All street improvements and underground utility improvements (storm, sewer, and water) must be designed by a Washington State Licensed Engineer; all drawings shall bear the engineers stamp.
8. All plans submitted in conjunction with a building, grading or right-of-way permit must have elevations which are based on the King County datum only (NAVD 88).
9. A completeness check meeting is required prior to submittal of any Building Permit applications.
10. Seattle City Light Easements: The applicant shall notify Seattle City Light (SCL) by certified mail, return receipt requested, of their plans to subdivide the property or install improvements with a copy of the notice and the return receipt provided to the City. If the applicant does not provide documentation of SCL approval before recording of the short plat or installation of the improvement in a form acceptable to the City, the property owner shall also sign an agreement to defend, indemnify and hold the City harmless in the event that a dispute arises between SCL and the developer, property owner, or any future property owners.

11. The required tree plan shall include any significant tree in the public right-of-way along the property frontage.

12. All subdivision recording documents shall include the following language:

Utility Maintenance: Each property owner shall be responsible for maintenance of the sanitary sewer, storm water stub, rain garden, permeable pavement, or any infiltration facilities (known as Low Impact Development) from the point of use on their own property to the point of connection in the City sanitary sewer main or storm water main. Any portion of a sanitary sewer, surface water stub, rain garden, permeable pavement, or any infiltration facilities, which jointly serves more than one property, shall be jointly maintained and repaired by the property owners sharing such stub. The joint use and maintenance shall "run with the land" and will be binding on all property owners within this subdivision, including their heirs, successors and assigns.

Public Right-of-way Sidewalk and Vegetation Maintenance: Each property owner shall be responsible for keeping the sidewalk abutting the subject property clean and litter free. The property owner shall also be responsible for the maintenance of the vegetation within the abutting landscape strip. The maintenance shall "run with the land" and will be binding on all property owners within this subdivision, including their heirs, successors and assigns.

If the lots have on-site private storm water facilities, include this language on the subdivision recording document:

Maintenance of On-site Private Stormwater Facilities: Each Lot within the Subdivision has a stormwater facility (infiltration trench, dry wells, dispersion systems, rain garden, and permeable pavement) which is designed to aid storm water flow control for the development. The stormwater facility within the property shall be owned, operated and maintained by the Owner. The City of Kirkland shall have the right to ingress and egress the Property for inspection of and to reasonable monitoring of the performance, operational flows, or defects of the stormwater/flow control facility. If the City of Kirkland determines related maintenance or repair work of the stormwater facility is required, the City of Kirkland shall give notice to the Owner of the specific maintenance and/or repair work required. If the above required maintenance or repair is not completed within the time set by the City of Kirkland, the City of Kirkland may perform the required maintenance or repair, or contract with a private company capable of performing the stormwater facility maintenance or repair and the Owner will be required to reimburse the City for any such work performed. The Owner is required to obtain written approval from the City of Kirkland prior to replacing, altering, modifying or maintaining the storm water facility.

If the project contains LID storm improvements that will be installed as a condition of the new home Building Permit, then include this condition on the Short Plat recording documents:



Installation of Low Impact Development (LID) storm drainage improvements with Building Permits: All LID storm drainage features depicted on Sheet ____ of ____ of issued permit LSM1X-0XXXX shall be installed in conjunction with the construction of each new home on lots X to X. The LID improvements include, but are not limited to the rain gardens and the pervious driveways. The Building Permit for the new single family home on lots X to X will not receive a final inspection until said LID improvements are installed. The pervious access road/Tract serving lots X and X shall be constructed or secured by a performance bond prior to recording of the short plat

Sanitary Sewer Conditions:

1. The existing sanitary sewer main in the right-of-way is adequate to serve the project.
2. Provide a 6-inch minimum side sewer stub to each lot. Side sewers serving the property shall be PVC gravity sewer pipe per Public Works Pre-Approved Criteria. Remove and replace any substandard pipes. Verify existing pipe condition by video inspection if the pipe is to remain.
3. Access for maintenance of the sewer manholes is required. Provide a 15' wide access easement from the right-of-way to each sanitary sewer manhole.
4. The existing septic system shall be abandoned per City standards with a Demo Permit.

Water System Conditions:

1. The existing water main in the right-of-way is adequate to serve the project.
2. Provide a separate 1" minimum water service from the water main to the meter for each lot; City of Kirkland will set the water meter. The water size is determined when the Building Permit is submitted and is sized per the Uniform Plumbing Code. A ¾" meter is typical for a new single-family home, unless otherwise required by the City.
3. The existing water service shall be abandoned at the main, unless approved otherwise by Public Works. Note: The existing water service may be used provided that it is in the right location, is not galvanized or blue poly, and is sized adequately to serve the building (per the Plumbing Code).
4. See Fire Department conditions for fire flow requirements.

Surface Water Conditions:

1. Provide temporary and permanent storm water control in accordance with the 2016 King County Surface Water Design Manual (KCSWDM) and the City of Kirkland Addendum (Policy D-10).
2. **SEE POLICY D-10 for updated storm water design requirements**
3. To determine the drainage review level required, the target impervious surface area is the maximum allowable lot coverage area for the project, plus any offsite improved impervious areas. See Policies D-2 and D-3 in the Public Works Pre-Approved Plans for drainage review information, or contact Kirkland Surface Water staff at (425) 587-3800 for assistance. The Kirkland Drainage Review Flow Chart is a helpful tool to determine a project's drainage review level. Drainage review levels are summarized below:
 - Full Drainage Review
 - Any non-single-family residential project that creates more than 2,000 sf of new and/or replaced impervious surface, or greater than 7,000 sf of land disturbing activity will trigger a Full Drainage Review.
 - Single family residential projects that propose improvements greater than the Simplified thresholds explained above will be subject to a Full Drainage Review.
4. A preliminary drainage report (Technical Information Report) must be submitted with the subdivision application. This must include a downstream analysis for all projects (except for Basic and Simplified Drainage Review projects). Provide a level one off-site analysis per Core Requirement #2 of the KCSWDM.
 - For Simplified Drainage Review, use the Simplified TIR Submittal Template available on the City of Kirkland website. Navigate to the following webpage:
"City of Kirkland Utilities > Storm & Surface Water > Development & Construction"
5. This project is in a Level 2 Flow Control Area, and is required to comply with core drainage requirements in the KCSWDM. Historic (forested) conditions shall be used as the pre-developed modeling condition for design of the stormwater detention system.
6. The project may qualify for an exception to detention if the target surfaces will generate no more than a 0.15 cfs increase in the historic (forested) conditions 100-year peak flow. The 15-minute time step must be used to perform the flow control analysis. Do not use the 1-hour time step. Approved hydrologic modeling programs are MGS Flood and WWHM 2012.
7. Evaluate the feasibility and applicability of dispersion, infiltration, and other stormwater Low Impact Development (LID) Best Management Practices (BMPs) per the KCSWDM. If feasible, stormwater LID BMPs are required to the maximum extent feasible. If LID BMPs are infeasible, pervious pavement cannot be used to reduce overall impervious lot coverage. The Private Maintenance Agreement will be recorded on all projects that construct a stormwater LID BMP or facility, per Policy D-7.



8. Soil information may be necessary for designing LID BMPs per the KCSWDM, and there are other reasons a soil report is necessary for a project (e.g., steep slopes, sensitive areas, etc.). Refer to Policy D-8 for details.
9. Special inspections may be required for LID BMPs on this project. Provide documentation of inspections by a licensed geotechnical professional that the BMP will function as designed.
10. If the project will create or replace more than 5,000 square feet of pollution generating impervious surface (PGIS), provide water quality treatment in accordance with the KCSWDM.
11. Soil Amendment per Pre-Approved Plan E.12 is required for all landscaped areas.
12. Provide a separate storm drain connection to each lot for conveyance. All roof and driveway drainage must be tight-lined to the storm drain system or utilize low impact development techniques on-site.
13. Provide collection and conveyance of right-of-way storm drainage. Extend the storm main along 124th Ave NE, to and through the limits of the property. Provide a plan and profile design for the storm sewer system. Size and material of construction shall be in accordance with the City Kirkland Pre-Approved Plans and Notes. Refer to Policy D-5 for details.
14. A ____ foot wide ____ storm sewer line easement for ____ must be recorded with the property.
15. Provide a 15' wide access easement to the storm detention control manhole; easement must be improved with 10' of asphalt and drainage control to protect against erosion.
16. A storm sewer "Joint Maintenance Agreement" must be recorded with the property for the jointly used storm sewer lines.
17. Construction Stormwater Pollution Prevention Plan (CSWPPP):
 - All proposed projects that will conduct construction activities onsite, or offsite must provide stormwater pollution prevention and spill controls to prevent, reduce, or eliminate the discharge of pollutants (including sediment) to onsite or adjacent stormwater systems or watercourses.
 - Refer to Core Requirement No. 5 in the KCSWDM and Policy D-12.
 - Provide an erosion control report and plan with the Building or Land Surface Modification Permit application. The plan shall be in accordance with the KCSWDM.
 - Construction drainage control shall be maintained by the developer and will be subject to periodic inspections. During the period from May 1 and September 30, all denuded soils must be covered within 7 days; between October 1 and April 30, all



denuded soils must be covered within 12 hours. Additional erosion control measures may be required based on site and weather conditions. Exposed soils shall be stabilized at the end of the workday prior to a weekend, holiday, or predicted rain event.

Street and Pedestrian Improvement Conditions:

1. The subject property abuts NE 73rd PL and 124th Ave NE. This street is a Neighborhood Access type street. Zoning Code sections 110.10 and 110.25 require the applicant to make half-street improvements in rights-of-way abutting the subject property. Section 110.30-110.50 establishes that this street must be improved with the following:

NE 73rd PL

- A. Replace any cracked or deteriorated curb. Existing improvements are adequate.

124th Ave NE

- A. **Install Type-A concrete curb and gutter. The face of curb shall be 24 feet from the face of curb on the opposite side of street. Widen the street pavement to meet the curb and gutter.**
 - B. Install a 4.5-ft landscape strip behind the curb, with street trees 30 feet on-center.
 - C. Install a 5-ft wide concrete sidewalk behind the landscape strip.
 - D. Remove and replace existing half-street improvements in substandard condition.
 - E. Remove obsolete driveway cuts, and replace with new frontage improvements.
 - F. Identify and protect trees with retention value in the right-of-way.
 - G. Coordinate improvements with planned Kirkland street projects, if any.
2. Access Requirements (KZC Chapter 105.10):
 - A. Since the access is adjacent to a property line, provide a 5-ft setback from the property line to the edge of the paved access.
 - B. The driveway for each lot shall be long enough so that parked cars do not extend into any easement, tract, or right-of-way (20' minimum). The parking pad shall measure 20' by 20'.
 3. Meet the requirements of the Kirkland Driveway Policy R-4. Spacing Table from R-4, for reference:

site must be underground. The Public Works Director may determine if undergrounding

FIRE DEPARTMENT COMMENTS

Contact: Todd Anderson @ 425-587-3639; or tanderson@kirklandwa.gov

FIRE FLOW

Fire flow in the area is 1630 gpm, which is adequate for homes up to 3600 sq. ft. Any home built with a gross floor area over 3600 sq.ft. will require sprinklers.

(Per International Fire Code Table B105.1(1) and B105.1(2): 0-3,600 s.f. = 1,000 gpm; 3,601-4,800 s.f. = 1,750 gpm; >4,801 s.f. = 2,000 gpm. Over 5,000 requires sprinklers per local ordinance.)

HYDRANTS

Existing hydrants in the area are adequate to provide coverage for the proposed project.

ACCESS

No issues.

SPRINKLER THRESHOLD

Per Kirkland Municipal Code, all new buildings which are 5,000 gross square feet or larger require fire sprinklers. Included are single family homes, duplexes, and zero lot line townhouses where the aggregate area of all connected townhouses is greater than 5,000 square feet; garages, porches, covered decks, etc, are included in the gross square footage.

(This comment is included in the SUB conditions for informational purposes only.)



LAYTON TREE CONSULTING, LLC

ARBORIST REPORT

Merit Homes
Adsit Short Plat
7319 124th AVE NE
Kirkland, WA



Report Prepared by:
Bob Layton
Registered Consulting Arborist #670
Certified Arborist #PN-2714A

September 17, 2019
Updated June 23, 2020

It's all about trees.....

PO BOX 572, SNOHOMISH, WA 98291-0572 * 425-220-5711 * bob@laytontreeconsulting.com

Arborist Report – Adsit 7319 124th AVE NE

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Attachments

Photos, pages 9 - 16

Tree Summary Table

Tree Conditions/Drip-Line Map

Tree Retention Plan

Arborist Report – Adsit 7319 124th AVE NE

Assignment

Layton Tree Consulting LLC was contacted by Mike Smith of Merit Homes, and was asked to compile an 'Arborist Report' for a parcel located within the City of Kirkland.

The proposed project encompasses the property at 7319 124th AVE NE. My assignment is to prepare a written report on present tree conditions, which is to be filed with the preliminary permit application.

This report encompasses all of the criteria set forth under the City of Kirkland's tree regulations (Chapter 95 of the Kirkland Zoning Code). The required minimum tree density for the subject parcel (+/- 21,800 sq. ft.) is 15 tree credits.

Date of Field Examination: September 16, 2019

Description

11 significant trees were identified and assessed on the subject property. These are comprised of a mix of planted and native species.

A numbered aluminum tag was attached to the lower trunk of the subject trees. These tag numbers correspond with the numbers on the Tree Summary Table and attached map.

There are a few issues related to neighboring trees. Seven neighboring trees were assessed, whose drip-lines encroach upon the subject property.

Methodology

Each tree in this report was visited. Tree diameters were measured by tape. The tree heights were measured using a Spiegel Relaskop. Each tree was visually examined for defects and vigor. The tree assessment procedure involves the examination of many factors:

The crown or canopy of the tree is examined for current vigor/health by examining the foliage for appropriate color and density, the vegetative buds for color and size, and the branches for structural form and annual shoot growth; and the overall presence of limb dieback and/or any disease issues.

The trunk or main stem of the tree is inspected for decay, which includes cavities, wounds, fruiting bodies of decay (conks or mushrooms), seams, insect pests, bleeding or exudation of sap, callus development, broken or dead tops, structural defects and unnatural leans. Structural defects can include but are not limited to excessive or unnatural leans, crooks, forks with V-shaped crotches, multiple attachments.

The root collar and exposed surface roots are inspected for the presence of decay, insect damage, as well as if they have been injured or wounded, undermined or exposed, or the original grade has been altered.

Based on these factors a determination of viability is made. A 'viable' tree, as defined by the City of Kirkland is "A significant tree (a trunk diameter greater than six inches when measured four and a half feet above ground) that a qualified professional has determined to be in good health, with a low risk of failure due to minimal structural defects, is wind firm if isolated or remains as part of a grove, and is a species that is suitable for its location." Trees considered 'non-viable' are trees that are in poor condition due to disease

Arborist Report – Adsit 7319 124th AVE NE

and/or pest infestation, age related decline, have significant decay issues and/or cumulative structural defects, which will compromise longevity. The municipal code calls out the City Arborist as the final decision-maker regarding 'viability'.

Judging Condition

The three condition categories are described as follows:

Good – free of significant structural defects, no disease concerns, minor pest issues, no significant root issues, good structure/form with uniform crown or canopy, foliage of normal color and density, average or normal vigor, will be wind firm if isolated or left as part of a grouping or grove of trees, suitable for its location

Fair – minor to moderate structural defects not expected to contribute to a failure in near future, no disease concerns, moderate pest issues, no significant root issues, asymmetric or unbalanced crown or canopy, average or normal vigor, foliage of normal color, moderate foliage density, will be wind firm if left as part of a grouping or grove of trees, cannot be isolated, suitable for its location

Poor – major structural defects expected to cause fail in near future, disease or significant pest concerns, decline due to old age, significant root issues, asymmetric or unbalanced crown or canopy, sparse or abnormally small foliage, poor vigor, not suitable for its location

The attached tree conditions map indicates the 'condition rating' of the subject trees found at the site. The attached Tree Summary Table provides specific information on tree sizes and drip-line measurements.

Judging Retention Suitability

Not all trees necessarily warrant retention. The three retention suitability categories as described in ANSI A300 Part 5 (Standard Practices for the Management of Trees During Site Planning, Site Development and Construction) are as follows:

Good – trees are in good health condition and structural stability and have the potential for longevity at the site

Fair – trees are in fair health condition and/or have structural defects that can be mitigated with treatment. These trees may require more intense management and monitoring, and may have shorter life-spans than those in the "good" category.

Poor – trees are in poor health condition and have significant defects in structure that cannot be mitigated with treatment. These trees can be expected to decline regardless of management. The species or individual tree may possess characteristics that are incompatible or undesirable in landscape settings or be unsuited for the intended use of the site.

Observations

The subject trees are found scattered across the site. The subject trees are described as follows:

Arborist Report – Adsit 7319 124th AVE NE

Tree #1 is a young bigleaf maple at the front of the property. A large portion of the upper crown has recently died. See picture below. Dieback is believed to be associated with a bacterial disease. It is located beneath the transmission lines. Retention suitability is poor. Overall condition is rated as fair to poor.

Tree #2 is a semi-mature Western red cedar located next to the front of the house. The trunk is actually attached to the house. There are many large exposed surface roots east of the tree in the lawn area. The main trunk forks into codominant (equal diameter) stems. The attachment appears fairly sound with some buildup of included bark. Overall condition is rated as fair.

Trees #3 and #4 are semi-mature to mature bigleaf maple located on the south perimeter. Tree #3 has some major issues. The trunk forks into codominant stems at roughly 12-feet above ground. The north stem has significant decay. There is also significant decay at the root crown associated with *Ganoderma applanatum* and *Kretzschmaria deusta*. It is also of low vigor with noteworthy dieback of upper crown components. The south stem is more structurally sound and of better vigor; however, the extent of basal decay will be problematic in the future. Overall condition is rated as fair to poor.

Tree #4 does not have any outward indicators of internal decay issues. The trunk forks at roughly 8-feet above ground. The forked attachment appears sound. Vigor is fairly good with foliage of normal size and density. Condition is rated as fair to good. There have been recent impacts on the south side. A new foundation was excavated into the drip-line area.

Trees #5 and #6 are semi-mature to mature black locust. Tree #5 has a large old cavity on the lower trunk that extends several feet up into the lower trunk. The degree of decay is noteworthy and problematic. There is also moderate dieback of upper crown components. Overall condition is rated as fair to poor. Tree #6 also has a large cavity on the lower trunk associated with a past codominant stem failure. Decay has not advanced significantly. Woundwood or reaction wood development is good. Vigor is better than #5 with only minor crown dieback. This tree has a large lead or limb that extends several feet onto the neighboring property to the south. Condition is fair.

Trees #7 and #8 are semi-mature Western red cedar in the middle of the backyard. Both are of good vigor. Tree #7 has multiple forks of the main trunk. Tree #8 is free of structural defects. It has a natural lean to the west away from #7. Tree #7 is in fair condition. Tree #8 is in good condition.

Tree #9 is a young to semi-mature plum fruit tree. It has developed poor form from lack of sunlight and suppression by adjacent trees. Overall condition is rated as fair.

Tree #10 is a young Douglas fir located next to the west property line. Vigor is good. No concerning conditions were observed. Condition is good.

Tree #11 is a semi-mature flowering cherry variety. Vigor is fair to poor with sparse foliage and minor dieback of upper crown components. Overall condition is rated as fair.

Neighboring Trees

Arborist Report – Adsit 7319 124th AVE NE

Tree #101 is a semi-mature Norway maple variety off of the southwest property corner. Vigor is good. No concerning conditions were observed.

Tree #102 is a young to semi-mature flowering cherry variety. It is approximately 10-feet off of the property line. Condition is fair.

Trees #103 through #106 are young red maples planted along the north property line. These have developed typical form. All are of good vigor with no major defects. Tree #103 has decay at the root crown which may compromise longevity. This may be associated with a girdling root.

Tree #107 is a young Japanese maple, located off of the northeast property corner. It appears somewhat stressed. Ground disturbance within a close proximity of the trunk would indicate recent right-of-way work which has disturbed the root system. Looks like there have been irrigation issues. Overall condition is rated as fair.

There are no neighboring tree issues along the south property line.

Discussion/Recommendations (updated 6-23-2020)

The extent of drip-lines (farthest reaching branches) for the subject trees can be found on the tree summary table at the back of this report. These have also been delineated on a copy of the attached site survey (Tree Conditions Map).

The recommended Critical Root Zone (CRZ) measurements can also be found on the tree summary table. These have also been delineated on a copy of the site survey for the possible retention candidates. The CRZ measurements are based on species, age, condition, drip-line, prior improvements, proposed impacts and the anticipated cumulative impacts to the entire root zone. These shall be referenced when determining the feasibility of tree retention.

The proposal is to retain Trees #7 and #8, the two semi-mature Western red cedars. The house on Lot 1 will be constructed north of the subject trees approximately 4 to 5-feet within the driplines. The overall impact to the trees will not be consequential to long-term health. A very minor percentage of the feeder root system will need to be removed. Afford these trees extra protection by positioning tree protection fencing at least 5-feet beyond the dripline on the east, south and west sides.

The planted off-site red maple trees (#104, #105 & #106) will need to be protected to maintain them in good condition. Tree #103 is within a proposed driveway and will have to be removed. There is a proposed storm drain utility south of these trees, roughly 5 to 6-feet from the trunks, well within their driplines. Red maple is known to have fair or medium relative tolerance to construction impacts (root loss, soil disturbance). The trench will need to be carefully excavated using hand tools or an air-spade to protect structural roots and all roots greater than 1 ½" in diameter. These are small, young trees that would be expected to remain in good condition if the proposed work is diligently performed. Trees #104 and #106 may require some minor clearance pruning to construct the house on Lot 2.

Arborist Report – Adsit 7319 124th AVE NE

The project arborist shall be on-site to monitor any necessary excavation within the driplines of retained trees to ensure impacts are kept as minimal as possible.

Tree Protection Measures

The following guidelines are recommended to ensure that the designated space set aside for the preserved trees are protected and construction impacts are kept to a minimum. Standards have been set forth under Kirkland Zoning Code 95.34 of Chapter 95. Please review these standards prior to any development activity.

- Tree protection fencing shall be erected per attached tree plan prior to moving any heavy equipment on site. Doing this will set clearing limits and avoid compaction of soils within root zones of retained trees.
- Excavation limits shall be laid out in paint on the ground to avoid over excavating.
- Excavations within the drip-lines shall be monitored by a qualified tree professional so necessary precautions can be taken to decrease impacts to tree parts. A qualified tree professional shall monitor excavations when work is required and allowed within the drip-line or critical root zone.
- To establish sub grade for foundations, curbs and pavement sections near the trees, soil shall be removed parallel to the roots and not at 90-degree angles to avoid breaking and tearing roots that lead back to the trunk within the drip-line. Any roots damaged during these excavations should be exposed to sound tissue and cut cleanly with a saw. Cutting tools should be sterilized with alcohol.
- Areas excavated within the drip-line of retained trees shall be thoroughly irrigated weekly during dry periods.
- Preparations for final landscaping shall be accomplished by hand within the drip-lines of retained trees. Large equipment shall be kept outside of the tree protection zones at all times.

Tree Density-Tree Replacement

Tree Density Calculation

Lot Size – +/- 21,800 sq.ft.

$21,800/43,560 \times 30 = 15.01$

Required Minimum Tree Density = 15 tree credits

Existing Tree Credits = 80.5

Tree Credits to be retained = 19.5

Supplemental Trees required = consult with City Planner

For planting and maintenance specifications, refer to chapters 95.50 and 51 of the Kirkland Zoning Code.

Arborist Disclosure Statement

Arborists are tree specialists who use their education, knowledge, training and experience to examine and assess trees, recommend measures to enhance the beauty and health of trees, and attempt to reduce the risks associated with living near trees. Clients may choose to accept or disregard the recommendations of the arborist, or to seek additional advice.

Arborists cannot detect every condition that could possibly lead to the structural failure of a tree. Trees are living organisms that grow, respond to their environment, mature, decline and sometimes fail in ways we do not fully understand. Conditions are often hidden within trees and below ground.

Arborists cannot guarantee that a tree will be healthy and/or safe under all circumstances, or for a specified period of time. Likewise, remedial treatments, like any medicine, cannot be guaranteed. Treatment, pruning and removal of trees may involve considerations beyond the scope of the arborist's services such as property boundaries, property ownership, site lines, disputes between neighbors, and other issues. Arborists cannot take such considerations into account unless complete and accurate information is disclosed to the arborist. An arborist should then be expected to reasonably rely upon the completeness and accuracy of the information provided.

Trees can be managed, but they cannot be controlled. To live near trees is to accept some degree of risk. The only way to eliminate all risk associated with trees is to eliminate all trees.

Arborist Report – Adsit 7319 124th AVE NE

Photo Documentation

Top of Tree #1, significant dieback



Tree #2, multiple large surface roots in lawn area



Arborist Report – Adsit 7319 124th AVE NE

Trees #3 > #6 on south perimeter



Tree #3, *Ganoderma* infection at root crown



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Base of Tree #1, extensive decay on east side caused by *Kretzschmaria deusta*



Recent impacts to south sides of root zones



Arborist Report – Adsit 7319 124th AVE NE

Tree #5, large basal cavity



Tree #6, cavity from past co-dominant stem failure



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Trees #7 and #8



Tree #9 and neighboring trees #101 and #102



Arborist Report – Adsit 7319 124th AVE NE

Tree #10 near west property line



Tree #10, looking north from west property line



Arborist Report – Adsit 7319 124th AVE NE

Tree #11



Tree #11 – upper crown



Arborist Report – Adsit 7319 124th AVE NE

North property line, looking west at off-site red maples #103 > #106



Off-site Tree #107





Layton Tree Consulting LLC

For: Merit Homes
Site: 7319 124th AVE NE (Adsit)

Tree Summary Table

Date: 9/16/2019

Tree/ Tag #	Species	DBH (inches)	Height (feet)	Tree Credit	Drip-Line / Critical Root Zone (feet)				Condition	Retention Suitability	Comments	Proposal
					N	S	E	W				
1	bigleaf maple	6	21	1	9/5	7/5	9/5	5/5	fair-poor	poor	recent top dieback, under power lines	Remove
2	Western red cedar	29	67	10.5	18	20	17	18	fair	poor	forked trunk, large exposed surface roots	Remove
3	bigleaf maple	28	84	10	12/10	18/na	14/12	10/14	fair-poor	poor	ganoderma, north stem decayed	Remove
4	bigleaf maple	37	86	14.5	26/12	16	14/14	14/14	fair-good	good	trunk forks at 8 feet, appears sound	Remove
5	black locust	22	80	7	14/12	10	4/12	12/12	fair-poor	poor	large cavity on lower trunk, significant decay	Remove
6	black locust	25,23 (34)	82	13	20/14	22	18/14	20/16	fair	fair	west stem with large cavity	Remove
7	Western red cedar	26	70	9	20/16	20/16	20/16	na	fair	fair	forked top	Save
8	Western red cedar	29	70	10.5	16/16	18/16	na	18/16	good	fair	natural lean west	Save
9	plum	10	20	1	16/8	11	7/8	10	fair	good	poor form, suppressed	Remove
10	Douglas fir	9	36	1	9/8	10/8	10/8	6	good	good	young, good vigor, no concerns	Remove
11	flowering cherry	14	39	3	12	12/10	12/10	12	fair	fair	sparse foliage, stressed, some dieback	Remove
				80.5								
Neighboring Trees												
101	Norway maple	15	62	NA	10/5	6/5	NA	NA	good	good	7 feet off property corner	Protect
102	flowering cherry	12,11 (16)	44	NA	NA	NA	3/0	NA	fair	good	typical, several feet off of property line	Protect
103	red maple	9	33	NA	NA	12/5	NA	NA	fair	good	young, some decay at root crown	Remove
104	red maple	9	33	NA	NA	11/5	NA	NA	good	good	young	Protect
105	red maple	7	34	NA	NA	6/5	NA	NA	good	good	young	Protect
106	red maple	10	36	NA	NA	11/5	13	NA	good	good	young	Protect
107	Japanese maple	4,4,3,3 (7)	12	NA	NA	8/6	10/6	5/6	fair	good	stressed	Protect

Parcel Trees - Drip-Line and Limits of Disturbance measurements from face of trunk

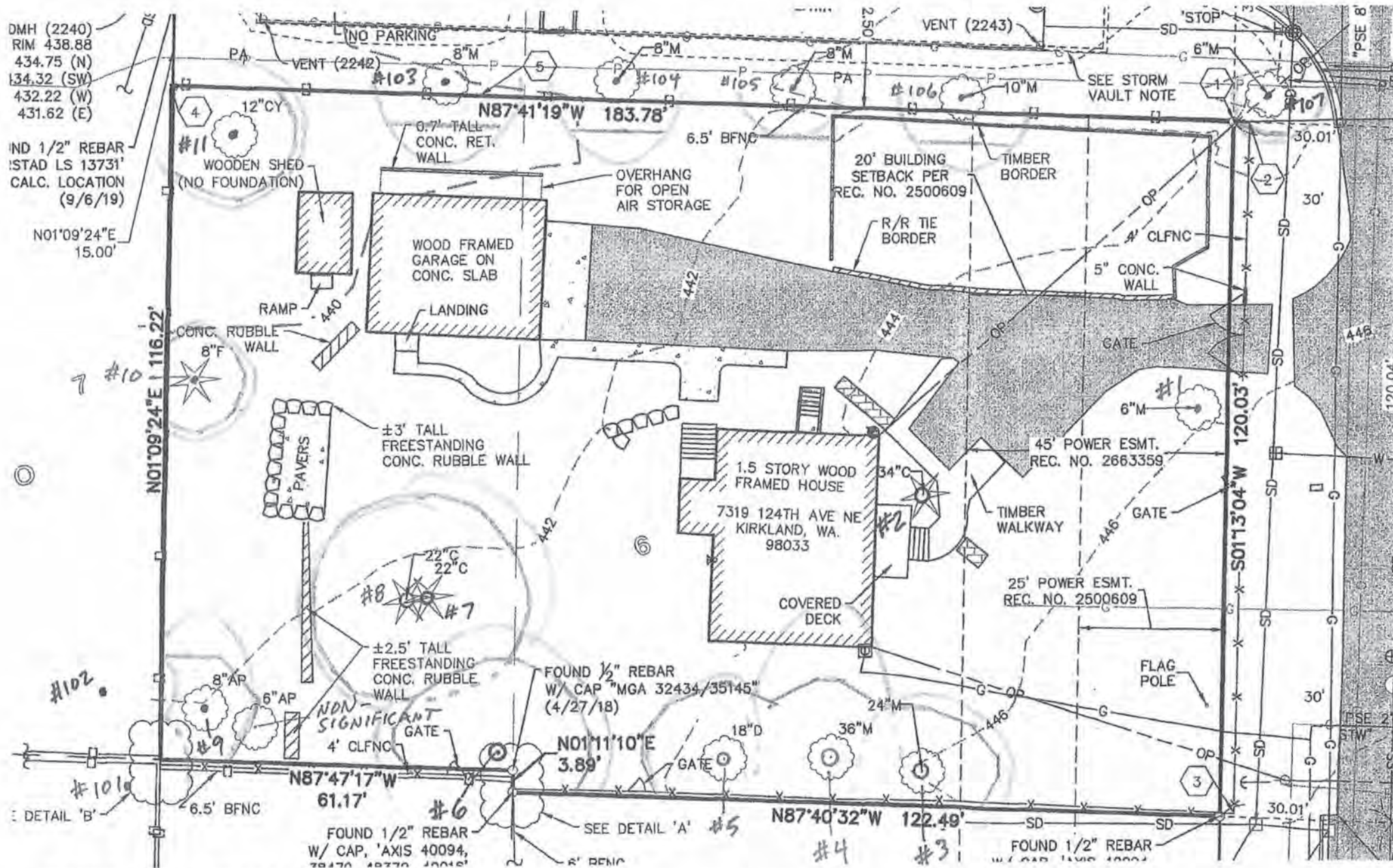
Trees on neighboring properties - Drip-Line and Limits of Disturbance measurements from property/fence line

Calculated DBH: the DBH is parenthesis is the square root of the sum of the dbh for each individual stem squared
(example with 3 stems: dbh = square root [(stem1)2 +(stem2)2 +(stem3)2]).

7319 124TH AVE NE

TREE LOCATOR / CONDITIONS MAP

SUB20-00171
ATTACHMENT 2 ATTACHMENT 4
ARBORIST REPORT



TREE CONDITIONS

- Good

- Fair

- Fair-Good # - Fair-Poor

- DRIP-LINE

- CRITICAL ROOT
ZONE BOUNDARY

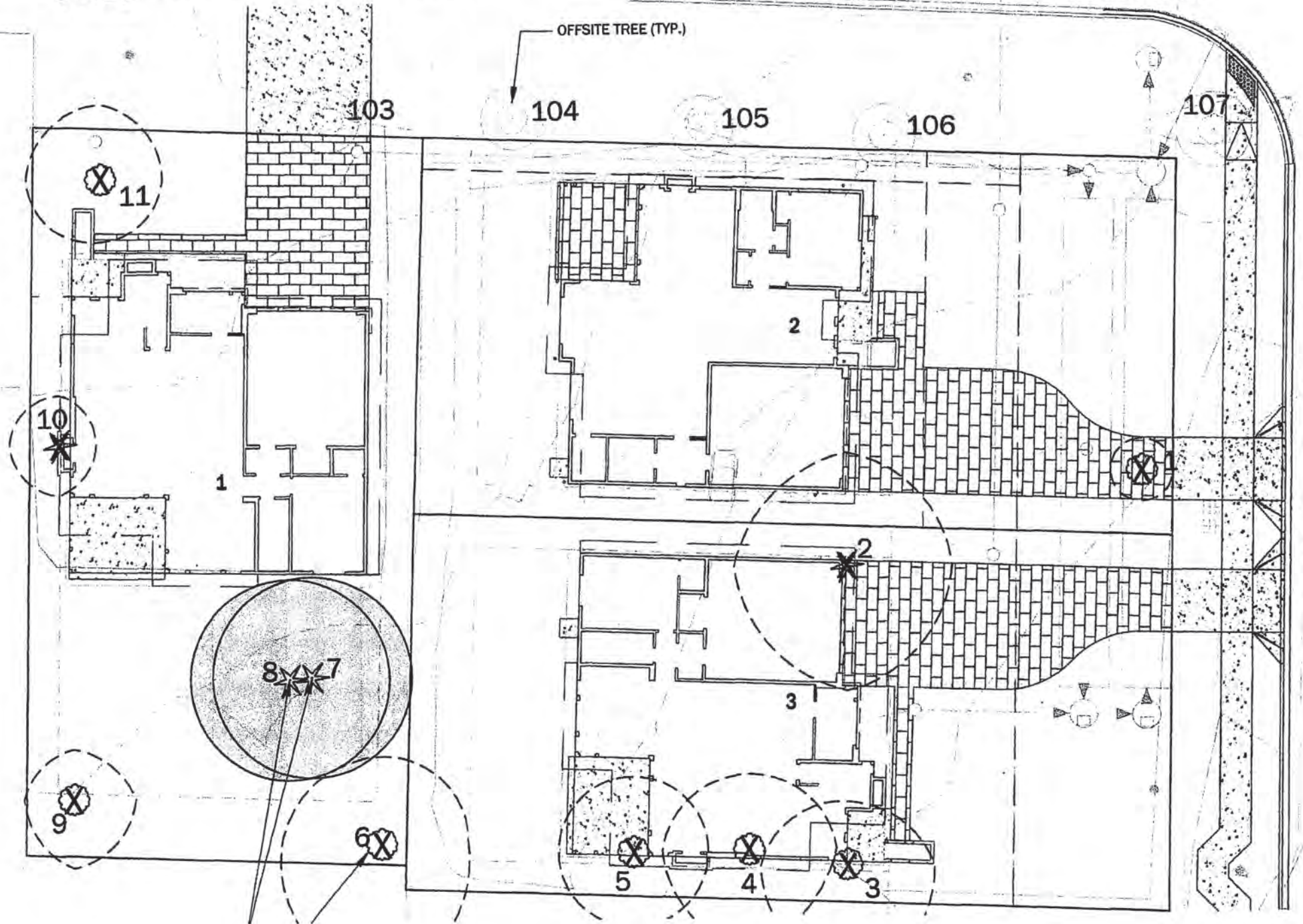
APPROX. SCALE

1" = 22'

108

TREE RETENTION PLAN

SUB20-00171
ATTACHMENT 2 ATTACHMENT 4
ARBORIST REPORT



Fwd: 2000-171

1 message

William Watson <bill.watson@pjassociation.com>

Sun, Oct 11, 2020 at 1:12 PM

To: Joe Burch <smcjoe@gmail.com>, Mark Shelley <Mark.shelley@boeing.com>, Goran Versegi <Goran.versegi@gmail.com>, Dan Esterly <dc.esterly@gmail.com>, Michelle Bruney <michbruney@gmail.com>

This shows that I started this conversation with them more than the time, but they kept making excuses and never mentioned a deadline, and either did that sign out there. Never did the City POC mention a deadline either

Bill Watson*President,***Pararescue Association**

m:2062458309

w:pjassociation.com

e:bill.watson@pjassociation.com

Strengthening relationships among all USAF Pararescuemen and Combat Rescue Officers – past, present, and future; fostering camaraderie among those who have earned the title, PJ/CRO; while providing an extended community for all USAF Pararescuemen/CRO's and their families.



Begin forwarded message:

From: Kaylie Duffy <KDuffy@kirklandwa.gov>**Subject:** RE: 2000-171**Date:** July 22, 2020 at 3:22:19 PM PDT**To:** William Watson <bill.watson@pjassociation.com>

Hi Bill,

My apologies for the lack of communication – I've been trying to get you in contact with the appropriate folks to answer your easement and water metering questions. I've been calling/emailing the Public Works reviewer on this project, but it turns out he is on vacation, and therefore I reached out to his supervisor, John Burkhalter, on Monday to get you the answers you need. I emailed him twice today about your questions, and he said he'd give you a call back.

I've also alerted the applicant, Mike Smith from Merit Homes, to reach out to you as well. I can assure you that we will address any issues with the HOA prior to any decisions made on this short plat application.

I'm very sorry that we're not running at full speed due to COVID and working from home, but I will keep reaching out to Public Works until we get you the answers you need.

Best,

Kaylie Duffy | Planner

From: William Watson <bill.watson@pjassociation.com>
Sent: Wednesday, July 22, 2020 1:51 PM
To: Kaylie Duffy <KDuffy@kirklandwa.gov>
Subject: 2000-171

Please return our call, you mentioned you would call back, we pay well above \$100,000.00 in property tax for this hoa and desire a phone, more than 1 every 20th request.

Bill Watson

President,
Pararescue Association
m:2062458309
w:pjassociation.com
e:bill.watson@pjassociation.com

Strengthening relationships among all USAF Pararescuemen and Combat Rescue Officers – past, present, and future; fostering camaraderie among those who have earned the title, PJ/CRO; while providing an extended community for all USAF Pararescuemen/CRO's and their families.



NOTICE: This e-mail account is part of the public domain. Any correspondence and attachments, including personal information, sent to and from the City of Kirkland are subject to the Washington State Public Records Act, Chapter 42.56 RCW, and may be subject to disclosure to a third party requestor, regardless of any claim of confidentiality or privilege asserted by an external party.

Fwd: Adsit project - thanks all for meeting

Bill Watson <bill.watson@pjassociation.com>
To: Michelle Bruney <michbruney@gmail.com>

Wed, Oct 14, 3:00 PM

As you can see the city has been on this

Bill Watson

President,
Pararescue Association
m:2062458309
w:pjassociation.com
e:bill.watson@pjassociation.com

Begin forwarded message:

From: William Watson <bill.watson@pjassociation.com>
Date: August 23, 2020 at 10:03:09 AM PDT
To: Mike Smith <Mike@merithomesinc.com>
Cc: John Burkhalter <JBurkhalter@kirklandwa.gov>, Jamie Ward <JWard@kirklandwa.gov>, Josh Lysen <Josh@merithomesinc.com>, Kaylie Duffy <KDuffy@kirklandwa.gov>
Subject: Re: Adsit project - thanks all for meeting

I have forwarded-document to Mike Smith, waiting on a response and agreement to what will be agreed to here before anything else moves forward.

How much area is planning on being opened to the access from 73rd pl,

"while still allowing access and visual appeal to the new home."

Bill Watson

On Aug 14, 2020, at 1:31 PM, Mike Smith <Mike@merithomesinc.com> wrote:

To everyone concerned:

At the site meeting, we discussed 3 primary issues of concern that we said we'd look into - 1) – 3) below, according to 7/31 message below. I asked if there were further concerns and didn't receive any.

I've linked a [drawing to consider](#) , depicting the three substantive topics:

1. *Removal of trees along south side to see if there are opportunities for retention;*

There are 5 trees total along our south line – 3, 4, 5, 6, 9. Of these, 3 – 5 are basically impossible, they're in the foundation of the

home. We are open to discussing retention of Trees 6 and 9 when we get closer to work starting. Up to now, it hasn't been our intent to retain, and these aren't ideal candidates. Still, we are sensitive to neighbor concerns and will discuss with all concerned as the work gets closer. ATTACHMENT 2

2. *Intersection of 124th and 73rd to review likely fence locations and possible landscaping improvements;*

We do have a super basic landscaping plan, which doesn't include anything here beyond planter strip. The existing goes almost to the sidewalk, though we don't have any survey info on where exactly it is. Similar to 1), going further in early design isn't part of our current work flow. We will work with the neighborhood to see what could be done there once we see where all the new improvements fall.

3. *Access to the western lot to see what opportunities are there to reduce visual impact to the landscaped area*

We will remove as little landscaping as possible along 73rd, while still allowing access and visual appeal to the new home.

There was another issue discussed – the possibility of one or more of the new homes joining the existing homeowners' association. We will consider this once we receive a copy of the existing. If Mr. Watson would be so kind as to send a copy, we will review and continue discussion on that point.

Thanks again, have a restful weekend.

Mike

From: Mike Smith

Sent: Friday, July 31, 2020 10:30 AM

To: Bill Watson <bill.watson@pjassociation.com>; John Burkhalter <JBurkhalter@kirklandwa.gov>; Jamie Ward <JWard@kirklandwa.gov>; Josh Lysen <Josh@merithomesinc.com>; Kaylie Duffy <KDuffy@kirklandwa.gov>

Subject: Adsit project - thanks all for meeting

Good day,

I had this written out and thought I had sent already, apologies for the delay.

Thanks all for the meeting onsite, it was informative and helpful. Over the next several days, Merit will be reviewing a few issues:

1. Removal of trees along south side to see if there are opportunities for retention;
2. Intersection of 124th and 73rd to review likely fence locations and possible landscaping improvements;
3. Access to the western lot to see what opportunities are there to reduce

visual impact to the landscaped area

ATTACHMENT 2

Bill – if you could send us a copy of your CC&Rs we can review those to see whether joining the HOA would be possible.

We're not in position to speak to parking on 73rd, nor any signage concerns.

Please let me know if there is anything I've missed here.

Thanks so much, we look forward to continuing discussions.

Mike

S. Michael Smith

MERIT HOMES

<image001.jpg>

Development Manager

209-788-9860 206-755-2660

Mike@MeritHomesInc.com | www.MeritHomesInc.com | [Facebook](#)

811 Kirkland Ave, Suite 200, Kirkland, WA 98033

ATTACHMENT 2

Short Plat
City of Kirkland

FILE NO. SPL04-00010

ACKNOWLEDGEMENTS

THIS IS TO CERTIFY THAT ON THIS 21st DAY OF JANUARY 2005, BEFORE ME
PERSONALLY APPEARED TONY E. GOWIN to be known to be the President of TEC WORKS, INC. who
who executed this SHORT PLAT and ATTACHMENTS AND, WHERE APPLICABLE VOLUNTARILY EXECUTED
THE ATTACHED OR REFERENCED DEED OF DEDICATION FOR THE USES AND PURPOSES MENTIONED THEREIN,
AND ON DATE, STATED THAT HE WAS UNWILLING TO EXECUTE THIS SHORT PLAT AND ANY DEED OF
DEDICATION, AND HE ENJOINED ME TO SIGN HIS NAME AND OFFICIAL SEAL. I HAVE FIRST
ABOVE WRITTEN.

THIS IS TO CERTIFY THAT ON THIS 24TH DAY OF JANUARY, 2006 BEFORE ME
PERSONALLY APPEARED LYNTHIA L. ALLEN, TO ME KNOWN TO BE THE REPRESENTATIVE OF ACTION
MORTGAGE COMPANY (A SUBSIDIARY OF STERLING SAVINGS BANK), WHO EXECUTED THIS SHORT PLAT AND
ATTACHMENTS AND, WHERE APPLICABLE VOLUNTARILY EXECUTED THE ATTACHED OR REFERENCED DEED OF
DEDICATION FOR THE BEST OF REASON THEREIN, ON 01/24/2006. I STATE THAT NEITHER I NOR
ANYONE ELSE WAS AUTHORIZED TO EXECUTE THIS SHORT PLAT AND ANY DEED OF DEDICATION I MAY EXCHANGE. WITNESS
MY HAND AND OFFICIAL SEAL THIS DAY AND YEAR FIRST ABOVE WRITTEN.

THIS IS TO CERTIFY THAT ON THIS 14TH DAY OF JAN, 2005, BEFORE ME
PERSONALLY APPEARED FABRICE AND MARIE-ALEXANDRE HUBRY, WHO EXECUTED THIS SHORT PLAT AND
THEIR SPOUSES AND CHILDREN JOINTLY AND SEVERALLY AS CO-OWNERS OF THE ABOVE DESCRIBED REAL ESTATE,
AND ALL OF THEM HAVE BEEN DULY INFORMED OF THE NATURE AND EFFECTS OF THE FOREGOING ACT OF
DEDICATION FOR THE USES AND PURPOSES MENTIONED THEREIN, AND EACH OF THEM STATED THAT THEY
WERE AUTHORIZED TO EXECUTE THIS SHORT PLAT AND ANY DEED OF DEDICATION IT MAY ENCOMPASS.
WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.

THIS IS TO CERTIFY THAT ON THIS 19 DAY OF January 2005, BEFORE ME,
PERSONALLY APPEARED Robert Northern TO ME KNOWN TO BE THE REPRESENTATIVE OF
WASHINGTON MUTUAL SAVINGS BANK, WHO EXECUTED THIS SHORT PLAT AND WHO EXECUTED THIS SHORT
PLAT AND ATTACHMENTS AND, WHERE APPLICABLE VOLUNTARILY EXECUTED THE ATTACHED OR REFERENCED
DEED OF GEDICATION FOR THE USES AND PURPOSES MENTIONED THEREIN, AND ON THAT, STATED THAT HE/
SHE/IT AUTHORIZED ME TO SIGN THIS SHORT PLAT AND ATTACHMENTS, AND ON THAT, STATED THAT HE/
SHE/IT WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.

115

20050523900009

187/070

TEC SHORT PLAT NO. 3

A PORTION OF THE SE1/4 OF THE NW1/4 SECTION 9, T.25N., R.5E., W.M.

Short ATTACHMENT 2
City of Kirkland

FILE NO. SPL04-00010

LEGAL DESCRIPTION

THE NORTH 50 FEET OF LOT 6 AND ALL OF LOTS 7 AND 8, BLOCK 2, ORCHARD HEIGHTS ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 18 OF PLATS, PAGE(S) 89, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THE SOUTH 120 FEET OF THE NORTH 170 FEET OF SAID LOT 6;

EXCEPT THE SOUTH 130 FEET OF SAID LOT 7;

AND EXCEPT THAT PORTION OF THE SOUTH 120 FEET OF THE NORTH 170 FEET OF SAID LOT 7 LYING EAST OF THE EAST LINE OF THE WEST 61.3 FEET OF SAID LOT 7;

AND EXCEPT THE SOUTH 130 FEET OF SAID LOT 8;

TOGETHER WITH LOT 3, BLOCK 2, ORCHARD HEIGHTS, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 18 OF PLATS, PAGE(S) 89, RECORDS OF KING COUNTY, WASHINGTON.

TOGETHER WITH LOT 4, BLOCK 2, ORCHARD HEIGHTS, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 18 OF PLATS, PAGE(S) 89, RECORDS OF KING COUNTY, WASHINGTON.

EXCEPT THAT PORTION OF SAID LOTS DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF N.E. 75TH STREET AND 124TH AVENUE N.E.; SAID INTERSECTION BEING A MONUMENT IN CASE AS EXISTED ON FEBRUARY 25, 2004; THENCE S1°12'34"W ALONG THE CENTERLINE OF SAID 124TH AVENUE N.E., A DISTANCE OF 328.88 FEET; THENCE LEAVING SAID CENTERLINE N87°40'59"W, A DISTANCE OF 30.01 FEET TO THE SOUTHEAST CORNER OF LOT 5, BLOCK 2, SAID ORCHARD HEIGHTS ADDITION; THENCE CONTINUING N87°40'59"W ALONG THE SOUTH LINE OF SAID LOT 5 AND LOT 4, A DISTANCE OF 183.86 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING N87°40'59"W ALONG THE SOUTH LINE OF SAID LOT 4, A DISTANCE OF 29.39 FEET TO A POINT ON A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 55.00 FEET; THENCE LEAVING SAID SOUTH LINE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 86°33'47", AN ARC DISTANCE OF 24.83 FEET TO A REVERSE CURVE HAVING A RADIUS OF 40.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 29°22'05", AN ARC DISTANCE OF 19.31 FEET TO THE WEST LINE OF SAID LOT 4; THENCE N1°09'44"E ALONG SAID WEST LINE, A DISTANCE OF 273.54 FEET TO THE SOUTH MARGIN OF SAID N.E. 75TH STREET; THENCE S67°33'01"E ALONG SAID SOUTH MARGIN, A DISTANCE OF 61.37 FEET; THENCE LEAVING SAID SOUTH MARGIN S1°10'59"W, A DISTANCE OF 288.28 FEET TO THE TRUE POINT OF BEGINNING.

SITUATE IN THE CITY OF KIRKLAND, COUNTY OF KING, STATE OF WASHINGTON.

CITY OF KIRKLAND

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

EXAMINED, REVIEWED, AND APPROVED BY THE CITY OF KIRKLAND PURSUANT TO THE SHORT SUBDIVISION PROVISIONS OF TITLE 22 (LAND SUBDIVISION), KIRKLAND MUNICIPAL CODE. THIS 11th DAY OF May, 2005.

Eric Smith
DIRECTOR, DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

DEPARTMENT OF ASSESSMENT

EXAMINED AND APPROVED THIS 23rd DAY OF May, 2005.

Scott Noble *Daniel Krasner*
KING COUNTY ASSESSOR *Deputy Assessor*
Pcl. #640070-0130, 0131, 0141, 0160

RECORDER'S CERTIFICATE

Filed for record this 23rd day of May, 2005, at Seattle in book 11 of 11 pages.

Registrar

Supt. of Records

NOTES

1. ADDRESSING SHALL BE IN ACCORDANCE WITH KIRKLAND BUILDING DIVISION POLICY MANUAL NUMBER 9.001, "ASSIGNMENT OF STREET AND ROAD SIGNAGE".
2. UTILITY MAINTENANCE: EACH PROPERTY OWNER SHALL BE RESPONSIBLE FOR MAINTENANCE OF THE SANITARY SEWER OR STORM WATER STUB FROM THE POINT OF USE ON THEIR OWN PROPERTY TO THE POINT OF CONNECTION IN THE CITY SANITARY SEWER MAIN OR STORM WATER MAIN. ANY PORTION OF A SANITARY SEWER OR SURFACE WATER STUB, WHICH JOINTLY SERVES MORE THAN ONE PROPERTY, SHALL BE JOINTLY MAINTAINED AND REPAIRED BY THE PROPERTY OWNERS SHARING SUCH STUB. THE JOINT USE AND MAINTENANCE SHALL "RUN WITH THE LAND" AND WILL BE BINDING ON ALL PROPERTY OWNERS WITHIN THIS SUBDIVISION, INCLUDING THEIR HEIRS, SUCCESSORS AND ASSIGNS.
3. PUBLIC RIGHT-OF-WAY SIDEWALK AND VEGETATION MAINTENANCE: EACH PROPERTY OWNER SHALL BE RESPONSIBLE FOR KEEPING THE SIDEWALK ABUTTING THE SUBJECT PROPERTY CLEAN AND LITTER FREE. THE PROPERTY OWNER SHALL ALSO BE RESPONSIBLE FOR THE MAINTENANCE OF THE VEGETATION WITHIN THE ABUTTING LANDSCAPE STRIP. THE MAINTENANCE SHALL "RUN WITH THE LAND" AND WILL BE BINDING ON ALL PROPERTY OWNERS WITHIN THIS SUBDIVISION, INCLUDING THEIR HEIRS, SUCCESSORS AND ASSIGNS.



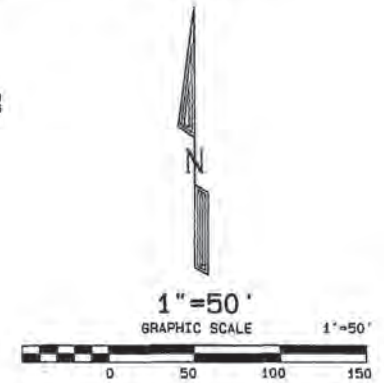
HARSTAD CONSULTANTS
LAND SURVEYORS
2024 W. LK. BARKHUIS PH. NE
REDMOND, WA 98062
(425) 747-8338

SHEET 2 OF 3

187/071

ATTACHMENT 2

FILE NO. SPL04-00010



KING COUNTY AERIAL SURVEY (K.C.A.S.)

* - SET 1/2" REBAR W/CAP-LS13731
 * - SET STANDARD CITY OF KIRKLAND MON IN CASE
 P - PLAT
 S- SURVEY
 M - MEASURE

	RADIUS	DELTA	ARC
C1	25.00	56°53'47"	24.63
C2	40.00	23°22'06"	16.31
C3	40.00	28°38'52"	20.00
C4	40.00	28°38'52"	20.00
C5	25.00	40°24'00"	17.63
C6	40.00	4°33'48"	3.19
C7	49.00	94°52'49"	66.24
C8	40.00	97°11'20"	67.85

1-14-05
Jetta R. Hines
ENTERED 8-15-05

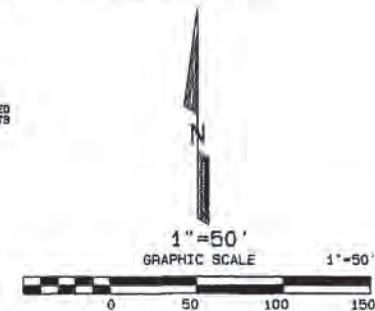


SHEET 3 OF 3

Short Plat
City of Kirkland

A PORTION OF THE SE1/4 OF THE NW1/4 SECTION 9, T.25N., R.5E., W.M.

FILE NO. SPL04-00029



HORIZONTAL DATUM
KING COUNTY AERIAL SURVEY (K.C.A.S.)

LEGEND

- - SET 1/2" REBAR W/CAP-LS13731
 P - PLAT
 S- SURVEY
 M - MEASURE

NOTES

1. **UTILITY MAINTENANCE:** EACH PROPERTY OWNER SHALL BE RESPONSIBLE FOR MAINTENANCE OF THE SANITARY SEWER OR STORM WATER STUB FROM THE POINT OF USE ON THEIR OWN PROPERTY TO THE POINT OF CONNECTION IN THE CITY SANITARY SEWER MAIN OR STORM WATER MAIN. ANY PORTION OF SANITARY SEWER OR SURFACE WATER STUB, WHICH JOINTLY SERVES MORE THAN ONE PROPERTY, SHALL BE JOINTLY MAINTAINED AND REPAIRED BY THE PROPERTY OWNERS SHARING SUCH STUB. THE JOINT USE AND MAINTENANCE SHALL BEGIN WITH THE LAND AND WILL BE ENDING ON THE PROPERTY OWNERS WITHIN THIS SUBDIVISION, INCLUDING THEIR HEIRS, SUCCESSORS AND ASSIGNS.
2. **PUBLIC RIGHT-OF-WAY SIDEWALK AND VEGETATION MAINTENANCE:** EACH PROPERTY OWNER SHALL BE RESPONSIBLE FOR KEEPING THE SIDEWALK ABUTTING THE SUBJECT PROPERTY CLEAN AND LITTER FREE. EACH PROPERTY OWNER SHALL ALSO BE RESPONSIBLE FOR THE MAINTENANCE OF THE VEGETATION WITH THE ABUTTING LANDSCAPE STRIP. THE MAINTENANCE SHALL BEGIN WITH THE LAND AND WILL BE ENDING ON ALL PROPERTY OWNERS WITHIN THIS SUBDIVISION, INCLUDING THEIR HEIRS, SUCCESSORS AND ASSIGNS.
3. **ADDRESSING SHALL BE IN ACCORDANCE WITH KIRKLAND BUILDING DIVISION POLICY MANUAL NUMBER 9.001, "ASSIGNMENT OF STREET AND ROAD SIGNAGE."**

LINE TABLE

	BEARING	DISTANCE
L1	N01°09'44"E	15.00
L2	N02°19'01"E	7.00
L3	N87°40'59"W	3.02
L4	N87°40'59"W	3.81

CURVE TABLE

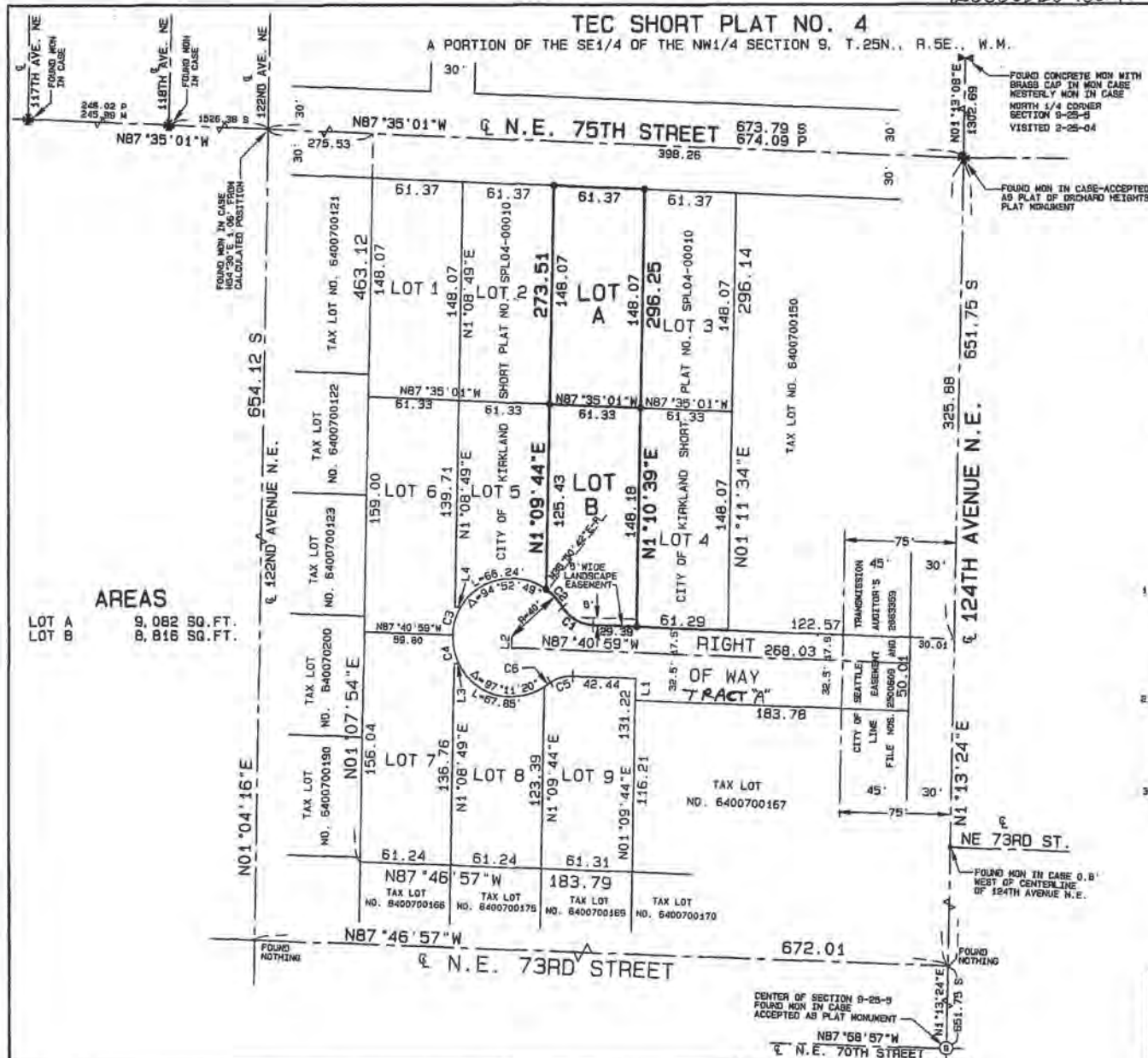
	RADIUS	DELTA	ARC
C1	25.00	56°53'47"	24.83
C2	40.00	23°22'06"	16.31
C3	40.00	28°38'52"	20.00
C4	40.00	28°38'52"	20.00
C5	25.00	40°24'00"	17.63
C6	40.00	4°33'48"	3.19

HARSTAD CONSULTANTS

LAND SURVEYORS
2024 W. LK. BARNHART HWY. NE
REDMOND, MA. 06082
(425) 747-8336

SHEET 2 OF 2

118



AREAS

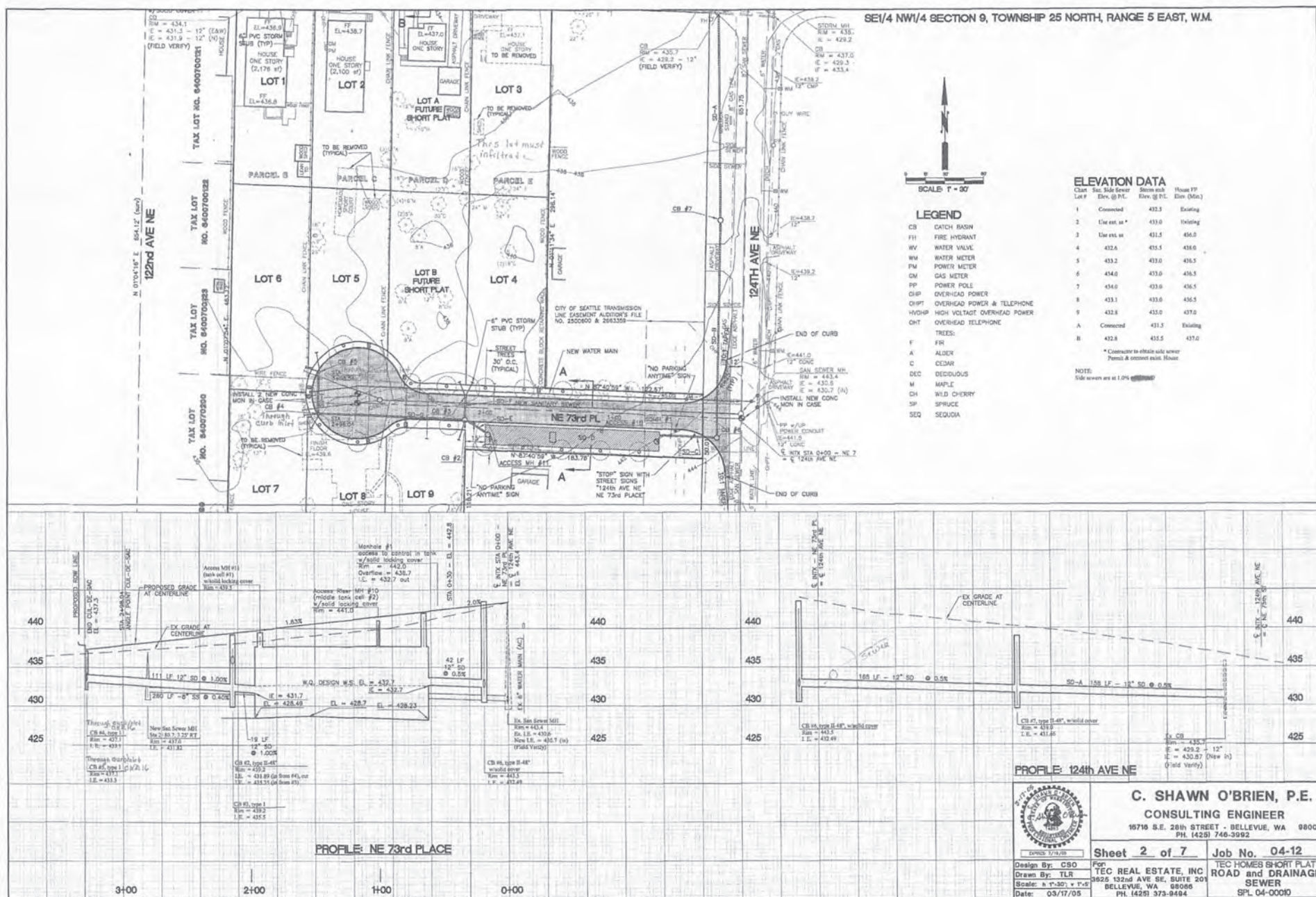
LOT A	9,082 SQ.FT.
LOT B	8,816 SQ.FT.

3-1-05
JERRY R. HANCOCK
8-15-05



133 211 VALMINE
CILA DI KIRKTVHD
CILA CTERK





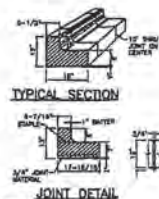
STORM DRAINAGE PLAN NOTES

- [illegible]

ROADWAY PLAN NOTES

- [illegible]

SE 1/4 NW 1/4 SECTION 9, TOWNSHIP 25 NORTH, RANGE 5 EAST, WM

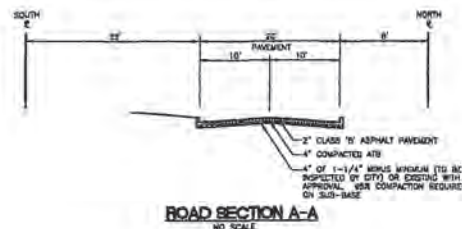


NIST

1. FORMS SHALL BE SET AND SET TRUE TO LINE AND GRADE (INSPECTION IS REQUIRED PRIOR TO PLACEMENT OF CONCRETE).
2. CONCRETE SHALL BE CEMENT CONCRETE CLASS 4000.
3. BASE COURSE SHALL BE 4" OF 3/8" AGG. CRUSHED ROCK OR AS DIRECTED BY ENGINEER.

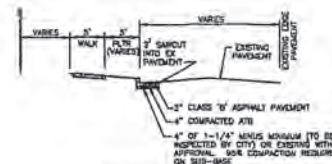
TYPE 'A'
CONCRETE CURB & GUTTER

NO SCALE



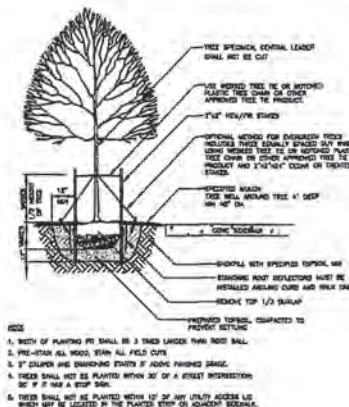
ROAD SECTION A-A

NO SEAL



ROAD SECTION R-R

NO. 5541



TREE PLANTING DETAIL

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

- MINI** **PREPARED TOPSOIL,
PREVENT SETTLING**
1. WIDTH OF PLANTING PIT SHALL BE 3 TIMES LARGER THAN ROOT BALL.
 2. PRE-SETTLE ALL SOIL, STRAIN ALL FIELD CLO.
 3. 3" CULPIN AND CHISELED STAFFS IF ABOVE FINISHED GRADE.
 4. TREES SHALL NOT BE PLANTED WITHIN 30' OF A STREET INTERSECTION
OR IF IT HAS A STOP SIGN.
 5. TREES SHALL NOT BE PLANTED WITHIN 10' OF ANY UTILITY ACCESS UNLESS THEY ARE LOCATED IN THE PLANTED ZONE OF ADJACENT SIDEWALK.



C. SHAWN O'BRIEN, P.E.
CONSULTING ENGINEER
10715 O.E. 26th STREET - BELLEVUE, WA 98008
PH. (425) 746-5992

DESIGNED BY: CBO
DRAWN BY: TLR
SCALE: AS NOTED
DATE: 09/17/05

Sheet <u>3</u> of <u>7</u>	Job No. <u>04-12</u>
For TEC REAL ESTATE, INC 3030 132nd AVE SE, SUITE 201 BELLEVUE, WA 98005 PH. (425) 273-0404	TEC HOMES SHORT PLAT NOTES and DETAIL EPL 04-00010



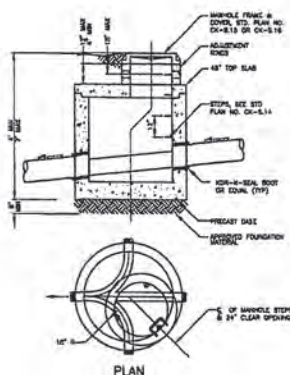
REASONABLE WATER-TIGHT COUPLING
OR FLANGE

3" MAX.
6" MIN.
4" MAX.

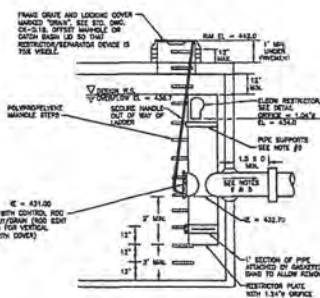
ELBOW RESTRICTOR DETAIL



SHEAR GATE DETAIL

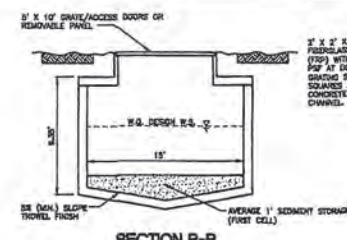


BHALLOW MANHOLE ASSEMBLY



CONTROL MANHOLE DETAIL

- NOTE:
 1. ALL METAL PARTS CORROSION RESISTANT. NON-GALVANIZED PARTS PROTECTED. STAINLESS STEEL PARTS PROTECTED. GALVANIZED PARTS PROTECTED. GALVANIZED PARTS TO HAVE ASPHALT TREATMENT 1.
 2. BUTTER JOINTS TO BE ALL CAST-IN-PLACE CONSTRUCTION JOINTS.
 3. PREFABRICATED WALL SECTIONS WITH MINOR STRUCTURAL MODIFICATIONS TO SUPPORT 8' X 10' OPENING OVER MAIN VAULT. ALTERNATELY, ACCESS CAN BE PROVIDED VIA A SIDE VESTIBULE AS SHOWN.
 4. 24" DIAMETER ACCESS MAY BE USED IF DEPTH IS LESS THAN OR EQUAL TO 16". OTHERWISE, 48" ECCENTRIC MANHOLE SECTION IS REQUIRED.
 5. GROUNDLINE BETWEEN ACCESS MANHOLES AND ANY POINT WITHIN THE STRUCTURE SHALL BE NO GREATER THAN 50' MAX.



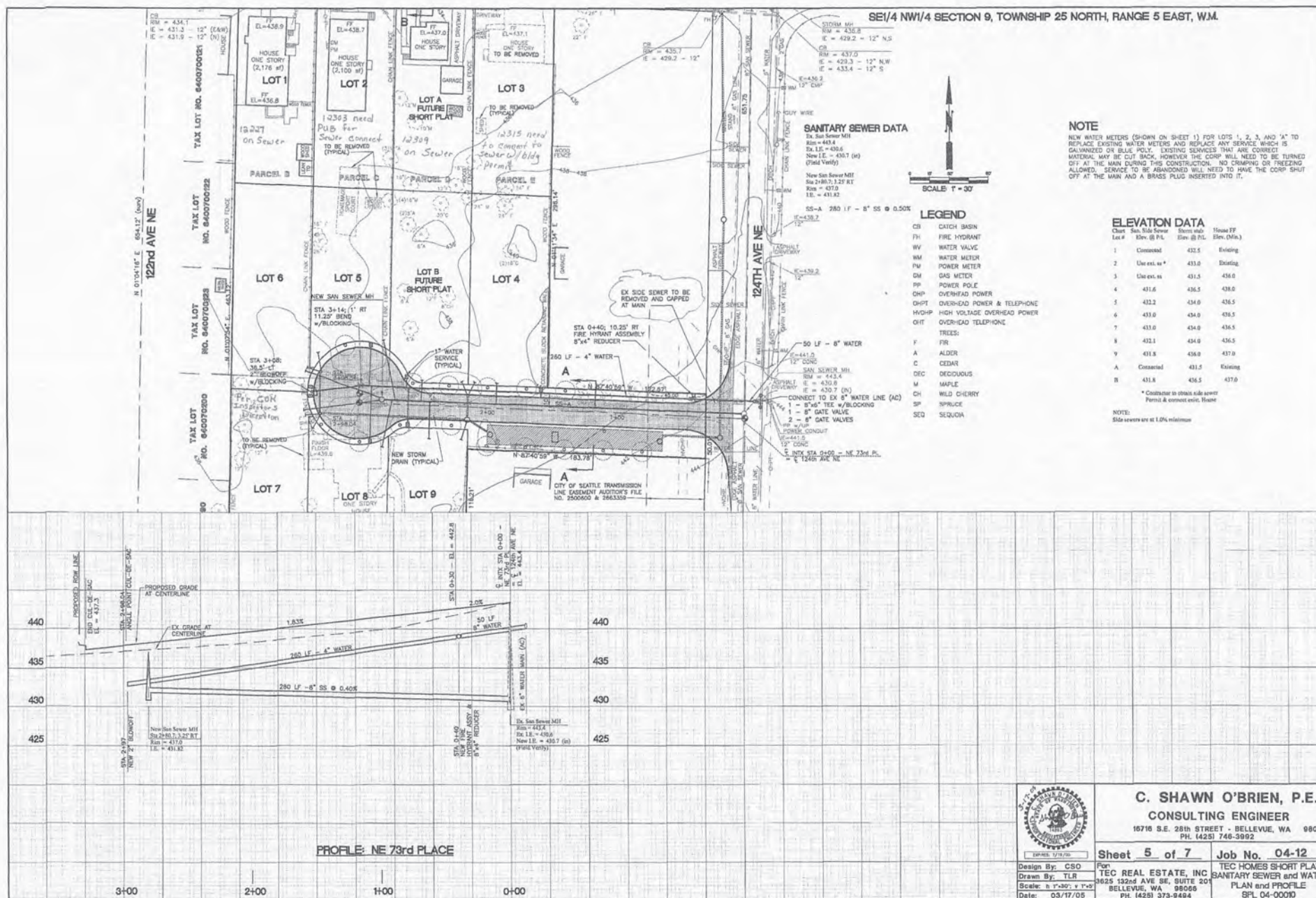
SECTION B-E



Sheet 4 of 7 Job No. 04-12

Design By: CS
Drawn By: TLR
Scale: AS NOT
Date: 03/17/0

For	TEC REAL ESTATE, INC	TEC HOMES SHORT PLAT
	3525 132nd AVE SE, SUITE 201	8TORM DRAINAGE
	BELLEVUE, WA 98005	DETAILS
	PH. (425) 373-8484	SP. 04-00070



C. SHAWN O'BRIEN, P.E.
CONSULTING ENGINEER
16716 S.E. 28th STREET - BELLEVUE, WA 98008
PH. (425) 746-3992

Sheet **5** of **7** Job No. **04-12**
For **TEC REAL ESTATE, INC.**
3625 132nd AVE SE, SUITE 201
BELLEVUE, WA 98008
PH. (425) 373-9464
SANITARY SEWER AND WATER
PLAN and PROFILE
SPL 04-00010



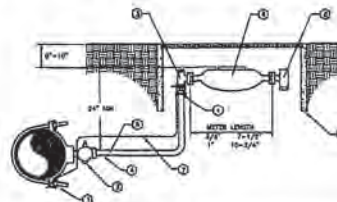
Design By: CSO
Drawn By: TLR
Scale: 1/4" = 1'-00"
Date: 03/17/05

SE1/4 NW1/4 SECTION 9, TOWNSHIP 25 NORTH, RANGE 5 EAST, W.M.

- [illegible]

- [illegible]

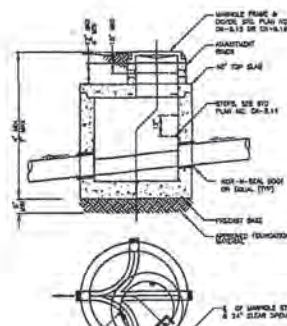
- [illegible]



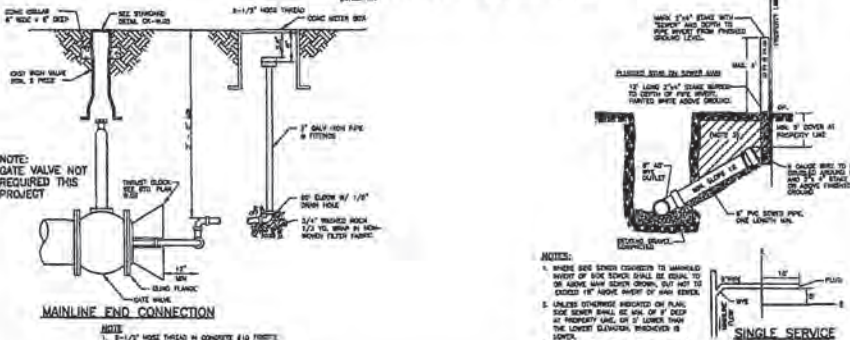
WATER SERVICE #BXNDG#		#1/2" x 1" ERT PLASTIC SERVICE	
DESCRIPTION	QUANTITY	UNIT	PRICE
1. SPABLE STAMP MODULE	PERMANENT CHARGE		
2. COUP COU	FOR EACH	101 PER	
3. ANGLE STOP	FOR EACH	2-1101-40 2/2" x 1/2" BLACK ANGLE	
4. INSERTS	FOR EACH	WALS-4448	
5. PLASTIC PIPE	FOR EACH	7/8" DIA/40X30 STEEL	
6. MIXED JOBS	POLYETHYLENE ASTM D2554	PS-1000 1/2"(PS-1000)	
7. TRIMMER PIPE	CHASTEN CO EQUAL	1200-10	
8. JOINT VALVE	CEI WELD PIPE	14 GAUGE	
	*****	OTO TO INSTALL	

1. ALL FITTINGS MUST BE FUSED OR SOLDERED.

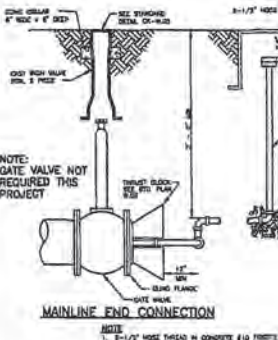
NO NOISE



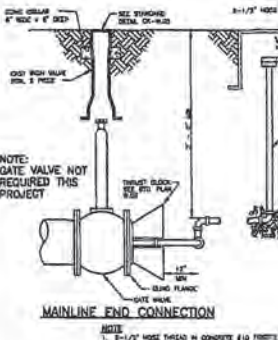
1994



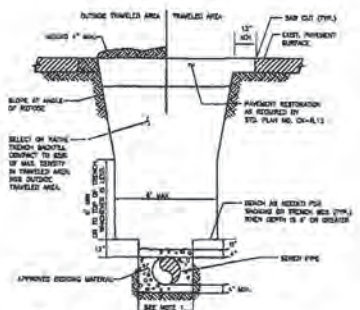
100



NO SIGNAL



NO SALE



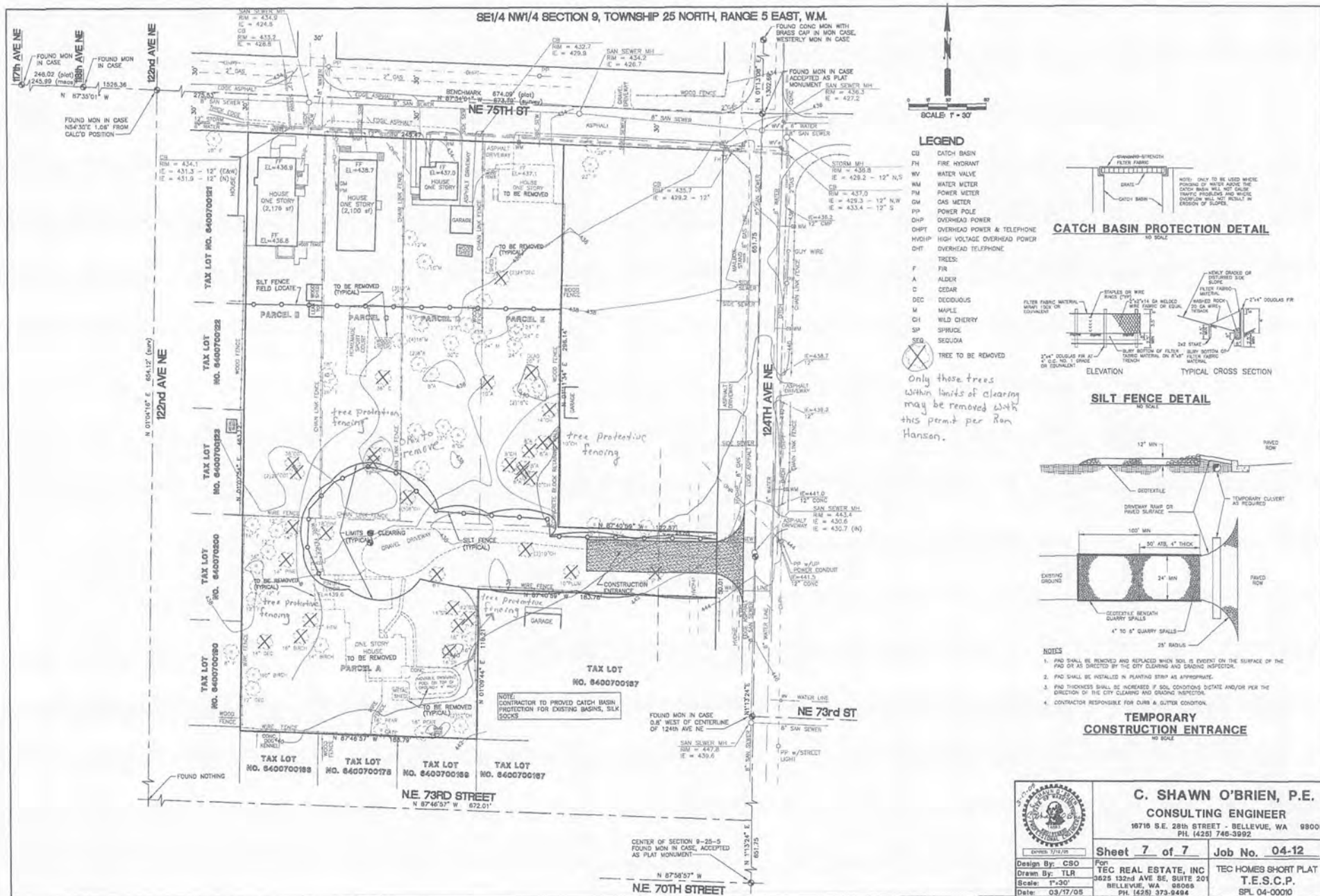
1. TRENCH SHOULD BE AT LEAST 4 FEET WIDE TO ALLOW UTILITY TO BE AS REQUIRED BY THE SPECIFICATIONS OR AS DIRECTED BY THE PUBLIC WORKS DIRECTOR.
2. MINIMUM WIDTH OF TRENCH AT TOP OF PIPE
- 20 INCHES FOR PIPE UP TO AND INCLUDING 12" NOMINAL DIAMETER.
 - O.G. PLUS 16 INCHES FOR PIPE LARGER THAN 12" NOMINAL DIAMETER.
3. IN PAVED AREAS SEE ORANGE BOOK SAMPLES.
- FULL DEPTH OF TRENCH SHOULD BE WITHIN ONE HUNDRED HUNDRETH OF THE UNPAVED LAYER OR SUBGRADE.
 - TOP FOUR FEET WHERE SLOPE MAY BE PARALLEL TO THE TRAVELLED LANE.
 - UNLESS EXISTING ROADWAY IS BEING REMOVED BY THE CONTRACTOR TO BE REPAVED FOR SLOPE.

ING STATE



C. SHAWN O'BRIEN, P.E.
CONSULTING ENGINEER
16715 N.E. 28th STREET - BELLEVUE, WA 98007
PH. (425) 748-3092

Design By: CSO	For	TEC HOMES SHORT PLAT
Drawn By: TLR	TEC REAL ESTATE, INC	WATER & SEWER
Scale: AS NOTED	3025 132ND AVE SE, SUITE 201	NOTES & DETAILS
Date: 03/17/05	BELLUVE, WA 98008	REF. 04-00010
	PH. (425) 373-9484	



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Handwritten notes in the center of the page, including the word "Handwritten" and some illegible scribbles.

Handwritten notes in the upper right quadrant of the page, including the word "Handwritten" and some illegible scribbles.

Handwritten notes in the lower center of the page, including the word "Handwritten" and some illegible scribbles.

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CITY OF IOWA	
BUILDING DEPT.	
PERMIT NUMBER	150-01-00048
PROJECT NAME	11 E. 22nd St. P.I.
OWNER	Van Rensselaer Surface Modification
DESIGNER	JEC Home S.
DATE SUBMITTED	1/14/05
DATE APPROVED	1/14/05
APPROVED BY	John D. Sullivan

REVISION
RECEIVED
APR 13 2005
PERMIT # 150-01-00048

Exhibit G

RETURN ADDRESS:

Stephannie Viertel
12011 NE 1st Street
Suite 201
Bellevue, WA 98005



20061116001981

CHICAGO TITLE COV 72.00
PAGE 001 OF 041
11/16/2006 14:27
KING COUNTY, WA

WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

DOCUMENT TITLE(S) (or transactions contained therein):	
Declaration of Covenants, Conditions, Restrictions, Easements, and Reservations for TEC Short Plat No. 3 and TEC Short Plat No. 4	
REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:	
20050523900010; 20050523900009	
<input type="checkbox"/> Additional reference #s on page _____ of document(s)	
GRANTOR(S) (Last name first, then first name and initials)	
Bennett-SFS, L.L.C.	CHICAGO TITLE INS. CO REF# <u>W0601111-10</u> ⁴¹
<input type="checkbox"/> Additional names on page _____ of document	
GRANTEE(S) (Last name first, then first name and initials)	
Rosewood of Kirkland Homeowners Association	
<input type="checkbox"/> Additional names on page _____ of document	
LEGAL DESCRIPTION (abbreviated: i.e., lot, block, plat or section, township, range)	
See attached Exhibit "A"	
<input type="checkbox"/> Additional legal is on page _____ of document	
ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER	
6400700-0143; 6400700-0147; 6400700-0144; 6400700-0145; 6400700-0160; 6400700-0161; 6400700-0130; 6400700-0142; 6400700-0141; 6400700-0146	
<input type="checkbox"/> Assessor Tax # not yet assigned	

**DECLARATION
Of
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS AND RESERVATIONS
TEC SHORT PLAT NO. 3 AND TEC SHORT PLAT NO. 4**

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DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS AND RESERVATIONS FOR
TEC SHORT PLAT NO. 3 AND TEC SHORT PLAT NO. 4

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RESERVATIONS (this "Declaration") is made this 15TH day of November 2006, by Bennett-SFS, L.L.C., a Washington limited liability company (hereinafter called the "Declarant").

RECITALS:

A. This Declaration governs that certain real properties located in the City of Kirkland, County of King, State of Washington, described in Exhibit A annexed hereto ("TEC Short Plat No. 3 and Tec Short Plat No. 4 or "Property").

B. Declarant plans to develop TEC Short Plat No. 3 and Tec Short Plat No. 4, pursuant to a general plan for the entirety of the plats and desires to provide for the preservation of the values and amenities of said community, for the maintenance of common areas and other common facilities and, to this end, desires to subject TEC Short Plat No. 3 and Tec Short Plat No. 4 to this Declaration for the benefit of the plats and each individual Owner thereof. See exhibit A.

C. Declarant has or will incorporate under the laws of the State of Washington, as a nonprofit corporation, Rosewood of Kirkland Homeowner's Association for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that lots 2-10 and Tract A of TEC Short Plat No. 3 and all of Tec Short Plat No. 4, shall be held, leased, occupied, sold and conveyed subject to the following covenants, conditions and restrictions, and subdivided as shown in the Plats of TEC Short Plat No. 3, recorded in Book 187 of surveys, pages 069 through 071, recording number 20050523900009 and TEC Short Plat No. 4, recorded in Book 187 of surveys, pages 072 through 074, recording number 20050523900010, all being records King County, Washington (the "Plats"), of all and each of which are for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Properties, in furtherance of a general plan for the protection of the Properties, or any portion thereof. All, and each of these covenants, conditions and restrictions are hereby imposed as equitable servitudes upon the Properties. The covenants, conditions and restrictions and equitable servitudes set forth herein shall run with the Properties, and every portion thereof, shall be binding on all parties having or acquiring any right, title or interest in the Properties, or in any part thereof, and their successors and assigns, shall inure to the benefit of every portion of the Properties and any interest therein, shall inure to the benefit of each Owner, and his or her successors and assigns, and may be enforced by any Owner or the Association; provided, however, that prior to the expiration of the Declarant Control Period, Declarant shall have the powers, responsibilities and duties of the Association and the Board of the Association hereunder, including, but not limited to, maintaining and administering the Common Areas and Common Area Improvements, enforcing the covenants, conditions and restrictions herein contained, and collecting and disbursing the assessments and charges hereinafter created.

ARTICLE I DEFINITIONS

Section 1.1. Words Defined. For the purposes of this Declaration and any amendments hereto, the following terms shall have the following meanings:

“Articles” shall mean the Articles of Incorporation of the Association which have been filed in the office of the Secretary of State of the State of Washington, as such Articles may be amended from time to time.

“Association” shall mean Rosewood of Kirkland Homeowner’s Association, a Washington nonprofit corporation, its successors and assigns.

“Board of Directors” or “Board” shall mean the Board of Directors of the Association.

“Bylaws” shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

“Committee” or “Architectural Control Committee” shall mean the Architectural Control Committee formed pursuant to Article VIII of this Declaration.

“Common Areas” shall mean the real property (including the improvements and facilities thereon) described as all areas of the Property outside the Lots, including but not limited to, roadways, walkways, parking areas, parks, open space buffers, wetlands areas, Native Growth Protection Easements or Areas, and landscape areas shown on the Plats which will be conveyed by Declarant to the Association and held for the common use, maintenance and enjoyment of the members of the Association, but shall not include any streets, or other areas now or hereafter dedicated for public use. Or: (a) any and all areas reserved for easements, as set forth, described or depicted in the Plats or otherwise reserved by Declarant for common use, including without limitation, access easements, utility easements, and (b) any portion of TEC Short Plat No. 3 and Tec Short Plat No. 4, which is restricted to a use or uses beneficial to the Owners in common. See “Exhibit C”

“Common Area Improvements” shall mean and include all improvements and facilities installed within or upon any of the Common Areas, including without limitation, roads, streets, utility installations, bridges, perimeter fences, security systems, entrance facilities, signs, landscaping, benches, play equipment and other amenities.

“Common Expense Percentage” means the percentage of general and special assessments payable by each Owner of a Lot, not including Lot 1 of TEC Short Plat No. 3, computed as the quotient of one (1) divided by the total number of Lots, included together in TEC Short Plat No. 3 and Tec Short Plat No. 4

"Common Annual Assessments" shall mean the annual charge against each Owner and his Lot, representing a portion of the total ordinary costs of operating the Association and maintaining, operating, improving, repairing, replacing and managing the Common Areas and Common Area Improvements, which charge shall be paid by each Owner to the Association to satisfy Common Expenses as further provided herein.

"Common Expenses" shall mean the actual and estimated costs of maintenance, management, operation, repair and replacement of the Common Areas and Common Area Improvements (including unpaid Particularized Assessments and those costs not paid by the Owner responsible for payment and legal recovery methods have been exhausted); the costs of all commonly metered utilities, including but not limited to street lights and irrigation, and other commonly metered charges for the Properties; costs of management and administration of the Association, including, but not limited to, reasonable compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all services benefiting the Common Areas and as approved through a vote of the members of the Home Owners Association pursuant to Section 3.4 of this Declaration; insurance, bonding, if any, of the members of the management body, real and/or personal property and leasehold excise taxes, assessments paid by the Association, amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas; and the costs of any other item or items designated by the Members of the Association for any reason in connection with the to be for the benefit of all of the Owners, and as approved through a vote of the members of the Home Owners Association pursuant to Section 3.4 of this Declaration. These "Common Expenses" are the responsibility of each individual lot owner to pay their "Common Expense Percentage" in the case the Home Owners Association does not pay.

"Declarant" shall mean Bennett-SFS, L.L.C. its successors and assigns.

"Declarant Control Period" shall mean the period commencing with the recordation of this Declaration and expiring on the first to occur of (i) the ten (10) year anniversary of such date of recordation, (ii) the date Declarant has conveyed the last of the ten (10) Lots combined, of the TEC Short Plat No. 3 and Tec Short Plat No. 4, or (iii) the date Declarant records an instrument voluntarily terminating the right to act on behalf of the Association.

"Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, Easements and Reservations for TEC Short Plat No. 3 and Tec Short Plat No. 4, as it may be amended from time to time as provided herein.

"First Mortgage" means a recorded Mortgage encumbering a Lot which has legal priority over all other Mortgages on such Lot.

"Improvement" shall mean all structures and appurtenances thereto of every kind, whether above or below the land surface, including, but not limited to, buildings, utility systems, walkways, driveways, parking areas, landscaping items, fences, walls, decks, stairs, swimming pools, patios, poles, landscaping vegetation, irrigation systems, signs, exterior fixtures and any other structure of any kind.

"Lot" shall mean any one or more of the ten (10) lots designated as A through B on the TEC Short Plat No. 4 and lots numbered 2 through 9 on TEC Short Plat No. 3.

"TEC Short Plat No. 3 and Tec Short Plat No. 4" shall mean all of the real property described in Exhibit A annexed hereto. The term "TEC Short Plat No. 3 and Tec Short Plat No. 4" is synonymous with the term "Property".

"Member" shall mean every person or entity who or which holds a membership in the Association, as provided in Section 2.4 hereof.

"Mortgage" shall mean a recorded mortgage or deed of trust that creates a lien against a Lot and shall also mean a real estate contract for the sale of a Lot. "Mortgagee" shall mean the beneficial owner, or the designee of the beneficial owner, of an encumbrance on a Lot created by a mortgage or a deed of trust and shall also mean the vendor, or the assignee of a vendor, of a real estate contract for the sale of a Lot.

"Mortgagor" shall mean the mortgagor of a mortgage, trustor or grantor of a deed of trust, and shall also mean the vendee, or the assignee of a vendee, of a real estate contract for the sale of a Lot.

"Native Growth Protection Easement or Area" shall mean that area as described to remaining in an undisturbed state as determined by the City of Kirkland.

"Occupant." The term "Occupant" shall mean a lessee of an Owner, or any other person or entity other than an Owner in lawful possession of a Lot, or a portion of a Lot, with the permission of the Owner.

"Owner" shall mean the Person(s) holding fee simple title of record to any Lot within the Properties, including purchaser(s) under executory contracts of sale.

"Owners" shall mean all of the owners of Lots within TEC Short Plat No. 3 and Tec Short Plat No. 4,

"Ownership" shall mean the status of being an Owner.

"Particularized Assessment" shall mean a charge against a particular Owner and his Lot, directly attributable to, or reimbursable by, said Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest and other charges thereon, as provided for in Section 4.5 of this Declaration.

"Person" shall mean a natural individual, corporation or any other entity with the legal right to hold title to real property.

"Plats" shall mean the recorded the plats of TEC Short Plat No. 3 and Tec Short Plat No. 4 and any amendments, corrections, or addenda thereto subsequently recorded.

"Property" shall mean all of the real property described in Exhibit A annexed to this Declaration. The term "Property" is synonymous with the term "TEC Short Plat No. 3 and Tec Short Plat No. 4".

"Record" or "File" shall mean, with respect to any document, the recordation thereof, and with respect to any map, the filing thereof, in the Official Records of the Recorders Office of King County, State of Washington.

"Residence" shall mean and refer to Improvements constructed or installed on any Lot intended for residential use.

"Signs" shall mean any structure, device or contrivance, electric or nonelectric, upon or within which any poster, bill, bulletin, printing, lettering, painting, device or other advertising of any kind whatsoever is used, placed, posted, tacked, nailed, pasted or otherwise fastened or affixed.

"Street" shall mean any street, drive, way, lane, place or other thoroughfare as noted on the recorded Final Plats.

"Structure" shall mean any building, fence, wall, driveway, walkway, patio, garage, storage shed, carport, mailboxes, basketball hoop, play equipment, climbing apparatus, swimming pool, rockery, dog run or the like.

"Visible from Neighboring Property" shall mean, with respect to any given object on a Lot, that such object is or would be visible to a person six (6) feet tall, standing on any part of any adjacent Lot or other portions of TEC Short Plat No. 3 and Tec Short Plat No. 4 at an elevation no greater than the elevation of the base of the object being viewed.

Section 1.2. Form of Words. The singular forms of words shall include the plural and the plural shall include the singular. Masculine, feminine and neuter pronouns shall be used interchangeably.

Section 1.3. Construction. In construing words herein, words shall have their usual and ordinary meaning, except as specifically defined herein or in any other documents recorded with respect to the Properties; provided that words which are not defined herein or in such other recorded documents, shall, if ambiguous, have the meaning given them (if any) in zoning and building regulations, ordinances and regulations of the governmental entity with jurisdiction in the area in which the Property is located.

ARTICLE II ROSEWOOD OF KIRKLAND HOMEOWNER'S ASSOCIATION

Section 2.1. Form of Association. The Association is a nonprofit association. The rights and duties of the members and of the Association shall be governed by the provisions of this Declaration, the Articles, the Bylaws, and such other rules and regulations as may hereafter be adopted by the Board.

Section 2.2. Board of Directors. During the Declarant Control Period, the Declarant shall manage the Association and shall have all the powers of the Board set forth herein. The Declarant may, from time to time, appoint a temporary board of not fewer than three (3) persons who need not be Owners to manage the Association during the Declarant Control Period. The temporary board shall have the full authority to manage the Association pursuant to and in accordance with the Articles and Bylaws; provided that, after appointing a temporary board, Declarant may at any time terminate the temporary board and reassume its management authority under this Section 2.2 or elect a new temporary board. Upon termination of the Declarant Control Period, the terms of the temporary Board selected by the Declarant, if any, shall terminate and the Board shall manage the Association as provided herein. The Board shall be elected from among the Owners, as provided in the Bylaws of the Association. The Board shall elect officers of the Association from among the Board members, which shall include a president who shall preside over meetings of the Board and meetings of the Association.

Section 2.3 Bylaws, Rules and Regulations. The Board on behalf of the Association shall have the power to adopt, modify, and amend rules and regulations governing the use of TEC Short Plat No. 3 and Tec Short Plat No. 4 provided that such rules and regulations shall not be inconsistent with this Declaration. The rules and regulations shall apply uniformly to all Owners, except as specifically provided herein. The Board shall have the power to enforce the rules and regulations on behalf of the Association and may prescribe penalties for the violation of such rules and regulations, including but not limited to suspension of the right to use the Common Areas or portions thereof. Any such rules and regulations shall become effective thirty (30) days after promulgation and shall be mailed to all Owners prior to their effective date. A copy of the rules and regulations then in force shall be retained by the secretary of the Association. The Declarant on behalf of the Board may adopt the initial Bylaws and rules and regulations.

Section 2.4. Membership. Every Owner shall automatically, upon becoming the Owner of a Lot, be a Member of the Association, and shall remain a Member thereof until such time as his Ownership ceases for any reason, at which time his Membership in the Association shall automatically cease. Ownership of a Lot shall be the sole qualification for Membership in the Association. All memberships shall be appurtenant to a Lot. Except as may otherwise be provided herein, the rights, duties, privileges and obligations of all Members of the Association shall be as set forth in this Declaration, the Articles of Incorporation and Bylaws of the Association, and the rules and regulations of the Association adopted in accordance with the Bylaws of the Association.

Section 2.5. Transfer. The Membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Owner's Lot and

then only to the purchaser or Mortgagee of such interest in such Lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association.

Section 2.6. Voting Rights. Owners shall be entitled to one vote for each Lot owned. When more than one person or entity owns an interest in any Lot, the vote for that Lot shall be exercised as the Owners decide to exercise that vote but, in no event, shall more than one vote be cast with respect to any Lot nor shall any vote be divided and fractional votes shall not be allowed. If joint owners are unable to agree among themselves how their vote shall be cast, they shall lose their right to vote on the matter in question. An Owner may, by written notice to the Board, designate a voting representative for the Lot. The designated voting representative need not be an Owner. The designation may be revoked at any time by written notice to the Board from a Person having an ownership interest in a Lot, or by actual notice to the Board of the death or judicially declared incompetence of any Person with an ownership interest in the Lot, except in cases in which the Person designated is a Mortgagee of the Lot. This power of designation and revocation may be exercised by the guardian of an Owner, the attorney-in-fact for the Owner under a durable power of attorney, and the administrator or executor of an Owner's estate. If no designation has been made, or if a designation has been revoked and no new designation has been made, the voting representative of each Lot shall be the group composed of all of its Owners. Unless otherwise expressly provided in this Declaration, a quorum is present throughout any meeting of the Association if the Owners to which seventy percent (70%) of the votes of the Association are allocated are present in person or by proxy at the beginning of the meeting.

Section 2.7. Meetings of Members. There shall be a meeting of the Members of the Association within sixty (60) days of the expiration of the Declarant Control Period. Declarant shall cause notice of said meeting to be given, but shall not be required to perform any other duty with respect to such meeting. Thereafter there shall be an annual meeting of the members of the Association in accordance with the Bylaws. At the first such meeting, and at each annual meeting thereafter, the Owners shall elect Board members to serve for the terms specified in the Bylaws of the Association. Special meetings of the members of the Association may be called in accordance with the Bylaws of the Association.

Section 2.8. Books and Records. The Board shall cause to be kept complete, detailed, and accurate books and records of the receipts and expenditures (if any) of the Association, in a form that complies with generally accepted accounting principles. The books and records, authorizations for payment of expenditures, and all contracts, documents, papers and other records of the Association shall be available for examination by Owners, Mortgagees, and the agents or attorneys of either of them, during normal business hours and at any other reasonable time or times.

Section 2.9. Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and either the Articles of Incorporation or the Bylaws of the Association, the terms and provisions of this Declaration shall prevail.

ARTICLE III AUTHORITY OF THE BOARD

Section 3.1 Adoption of Rules and Regulations. The Board is empowered to adopt, amend and revoke on behalf of the Association detailed administrative rules and regulations necessary or convenient from time to time to insure compliance with the general guidelines of this Declaration to promote the comfortable use and enjoyment of the Property and to govern the operation and procedures of the Association. The rules and regulations shall be binding upon all Owners, Occupants and all other Persons claiming any interest in the Property or any Lot.

Section 3.2 Enforcement of Declaration, Etc. The Board shall have the power to enforce the provisions of this Declaration, and the rules and regulations of the Association for the benefit of the Association. The failure of any Owner to comply with the provisions of this Declaration, or the rules and regulations of the Association will give rise to a cause of action in the Association (acting through the Board) and any aggrieved Owner for the recovery of damages, injunctive relief, and/or any other remedy available at law or in equity.

Section 3.3 Goods and Services. The Board shall acquire and pay for as Common Expenses of the Association all goods and services reasonably necessary or convenient for the efficient and orderly maintenance of all portions of the Common Areas and Common Area Improvements. The Board may hire such employees as it considers necessary.

Section 3.4 Protection of Common Area. During the Declarant Control Period, the Declarant may spend such funds and take such action as it may from time to time deem necessary to preserve the Common Areas and Common Area Improvements, settle claims, or otherwise act in what it considers to be the best interests of the Association. After the Transfer of the Homeowner's Association from the Declarant to the Board of Directors, the Board may take such action up to an amount of no more than \$1,000.00 without a vote of the Members of the Homeowner's Association. If actions causes the Board to spend in excess of \$1,000.00, the Board must conduct a vote of the Members of the Homeowner's Association.

Section 3.5 Maintenance of Wetlands and Native Areas. The Board may spend such funds and take such action as it may from time to time deem necessary to preserve the Native Areas, settle claims, or otherwise act in what it considers to be the best interests of the Association.

ARTICLE IV ASSOCIATION BUDGET, ASSESSMENTS AND LIENS

Section 4.1 Owner's Covenants to Pay Assessments. By the acquisition of Ownership of a Lot, the Owner thereof covenants and agrees thereby, on behalf of himself and his heirs, successors, and assigns, to pay the Association, in advance, all general, special and particularized assessments levied as provided herein.

Section 4.2 Fiscal Year; Preparation of Association Budget. The Board may adopt such fiscal year for the Association as it deems to be convenient. Unless another year is adopted, the fiscal year will be the calendar year. As soon as the Board in its discretion deems advisable after the Transition Date of the Association, and prior to the expiration of each fiscal year thereafter, the Board shall prepare, or cause the preparation of, an operating budget for the Association at least annually, which shall include, without limitation, the sums required by the Association, as estimated by the Board, to meet its annual Common Expenses for maintaining the Common Area during the ensuing fiscal year in accordance with generally accepted accounting principles, and shall mail a summary of the budget to all of the Owners. The funds required to meet the Association's annual Common Expenses shall be raised from a general assessment against each Owner as provided hereafter. The Board may revise the operating budget after its preparation at any time and from time to time, as it deems necessary or advisable in order to take into account and defray additional costs and expenses of the Association. Within thirty days after adoption by the Board, the Board shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the Owners of a majority of the votes in the Association are allocated or any larger percentage specified in the Articles or Bylaws reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board. The Board shall then assess each Lot within the Property with its pro rata share, based upon the number of Lots then within the Property, of such estimated costs. The Board, at its election, may require the Lot Owners to pay the amount assessed in equal monthly or quarterly installments or in a lump sum annual installment. The Board shall notify each Lot Owner in writing at least fourteen (14) days in advance of each assessment period of the amount of the assessment for said period, which notice shall be accompanied by a copy of the budget upon which the assessment is based. The assessments levied by the Board shall be used exclusively to promote the recreation, health, safety and welfare of the Lot Owners and for the improvement and maintenance of the Common Areas and provision of other goods and services described in Section 6.3, including without limitation the amount of all taxes and assessments levied against, and the cost of liability and other insurance on, the Common Areas; the cost of utilities and other services; and the cost of funding all reserves established by the Board, including, when appropriate, a general operating reserve and a reserve for replacements.

Section 4.3 Levy of General Assessment. In order to meet the costs and expenses projected in its operating budget, the Board shall determine and levy in advance on every Owner a general assessment. The amount of each Owner's general assessment shall be the amount of the Association's operating budget multiplied by such Owner's Common Expense Percentage. The Association shall make reasonable efforts to determine the amount of the general assessment payable by each Owner for an assessment period at least thirty (30) days in advance of the beginning of such period and shall during that time prepare a roster of the Owners and the general assessment allocated to each which shall be open to inspection by any Owner upon reasonable notice to the Board. Notice of the general assessment shall thereupon be sent to each Owner; provided, however, that notification to an Owner of the amount of an assessment shall not be necessary to the validity thereof. The omission by the Board, before the expiration of any

assessment period, to fix the amount of the general assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any Owner from the obligation to pay the general assessment, or any installment thereof, for that or any subsequent assessment period, but the general assessment fixed for the preceding period shall continue until a new assessment is fixed. Upon any revision by the Board of the operating budget during the assessment period for which such budget was prepared, the Board shall, if necessary, revise the general assessment levied against the Owners and give notice thereof to each Owner.

Section 4.4 Payment of General Assessment. The Board, at its election, may require the Owners to pay the amount assessed on a monthly, quarterly, semi-annual, or annual basis. Any Owner may prepay one or more installments on any assessment levied by the Association without penalty.

Section 4.5 Particularized Assessment. No assessment shall be made at any time which unreasonably discriminates against any particular Owner or group of Owners in favor of other Owners. However, a special assessment ("Particularized Assessment") may be made against a particular Owner by a two-thirds majority vote of the Board if, after notice from the Board of failure to maintain such Lot in a condition comparable to the other Lots has been given, the Association elects to expend funds to bring such Owner's Lot up to such comparable standard.

Section 4.6 Commencement of Assessments. The liability of an Owner for assessments shall commence on the first day following the date upon which any instrument of transfer to such Owner becomes operative (such as the date of a deed or the date of a recorded real estate contract for the sale of any Lot. The Declarant, its successors and assigns, shall not be liable for any assessments with respect to any Lot unless such Lot has been improved with a Residence and the Residence is occupied. The due dates of any special assessment or Particularized Assessment payments shall be fixed by the resolution authorizing such assessment(s).

Section 4.7 Certificates of Assessment Payment. Upon request, the Board shall furnish written receipt certifying the extent to which assessment payments on a specified Lot are paid and current to the date stated therein.

Section 4.8 Special Assessments. In addition to the general assessments authorized by this Article, the Association may, by majority vote of the Members in attendance at a meeting called for that purpose, levy a special assessment or assessments at any time, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, inordinate repair, or replacement of a capital improvement located upon or forming a part of the Common Areas or Common Area Improvements, including necessary fixtures and personal property related thereto, or for such other purpose as the Association may consider appropriate; provided, however, that any such special assessment in excess of \$500.00 per Lot must have the prior favorable vote of seventy percent (70%) or more of the Members in attendance at a meeting called for that purpose.

Section 4.9 Effect of Nonpayment of Assessment. If any assessment payment is not made in full within thirty (30) days after it was first due and payable, the unpaid amounts shall

constitute a lien against the Lot assessed, and shall bear interest from such due date at a rate set by the Board in its rules and regulations which shall not exceed the highest rate then permitted by law. By acceptance of a deed to a Lot, recording of a real estate contract therefore, or any other means of acquisition of Ownership of a Lot, and whether or not it shall be so expressed in any such deed or other instrument, each Owner shall be deemed to grant thereby to the Association, its agents and employees, and to Declarant during the Declarant Control Period, the right and power to bring all actions against such Owner personally for the collection of such assessments as a debt, and to enforce the liens created by this Declaration in favor of the Association by foreclosure of the continuing liens in the same form of action as is then provided for the foreclosure of a mortgage on real property under the laws of the State of Washington. The liens provided for in this Declaration shall be for the benefit of the Association, and the Association shall have the power to bid at any lien foreclosure sale and to acquire, hold, lease, mortgage, and convey the Lot foreclosed against.

Section 4.10 Lien to Secure Payment of Assessments. Declarant hereby creates in the Association perpetually the power to create a lien in favor of the Association against each Lot, to secure to the Association the payment to it of all assessments, interest, costs, and attorneys' fees; and Declarant hereby subjects all Lots perpetually to such power of the Association. Such lien shall arise in accordance with the terms of this Declaration without the necessity of any further action by the Association, and any such lien when created, shall be a security interest in the nature of a mortgage in favor of the Association. Such lien shall become a continuing lien in the amount stated in the assessment from the time of the assessment, but expiring pro rata as the assessment payments are made, and shall also be the personal obligation of the person or entity who is the Owner of the Lot at the time of the assessment. The personal obligation to pay a prior assessment shall not pass to successors in interest unless expressly assumed by them; provided, however, that in the case of a sale or contract for the sale of any Lot which is charged with the payment of an assessment, the person or entity who is the Owner immediately prior to the date of such sale shall be personally liable for the amounts of the installments due prior to said date, and the new Owner shall be personally liable for monthly installments becoming due on or after such date. The foregoing limitation on the duration of the personal obligation of an Owner to pay assessments shall not, however, affect the validity or duration of the continuing lien for unpaid assessments against the respective Lot.

Section 4.11 Subordination of Liens.

4.11.1 Intent of Provisions. The provisions of this Section 4.11 apply for the benefit of Mortgagees of Lots.

4.11.2 Mortgagee's Nonliability. A Mortgagee shall not, by reason of its security interest only, be liable for the payment of any assessment or charge, nor for the observance or performance of any covenant or restriction, excepting only those enforceable by equitable relief and not requiring the payment of money, and except as hereafter provided.

4.11.3 Mortgagee's Rights During Foreclosure. During foreclosure of a Mortgage, including any period of redemption, the Mortgagee may exercise any or all of the rights and privileges of the Owner of the encumbered Lot, including but not limited to the right to vote in the Association to the exclusion of the Owner's exercise of such rights and privileges.

4.11.4 Mortgagee as Owner. At such time as a Mortgagee shall become the record owner of the Lot previously encumbered by the Mortgage, the Mortgagee shall be subject to all of the terms and conditions of this Declaration, including the obligation to pay for all assessments and charges in the same manner as any Owner.

4.11.5 Mortgagee's Title Free and Clear of Liens. A Mortgagee or other secured party acquiring title to a Lot through foreclosure, deed in lieu of foreclosure, or equivalent method, shall acquire title to the encumbered Lot free and clear of any lien authorized by or arising out of the provisions of this Declaration, insofar as such lien secures the payment of any assessment due but unpaid before the final conclusion of any such proceeding, including the expiration date of any period of redemption. The Board may treat any unpaid assessments against a Lot foreclosed against as a Common Expense of the Association pursuant to Section 4.3.

4.11.6 Survival of Assessment Obligation. After the foreclosure of a security interest in a Lot, any unpaid assessments shall continue to exist and remain as a personal obligation of the Owner against whom the same was levied, and the Board shall use reasonable efforts to collect the same from such Owner.

4.11.7 Subordination of Assessment Liens. The liens for assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgage, and the Association will, upon demand, execute a written subordination document to confirm such priority. The sale or transfer of any Lot or of any interest therein shall not affect the liens provided for in this Declaration except as otherwise specifically provided for herein, and in the case of a transfer of a Lot for purposes of realizing a security interest, liens shall arise against the Lot for any assessment payments coming due after the date of such transfer.

Section 4.12 Suspension for Nonpayment of Assessment. If an Owner shall be in arrears in the payment of any assessment due, or shall otherwise be in default of the performance of any terms of the Declaration or of the Articles, Bylaws or rules and regulations of the Association for a period of thirty (30) days, said Owner's voting rights shall without the necessity of any further action by the Association, be suspended (except as against foreclosing secured parties) and shall remain suspended until all payments, including interest thereon, are brought current and any other default is remedied. No Owner is relieved of liability for assessments by nonuse of the Common Areas or by abandonment of a Lot.

Section 4.13 Reserves for Replacement. As a Common Expense, the Board shall establish and maintain a reserve fund for replacement of the Common Areas, Common Area Improvements, and any improvements thereon. Such fund shall be deposited with a banking institution. The reserve fund shall be expended only for the purpose of effecting the replacement of the Common Areas, Common Area Improvements, and any improvements and community facilities thereon, equipment replacement, and for operating contingencies of a nonrecurring nature. The Board may establish such other reserves for such other purposes as it may from time to time consider to be necessary or appropriate. The proportional interest of any Owner in any such reserves shall be considered an appurtenance of his Lot and shall not be separately withdrawn, assigned, or transferred from the Lot to which it appertains.

Section 7.15 Miscellaneous Provisions and Use Restrictions.

7.15.1 Tree Preservation Requirements are on record with the City of Kirkland. Removal of any of these trees is not permitted unless deemed diseased, dead or hazardous by the City of Kirkland. A separate Arborist report may be required. Any removal of these trees from any lot within TEC Short Plat No. 3 and TEC Short Plat No. 4 must be done in accordance with the Tree Retention Plan also on File with the City of Kirkland Planning Department. This also includes any Tree Preservation requirements contained within the building permit(s), inclusive of all lots within the Property. Final location of these trees may have been modified. Verify location with City of Kirkland prior to removal of any tree outside the building footprint.

7.15.2 No Further Subdivision of any lot within the Plat shall be permitted without approval of an appropriate subdivision procedure by the City of Kirkland.

7.15.3 Each property owner shall be responsible for the maintenance of the sanitary sewer or storm water stub from the point of use on their own property to the point of connection in the city sanitary sewer main or storm water main. Any portion of a sanitary sewer or surface water stub, which jointly serves more than one property, shall be jointly maintained and repaired by the property owners sharing such stub. The joint use and maintenance shall run with the land and will be binding on all property owners within this subdivision, including their heirs, successors, and assigns.

Section 7.16. Owners' Common Rights. Owners shall have equal rights to use the Common Areas, except as otherwise specifically set forth in this Declaration. All easements for ingress, egress, utilities, and use of facilities, unless otherwise specifically limited, shall exist in favor of all Owners.

Section 7.17. No Obstruction by Owner. The Owners of Lots which are burdened by any Common Areas shall not in any manner interfere with the Association's maintenance, use and operation of the Common Areas, but such Owners may use the Common Areas within their respective Lots in any lawful manner that does not so interfere. Declarant makes no warranty or representation as to what, if any, uses may be made of any Common Areas.

Section 7.18. Maintenance of Common Areas. The Association shall maintain, repair, replace, improve, and otherwise manage all of the Common Areas and Common Area Improvements in accordance with Section 6.1 of this Declaration.

Section 7.19. Native Growth Protection Easements and Tracts. Intentionally unused.

ARTICLE VIII ARCHITECTURAL CONTROL COMMITTEE

An Architectural Control Committee ("Committee") consisting of three (3) members is hereby created with the rights and powers set forth in this Declaration. The initial members of the Committee shall be representatives appointed by Declarant. Committee members shall not be entitled to compensation for their services hereunder, except as may be determined by the Board of Directors. Declarant shall have the right and power at all times to appoint or renew the appointment of the members of the Committee or to fill any vacancy until the expiration of the Declarant Control Period. After the expiration of the Declarant Control Period, the Board shall have the power to appoint and remove the members of the Committee.

ARTICLE IX CONSTRUCTION OF IMPROVEMENTS

Section 9.1. Approval of Plans Required. No Improvements shall be erected, placed, altered, maintained or permitted to remain on any Lot by any Owner until final plans and specifications shall have been submitted to and approved in writing by the Committee. Such final plans and specifications shall be submitted over the authorized signature of the Owner of the Lot or his authorized agent. The plans and specifications shall be in such form and shall contain such information as may be required by the Committee, but shall in any event include the following:

9.1.1 A site development plan of the Lot showing the nature, kind, shape, composition and location of all structures with respect to the particular Lot, including, without limitation, the number and location of all driveways on the Lot;

9.1.2 Grading and storm drainage plan;

9.1.3 A landscaping plan;

9.1.4 A plan for the location of signs and lighting;

9.1.5 Building elevations and plans showing dimensions, materials and external color scheme in such detail as required by the Committee; and

9.1.6 A design review fee in an amount to be determined by the Board of Directors.

Section 9.2 Plan Changes and Plans for Changes to Improvements. Material changes in approved plans must be similarly submitted to and approved by the Committee. In addition to the other requirements of Section 9.1 above:

9.2.1 No exterior surface of any improvement on any Lot shall be repainted, texturized or otherwise changed;

9.2.2 No alterations, additions or changes shall be made to any landscaping placed on any Lot; and

9.2.3 No additions or alterations to any paved area on any Lot shall be made, until plans for such painting, alterations, additions or changes, including samples of colors and materials, landscaping plans, or plans and specifications with regard to paving, as the case may be, together with such other information as shall be required by the Committee, have been submitted to the Committee and the Committee has approved in writing such requested change.

Section 9.3. Approval Procedures. The Committee shall not arbitrarily or unreasonably withhold its approval of any plans and specifications. Except as otherwise provided in this Declaration, the Committee shall have the right to disapprove any plans and specifications submitted hereunder on any reasonable grounds including, but not limited to, the following:

9.3.1 failure to comply with any of the restrictions set forth in this Declaration;

9.3.2 failure to include information in such plans and specifications as may have been reasonably requested by the Committee;

9.3.3 objection on the grounds of incompatibility of any proposed structure, use or landscaping with existing structures, uses or landscaping upon other Lots, or other property in the vicinity of the subject Lot;

9.3.4 objection to the grading or landscaping plan for any Lot;

9.3.5 objection to the color scheme, finish, proportions, style or architecture, height, bulk or appropriateness of any structure;

9.3.6 objection to the number or size of parking spaces, or to the design of the parking area;

9.3.7 any other matter which, in the judgment of the Committee, would render the proposed improvements or use inharmonious with the general plan for improvement of TEC Short Plat No. 3 and Tec Short Plat No. 4 or with Improvements located upon other Lots or other property in the vicinity.

Section 9.4. Result of Inaction. If the Committee fails either to approve or disapprove plans and specifications submitted to it within thirty (30) days after the same have been submitted, it shall be conclusively presumed that the Committee has approved said plans and specifications; provided, however, that if, within the thirty (30) day period, the Committee gives written notice of the fact that more time is required and must give notice of necessary additional time, and that time may not exceed an additional 30 days, for the review of such plans and specifications, there shall be no presumption that the same are approved until the expiration of such reasonable period of time as is set forth in the notice.

Section 9.5. Approval. The Committee may approve plans and specifications as submitted, or as altered or amended, or it may grant its approval to the same subject to specific conditions. Upon approval or conditional approval by the Committee of any plans and specifications submitted, a copy of such plans and specifications, together with any conditions, shall be deposited for permanent record with the Committee, and a copy of such plans and specifications, bearing such approval, together with any conditions, shall be returned to the applicant submitting the same.

Section 9.6. Variances. Either the Board or the Committee may grant to any Lot or Owner thereof such variances from the covenants, conditions, restrictions and provisions set forth herein as it, in its sole discretion, determines is in the best interest of TEC Short Plat No. 3 and Tec Short Plat No. 4. Any variances granted hereunder shall be effective only if made in accordance with applicable law and in writing.

Section 9.7. Proceeding with Work. Upon receipt of approval of the final construction documents from the Committee, the Owner to whom approval is given shall, as soon as practicable, satisfy any and all conditions of such approval and shall diligently proceed with the commencement and completion of all approved excavation, construction, refinishing and alterations. In all cases, work shall commence within twelve (12) months from the date of approval, and if work is not so commenced, approval shall be deemed revoked unless the Committee, pursuant to written request made and received prior to the expiration of said twelve (12) month period, extends the period of time within which work must be commenced.

Section 9.8. Completion of Work. Any Improvement commenced pursuant hereto shall be completed within six (6) months from the date of commencement of construction, except for so long as such completion is rendered impossible, or unless work upon the proposed Improvements would impose a great hardship upon the Owner to whom the Committee's approval is given due to strike, fire, national emergency, natural disaster or other supervening force beyond the control of the Owner. The Committee may, upon written request made and received prior to the expiration of the six (6) month period, extend the period of time within which work must be completed. Failure to comply with this Section 9.8 shall constitute a breach of the Declaration and subject the party in breach to the enforcement procedures set forth herein.

Section 9.9. Construction Deposit. For purposes of protecting the Common Areas and Common Area Improvements against damage during construction by an Owner, his contractors and agents, the Committee is authorized to require a cash deposit from each Owner to whom approval of plans is given of an amount deemed appropriate by the Committee for such purposes ("Construction Deposit"), if the Committee finds that potential damage can be done to the Common Area(s) caused by Owner's proposed construction. The Construction Deposit, however, shall not exceed Two Thousand Dollars (\$2,000.00). In the event an Owner, his contractor, agents or employees causes any damage or destruction to any portion of the Common Areas or Common Area Improvements, the Committee shall notify such Owner and request the replacement or repair of the item or area damaged or destroyed. The Owner shall have a period of (2) two business days after the date or receipt of such notice to advise the Committee of its intended course of action and its schedule for correction of the damage, and to commence such correction. The Committee shall in its sole discretion approve or disapprove such course and schedule, and the Owner agrees to make such changes thereto as are necessary to obtain the Committee's approval. If the Owner fails to correct the damage in the manner or within the time approved by the Committee, the Committee may, at its option, perform such work as is necessary to remedy the situation on behalf and at the expense of the Owner and apply the Construction Deposit against the cost thereof. If the cost of such work exceeds the total amount of the Construction Deposit, the Owner shall pay the Association that excess cost within 10 days of demand by the Committee. Upon completion of construction of the Improvements on the Lot, and following a joint inspection of the Improvements and Lot by the Owner and the Committee to verify that no damage to the Common Areas and/or Common Area Improvements has occurred, the Committee shall make a final determination of compliance and return the remaining balance, if any, of the Construction Deposit to the Owner, without interest within 10 days of such final determination.

Section 9.10. Committee Not Liable. The Committee shall not be liable for any damage, loss or prejudice suffered or claimed by any person on account of:

9.10.1 The approval or disapproval of any plans, drawings and specifications, whether or not in any way defective;

9.10.2 The construction of any Improvement, or performance of any work, whether or not pursuant to approved plans, drawings and specifications;

9.10.3 The development of any Lot within TEC Short Plat No. 3 and Tec Short Plat No. 4,

9.10.4 Injury to any person or property due to construction, the performance of any work, location of any physical object, or resulting from the performance of any work within TEC Short Plat No. 3 and Tec Short Plat No. 4;

9.10.5 The failure of the Owner to comply with any applicable ordinances, codes or regulations, including sensitive or critical areas ordinances; and

9.10.6 Omissions to act done in good faith in the interpretation, administration and enforcement of this Declaration.

Section 9.11. Construction Without Approval. If any Improvement shall be erected, placed or maintained upon any Lot, or any new use commenced upon any Lot, other than in accordance with the approval of the Committee pursuant to the provisions of this Declaration, such alteration, erection, placement, maintenance or use shall be deemed to have been undertaken in violation of this Declaration, and upon written notice from the Committee any such Improvement so altered, erected, placed, maintained or used upon any Lot in violation of this Declaration shall be removed or altered so as to conform to this Declaration. Should such removal, or alteration, or cessation or amendment of use not be accomplished within thirty (30) days after receipt of such notice, then the party in breach of this Declaration shall be subject to the enforcement procedures set forth in this Declaration.

ARTICLE X BUILDING MATERIALS; REQUIRED CONSTRUCTION; LANDSCAPING; OTHER REQUIREMENTS

Section 10.1. Building Materials. Each Residence constructed on a Lot shall be built of new materials except, with approval of the Architectural Control Committee, decorative items such as used brick, weathered planking, and similar items. All visible masonry shall be cultured stone, brick or stucco. Aluminum or "T-111" siding and aluminum window frames are not permitted. Roofing material, types and colors of exterior paint and stain must be submitted to the Committee for approval.

Section 10.2. Minimum Floor Area. The total floor area of the resident structure shall not be less than 3000 square feet. Exclusive of open porches and garages, the main floor shall be not less than 1200 square feet.

Section 10.3. Intentionally unused,

Section 10.4. Roof Drains. Roof drains for Residences installed on all ten (10) lots designated as A through B on TEC Short Plat No. 4 and lots numbered 2 through 9 on TEC Short Plat No. 3 must provide for discharge directly to the storm drainage system.

Section 10.5. Foundation Drains. Footing drains for structures installed on all ten (10) lots designated as A through B on the TEC Short Plat No. 4 and lots numbered 2 through 9 on TEC Short Plat No. 3 must provide for discharge directly to the storm drainage system

Section 10.6. Local Codes. All buildings or Structures shall be constructed in accordance with the governing governmental jurisdiction and other applicable Codes. In the event of a conflict between any applicable codes and this Declaration, the codes shall govern.

Section 10.7. Landscaping. Yards, excluding Native Growth Protection Easement areas, shall be fully landscaped within twelve (12) months after the date construction of the Residence

commences unless extended by the Committee. **No trees outside the building footprint shall be removed without the approval of the City of Kirkland.** No fence shall be erected which shall be over six (6) feet in height. No barbed wire, chain link or corrugated fiberglass fences shall be erected on any Lot. All fences, open and solid, are to meet the standards set by the Committee and must be approved by the Committee prior to construction.

Section 10.8. Garages and Parking. Each Residence shall include a garage sufficient to hold at least two (2) automobiles.

Section 10.9. Driveways. All driveways and parking areas shall be paved with a masonry type material, such as concrete or brick, unless otherwise approved by the Committee. No asphalt or gravel driveways or parking areas shall be permitted without approval of the Committee.

Section 10.10. Fences. All fences shall conform to the fence detail shown on Exhibit B unless otherwise authorized by the Board. Unless otherwise authorized by the Board and the City of Kirkland, no fence, wall, hedge, or mass planting over three feet in height, shall be permitted to extend nearer to any street than the minimum setback line; however, nothing shall prevent, except if disapproved by the governing governmental jurisdiction, erection of a necessary retaining wall, the top of which does not extend more than two feet above the finished grade at the back of said retaining wall. Native Growth Protection Area fencing is approved and installed per the City of Kirkland requirements.

Section 10.11. Contractor. No home may be constructed on any Lot by other than a contractor licensed as a general contractor under the statutes of the State of Washington without the prior approval of the Architectural Control Committee.

ARTICLE XI REGULATION OF OPERATIONS AND USES

Section 11.1. Residential Use. The Lots are intended for and restricted to use as Single Family Residences only, on an ownership, rental or lease basis, and for social, recreational, or other reasonable activities normally incident to such use; provided, however, Declarant may use Lots and Improvements thereon owned by Declarant as sales offices and models.

Section 11.2. No Commercial Uses. No commercial enterprise, including itinerant vendors, shall be permitted on any Lot; provided, however, that the Association may, by adopting rules and regulations, permit specified home occupations to be conducted if allowed by law and if such occupation will not, in the reasonable judgment of the Association, cause traffic congestion or other disruption of the community; and provided further that no signs or advertising devices of any character shall be permitted.

Section 11.3. Garbage. No garbage, refuse, or rubbish shall be deposited or left in TEC Short Plat No. 3 and Tec Short Plat No. 4, unless placed in a suitable covered container. Trash and garbage containers shall not be permitted to be Visible from Neighboring Property, except on

days of trash collections. No incinerator shall be kept or maintained, and no burning of any trash, refuse, or scrap of any kind shall be permitted.

Section 11.4. Nuisances. No noxious or offensive activity shall be conducted in any portion of TEC Short Plat No. 3 and Tec Short Plat No. 4, nor shall anything be done or maintained therein in derogation or violation of the laws of the State of Washington, King County, or any other applicable governmental entity. Nothing shall be done or maintained on any portion of TEC Short Plat No. 3 and Tec Short Plat No. 4 which may be or become an annoyance or nuisance to the neighborhood or detract from the value of the TEC Short Plat No. 3 and Tec Short Plat No. 4 community. The Board shall determine whether any given use of a Residence unreasonably interferes with the rights of the other Owners to the use and enjoyment of their respective Lots and Residences, or of the Common Areas, and such determination shall be final and conclusive.

Section 11.5. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept; provided, however, that dogs, cats, or other conventional household pets may be kept if they are not kept, bred, or maintained for any commercial purposes. No domestic pet may be kept if it is a source of annoyance or a nuisance. The Board shall have the authority to determine whether a particular pet is a nuisance or a source of annoyance, and such determination shall be final and conclusive. Pets shall be registered, licensed, and inoculated from time to time as required by law.

Section 11.6. Vehicle Storage. No storage of goods, vehicles, boats, trailers, trucks, campers, recreational vehicles or other equipment or device shall be permitted, if Visible from a Neighboring Property, and with the exception of daily driven automobiles, on the driveway areas adjacent to garages on the Lots. Temporary parking is allowable if a vehicle is parked for 24 hours or less. Upon 48 hours' notice to the Owner of an improperly parked or stored vehicle, boat, or other equipment, the Board has authority to have removed at the Owner's expense any such items Visible from a Neighboring Property parked on any Lot or within any Common Area for more than 24 hours.

Section 11.7. Utilities Underground. Except for hoses and the like which are reasonably necessary in connection with normal lawn maintenance, no water pipe, sewer pipe, gas pipe, drainage pipe, telephone, power, or television cable, or similar transmission line shall be installed or maintained above the surface of the ground.

Section 11.8. Antennae; Aerials. No external short-wave or citizens' band antennas, freestanding antenna towers, or satellite reception dishes of any kind exceeding eighteen (18) inches in diameter shall be permitted in TEC Short Plat No. 3 and Tec Short Plat No. 4. All television, FM radio antennas and satellite reception dishes having a diameter of eighteen (18) inches or less ("Permitted Dishes") must be physically attached to a structure and must comply with applicable governmental standards and guidelines and any Association rules and regulations. The Association shall have the authority to review, approve, modify or deny an Owner's request for an antenna or Permitted Dish installation.

Section 11.9. Mineral Exploration. No portion of the Properties shall be used in any manner to explore for or to remove any steam, heat, oil or other hydrocarbons, gravel, earth, or any earth substances or other minerals of any kind; provided, however, that this shall not prevent the excavation of earth in connection with the grading or construction of Improvements within a Lot.

Section 11.10. Signs. Except for entrance, street, directional, traffic control, and safety signs, and such promotional signs as may be maintained by Declarant, or agents or contractors of Declarant, or the Association, no signs or advertising devices of any character shall be posted or displayed in the Properties.

Section 11.11. Temporary Structures. No Improvement of a temporary character, trailer, tent, shack, garage, barn or other outbuilding shall be installed, placed or used on any Lot, either temporarily or permanently.

Section 11.12. No Obstruction of Easements. No structure, planting, or other material shall be placed or permitted to remain in or upon TEC Short Plat No. 3 and Tec Short Plat No. 4, which may damage or interfere with any easement or the installation or maintenance of utilities, or which may unreasonably change, obstruct, or retard direction or flow of any drainage channels. No decorative planting, structure or fence may be maintained within an easement area unless specifically approved by the Committee.

Section 11.13. Leasing. No Lot may be leased or rented by any Person for a period of fewer than thirty (30) days, nor shall less than the whole of any Lot be leased or rented. Each lease or rental agreement shall be in writing and shall by its terms provide that it is subject in all respects to the provisions of the Declaration, Articles, Bylaws and rules and regulations as may be adopted pursuant thereto. Any failure by a lessee to comply with the terms of such documents shall be a default under the lease, whether or not it is so expressed therein. Other than the foregoing, there is no restriction on the right of any Owner to lease his Lot.

Section 11.14. Weapons. No firearms of any kind or nature, including rifles, handguns, bows, slingshots, BB guns, slings, traps, or any other like weapon, shall be used or discharged within the Properties except by authorized governmental officials.

ARTICLE XII OWNERS' MAINTENANCE RESPONSIBILITIES

Section 12.1. General. The Owner or Occupant of any Lot shall at all times keep it and the Improvements and appurtenances thereon in a safe, clean and wholesome condition and comply, at its own expense, in all respects with applicable governmental, health, fire and safety ordinances, regulations, requirements and directives, and the Owner or Occupant shall at regular and frequent intervals remove at its own expense any rubbish of any character whatsoever that may accumulate upon such Lot.

Section 12.2. Grounds. Each Owner shall be responsible for the maintenance and repair of all parking areas, driveways, walkways and landscaping on his Lot. Such maintenance and repair shall include, without limitation:

12.2.1 Maintenance of all parking areas, driveways and walkways in a clean and safe condition, including the paving and repairing or resurfacing of such areas when necessary with the type of material originally installed thereon or such substitute therefore as shall, in all respects, be equal in quality, appearance and durability; the removal of debris and waste material and the washing and sweeping of paved areas as required; painting and repainting of striping markers and directional signals as required;

12.2.2 Cleaning, maintaining and relamping of any external lighting fixtures except such fixture as may be the property of any public utility or government body; and

12.2.3 Excluding Common Areas to be maintained by the Association, performance of all necessary maintenance of all landscaping within the Owner's or Occupant's Lot, including the trimming, watering and fertilization of all grass, ground cover, shrubs or trees, removal of dead or waste materials, replacement of any dead or diseased grass, ground cover, shrubs or trees.

Nothing contained herein shall preclude an Owner from recovering from any person liable therefore damages to which such Owner might be entitled for any act or omission to act requiring an expenditure by the Owner for the maintenance and repair of the parking area, driveway, walkway and/or landscaping on his Lot.

Section 12.3. Remedies for Failure to Maintain and Repair.

12.3.1 Remedies. If any Owner shall fail to perform the maintenance and repair required by Section 12.2, then the Board, after fifteen (15) days prior written notice to such delinquent Owner, shall have the right, but not the obligation, to perform such maintenance and repair and to charge as a Particularized Assessment the delinquent Owner and his Lot with the cost of such work, together with interest thereon at a rate to be set by the Board from the date of the Association's advancement of funds for such work to the date of reimbursement of the Association by such Owner. If the delinquent Owner shall fail to reimburse the Association for such cost within ten (10) days after demand therefore, the Association may, at any time within two (2) years after such advance, enforce the lien in accordance with the provisions of this Declaration.

12.3.2 Nonexclusive Remedy. The foregoing lien and the rights to foreclose thereunder shall be in addition to, and not in substitution for, all other rights and remedies which the Board may have hereunder and by law, including any suit for specific performance or to recover a money judgment for unpaid assessments. If any Owner shall fail to perform such maintenance and repair and, notwithstanding such failure, the Board should fail to exercise its rights and remedies hereunder, then any other Owner, after fifteen (15) days' prior written notice to the Board and such delinquent Owner, shall have the right, but not the obligation, to perform such maintenance and repair and shall have the same rights and remedies with respect thereto as are provided herein to the Board.

ARTICLE XIII DAMAGE OR LOSS TO IMPROVEMENTS

Section 13.1. Restoration of Common Areas. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Common Areas, Common Area Improvements, or any other Improvements insured by the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance shall be used for such purpose. The Board of Directors shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Common Areas, Common Area Improvements, and all other Improvements shall be reconstructed or rebuilt substantially in accordance with the original construction plans if they are available, with such changes as are recommended by the Architectural Control Committee. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be less than the estimated cost of restoration and repair, a special assessment shall be levied by the Board of Directors upon the Owners and their Lots in order to provide the necessary funds for such reconstruction over and above the amount of any insurance proceeds available for such purpose.

Section 13.2. Restoration Obligations of Owners. In the event of the damage or destruction of any portion of a Lot or the Improvements thereon, then it shall be the duty of the Owner of such Lot, as soon as may be practical, to repair and replace the damage or destruction, or such portion thereof as will render such damage or destruction indiscernible from the exterior boundaries of the Lot. Any reconstruction, replacement or repair required by this section shall be in accordance with the original plans and specifications of the Lot or plans and specifications approved by both the Architectural Control Committee.

Section 13.3. Condemnation. In the event the whole, or any part, of the Common Areas shall be taken or condemned by any authority exercising the power of eminent domain, the Board shall have the exclusive rights to prosecute the proceedings; provided, however, that nothing contained herein to the contrary shall prevent an Owner from joining in the proceeding for purposes of claiming that the condemnation action has materially affected said Owner's Lot and any Improvements thereon. The entire award relating to the taking of any part of the Common Area shall be paid to the Board in trust for the benefit of the Owners. The Board shall distribute the award to the Owners in proportion to their Common Expense Percentages; provided, that if a Lot is encumbered by a Mortgage or Mortgages which has or have a provision relating to condemnation, then in lieu of distributing the award to the Owner of said Lot, the Board shall distribute the award directly to the Mortgagee of the Mortgage with the highest priority and seniority for distribution or payment in accordance with the terms and conditions of said Mortgagee's Mortgage.

ARTICLE XIV DURATION AND AMENDMENT

Section 14.1. Duration. This Declaration shall continue in full force until December 31, 2045, unless a Declaration of Termination or Declaration of Renewal is recorded meeting the requirements of an amendment to this Declaration as set forth in Section 14.2. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Lot from the appurtenant Membership in the Association, as long as this Declaration shall continue in full force and effect.

Section 14.2. Amendment. Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered. The amendment shall be adopted by the vote, in person or by proxy, or written consent of seventy percent (70%) of the voting power of the Membership of the Association; provided, however, that so long as Declarant owns a minimum of one (1) Lots in TEC Short Plat No. 3 or Tec Short Plat No. 4, or for a period of ten (10) years from the recording of this Declaration, whichever is earlier, no termination or other amendment shall be effective without the written approval of Declarant, which approval shall not be unreasonably withheld. A copy of each amendment which has been properly adopted shall be certified by at least two (2) officers of the Association and the amendment shall be effective when the Certificate of Amendment is recorded. Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved in writing by all of the record holders of First Mortgages encumbering Lots in TEC Short Plat No. 3 and Tec Short Plat No. 4 at the time of such amendment:

14.2.1 Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protections granted to Mortgagees as provided in Section 4.11 or which seeks to modify Section 14.2 hereof;

14.2.2 Any amendment which would necessitate a Mortgagee after it has acquired a Lot through foreclosure, to pay more than its proportionate share of any unpaid assessment or assessments; or

14.2.3 Any amendment which would or could result in a Mortgage being canceled by forfeiture.

Section 14.3. Modification by Declarant. For so long as Declarant is the Owner of at least two (2) of the Lots, Declarant, acting alone, may modify or amend this Declaration; provided, however, that (i) any such modification or amendment must be within the spirit and overall intention of the development as set forth herein; (ii) prior to any such modification or amendment, Declarant shall obtain the approval of any governmental agency to such modification or amendment where such approval is necessary; and (iii) any modification or amendment shall not provide for any type of Improvements or uses not presently permitted by this Declaration nor declare any then permitted use to not be permitted. No such modification or amendment shall be effective until the Owners have been given thirty (30) days' prior written notice of the proposed change, and a proper instrument in writing has been executed, acknowledged and recorded by Declarant.

Section 14.4. Governmental Regulation. All valid governmental enactments, ordinances and regulations are deemed to be part of this Declaration and to the extent that they conflict with any provision, covenant, condition or restriction hereof, said conflicting governmental enactment, ordinance and regulation shall control and the provision, covenant, condition or restriction hereof in conflict therewith shall be deemed (i) amended to the extent necessary to bring it into conformity with said enactment, ordinance and regulation while still preserving the intent and spirit of the provision, covenant, condition or restriction or (ii) stricken here from should no amendment conforming to the governmental enactment, ordinance or restriction be capable of preserving the intent and spirit of said provision, covenant, condition or restriction.

ARTICLE XV WAIVER

Neither Declarant, the Association, the Board, the Committee, nor their successors or assigns, shall be liable to any Owner or Occupant of TEC Short Plat No. 3 and Tec Short Plat No. 4 by reason of any mistake in judgment, negligence, nonfeasance, action or inaction or for the enforcement or failure to enforce any provision of this Declaration. Every Owner or Occupant of any of the Lots by acquiring its interest therein agrees that it will not bring any action or suit against Declarant, the Association, the Board or the Committee, or their successors or assigns, to recover any such damages or to seek equitable relief because of same.

ARTICLE XVI GENERAL PROVISIONS

Section 16.1. Legal Proceedings. Failure to comply with any of the terms of this Declaration, the Articles and Bylaws of the Association or regulations adopted pursuant thereto, by an Owner or Occupant, his guests, employees, invitees or tenants, shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof, which relief may be sought by Declarant, the Association, the Board of Directors or, if appropriate, by an aggrieved Owner. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision, or any other provision hereof. In addition to any other available remedy, the Association, the Board, any Owner (not at the time in default hereunder) or Declarant shall be entitled to bring an action for damages against any defaulting Owner and, in addition, may enjoin any violation of this Declaration. Any judgment rendered in any action or proceeding pursuant thereto shall include a sum for attorneys' fees, including appeals, in such amount as the Court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, together with interest, costs of collection and court costs. Each remedy provided for in this Declaration shall be cumulative and not exclusive or exhaustive.

Section 16.2. Severability. The provisions hereof shall be deemed independent and severable, and a determination of invalidity or partial invalidity or enforceability of any one provision or portion hereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions hereof.

Section 16.3. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of the development and for the maintenance of the Common Areas, and any violation of this Declaration shall be deemed to be a nuisance.

Section 16.4. Headings; Gender; Etc. The article and section headings, titles and captions have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context otherwise requires, as used herein the singular and the plural shall each include the other and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

Section 16.5. Construction and Sales by Declarant. Nothing in this Declaration shall limit, and no Owner shall do anything which shall interfere with, the right of Declarant to complete any construction of Improvements on the Lots owned by Declarant and the Common Areas, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements on such Lots and Common Areas as Declarant deems advisable prior to the expiration of the Declarant Control Period. Each Owner, by accepting a deed of a Lot from Declarant, hereby acknowledges that the activities of Declarant may constitute a temporary inconvenience or nuisance to the Owners. Such right shall include, but shall not be limited to, erecting, constructing and maintaining on TEC Short Plat No. 3 and Tec Short Plat No. 4 such structures and displays as may be reasonably necessary for the conduct of its business or completing the work and disposing of the Lots by sale, lease or otherwise. Declarant may use any Lots owned by Declarant as models or real estate sales or leasing offices. This Declaration shall not limit the right of Declarant at any time prior to conveyance of title by deed to the last Lot to establish on the Lots owned by Declarant and the Common Areas additional easements, reservations and rights-of-way to itself, to utility companies, or to other Persons as may from time to time be reasonably necessary for the proper development and disposal of the Lots. Such easements may be created for the construction, installation, maintenance, removal, replacement, operation and use of utilities, including, without limitation, sewers, water and gas pipes and systems, drainage lines and systems, electric power and conduit lines and wiring, telephone conduits, lines and wires, and other utilities, public or private, beneath the ground surface, except vaults, vents, access structures and other facilities required to be above ground surface by good engineering practice, including the right to dedicate, grant or otherwise convey easements for rights-of-way to any public utility or governmental entity for such purposes. In the performance of any work in connection with such utilities, Declarant shall not unreasonably interfere with or disrupt the use of the Common Areas or the facilities located thereon and shall replace and restore the areas and facilities as nearly as possible to the condition in which they were prior to the performance of such work. All or any portion of the rights of Declarant hereunder may be assigned to any successor or successors to all or part of Declarant's respective interest in the Properties, by an express written and recorded assignment.

Section 16.6. Hold Harmless and Indemnification. Each Owner shall be liable to the Association for any injury to any person or damage to the Common Areas, Common Area Improvements, or any equipment thereon which may be sustained by reason of the negligence of said Owner or of his guests, employees, invitees or tenants, to the extent that any such damage shall not be covered by insurance. The costs incurred by the Association as a result of such

damage shall be deemed a Particularized Assessment of such Owner and his Lot, and shall be subject to levy, enforcement and collection by the Board of Directors in accordance with the assessment and lien procedures provided in this Declaration. The Association further reserves the right to charge a Special Assessment equal to the increase, if any, in the insurance premium directly attributable to the damage or injury caused by such Owner or by the use of the Lot of such Owner. The Association shall hold each Owner safe and harmless from liability for loss or injuries occurring on the Common Areas to the extent that such loss or injuries are covered by insurance then maintained by the Association.

Section 16.7. No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of TEC Short Plat No. 3 and Tec Short Plat No. 4, to the public, or for any public use.

Section 16.8. Nonliability and Indemnification. Except as provided herein, no right, power or responsibility conferred on the Board or the Architectural Control Committee by this Declaration or by the Articles or the Bylaws shall be construed as a duty, obligation or disability charged upon the Board, the Committee, any member of the Board or of the Committee, or any other officer, employee or agent of the Declarant or the Association. No such Person shall be liable to any party other than the Association or a party claiming in the name of the Association for injuries or damage resulting from such Person's acts or omissions within what such Person reasonably believed to be the scope of his Association duties ("Official Acts"), except to the extent that such injuries or damages result from such Person's willful or malicious misconduct. No such Person shall be liable to the Association or to any party claiming in the name of the Association for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Persons willful or malicious misconduct. The Association shall pay all expenses incurred by, and satisfy any judgment or fine levied against, any Person as a result of any action or threatened action against such Person to impose liability on such Person for his Official Acts, provided that:

16.8.1 The Board determines that such Person acted in good faith and in a manner such Person reasonably believed to be in the best interests of the Association;

16.8.2 In the case of a criminal proceeding, the Board determines that such Person had no reasonable cause to believe his conduct was unlawful; and

16.8.3 In the case of an action or threatened action by or in the name of the Association, the Board determines that such Person acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

16.8.4 Any determination of the Board required under this Section 16.8 must be approved by a majority vote of a quorum consisting of Directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, such determination may be made by the vote of a majority of a quorum of the Members of the Association voting at a meeting of the Association called for such purpose, provided that the Person to be indemnified shall not be entitled to vote.

16.8.5 Payments made hereunder shall include amounts paid and expenses incurred in settling any such action or threatened action. This Section 16.8 shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law.

16.8.6 The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees or devisees of any Person entitled to such indemnification.

Section 16.9. Notices. Except as otherwise provided in this Declaration, in each instance in which notice is to be given to an Owner, the same shall be in writing and may be delivered personally to the Owner, in which case personal delivery of such notice to one or more co-owners of a Lot or to any general partner of a partnership owning a Lot shall be deemed delivery to all co-owners or to the partnership, as the case may be. Personal delivery of such notice to any officer or agent for the service of process on a corporation shall be deemed delivery to the corporation. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address shall have been furnished, to the street address of such Lot. Such notice shall be deemed delivered two (2) business days after the time of such mailing, except for notice of a meeting of Members or of the Board of Directors, in which case the notice provisions of the Bylaws of the Association shall control. Any notice to be given to the Association may be delivered personally to any Member of the Board of Directors, or sent by United States mail, postage prepaid, addressed to the Association at such address as shall be fixed from time to time and circulated to all Owners.

THIS DECLARATION has been executed on the date first written above.

DECLARANT:

Bennett-SFS, L.L.C.


By: 
Todd Bennett
 Its Member

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTIES

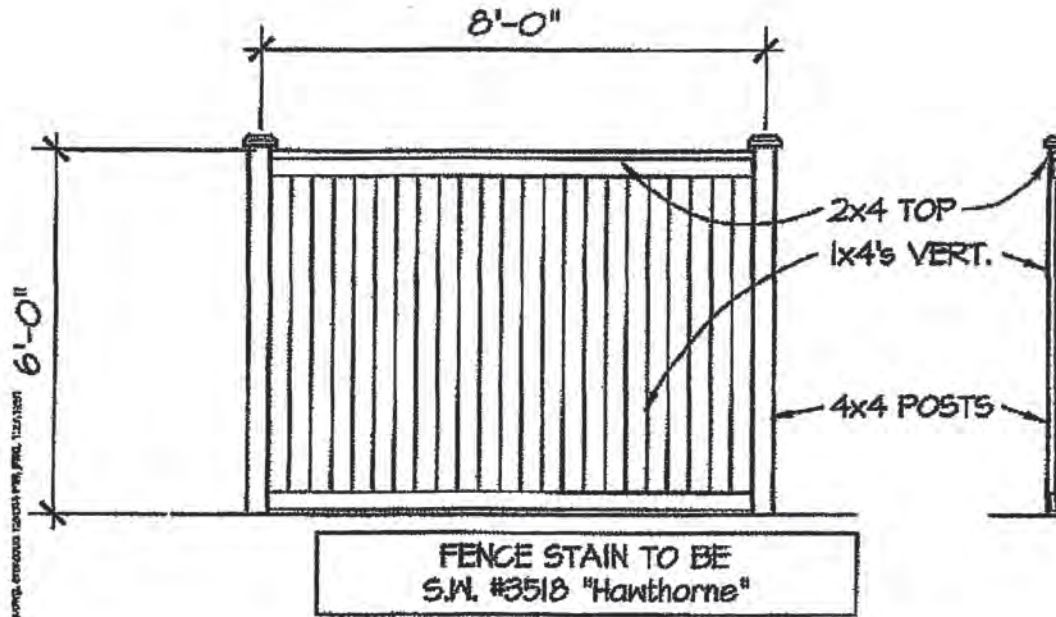
Lots 2 thru 10 and Tract A subdivided as shown in Plat of TEC Short Plat No. 3, recorded in Book 187 of surveys, pages 069 through 071, recording number 20050523900009;

And

Lots A thru B subdivided as shown in Plat of TEC Short Plat No. 4, recorded in Book 187 of surveys, pages 072 through 073, recording number 20050523900009;

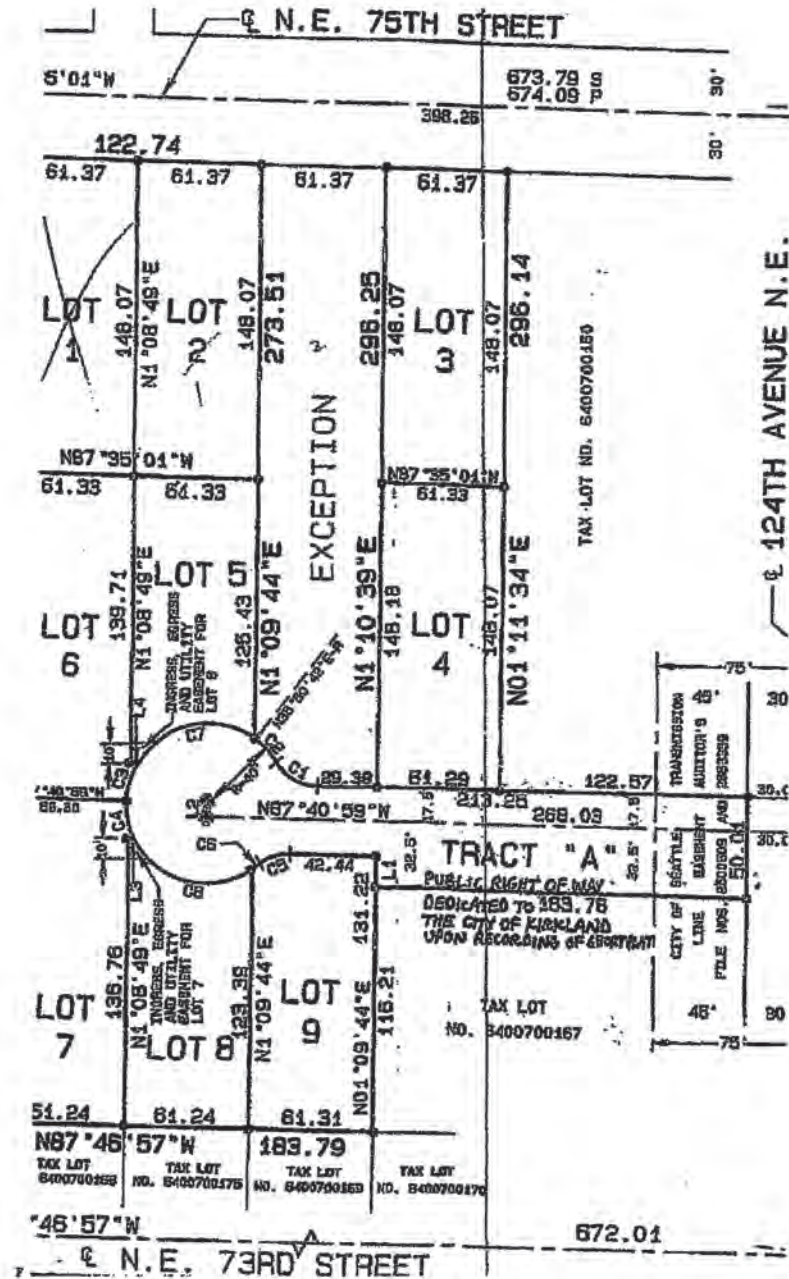
all being records King County, Washington .

EXHIBIT "B"
FENCE DETAIL



FENCE DETAIL "B"

EXHIBIT "C"
LANDSCAPE MAINTENANCE FOR "TRACT A"







BEFORE THE HEARING EXAMINER FOR THE CITY OF KIRKLAND

In the Matter of the Appeal of:

William Watson and the Rosewood of Kirkland
Homeowners Association,

Appellants,

Merit Homes, Inc.

Applicant / Respondent,

City of Kirkland Planning and Building
Department,

Respondent,

From the Decision of the City of Kirkland,
regarding the Adsit Short Plat

NO. SUB20-00171

**APPLICANT'S MOTION FOR
SUMMARY JUDGMENT**

The Applicant, Merit Homes, Inc. ("Merit Homes"), brings this Motion for Summary Judgment to dismiss the appeal of William Watson and the Rosewood of Kirkland Homeowners Association ("Rosewood"). The Rosewood appeal relies entirely on an erroneous application of law to certain public right-of-way ("ROW") controlled by the City of Kirkland ("City"), known as NE 73rd Place. Since NE 73rd Place is under the control of the City, and Rosewood's right, if any, is subordinate to the City's use for public purposes, the rights Rosewood asserts cannot be maintained at the expense of the City's ROW. To the extent that any claim by Rosewood is not dependent on that question, these claims can also be dismissed on their merits.

I. BACKGROUND

Merit Homes applied to the City for preliminary approval of a 3-lot short subdivision at 7319 124th Ave NE, Kirkland, WA (the "Adsit Short Plat"). *Exhibit A* at 2. Merit Homes

proposes to create two new lots with direct access to 124th Ave NE and one additional lot with direct access to NE 73rd Place to the north, as depicted in the below civil plans:

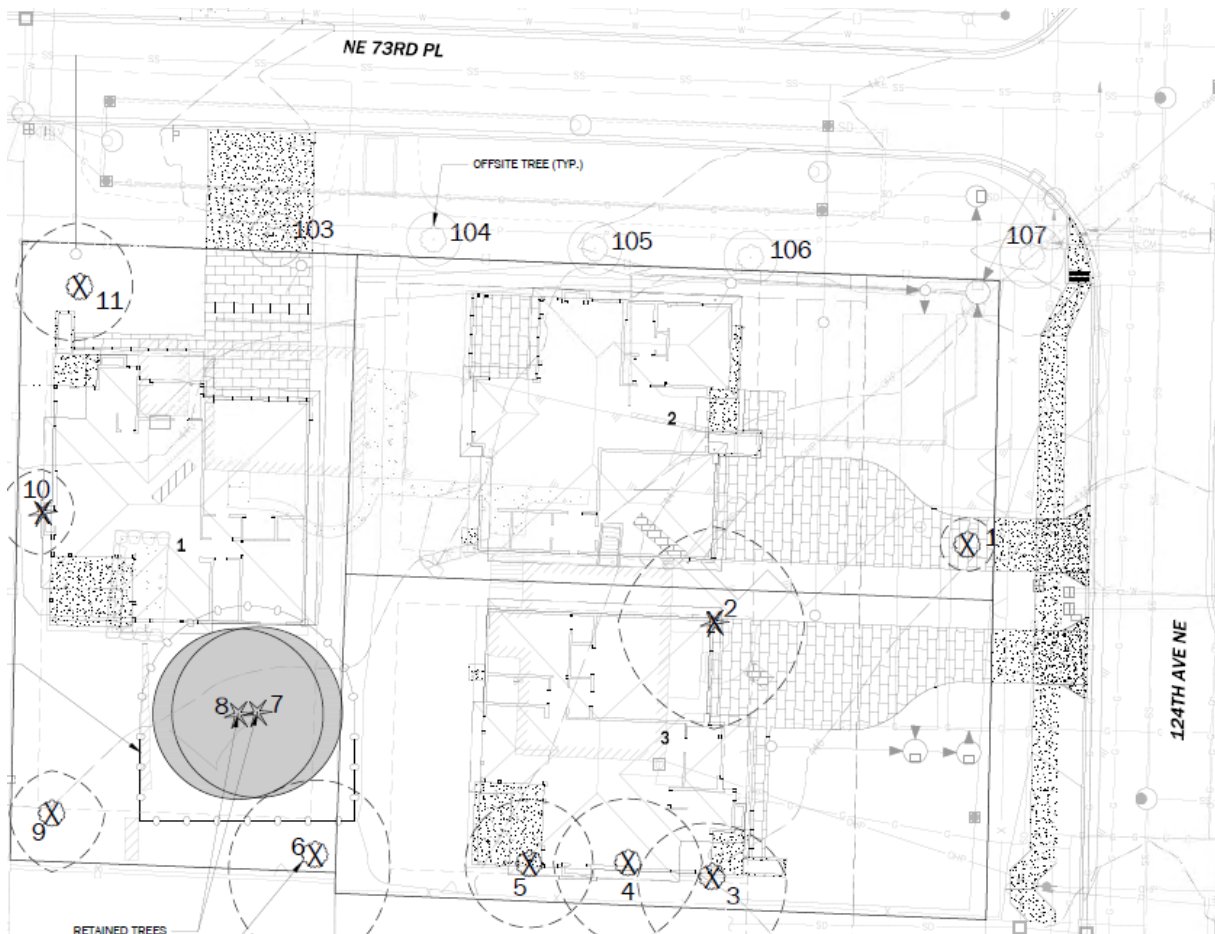


Exhibit I at 9.

Rosewood is a single-family community platted and constructed in 2005, abutting the project site, but excluding the subject parcel. *See Exhibit D* at 3. The final recorded short subdivision for Rosewood, recorded in the records of King County at 20050523900009, set aside the entire roadway for what is now NE 73rd Pl. and designated it as “TRACT A”, with the following language on the face of the final short plat:

PUBLIC RIGHT OF WAY DEDICATED TO THE CITY OF KIRKLAND
UPON RECORDING OF SHORT PLAT

Id. Further, the top of the final short plat reads:

the undersigned . . . do hereby dedicate to the use of the public forever all streets and avenues not shown as private hereon and dedicate the use thereof for all public purposes not inconsistent with the use thereof for public highway purposes, . . . and further dedicate to the use of the public all the easements **and tracts** shown on this short plat for all public purposes as indicated thereon

Id. at 1 (emphasis added). The face of the Rosewood short plat thus specifies that Tract A was dedicated to the City of Kirkland as public right-of-way, with no language anywhere that indicates a reservation in Rosewood to some right in Tract A, which became NE 73rd Pl. *See id.*

Portions of the NE 73rd Pl. ROW are wider than the roadway constructed to serve the Rosewood homes. *See Exhibit D* at 3. The wider ROW was required to accommodate a stormwater detention vault underlying the ROW for the benefit of Rosewood, but the vault is controlled and maintained by the City pursuant to the short plat dedication. *See Exhibit F* at 1.

Rosewood is governed by CC&Rs recorded over a year after the plat, in 2006. *Exhibit J* at 1. The Rosewood homeowners' CC&Rs (Covenants, Conditions and Restrictions), apparently provide that all members should pay dues that are used to maintain certain landscaping above the stormwater detention vault and within the NE 73rd Pl. ROW. *See Appeal* at 3; *see Exhibit J* at 22 (Section 7.11). The CC&Rs indicate that "Any landscaping not abutting a lot (i.e. entry way landscape) shall be maintained by [Rosewood]." *Id.* Rosewood has apparently maintained this area for many years, including landscaping and fence repairs, and members of Rosewood use the area for their personal enjoyment. *Id.* Rosewood claims that it was the Rosewood developer's intent that this area should be reserved for the benefit of the subdivision, *id.*, at the expense and exclusion of the City's right to the ROW, despite no such declaration on the face of the recorded short subdivision and no such language in the CC&Rs.

II. ARGUMENT & AUTHORITY

A. Standard of Review

“A motion for summary judgment is properly granted where ‘there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.’” *Ruvalcaba v. Kwang Ho Baek*, 175 Wn.2d 1, 6, 282 P.3d 1083 (2012) (citation omitted). “A ‘material fact’ is one on which the outcome of the litigation depends, in whole or in part.” *Schmitt v. Langenour*, 162 Wn. App. 397, 404, 256 P.3d 1235 (2011). The only question before the Hearing Examiner is a legal one. There is no material fact in dispute that might change the outcome of the present appeal.

B. Tract A of the Rosewood Short Plat was *dedicated* to the City of Kirkland for public right of way, with all necessary rights thereto.

Rosewood asserts four primary claims, each of which is predicated on the presumption that the City has something less than an absolute right to control public right of way over NE 73rd Pl. First, Rosewood asserts that the City failed to address ownership and use rights of NE 73rd Pl., citing RCW 58.08.015—Effect of donation marked on plat. Rosewood’s contention is based on their citation to *Kiely v. Graves*, 173 Wn.2d 926, 271 P.3d 226 (2012). However, Tract A was specifically *dedicated* to the City of Kirkland for public right of way by the plats explicit and unambiguous terms, and neither the cited Statute nor its evaluation in *Kiely* are favorable to Rosewood. Further, the CC&Rs were recorded over a year later, and nothing in them nor reference to the Plat purports to revoke the City’s right to the ROW.

Rosewood’s statement of appeal reveals a fundamental misunderstanding of the recorded Rosewood short plat. In their appeal, Rosewood states:

Here, all of the surveys and subdivision proposals for NE 73rd PL that were submitted by the grantor, TEC Homes Inc., and which the City approved in 2005, show Tract A as a specific reserved space **south of the roadway**.

1 *Appeal* at 2 (emphasis added). Rosewood apparently believes that Tract A and NE 73rd Pl. were
 2 identified on the face of the Rosewood short plat as separate parcels, but they were not. There
 3 is no separate parcel “south of the roadway.” In addition to the fact that there is no line on the
 4 face of the short plat that could be pointed to that bisects Tract A, the face of the Rosewood
 5 short plat has a list of every parcel created and identifies Tract A as being 15,884 square feet,
 6 the exact size of NE 73rd Pl. plus the area above the detention vault that Rosewood claims
 7 control of. *Exhibit D* at 3. This clarification alone begins to unravel Rosewood’s basis for
 8 appeal.

9 Rather than being a “donation”, which does not appear anywhere on the face of the
 10 Rosewood short plat, Tract A, and along with it the entirety of the area Rosewood claims to
 11 control, was part of a “statutory dedication,” governed by RCW 58.08.015. *See Kiely*, 173
 12 Wn.2d at 932.

13 “Dedication” is the deliberate appropriation of land by an owner for any general
 14 and public uses, **reserving to himself or herself no other rights** than such as
 15 are compatible with the full exercise and enjoyment of the public uses to which
 16 the property has been devoted. The intention to dedicate shall be evidenced by
 17 the owner by the presentment for filing of a final plat or short plat showing the
 18 dedication thereon; and, the acceptance by the public shall be evidenced by the
 19 approval of such plat for filing by the appropriate governmental unit.

20 RCW 58.17.020(3) (emphasis added). By its express terms, Tract A was *dedicated* as public
 21 right of way, meaning that the public has the right to pave it, paint it, and drive it, along with
 22 any other public purpose deemed necessary, such as utilities.

23 Washington law is clear that such a dedication is not a fee simple transaction, but instead
 24 constitutes only “a public easement.” *Kiely*, 173 Wn.2d at 933. “The general rule in
 25 Washington, as well as every other jurisdiction which has considered the issue, is that a
 dedicator may place reasonable conditions or restrictions upon a dedication of property to
 public purposes.” *North Spokane Irrigation District No. 8 v. Spokane County*, 86 Wn.2d 599,

601–02, 547 P.2d 859 (1976). However, no conditions were placed on the dedication to the public in this case. *See Exhibit D*. Nowhere on the Rosewood short plat is there any indication that the public right to Tract A was to be infringed by landscaping, and if it were, such a condition would be void as against public policy.

The [City], by accepting the dedication, agrees to the conditions or restrictions placed thereon. The [City] cannot, however, assent to conditions which will deprive the municipality of its power to regulate and control the public streets. When the dedicator attempts to attach a condition to the dedication which will circumscribe the freedom of action of the authorities to devote the street to needs of the public, the condition is void, as against public policy.

Id. (citation omitted). Therefore, even if Rosewood had an argument that the short plat evidenced some intent to preserve landscaping rights over Tract A in the Rosewood HOA, such a condition would be void by public policy because it would clearly interfere with the primary purpose of the dedication, to give the public a right of way.

If the City wanted, and applicable development regulations so provided, it could require Merit Homes to wipe out Rosewood’s landscaping entirely and construct in its place a curb, gutter and sidewalk; or, if fire code so demanded, the City could even ask Merit Home to widen the road to the full width of the ROW. In any event, the proposed use would be consistent with the dedication on the face of the Rosewood short plat and applicable law.

C. No vacation of NE 73rd Pl. is required to utilize the public right of way to access Lot 1 of the Adsit Short Plat.

No vacation is required because no portion of the public right of way is being granted, gifted, or otherwise conveyed to Merit Homes for some private use. Statute and the law are also clear that Rosewood has “no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted.” RCW 58.17.020(3). This is a basic principle of easement rights, that the servient estate has the right to use his land for any purpose not inconsistent with its ultimate use for the easement’s purpose. *See City of*

1 *Edmonds v. Williams*, 54 Wn. App. 632, 636, 774 P.2d 1241 (1989). While Rosewood may
 2 contend that allowing connection to a single driveway is a private—not a public—benefit, this
 3 is an overly narrow and impermissible interpretation of the law. The number of parties that
 4 benefit from a public right of way is of no consequence to whether the City has the right to
 5 allow such use. While it may ultimately appear to be privately controlled property based on the
 6 configuration, no portion of the driveway to Lot 1 of the Adsit Short Plat that lies within the
 7 NE 73rd Pl. ROW will be anything other than public right of way. In this sense, Merit Homes
 8 will actually be constructing a small offshoot of public road from NE 73rd Pl. to the private
 9 driveway that will lie upon Lot 1. Whether to allow use of the area in question for ingress and
 10 egress, even to one home, is a decision that lies exclusively with the City of Kirkland. The
 11 Rosewood HOA members are still free to picnic there if they so choose, but they will have to
 12 move whenever a member of the public, such as their new neighbor, must cross.

13 This is not an uncommon event, as private developers regularly open public ROW that
 14 was once dedicated but never constructed, sometimes one hundred years later. If Rosewood's
 15 argument holds true, no private land owner could ever utilize public ROW that was dedicated
 16 by their neighbor where said neighbor failed to construct a street to the full extent of the ROW
 17 on their own, negating the basic point for the dedication. This is sometimes referred to as
 18 “open[ing]” a public right of way. *See, e.g., Kelley v. Tonda*, 198 Wn. App. 303, 324, 393 P.3d
 19 824 (2017). However, the failure to open a public right of way for some period of time does not
 20 result in some loss of right in the public to do so later. *See id.* at fn.9. Thus, because the public
 21 right of way is being put to its proper use for ingress and egress, and not being built upon solely
 22 for some private use, such as a basketball stadium, no vacation is required.

D. The impact of the Adsit Short Plat was properly addressed according to existing regulations.

Rosewood asserts that the Adsit Short Plat, and presumably the proposed driveway to Lot 1, will have some impact to Rosewood that the City failed to evaluate. *Appeal* at 4. However, this claim is predicated on Rosewood having some right that is being infringed by the City in approving it. The concerns Rosewood raises are impacts to their “beautifully landscaped entrance,” “aesthetic” and “value” of their properties. *Id.* However, as demonstrated above, Rosewood has no rights that are being infringed here. The fact that Rosewood has been allowed to claim this area their own for so long, or that they have been “paying for weekly landscaping, paying for irrigation, and repairing the fence as needed,” does not create some right under the law that the City is required to take into consideration when the City decides to assert its right to their primary use of this area for public right of way. Rosewood cites to no law that suggests otherwise.

E. There are no designated “open spaces” on NE 73rd Pl. and no consideration of any change to the right of way is required.

Rosewood again asserts that the City was required to provide some extraordinary consideration of the Adsit Short Plat’s impact on Rosewood’s transitory use of the NE 73rd Pl. ROW. As explained above, there are multiple scenarios under which the City could assert control on behalf the public to the entirety of the dedicated ROW. Rosewood’s members are fortunate that it has taken this long for such a situation to arise.

Open space is not public right of way. This area was unequivocally not dedicated as “open space.” Such a designation would mean something other than public right of way, which the entirety of Tract A was specified for. While Rosewood may have used the public right of way as open space for their own benefit all these years, that use is and must be secondary to the public right therein. An open space designation has a completely different meaning in land use laws and zoning codes at every level of Washington law. *See, e.g.*, RCW 58.17.110(1) (listing

1 separately “open space” from “streets or roads” and “other public ways”). If Tract A of the
2 Rosewood short plat was “open space,” no road could have been built there at all.

3 Further, Rosewood has no special interest or right to control the configuration,
4 construction, standards or any other aspect of improvement to the public right of way. This is
5 entirely within the control of the City of Kirkland, as explained in detail above.

6 **F. Rosewood has no claim for the taking of private property for public use, or other**
7 **cognizable takings claim.**

8 As explained in detail above, the City is asserting its right to control over the NE 73rd
9 Pl. ROW within its right to do so and as explicitly provided on the face of the Rosewood short
10 plat. Thus, there is no claim for damages, even if the Hearing Examiner had jurisdiction to
11 evaluate such a claim.

12 **G. The Decision and approvals contain sufficient information for a preliminary short**
13 **subdivision.**

14 Rosewood asserts, without citation to any authority, that Merit Homes should be
15 required to produce detailed plans, and likely capitulate, to Rosewood’s satisfaction before any
16 short subdivision can be approved. This claim ignores the comprehensive system and operation
17 of permitting review. Merit Homes is seeking approval for a preliminary short subdivision. This
18 is not a construction approval. This is not approval of final design and engineering plans. The
19 City’s decision to grant the preliminary short subdivision is based on the underlying conclusion
20 that the project is feasible and that Merit Homes has demonstrated the project is capable of
21 complying with applicable development regulations.

22 Preliminary approval provides an applicant with the assurances it needs to commit the
23 significant resources required to produce final engineering and design specifications. Nowhere
24 in Code or Statutes are such specifics required for the approval Merit Homes seeks. Rosewood’s
25 argument, if taken to its natural conclusion, is that preliminary designs should not exist, and

every applicant should have to submit final engineering designs and specifications for public review and approval. But this is not practical, and it is not the law.

H. No portion of the Adsit Short Plat is subject to the Rosewood CC&Rs and no authority permits their imposition based on use of public right of way.

Since the Adsit property was in no way a part of the Rosewood short plat, there is no authority that allows imposition of the Rosewood HOA's CC&Rs on the property now. The second part of Rosewood's claim, if taken to its natural conclusion, would mean that any new development that crosses upon a public road dedicated and constructed pursuant to a prior subdivision approval, would become subject to the latter's CC&Rs. This would be an absurd result, piling on conditions and restrictions to every new subdivision in the State, and further, this ignores the fact that no such condition is included in the public right to utilize the dedicated area "for any general and public uses." RCW 58.17.020 (3).

III. CONCLUSION

Where the law clearly dictates that the public right to make use of dedicated rights of way is primary, and any right that may remain in an underlying property owner is subservient, summary judgment and dismissal of any claim to the contrary is required.

Rosewood believes that the paved road of NE 73rd Pl., as they know it, and the balance of the dedicated right of way according to the Rosewood short plat, should be treated separately under the law. However, the face of the Rosewood short plat does not so bifurcate Tract A. Instead, the entirety of Tract A was unequivocally dedicated to the City of Kirkland for any general and public use that the City of Kirkland deems necessary and proper. It is only by chance that Rosewood has been able to maintain the landscaping in this area undisturbed for so long. Since the law is clear, and since there are no facts in dispute that might alter the outcome of the issues raised in this appeal, Merit Homes respectfully requests the Hearing Examiner grant summary judgment and dismiss the appeal in its entirety.

1 DATED this 6th day of November, 2020.

2 JOHNS MONROE MITSUNAGA
3 KOLOUŠKOVÁ, PLLC

4 By /s/ Dean Williams
5 Duana T. Koloušková, WSBA #27532
6 Dean Williams, WSBA #52901
7 Attorneys for Applicant Merit Homes, Inc.

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1370-1 Applicant's Motion for SJ 11-6-20F

DECLARATION OF SERVICE

I, Benita K. Lamp, am a citizen of the United States, resident of the State of Washington, and declare under the penalty of perjury under the laws of the State of Washington, that on this date, I caused to be served a true and correct copy of the foregoing APPLICANT'S MOTION FOR SUMMARY JUDGMENT, upon all counsel and parties of record at the address and in the manner listed below.

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*Attorneys for Appellants Rosewood of
Kirkland HOA & William Watson*

Dated this 6th day of November, 2020.

/s/ Benita K. Lamp

Benita K. Lamp

RETURN ADDRESS:

Stephannie Viertel
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 Suite 201
 Bellevue, WA 98005



20061116001981
 CHICAGO TITLE COV 72.00
 PAGE 001 OF 041
 11/16/2006 14:27
 KING COUNTY, WA

WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

DOCUMENT TITLE(S) (or transactions contained therein):	
Declaration of Covenants, Conditions, Restrictions, Easements, and Reservations for TEC Short Plat No. 3 and TEC Short Plat No. 4	
REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED:	
20050523900010; 20050523900009	
<input type="checkbox"/> Additional reference #s on page _____ of document(s)	
GRANTOR(S) (Last name first, then first name and initials)	
Bennett-SFS, L.L.C.	CHICAGO TITLE INS. CO REF# <u>W060111-10</u> (41)
<input type="checkbox"/> Additional names on page _____ of document	
GRANTEE(S) (Last name first, then first name and initials)	
Rosewood of Kirkland Homeowners Association	
<input type="checkbox"/> Additional names on page _____ of document	
LEGAL DESCRIPTION (abbreviated: i.e., lot, block, plat or section, township, range)	
See attached Exhibit "A"	
<input type="checkbox"/> Additional legal is on page _____ of document	
ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER	
6400700-0143; 6400700-0147; 6400700-0144; 6400700-0145; 6400700-0160; 6400700-0161; 6400700-0130; 6400700-0142; 6400700-0141; 6400700-0146	
<input type="checkbox"/> Assessor Tax # not yet assigned	

DECLARATION
Of
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS AND RESERVATIONS
TEC SHORT PLAT NO. 3 AND TEC SHORT PLAT NO. 4

Unofficial copy

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DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS,
EASEMENTS AND RESERVATIONS FOR
TEC SHORT PLAT NO. 3 AND TEC SHORT PLAT NO. 4

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND RESERVATIONS (this "Declaration") is made this 15TH day of November 2006, by Bennett-SFS, L.L.C., a Washington limited liability company (hereinafter called the "Declarant").

RECITALS:

A. This Declaration governs that certain real properties located in the City of Kirkland, County of King, State of Washington, described in Exhibit A annexed hereto ("TEC Short Plat No. 3 and Tec Short Plat No. 4 or "Property").

B. Declarant plans to develop TEC Short Plat No. 3 and Tec Short Plat No. 4, pursuant to a general plan for the entirety of the plats and desires to provide for the preservation of the values and amenities of said community, for the maintenance of common areas and other common facilities and, to this end, desires to subject TEC Short Plat No. 3 and Tec Short Plat No. 4 to this Declaration for the benefit of the plats and each individual Owner thereof. See exhibit A.

C. Declarant has or will incorporate under the laws of the State of Washington, as a nonprofit corporation, Rosewood of Kirkland Homeowner's Association for the purpose of exercising the functions aforesaid.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that lots 2-10 and Tract A of TEC Short Plat No. 3 and all of Tec Short Plat No. 4, shall be held, leased, occupied, sold and conveyed subject to the following covenants, conditions and restrictions, and subdivided as shown in the Plats of TEC Short Plat No. 3, recorded in Book 187 of surveys, pages 069 through 071, recording number 20050523900009 and TEC Short Plat No. 4, recorded in Book 187 of surveys, pages 072 through 074, recording number 20050523900010, all being records King County, Washington (the "Plats"), of all and each of which are for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Properties, in furtherance of a general plan for the protection of the Properties, or any portion thereof. All, and each of these covenants, conditions and restrictions are hereby imposed as equitable servitudes upon the Properties. The covenants, conditions and restrictions and equitable servitudes set forth herein shall run with the Properties, and every portion thereof, shall be binding on all parties having or acquiring any right, title or interest in the Properties, or in any part thereof, and their successors and assigns, shall inure to the benefit of every portion of the Properties and any interest therein, shall inure to the benefit of each Owner, and his or her successors and assigns, and may be enforced by any Owner or the Association; provided, however, that prior to the expiration of the Declarant Control Period, Declarant shall have the powers, responsibilities and duties of the Association and the Board of the Association hereunder, including, but not limited to, maintaining and administering the Common Areas and Common Area Improvements, enforcing the covenants, conditions and restrictions herein contained, and collecting and disbursing the assessments and charges hereinafter created.

ARTICLE I DEFINITIONS

Section 1.1. Words Defined. For the purposes of this Declaration and any amendments hereto, the following terms shall have the following meanings:

“Articles” shall mean the Articles of Incorporation of the Association which have been filed in the office of the Secretary of State of the State of Washington, as such Articles may be amended from time to time.

“Association” shall mean Rosewood of Kirkland Homeowner’s Association, a Washington nonprofit corporation, its successors and assigns.

“Board of Directors” or “Board” shall mean the Board of Directors of the Association.

“Bylaws” shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

“Committee” or “Architectural Control Committee” shall mean the Architectural Control Committee formed pursuant to Article VIII of this Declaration.

“Common Areas” shall mean the real property (including the improvements and facilities thereon) described as all areas of the Property outside the Lots, including but not limited to, roadways, walkways, parking areas, parks, open space buffers, wetlands areas, Native Growth Protection Easements or Areas, and landscape areas shown on the Plats which will be conveyed by Declarant to the Association and held for the common use, maintenance and enjoyment of the members of the Association, but shall not include any streets, or other areas now or hereafter dedicated for public use. Or: (a) any and all areas reserved for easements, as set forth, described or depicted in the Plats or otherwise reserved by Declarant for common use, including without limitation, access easements, utility easements, and (b) any portion of TEC Short Plat No. 3 and Tec Short Plat No. 4, which is restricted to a use or uses beneficial to the Owners in common. See “Exhibit C”

“Common Area Improvements” shall mean and include all improvements and facilities installed within or upon any of the Common Areas, including without limitation, roads, streets, utility installations, bridges, perimeter fences, security systems, entrance facilities, signs, landscaping, benches, play equipment and other amenities.

“Common Expense Percentage” means the percentage of general and special assessments payable by each Owner of a Lot, not including Lot 1 of TEC Short Plat No. 3, computed as the quotient of one (1) divided by the total number of Lots, included together in TEC Short Plat No. 3 and Tec Short Plat No. 4

“Common Annual Assessments” shall mean the annual charge against each Owner and his Lot, representing a portion of the total ordinary costs of operating the Association and maintaining, operating, improving, repairing, replacing and managing the Common Areas and Common Area Improvements, which charge shall be paid by each Owner to the Association to satisfy Common Expenses as further provided herein.

“Common Expenses” shall mean the actual and estimated costs of maintenance, management, operation, repair and replacement of the Common Areas and Common Area Improvements (including unpaid Particularized Assessments and those costs not paid by the Owner responsible for payment and legal recovery methods have been exhausted); the costs of all commonly metered utilities, including but not limited to street lights and irrigation, and other commonly metered charges for the Properties; costs of management and administration of the Association, including, but not limited to, reasonable compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all services benefiting the Common Areas and as approved through a vote of the members of the Home Owners Association pursuant to Section 3.4 of this Declaration; insurance, bonding, if any, of the members of the management body, real and/or personal property and leasehold excise taxes, assessments paid by the Association, amounts paid by the Association for discharge of any lien or encumbrance levied against the Common Areas; and the costs of any other item or items designated by the Members of the Association for any reason in connection with the to be for the benefit of all of the Owners, and as approved through a vote of the members of the Home Owners Association pursuant to Section 3.4 of this Declaration. These “Common Expenses” are the responsibility of each individual lot owner to pay their “Common Expense Percentage” in the case the Home Owners Association does not pay.

“Declarant” shall mean Bennett-SFS, L.L.C. its successors and assigns.

“Declarant Control Period” shall mean the period commencing with the recordation of this Declaration and expiring on the first to occur of (i) the ten (10) year anniversary of such date of recordation, (ii) the date Declarant has conveyed the last of the ten (10) Lots combined, of the TEC Short Plat No. 3 and Tec Short Plat No. 4, or (iii) the date Declarant records an instrument voluntarily terminating the right to act on behalf of the Association.

“Declaration” shall mean this Declaration of Covenants, Conditions, Restrictions, Easements and Reservations for TEC Short Plat No. 3 and Tec Short Plat No. 4, as it may be amended from time to time as provided herein.

“First Mortgage” means a recorded Mortgage encumbering a Lot which has legal priority over all other Mortgages on such Lot.

“Improvement” shall mean all structures and appurtenances thereto of every kind, whether above or below the land surface, including, but not limited to, buildings, utility systems, walkways, driveways, parking areas, landscaping items, fences, walls, decks, stairs, swimming pools, patios, poles, landscaping vegetation, irrigation systems, signs, exterior fixtures and any other structure of any kind.

“Lot” shall mean any one or more of the ten (10) lots designated as A through B on the TEC Short Plat No. 4 and lots numbered 2 through 9 on TEC Short Plat No. 3.

“TEC Short Plat No. 3 and Tec Short Plat No. 4” shall mean all of the real property described in Exhibit A annexed hereto. The term “TEC Short Plat No. 3 and Tec Short Plat No. 4” is synonymous with the term “Property”.

“Member” shall mean every person or entity who or which holds a membership in the Association, as provided in Section 2.4 hereof.

“Mortgage” shall mean a recorded mortgage or deed of trust that creates a lien against a Lot and shall also mean a real estate contract for the sale of a Lot. “Mortgagee” shall mean the beneficial owner, or the designee of the beneficial owner, of an encumbrance on a Lot created by a mortgage or a deed of trust and shall also mean the vendor, or the assignee of a vendor, of a real estate contract for the sale of a Lot.

“Mortgagor” shall mean the mortgagor of a mortgage, trustor or grantor of a deed of trust, and shall also mean the vendee, or the assignee of a vendee, of a real estate contract for the sale of a Lot.

“Native Growth Protection Easement or Area” shall mean that area as described to remaining in an undisturbed state as determined by the City of Kirkland.

“Occupant.” The term “Occupant” shall mean a lessee of an Owner, or any other person or entity other than an Owner in lawful possession of a Lot, or a portion of a Lot, with the permission of the Owner.

“Owner” shall mean the Person(s) holding fee simple title of record to any Lot within the Properties, including purchaser(s) under executory contracts of sale.

“Owners” shall mean all of the owners of Lots within TEC Short Plat No. 3 and Tec Short Plat No. 4,

“Ownership” shall mean the status of being an Owner.

“Particularized Assessment” shall mean a charge against a particular Owner and his Lot, directly attributable to, or reimbursable by, said Owner, equal to the cost incurred by the Association for corrective action performed pursuant to the provisions of this Declaration, plus interest and other charges thereon, as provided for in Section 4.5 of this Declaration.

“Person” shall mean a natural individual, corporation or any other entity with the legal right to hold title to real property.

“Plats” shall mean the recorded the plats of TEC Short Plat No. 3 and Tec Short Plat No. 4 and any amendments, corrections, or addenda thereto subsequently recorded.

“Property” shall mean all of the real property described in Exhibit A annexed to this Declaration. The term “Property” is synonymous with the term “TEC Short Plat No. 3 and Tec Short Plat No. 4”.

“Record” or “File” shall mean, with respect to any document, the recordation thereof, and with respect to any map, the filing thereof, in the Official Records of the Records Office of King County, State of Washington.

“Residence” shall mean and refer to Improvements constructed or installed on any Lot intended for residential use.

“Signs” shall mean any structure, device or contrivance, electric or nonelectric, upon or within which any poster, bill, bulletin, printing, lettering, painting, device or other advertising of any kind whatsoever is used, placed, posted, tacked, nailed, pasted or otherwise fastened or affixed.

“Street” shall mean any street, drive, way, lane, place or other thoroughfare as noted on the recorded Final Plats.

“Structure” shall mean any building, fence, wall, driveway, walkway, patio, garage, storage shed, carport, mailboxes, basketball hoop, play equipment, climbing apparatus, swimming pool, rockery, dog run or the like.

“Visible from Neighboring Property” shall mean, with respect to any given object on a Lot, that such object is or would be visible to a person six (6) feet tall, standing on any part of any adjacent Lot or other portions of TEC Short Plat No. 3 and Tec Short Plat No. 4 at an elevation no greater than the elevation of the base of the object being viewed.

Section 1.2. Form of Words. The singular forms of words shall include the plural and the plural shall include the singular. Masculine, feminine and neuter pronouns shall be used interchangeably.

Section 1.3. Construction. In construing words herein, words shall have their usual and ordinary meaning, except as specifically defined herein or in any other documents recorded with respect to the Properties; provided that words which are not defined herein or in such other recorded documents, shall, if ambiguous, have the meaning given them (if any) in zoning and building regulations, ordinances and regulations of the governmental entity with jurisdiction in the area in which the Property is located.

ARTICLE II
ROSEWOOD OF KIRKLAND HOMEOWNER'S ASSOCIATION

Section 2.1. Form of Association. The Association is a nonprofit association. The rights and duties of the members and of the Association shall be governed by the provisions of this Declaration, the Articles, the Bylaws, and such other rules and regulations as may hereafter be adopted by the Board.

Section 2.2. Board of Directors. During the Declarant Control Period, the Declarant shall manage the Association and shall have all the powers of the Board set forth herein. The Declarant may, from time to time, appoint a temporary board of not fewer than three (3) persons who need not be Owners to manage the Association during the Declarant Control Period. The temporary board shall have the full authority to manage the Association pursuant to and in accordance with the Articles and Bylaws; provided that, after appointing a temporary board, Declarant may at any time terminate the temporary board and reassume its management authority under this Section 2.2 or elect a new temporary board. Upon termination of the Declarant Control Period, the terms of the temporary Board selected by the Declarant, if any, shall terminate and the Board shall manage the Association as provided herein. The Board shall be elected from among the Owners, as provided in the Bylaws of the Association. The Board shall elect officers of the Association from among the Board members, which shall include a president who shall preside over meetings of the Board and meetings of the Association.

Section 2.3 Bylaws, Rules and Regulations. The Board on behalf of the Association shall have the power to adopt, modify, and amend rules and regulations governing the use of TEC Short Plat No. 3 and Tec Short Plat No. 4 provided that such rules and regulations shall not be inconsistent with this Declaration. The rules and regulations shall apply uniformly to all Owners, except as specifically provided herein. The Board shall have the power to enforce the rules and regulations on behalf of the Association and may prescribe penalties for the violation of such rules and regulations, including but not limited to suspension of the right to use the Common Areas or portions thereof. Any such rules and regulations shall become effective thirty (30) days after promulgation and shall be mailed to all Owners prior to their effective date. A copy of the rules and regulations then in force shall be retained by the secretary of the Association. The Declarant on behalf of the Board may adopt the initial Bylaws and rules and regulations.

Section 2.4. Membership. Every Owner shall automatically, upon becoming the Owner of a Lot, be a Member of the Association, and shall remain a Member thereof until such time as his Ownership ceases for any reason, at which time his Membership in the Association shall automatically cease. Ownership of a Lot shall be the sole qualification for Membership in the Association. All memberships shall be appurtenant to a Lot. Except as may otherwise be provided herein, the rights, duties, privileges and obligations of all Members of the Association shall be as set forth in this Declaration, the Articles of Incorporation and Bylaws of the Association, and the rules and regulations of the Association adopted in accordance with the Bylaws of the Association.

Section 2.5. Transfer. The Membership held by any Owner shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Owner's Lot and

then only to the purchaser or Mortgagee of such interest in such Lot. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association.

Section 2.6. Voting Rights. Owners shall be entitled to one vote for each Lot owned. When more than one person or entity owns an interest in any Lot, the vote for that Lot shall be exercised as the Owners decide to exercise that vote but, in no event, shall more than one vote be cast with respect to any Lot nor shall any vote be divided and fractional votes shall not be allowed. If joint owners are unable to agree among themselves how their vote shall be cast, they shall lose their right to vote on the matter in question. An Owner may, by written notice to the Board, designate a voting representative for the Lot. The designated voting representative need not be an Owner. The designation may be revoked at any time by written notice to the Board from a Person having an ownership interest in a Lot, or by actual notice to the Board of the death or judicially declared incompetence of any Person with an ownership interest in the Lot, except in cases in which the Person designated is a Mortgagee of the Lot. This power of designation and revocation may be exercised by the guardian of an Owner, the attorney-in-fact for the Owner under a durable power of attorney, and the administrator or executor of an Owner's estate. If no designation has been made, or if a designation has been revoked and no new designation has been made, the voting representative of each Lot shall be the group composed of all of its Owners. Unless otherwise expressly provided in this Declaration, a quorum is present throughout any meeting of the Association if the Owners to which seventy percent (70%) of the votes of the Association are allocated are present in person or by proxy at the beginning of the meeting.

Section 2.7. Meetings of Members. There shall be a meeting of the Members of the Association within sixty (60) days of the expiration of the Declarant Control Period. Declarant shall cause notice of said meeting to be given, but shall not be required to perform any other duty with respect to such meeting. Thereafter there shall be an annual meeting of the members of the Association in accordance with the Bylaws. At the first such meeting, and at each annual meeting thereafter, the Owners shall elect Board members to serve for the terms specified in the Bylaws of the Association. Special meetings of the members of the Association may be called in accordance with the Bylaws of the Association.

Section 2.8. Books and Records. The Board shall cause to be kept complete, detailed, and accurate books and records of the receipts and expenditures (if any) of the Association, in a form that complies with generally accepted accounting principles. The books and records, authorizations for payment of expenditures, and all contracts, documents, papers and other records of the Association shall be available for examination by Owners, Mortgagees, and the agents or attorneys of either of them, during normal business hours and at any other reasonable time or times.

Section 2.9. Priorities and Inconsistencies. If there are conflicts or inconsistencies between this Declaration and either the Articles of Incorporation or the Bylaws of the Association, the terms and provisions of this Declaration shall prevail.

ARTICLE III AUTHORITY OF THE BOARD

Section 3.1 Adoption of Rules and Regulations. The Board is empowered to adopt, amend and revoke on behalf of the Association detailed administrative rules and regulations necessary or convenient from time to time to insure compliance with the general guidelines of this Declaration to promote the comfortable use and enjoyment of the Property and to govern the operation and procedures of the Association. The rules and regulations shall be binding upon all Owners, Occupants and all other Persons claiming any interest in the Property or any Lot.

Section 3.2 Enforcement of Declaration, Etc. The Board shall have the power to enforce the provisions of this Declaration, and the rules and regulations of the Association for the benefit of the Association. The failure of any Owner to comply with the provisions of this Declaration, or the rules and regulations of the Association will give rise to a cause of action in the Association (acting through the Board) and any aggrieved Owner for the recovery of damages, injunctive relief, and/or any other remedy available at law or in equity.

Section 3.3 Goods and Services. The Board shall acquire and pay for as Common Expenses of the Association all goods and services reasonably necessary or convenient for the efficient and orderly maintenance of all portions of the Common Areas and Common Area Improvements. The Board may hire such employees as it considers necessary.

Section 3.4 Protection of Common Area. During the Declarant Control Period, the Declarant may spend such funds and take such action as it may from time to time deem necessary to preserve the Common Areas and Common Area Improvements, settle claims, or otherwise act in what it considers to be the best interests of the Association. After the Transfer of the Homeowner's Association from the Declarant to the Board of Directors, the Board may take such action up to an amount of no more than \$1,000.00 without a vote of the Members of the Homeowner's Association. If actions causes the Board to spend in excess of \$1,000.00, the Board must conduct a vote of the Members of the Homeowner's Association.

Section 3.5 Maintenance of Wetlands and Native Areas. The Board may spend such funds and take such action as it may from time to time deem necessary to preserve the Native Areas, settle claims, or otherwise act in what it considers to be the best interests of the Association.

ARTICLE IV ASSOCIATION BUDGET, ASSESSMENTS AND LIENS

Section 4.1 Owner's Covenants to Pay Assessments. By the acquisition of Ownership of a Lot, the Owner thereof covenants and agrees thereby, on behalf of himself and his heirs, successors, and assigns, to pay the Association, in advance, all general, special and particularized assessments levied as provided herein.

Section 4.2 Fiscal Year; Preparation of Association Budget. The Board may adopt such fiscal year for the Association as it deems to be convenient. Unless another year is adopted, the fiscal year will be the calendar year. As soon as the Board in its discretion deems advisable after the Transition Date of the Association, and prior to the expiration of each fiscal year thereafter, the Board shall prepare, or cause the preparation of, an operating budget for the Association at least annually, which shall include, without limitation, the sums required by the Association, as estimated by the Board, to meet its annual Common Expenses for maintaining the Common Area during the ensuing fiscal year in accordance with generally accepted accounting principles, and shall mail a summary of the budget to all of the Owners. The funds required to meet the Association's annual Common Expenses shall be raised from a general assessment against each Owner as provided hereafter. The Board may revise the operating budget after its preparation at any time and from time to time, as it deems necessary or advisable in order to take into account and defray additional costs and expenses of the Association. Within thirty days after adoption by the Board, the Board shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the Owners of a majority of the votes in the Association are allocated or any larger percentage specified in the Articles or Bylaws reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board. The Board shall then assess each Lot within the Property with its pro rata share, based upon the number of Lots then within the Property, of such estimated costs. The Board, at its election, may require the Lot Owners to pay the amount assessed in equal monthly or quarterly installments or in a lump sum annual installment. The Board shall notify each Lot Owner in writing at least fourteen (14) days in advance of each assessment period of the amount of the assessment for said period, which notice shall be accompanied by a copy of the budget upon which the assessment is based. The assessments levied by the Board shall be used exclusively to promote the recreation, health, safety and welfare of the Lot Owners and for the improvement and maintenance of the Common Areas and provision of other goods and services described in Section 6.3, including without limitation the amount of all taxes and assessments levied against, and the cost of liability and other insurance on, the Common Areas; the cost of utilities and other services; and the cost of funding all reserves established by the Board, including, when appropriate, a general operating reserve and a reserve for replacements.

Section 4.3 Levy of General Assessment. In order to meet the costs and expenses projected in its operating budget, the Board shall determine and levy in advance on every Owner a general assessment. The amount of each Owner's general assessment shall be the amount of the Association's operating budget multiplied by such Owner's Common Expense Percentage. The Association shall make reasonable efforts to determine the amount of the general assessment payable by each Owner for an assessment period at least thirty (30) days in advance of the beginning of such period and shall during that time prepare a roster of the Owners and the general assessment allocated to each which shall be open to inspection by any Owner upon reasonable notice to the Board. Notice of the general assessment shall thereupon be sent to each Owner; provided, however, that notification to an Owner of the amount of an assessment shall not be necessary to the validity thereof. The omission by the Board, before the expiration of any

assessment period, to fix the amount of the general assessment hereunder for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this Article or a release of any Owner from the obligation to pay the general assessment, or any installment thereof, for that or any subsequent assessment period, but the general assessment fixed for the preceding period shall continue until a new assessment is fixed. Upon any revision by the Board of the operating budget during the assessment period for which such budget was prepared, the Board shall, if necessary, revise the general assessment levied against the Owners and give notice thereof to each Owner.

Section 4.4 Payment of General Assessment. The Board, at its election, may require the Owners to pay the amount assessed on a monthly, quarterly, semi-annual, or annual basis. Any Owner may prepay one or more installments on any assessment levied by the Association without penalty.

Section 4.5 Particularized Assessment. No assessment shall be made at any time which unreasonably discriminates against any particular Owner or group of Owners in favor of other Owners. However, a special assessment ("Particularized Assessment") may be made against a particular Owner by a two-thirds majority vote of the Board if, after notice from the Board of failure to maintain such Lot in a condition comparable to the other Lots has been given, the Association elects to expend funds to bring such Owner's Lot up to such comparable standard.

Section 4.6 Commencement of Assessments. The liability of an Owner for assessments shall commence on the first day following the date upon which any instrument of transfer to such Owner becomes operative (such as the date of a deed or the date of a recorded real estate contract for the sale of any Lot. The Declarant, its successors and assigns, shall not be liable for any assessments with respect to any Lot unless such Lot has been improved with a Residence and the Residence is occupied. The due dates of any special assessment or Particularized Assessment payments shall be fixed by the resolution authorizing such assessment(s).

Section 4.7 Certificates of Assessment Payment. Upon request, the Board shall furnish written receipt certifying the extent to which assessment payments on a specified Lot are paid and current to the date stated therein.

Section 4.8 Special Assessments. In addition to the general assessments authorized by this Article, the Association may, by majority vote of the Members in attendance at a meeting called for that purpose, levy a special assessment or assessments at any time, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, inordinate repair, or replacement of a capital improvement located upon or forming a part of the Common Areas or Common Area Improvements, including necessary fixtures and personal property related thereto, or for such other purpose as the Association may consider appropriate; provided, however, that any such special assessment in excess of \$500.00 per Lot must have the prior favorable vote of seventy percent (70%) or more of the Members in attendance at a meeting called for that purpose.

Section 4.9 Effect of Nonpayment of Assessment. If any assessment payment is not made in full within thirty (30) days after it was first due and payable, the unpaid amounts shall

constitute a lien against the Lot assessed, and shall bear interest from such due date at a rate set by the Board in its rules and regulations which shall not exceed the highest rate then permitted by law. By acceptance of a deed to a Lot, recording of a real estate contract therefore, or any other means of acquisition of Ownership of a Lot, and whether or not it shall be so expressed in any such deed or other instrument, each Owner shall be deemed to grant thereby to the Association, its agents and employees, and to Declarant during the Declarant Control Period, the right and power to bring all actions against such Owner personally for the collection of such assessments as a debt, and to enforce the liens created by this Declaration in favor of the Association by foreclosure of the continuing liens in the same form of action as is then provided for the foreclosure of a mortgage on real property under the laws of the State of Washington. The liens provided for in this Declaration shall be for the benefit of the Association, and the Association shall have the power to bid at any lien foreclosure sale and to acquire, hold, lease, mortgage, and convey the Lot foreclosed against.

Section 4.10 Lien to Secure Payment of Assessments. Declarant hereby creates in the Association perpetually the power to create a lien in favor of the Association against each Lot, to secure to the Association the payment to it of all assessments, interest, costs, and attorneys' fees; and Declarant hereby subjects all Lots perpetually to such power of the Association. Such lien shall arise in accordance with the terms of this Declaration without the necessity of any further action by the Association, and any such lien when created, shall be a security interest in the nature of a mortgage in favor of the Association. Such lien shall become a continuing lien in the amount stated in the assessment from the time of the assessment, but expiring pro rata as the assessment payments are made, and shall also be the personal obligation of the person or entity who is the Owner of the Lot at the time of the assessment. The personal obligation to pay a prior assessment shall not pass to successors in interest unless expressly assumed by them; provided, however, that in the case of a sale or contract for the sale of any Lot which is charged with the payment of an assessment, the person or entity who is the Owner immediately prior to the date of such sale shall be personally liable for the amounts of the installments due prior to said date, and the new Owner shall be personally liable for monthly installments becoming due on or after such date. The foregoing limitation on the duration of the personal obligation of an Owner to pay assessments shall not, however, affect the validity or duration of the continuing lien for unpaid assessments against the respective Lot.

Section 4.11 Subordination of Liens.

4.11.1 Intent of Provisions. The provisions of this Section 4.11 apply for the benefit of Mortgagees of Lots.

4.11.2 Mortgagee's Nonliability. A Mortgagee shall not, by reason of its security interest only, be liable for the payment of any assessment or charge, nor for the observance or performance of any covenant or restriction, excepting only those enforceable by equitable relief and not requiring the payment of money, and except as hereafter provided.

4.11.3 Mortgagee's Rights During Foreclosure. During foreclosure of a Mortgage, including any period of redemption, the Mortgagee may exercise any or all of the rights and privileges of the Owner of the encumbered Lot, including but not limited to the right to vote in the Association to the exclusion of the Owner's exercise of such rights and privileges.

4.11.4 Mortgagee as Owner. At such time as a Mortgagee shall become the record owner of the Lot previously encumbered by the Mortgage, the Mortgagee shall be subject to all of the terms and conditions of this Declaration, including the obligation to pay for all assessments and charges in the same manner as any Owner.

4.11.5 Mortgagee's Title Free and Clear of Liens. A Mortgagee or other secured party acquiring title to a Lot through foreclosure, deed in lieu of foreclosure, or equivalent method, shall acquire title to the encumbered Lot free and clear of any lien authorized by or arising out of the provisions of this Declaration, insofar as such lien secures the payment of any assessment due but unpaid before the final conclusion of any such proceeding, including the expiration date of any period of redemption. The Board may treat any unpaid assessments against a Lot foreclosed against as a Common Expense of the Association pursuant to Section 4.3.

4.11.6 Survival of Assessment Obligation. After the foreclosure of a security interest in a Lot, any unpaid assessments shall continue to exist and remain as a personal obligation of the Owner against whom the same was levied, and the Board shall use reasonable efforts to collect the same from such Owner.

4.11.7 Subordination of Assessment Liens. The liens for assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgage, and the Association will, upon demand, execute a written subordination document to confirm such priority. The sale or transfer of any Lot or of any interest therein shall not affect the liens provided for in this Declaration except as otherwise specifically provided for herein, and in the case of a transfer of a Lot for purposes of realizing a security interest, liens shall arise against the Lot for any assessment payments coming due after the date of such transfer.

Section 4.12 Suspension for Nonpayment of Assessment. If an Owner shall be in arrears in the payment of any assessment due, or shall otherwise be in default of the performance of any terms of the Declaration or of the Articles, Bylaws or rules and regulations of the Association for a period of thirty (30) days, said Owner's voting rights shall without the necessity of any further action by the Association, be suspended (except as against foreclosing secured parties) and shall remain suspended until all payments, including interest thereon, are brought current and any other default is remedied. No Owner is relieved of liability for assessments by nonuse of the Common Areas or by abandonment of a Lot.

Section 4.13 Reserves for Replacement. As a Common Expense, the Board shall establish and maintain a reserve fund for replacement of the Common Areas, Common Area Improvements, and any improvements thereon. Such fund shall be deposited with a banking institution. The reserve fund shall be expended only for the purpose of effecting the replacement of the Common Areas, Common Area Improvements, and any improvements and community facilities thereon, equipment replacement, and for operating contingencies of a nonrecurring nature. The Board may establish such other reserves for such other purposes as it may from time to time consider to be necessary or appropriate. The proportional interest of any Owner in any such reserves shall be considered an appurtenance of his Lot and shall not be separately withdrawn, assigned, or transferred from the Lot to which it appertains.

ARTICLE V EASEMENTS AND RIGHTS OF ENTRY

Section 5.1. **Easements.**

5.1.1 Board's Right to Grant. The Board of Directors of the Association shall have the right to grant necessary easements and rights-of-way over the Common Areas, if allowed by the Governing Municipality code, to any Person or Entity for a reasonable necessary use with at least 70 % approval by the Members of the Association, and with any and all approvals necessary obtained from the Governing Municipality.

5.1.2 Maintenance and Repair. Declarant expressly reserves for the benefit of the Association, the Board of Directors and all agents, officers and employees of the Association nonexclusive easements over the Common Areas and the Lots as necessary to maintain and repair the Common Areas and Common Area Improvements and to perform all other tasks in accordance with the provisions of this Declaration.

5.1.3 No Obstruction of Walkways and Streets. There shall be no obstruction of any streets or walkways located within TEC Short Plat No. 3 and Tec Short Plat No. 4 which would interfere with the free circulation of foot or automobile traffic, except such obstruction as may be reasonably required in connection with repairs of such streets or walkways. Use of all streets and walkways within TEC Short Plat No. 3 and Tec Short Plat No. 4 shall be subject to the reasonable rules and regulations adopted by the Association. The Board shall promptly take such action as may be necessary to abate or enjoin any interference with or obstruction of the streets and walkways and shall have the right of entry for purposes of removing said interference or obstruction.

Section 5.2. Rights of Entry. The Board of Directors, the Architectural Control Committee and Declarant shall have a limited right of entry, per Sections 6, 8 and 9 of these Covenants, in and upon the exterior of all Improvements located on any Lot for the purpose of inspecting the same and taking whatever corrective action may be deemed necessary or proper, consistent with the provisions of this Declaration. However, nothing herein shall be construed to impose any obligation upon the Association, the Board, the Architectural Control Committee or Declarant to maintain or repair any portion of any Lot or any Improvement thereon which is to be maintained or repaired by the Owner. Nothing in this Article shall in any manner limit the right of any Owner to the exclusive occupancy and control over the Improvements located upon his Lot. However, each Owner shall permit access to such Owner's Lot or Improvements thereon by any Person authorized by the Board of Directors, the Committee or Declarant as reasonably necessary, such as in case of any emergency originating on or threatening such Lot or Improvements, whether or not such Owner is present.

ARTICLE VI REPAIR AND MAINTENANCE

Section 6.1. Repair and Maintenance Duties of the Association. Following initial installation, the Association shall maintain, repair, replace, resurface and make necessary improvements to the Common Areas, or shall contract for such maintenance, repair and improvements, to assure the maintenance of the Common Areas and Common Area Improvements in a good, sanitary and attractive condition. Such maintenance, repairs and improvements shall include, without limitation, maintenance and replacement of streets, shrubs, trees, vegetation, irrigation systems and other landscaping located on the Common Areas (including the Native Growth Protection Easement Areas and Tracts), repair and payment for all centrally metered utilities, security systems, entrance gates and related mechanisms, other mechanical and electrical equipment in the Common Areas, and repair and maintenance of all walks and other means of ingress and egress within the Common Areas. All such maintenance, repairs and improvements to the Common Areas shall be paid for as Common Expenses. The Association shall pay all real, personal property and leasehold excise taxes and assessments which are separately assessed against the Common Areas. It shall further be the affirmative duty of the Board to require strict compliance with all provisions of this Declaration and to cause the Lots to be inspected by the Architectural Control Committee for any violations hereof.

Section 6.2. Special Powers of Association. Without in any way limiting the generality of the foregoing, if the Architectural Control Committee determines that an Improvement, the maintenance of which is the responsibility of an Owner, is in need of repair, restoration or painting, or if the Board of Directors determines that there is a violation of any provision of this Declaration, then the Board shall give written notice to such Owner of such condition or violation. Unless the Architectural Control Committee has approved in writing corrective plans proposed by the Owner to remedy the condition complained of within such period of time as may be determined reasonable by the Board after the Board has given said written notice, and unless such corrective work so approved is completed thereafter within the time allotted by the Committee, the Board shall undertake to remedy such condition or violation, and the cost thereof shall be charged to the Owner and his Lot. Such cost shall be deemed to be a Particularized Assessment of such Owner and his Lot, and subject to levy, enforcement and collection by the Board of Directors in accordance with the assessment and lien procedures provided for in this Declaration.

ARTICLE VII COMMON AREAS AND EASEMENTS

Section 7.1 Conveyance to Association. Declarant hereby grants and conveys the Common Areas to the Association or as applicable, confirms conveyances that were effective upon recording of the Final Short Plats ("Property"); as to the Common Areas as shown on the Final Short Plats.

Section 7.2 Common Areas. The definition of "Common Areas" set forth in Section 1.1 of the Declaration

Section 7.3 Use. Each Owner shall have the right to use the Common Areas in common with all other Owners. The right to use the Common Areas shall be appurtenant to and pass with the ownership of each Lot and shall extend not only to each Owner, but also to his agents, tenants, members of his household, invitees, and licensees. The right to use the Common Areas shall be governed by the provisions of this Declaration, the Bylaws, and/or the rules and regulations of the Association.

Section 7.4 Abandonment of Common Areas. The Common Areas may not be abandoned, partitioned, subdivided, encumbered, sold, or transferred by the Association, any Owner or any third party, provided that, with the approval of at least 80% of the Owners and compliance with any restrictions on the face of the Short Plats, the Common Areas may be transferred to or encumbered for the benefit of a public agency, authority, or utility. The granting of easements for utilities or for other purposes consistent with the intended use of the Common Areas by the Owners shall not be deemed a partition or division.

Section 7.5 Alteration of Common Areas. Nothing shall be altered or constructed in or removed from any Common Areas except upon the prior written consent of the Board.

Section 7.6 Intentionally Unused

Section 7.7 City of Kirkland Utility Easements. The Declarant and Owners of the land hereby creates, reserves and conveys to the City of Kirkland, its Successor and/or Assigns, across the areas as described herein TEC Short Plat No. 3 and TEC Short Plat No. 4 as "Public Utility Easement", a perpetual 10 ft easement along the property lines of Lots 2 through 9 of TEC Short Plat No. 3 and Lots A through B of TEC Short Plat No. 4, and adjoining street frontage, for the benefit of the City of Kirkland, its successors and assigns, (the Grantee), for Utilities including water, sanitary sewer, storm drainage, power, telecommunications, cable television, natural gas, and other such utilities as may be developed, together with the right of ingress and egress thereto across adjacent lands of Grantor for these purposes. These easements and conditions shall be a covenant running with the land and shall be binding on the Owners, Successor, Heirs and Assigns of the land hereby subdivided. The City of Kirkland its Successors and Assigns shall have the right without prior institution of any suit or proceedings of law, at such time as may be necessary to enter upon said easement for the purpose of installing, replacing, operating, maintaining, repairing, altering or reconstructing said utilities or making any connections thereto without incurring any legal obligation or liability therefore; provided that such shall be accomplished in a manner that if existing private improvements are disturbed or destroyed they will be repaired or replaced to a condition similar as they were immediately before the property was entered upon by the Grantee. The Grantor shall retain the right to use the surface of said easement if such does not interfere with the installation or use of said utilities. However, the Grantor shall not erect or maintain buildings or structures, including but not limited to decks, carports, hot tubs, patios, and retaining walls within the easement. Also the Grantor shall not plant trees, shrubs or vegetation having root patterns which may cause damage to or interfere with said utilities. Also the Grantor shall not develop or beautify the easement areas in such a way to cause excessive cost to the Grantee pursuant to its restoration duties herein.

Section 7.8 Intentionally unused

Section 7.9 Intentionally unused

Section 7.10 Right of Way Sidewalk Maintenance. Per recorded short plat each property owner shall be responsible for keeping the sidewalk abutting the subject property clean and litter free. The maintenance shall run with the land and will be binding on all property owners within this subdivision, including their heirs, successors and assigns

7.10.1 The City of Kirkland shall, upon completion of any work within the property, restore the surface of the easement and any private improvements disturbed or destroyed during execution of the work, as nearly as practical to their normal conditions that they were in immediately before the commencement of the work or entry by the Grantee.

Section 7.11 Right of Way Landscape Maintenance. The property owner shall also be responsible for the maintenance of the vegetation within the abutting landscape strip. Any landscaping not abutting a lot (i.e. entry way landscape) shall be maintained by the Rosewood of Kirkland Homeowners Association. The maintenance shall run with the land and will be binding on all property owners within this subdivision, including their heirs, successors, and assigns.

Section 7.12 Landscape Easements. Declarant hereby reserves a 5' landscape easement across Lot 4 of TEC Short Plat No. 3 and Lot B of TEC Short Plat No. 4 for the benefit of the lot owners of TEC Short Plat No. 3 and TEC Short Plat No. 4. The lot owners of lot 4 of TEC Short Plat No. 3 and Lot B of TEC Short Plat No. 4 shall maintain the landscaping in said easement. Street Trees within said easement cannot be removed without permission from the City of Kirkland.

Section 7.13 Driveway Access Easements. Intentionally unused

Section 7.14 Conditions for Grant of Easements. The easements granted in Sections 7.5 through 7.13 are subject to the agreement of grantees to compensate grantor (or grantor's successors and assigns) for any damage to the affected property caused by the exercise of grantee's easement rights; to use reasonable care in carrying out any construction or repair in the easement areas and to restore such areas, to the extent reasonably practicable, to the condition they were immediately prior to such work; and to indemnify and hold harmless grantor (and grantor's successors and assigns) from any and all claims for injuries and/or damages suffered by any person caused by grantee's exercise of the rights therein granted. All work performed within an easement shall be conducted in a workmanlike manner, free and clear of liens.

Section 7.15 Miscellaneous Provisions and Use Restrictions.

7.15.1 Tree Preservation Requirements are on record with the City of Kirkland. Removal of any of these trees is not permitted unless deemed diseased, dead or hazardous by the City of Kirkland. A separate Arborist report may be required. Any removal of these trees from any lot within TEC Short Plat No. 3 and TEC Short Plat No. 4 must be done in accordance with the Tree Retention Plan also on File with the City of Kirkland Planning Department. This also includes any Tree Preservation requirements contained within the building permit(s), inclusive of all lots within the Property. Final location of these trees may have been modified. Verify location with City of Kirkland prior to removal of any tree outside the building footprint.

7.15.2 No Further Subdivision of any lot within the Plat shall be permitted without approval of an appropriate subdivision procedure by the City of Kirkland.

7.15.3 Each property owner shall be responsible for the maintenance of the sanitary sewer or storm water stub from the point of use on their own property to the point of connection in the city sanitary sewer main or storm water main. Any portion of a sanitary sewer or surface water stub, which jointly serves more than one property, shall be jointly maintained and repaired by the property owners sharing such stub. The joint use and maintenance shall run with the land and will be binding on all property owners within this subdivision, including their heirs, successors, and assigns.

Section 7.16. Owners' Common Rights. Owners shall have equal rights to use the Common Areas, except as otherwise specifically set forth in this Declaration. All easements for ingress, egress, utilities, and use of facilities, unless otherwise specifically limited, shall exist in favor of all Owners.

Section 7.17. No Obstruction by Owner. The Owners of Lots which are burdened by any Common Areas shall not in any manner interfere with the Association's maintenance, use and operation of the Common Areas, but such Owners may use the Common Areas within their respective Lots in any lawful manner that does not so interfere. Declarant makes no warranty or representation as to what, if any, uses may be made of any Common Areas.

Section 7.18. Maintenance of Common Areas. The Association shall maintain, repair, replace, improve, and otherwise manage all of the Common Areas and Common Area Improvements in accordance with Section 6.1 of this Declaration.

Section 7.19. Native Growth Protection Easements and Tracts. Intentionally unused.

ARTICLE VIII ARCHITECTURAL CONTROL COMMITTEE

An Architectural Control Committee ("Committee") consisting of three (3) members is hereby created with the rights and powers set forth in this Declaration. The initial members of the Committee shall be representatives appointed by Declarant. Committee members shall not be entitled to compensation for their services hereunder, except as may be determined by the Board of Directors. Declarant shall have the right and power at all times to appoint or renew the appointment of the members of the Committee or to fill any vacancy until the expiration of the Declarant Control Period. After the expiration of the Declarant Control Period, the Board shall have the power to appoint and remove the members of the Committee.

ARTICLE IX CONSTRUCTION OF IMPROVEMENTS

Section 9.1. Approval of Plans Required. No Improvements shall be erected, placed, altered, maintained or permitted to remain on any Lot by any Owner until final plans and specifications shall have been submitted to and approved in writing by the Committee. Such final plans and specifications shall be submitted over the authorized signature of the Owner of the Lot or his authorized agent. The plans and specifications shall be in such form and shall contain such information as may be required by the Committee, but shall in any event include the following:

9.1.1 A site development plan of the Lot showing the nature, kind, shape, composition and location of all structures with respect to the particular Lot, including, without limitation, the number and location of all driveways on the Lot;

9.1.2 Grading and storm drainage plan;

9.1.3 A landscaping plan;

9.1.4 A plan for the location of signs and lighting;

9.1.5 Building elevations and plans showing dimensions, materials and external color scheme in such detail as required by the Committee; and

9.1.6 A design review fee in an amount to be determined by the Board of Directors.

Section 9.2 Plan Changes and Plans for Changes to Improvements. Material changes in approved plans must be similarly submitted to and approved by the Committee. In addition to the other requirements of Section 9.1 above:

9.2.1 No exterior surface of any improvement on any Lot shall be repainted, texturized or otherwise changed;

9.2.2 No alterations, additions or changes shall be made to any landscaping placed on any Lot; and

9.2.3 No additions or alterations to any paved area on any Lot shall be made, until plans for such painting, alterations, additions or changes, including samples of colors and materials, landscaping plans, or plans and specifications with regard to paving, as the case may be, together with such other information as shall be required by the Committee, have been submitted to the Committee and the Committee has approved in writing such requested change.

Section 9.3. Approval Procedures. The Committee shall not arbitrarily or unreasonably withhold its approval of any plans and specifications. Except as otherwise provided in this Declaration, the Committee shall have the right to disapprove any plans and specifications submitted hereunder on any reasonable grounds including, but not limited to, the following:

9.3.1 failure to comply with any of the restrictions set forth in this Declaration;

9.3.2 failure to include information in such plans and specifications as may have been reasonably requested by the Committee;

9.3.3 objection on the grounds of incompatibility of any proposed structure, use or landscaping with existing structures, uses or landscaping upon other Lots, or other property in the vicinity of the subject Lot;

9.3.4 objection to the grading or landscaping plan for any Lot;

9.3.5 objection to the color scheme, finish, proportions, style or architecture, height, bulk or appropriateness of any structure;

9.3.6 objection to the number or size of parking spaces, or to the design of the parking area;

9.3.7 any other matter which, in the judgment of the Committee, would render the proposed improvements or use inharmonious with the general plan for improvement of TEC Short Plat No. 3 and Tec Short Plat No. 4 or with Improvements located upon other Lots or other property in the vicinity.

Section 9.4. Result of Inaction. If the Committee fails either to approve or disapprove plans and specifications submitted to it within thirty (30) days after the same have been submitted, it shall be conclusively presumed that the Committee has approved said plans and specifications; provided, however, that if, within the thirty (30) day period, the Committee gives written notice of the fact that more time is required and must give notice of necessary additional time, and that time may not exceed an additional 30 days, for the review of such plans and specifications, there shall be no presumption that the same are approved until the expiration of such reasonable period of time as is set forth in the notice.

Section 9.5. Approval. The Committee may approve plans and specifications as submitted, or as altered or amended, or it may grant its approval to the same subject to specific conditions. Upon approval or conditional approval by the Committee of any plans and specifications submitted, a copy of such plans and specifications, together with any conditions, shall be deposited for permanent record with the Committee, and a copy of such plans and specifications, bearing such approval, together with any conditions, shall be returned to the applicant submitting the same.

Section 9.6. Variances. Either the Board or the Committee may grant to any Lot or Owner thereof such variances from the covenants, conditions, restrictions and provisions set forth herein as it, in its sole discretion, determines is in the best interest of TEC Short Plat No. 3 and Tec Short Plat No. 4. Any variances granted hereunder shall be effective only if made in accordance with applicable law and in writing.

Section 9.7. Proceeding with Work. Upon receipt of approval of the final construction documents from the Committee, the Owner to whom approval is given shall, as soon as practicable, satisfy any and all conditions of such approval and shall diligently proceed with the commencement and completion of all approved excavation, construction, refinishing and alterations. In all cases, work shall commence within twelve (12) months from the date of approval, and if work is not so commenced, approval shall be deemed revoked unless the Committee, pursuant to written request made and received prior to the expiration of said twelve (12) month period, extends the period of time within which work must be commenced.

Section 9.8. Completion of Work. Any Improvement commenced pursuant hereto shall be completed within six (6) months from the date of commencement of construction, except for so long as such completion is rendered impossible, or unless work upon the proposed Improvements would impose a great hardship upon the Owner to whom the Committee's approval is given due to strike, fire, national emergency, natural disaster or other supervening force beyond the control of the Owner. The Committee may, upon written request made and received prior to the expiration of the six (6) month period, extend the period of time within which work must be completed. Failure to comply with this Section 9.8 shall constitute a breach of the Declaration and subject the party in breach to the enforcement procedures set forth herein.

Section 9.9. Construction Deposit. For purposes of protecting the Common Areas and Common Area Improvements against damage during construction by an Owner, his contractors and agents, the Committee is authorized to require a cash deposit from each Owner to whom approval of plans is given of an amount deemed appropriate by the Committee for such purposes ("Construction Deposit"), if the Committee finds that potential damage can be done to the Common Area(s) caused by Owner's proposed construction. The Construction Deposit, however, shall not exceed Two Thousand Dollars (\$2,000.00). In the event an Owner, his contractor, agents or employees causes any damage or destruction to any portion of the Common Areas or Common Area Improvements, the Committee shall notify such Owner and request the replacement or repair of the item or area damaged or destroyed. The Owner shall have a period of (2) two business days after the date or receipt of such notice to advise the Committee of its intended course of action and its schedule for correction of the damage, and to commence such correction. The Committee shall in its sole discretion approve or disapprove such course and schedule, and the Owner agrees to make such changes thereto as are necessary to obtain the Committee's approval. If the Owner fails to correct the damage in the manner or within the time approved by the Committee, the Committee may, at its option, perform such work as is necessary to remedy the situation on behalf and at the expense of the Owner and apply the Construction Deposit against the cost thereof. If the cost of such work exceeds the total amount of the Construction Deposit, the Owner shall pay the Association that excess cost within 10 days of demand by the Committee. Upon completion of construction of the Improvements on the Lot, and following a joint inspection of the Improvements and Lot by the Owner and the Committee to verify that no damage to the Common Areas and/or Common Area Improvements has occurred, the Committee shall make a final determination of compliance and return the remaining balance, if any, of the Construction Deposit to the Owner, without interest within 10 days of such final determination.

Section 9.10. Committee Not Liable. The Committee shall not be liable for any damage, loss or prejudice suffered or claimed by any person on account of:

9.10.1 The approval or disapproval of any plans, drawings and specifications, whether or not in any way defective;

9.10.2 The construction of any Improvement, or performance of any work, whether or not pursuant to approved plans, drawings and specifications;

9.10.3 The development of any Lot within TEC Short Plat No. 3 and Tec Short Plat No. 4,

9.10.4 Injury to any person or property due to construction, the performance of any work, location of any physical object, or resulting from the performance of any work within TEC Short Plat No. 3 and Tec Short Plat No. 4;

9.10.5 The failure of the Owner to comply with any applicable ordinances, codes or regulations, including sensitive or critical areas ordinances; and

9.10.6 Omissions to act done in good faith in the interpretation, administration and enforcement of this Declaration.

Section 9.11. Construction Without Approval. If any Improvement shall be erected, placed or maintained upon any Lot, or any new use commenced upon any Lot, other than in accordance with the approval of the Committee pursuant to the provisions of this Declaration, such alteration, erection, placement, maintenance or use shall be deemed to have been undertaken in violation of this Declaration, and upon written notice from the Committee any such Improvement so altered, erected, placed, maintained or used upon any Lot in violation of this Declaration shall be removed or altered so as to conform to this Declaration. Should such removal, or alteration, or cessation or amendment of use not be accomplished within thirty (30) days after receipt of such notice, then the party in breach of this Declaration shall be subject to the enforcement procedures set forth in this Declaration.

ARTICLE X BUILDING MATERIALS; REQUIRED CONSTRUCTION; LANDSCAPING; OTHER REQUIREMENTS

Section 10.1. Building Materials. Each Residence constructed on a Lot shall be built of new materials except, with approval of the Architectural Control Committee, decorative items such as used brick, weathered planking, and similar items. All visible masonry shall be cultured stone, brick or stucco. Aluminum or "T-111" siding and aluminum window frames are not permitted. Roofing material, types and colors of exterior paint and stain must be submitted to the Committee for approval.

Section 10.2. Minimum Floor Area. The total floor area of the resident structure shall not be less than 3000 square feet. Exclusive of open porches and garages, the main floor shall be not less than 1200 square feet.

Section 10.3. Intentionally unused,

Section 10.4. Roof Drains. Roof drains for Residences installed on all ten (10) lots designated as A through B on TEC Short Plat No. 4 and lots numbered 2 through 9 on TEC Short Plat No. 3 must provide for discharge directly to the storm drainage system.

Section 10.5. Foundation Drains. Footing drains for structures installed on all ten (10) lots designated as A through B on the TEC Short Plat No. 4 and lots numbered 2 through 9 on TEC Short Plat No. 3 must provide for discharge directly to the storm drainage system

Section 10.6. Local Codes. All buildings or Structures shall be constructed in accordance with the governing governmental jurisdiction and other applicable Codes. In the event of a conflict between any applicable codes and this Declaration, the codes shall govern.

Section 10.7. Landscaping. Yards, excluding Native Growth Protection Easement areas, shall be fully landscaped within twelve (12) months after the date construction of the Residence

commences unless extended by the Committee. **No trees outside the building footprint shall be removed without the approval of the City of Kirkland.** No fence shall be erected which shall be over six (6) feet in height. No barbed wire, chain link or corrugated fiberglass fences shall be erected on any Lot. All fences, open and solid, are to meet the standards set by the Committee and must be approved by the Committee prior to construction.

Section 10.8. Garages and Parking. Each Residence shall include a garage sufficient to hold at least two (2) automobiles.

Section 10.9. Driveways. All driveways and parking areas shall be paved with a masonry type material, such as concrete or brick, unless otherwise approved by the Committee. No asphalt or gravel driveways or parking areas shall be permitted without approval of the Committee.

Section 10.10. Fences. All fences shall conform to the fence detail shown on Exhibit B unless otherwise authorized by the Board. Unless otherwise authorized by the Board and the City of Kirkland, no fence, wall, hedge, or mass planting over three feet in height, shall be permitted to extend nearer to any street than the minimum setback line; however, nothing shall prevent, except if disapproved by the governing governmental jurisdiction, erection of a necessary retaining wall, the top of which does not extend more than two feet above the finished grade at the back of said retaining wall. Native Growth Protection Area fencing is approved and installed per the City of Kirkland requirements.

Section 10.11. Contractor. No home may be constructed on any Lot by other than a contractor licensed as a general contractor under the statutes of the State of Washington without the prior approval of the Architectural Control Committee.

ARTICLE XI REGULATION OF OPERATIONS AND USES

Section 11.1. Residential Use. The Lots are intended for and restricted to use as Single Family Residences only, on an ownership, rental or lease basis, and for social, recreational, or other reasonable activities normally incident to such use; provided, however, Declarant may use Lots and Improvements thereon owned by Declarant as sales offices and models.

Section 11.2. No Commercial Uses. No commercial enterprise, including itinerant vendors, shall be permitted on any Lot; provided, however, that the Association may, by adopting rules and regulations, permit specified home occupations to be conducted if allowed by law and if such occupation will not, in the reasonable judgment of the Association, cause traffic congestion or other disruption of the community; and provided further that no signs or advertising devices of any character shall be permitted.

Section 11.3. Garbage. No garbage, refuse, or rubbish shall be deposited or left in TEC Short Plat No. 3 and Tec Short Plat No. 4, unless placed in a suitable covered container. Trash and garbage containers shall not be permitted to be Visible from Neighboring Property, except on

days of trash collections. No incinerator shall be kept or maintained, and no burning of any trash, refuse, or scrap of any kind shall be permitted.

Section 11.4. Nuisances. No noxious or offensive activity shall be conducted in any portion of TEC Short Plat No. 3 and Tec Short Plat No. 4, nor shall anything be done or maintained therein in derogation or violation of the laws of the State of Washington, King County, or any other applicable governmental entity. Nothing shall be done or maintained on any portion of TEC Short Plat No. 3 and Tec Short Plat No. 4 which may be or become an annoyance or nuisance to the neighborhood or detract from the value of the TEC Short Plat No. 3 and Tec Short Plat No. 4 community. The Board shall determine whether any given use of a Residence unreasonably interferes with the rights of the other Owners to the use and enjoyment of their respective Lots and Residences, or of the Common Areas, and such determination shall be final and conclusive.

Section 11.5. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, or kept; provided, however, that dogs, cats, or other conventional household pets may be kept if they are not kept, bred, or maintained for any commercial purposes. No domestic pet may be kept if it is a source of annoyance or a nuisance. The Board shall have the authority to determine whether a particular pet is a nuisance or a source of annoyance, and such determination shall be final and conclusive. Pets shall be registered, licensed, and inoculated from time to time as required by law.

Section 11.6. Vehicle Storage. No storage of goods, vehicles, boats, trailers, trucks, campers, recreational vehicles or other equipment or device shall be permitted, if Visible from a Neighboring Property, and with the exception of daily driven automobiles, on the driveway areas adjacent to garages on the Lots. Temporary parking is allowable if a vehicle is parked for 24 hours or less. Upon 48 hours' notice to the Owner of an improperly parked or stored vehicle, boat, or other equipment, the Board has authority to have removed at the Owner's expense any such items Visible from a Neighboring Property parked on any Lot or within any Common Area for more than 24 hours.

Section 11.7. Utilities Underground. Except for hoses and the like which are reasonably necessary in connection with normal lawn maintenance, no water pipe, sewer pipe, gas pipe, drainage pipe, telephone, power, or television cable, or similar transmission line shall be installed or maintained above the surface of the ground.

Section 11.8. Antennae; Aerials. No external short-wave or citizens' band antennas, freestanding antenna towers, or satellite reception dishes of any kind exceeding eighteen (18) inches in diameter shall be permitted in TEC Short Plat No. 3 and Tec Short Plat No. 4. All television, FM radio antennas and satellite reception dishes having a diameter of eighteen (18) inches or less ("Permitted Dishes") must be physically attached to a structure and must comply with applicable governmental standards and guidelines and any Association rules and regulations. The Association shall have the authority to review, approve, modify or deny an Owner's request for an antenna or Permitted Dish installation.

Section 11.9. Mineral Exploration. No portion of the Properties shall be used in any manner to explore for or to remove any steam, heat, oil or other hydrocarbons, gravel, earth, or any earth substances or other minerals of any kind; provided, however, that this shall not prevent the excavation of earth in connection with the grading or construction of Improvements within a Lot.

Section 11.10. Signs. Except for entrance, street, directional, traffic control, and safety signs, and such promotional signs as may be maintained by Declarant, or agents or contractors of Declarant, or the Association, no signs or advertising devices of any character shall be posted or displayed in the Properties.

Section 11.11. Temporary Structures. No Improvement of a temporary character, trailer, tent, shack, garage, barn or other outbuilding shall be installed, placed or used on any Lot, either temporarily or permanently.

Section 11.12. No Obstruction of Easements. No structure, planting, or other material shall be placed or permitted to remain in or upon TEC Short Plat No. 3 and Tec Short Plat No. 4, which may damage or interfere with any easement or the installation or maintenance of utilities, or which may unreasonably change, obstruct, or retard direction or flow of any drainage channels. No decorative planting, structure or fence may be maintained within an easement area unless specifically approved by the Committee.

Section 11.13. Leasing. No Lot may be leased or rented by any Person for a period of fewer than thirty (30) days, nor shall less than the whole of any Lot be leased or rented. Each lease or rental agreement shall be in writing and shall by its terms provide that it is subject in all respects to the provisions of the Declaration, Articles, Bylaws and rules and regulations as may be adopted pursuant thereto. Any failure by a lessee to comply with the terms of such documents shall be a default under the lease, whether or not it is so expressed therein. Other than the foregoing, there is no restriction on the right of any Owner to lease his Lot.

Section 11.14. Weapons. No firearms of any kind or nature, including rifles, handguns, bows, slingshots, BB guns, slings, traps, or any other like weapon, shall be used or discharged within the Properties except by authorized governmental officials.

ARTICLE XII OWNERS' MAINTENANCE RESPONSIBILITIES

Section 12.1. General. The Owner or Occupant of any Lot shall at all times keep it and the Improvements and appurtenances thereon in a safe, clean and wholesome condition and comply, at its own expense, in all respects with applicable governmental, health, fire and safety ordinances, regulations, requirements and directives, and the Owner or Occupant shall at regular and frequent intervals remove at its own expense any rubbish of any character whatsoever that may accumulate upon such Lot.

Section 12.2. Grounds. Each Owner shall be responsible for the maintenance and repair of all parking areas, driveways, walkways and landscaping on his Lot. Such maintenance and repair shall include, without limitation:

12.2.1 Maintenance of all parking areas, driveways and walkways in a clean and safe condition, including the paving and repairing or resurfacing of such areas when necessary with the type of material originally installed thereon or such substitute therefore as shall, in all respects, be equal in quality, appearance and durability; the removal of debris and waste material and the washing and sweeping of paved areas as required; painting and repainting of striping markers and directional signals as required;

12.2.2 Cleaning, maintaining and relamping of any external lighting fixtures except such fixture as may be the property of any public utility or government body; and

12.2.3 Excluding Common Areas to be maintained by the Association, performance of all necessary maintenance of all landscaping within the Owner's or Occupant's Lot, including the trimming, watering and fertilization of all grass, ground cover, shrubs or trees, removal of dead or waste materials, replacement of any dead or diseased grass, ground cover, shrubs or trees.

Nothing contained herein shall preclude an Owner from recovering from any person liable therefore damages to which such Owner might be entitled for any act or omission to act requiring an expenditure by the Owner for the maintenance and repair of the parking area, driveway, walkway and/or landscaping on his Lot.

Section 12.3. Remedies for Failure to Maintain and Repair.

12.3.1 Remedies. If any Owner shall fail to perform the maintenance and repair required by Section 12.2, then the Board, after fifteen (15) days prior written notice to such delinquent Owner, shall have the right, but not the obligation, to perform such maintenance and repair and to charge as a Particularized Assessment the delinquent Owner and his Lot with the cost of such work, together with interest thereon at a rate to be set by the Board from the date of the Association's advancement of funds for such work to the date of reimbursement of the Association by such Owner. If the delinquent Owner shall fail to reimburse the Association for such cost within ten (10) days after demand therefore, the Association may, at any time within two (2) years after such advance, enforce the lien in accordance with the provisions of this Declaration.

12.3.2 Nonexclusive Remedy. The foregoing lien and the rights to foreclose thereunder shall be in addition to, and not in substitution for, all other rights and remedies which the Board may have hereunder and by law, including any suit for specific performance or to recover a money judgment for unpaid assessments. If any Owner shall fail to perform such maintenance and repair and, notwithstanding such failure, the Board should fail to exercise its rights and remedies hereunder, then any other Owner, after fifteen (15) days' prior written notice to the Board and such delinquent Owner, shall have the right, but not the obligation, to perform such maintenance and repair and shall have the same rights and remedies with respect thereto as are provided herein to the Board.

ARTICLE XIII DAMAGE OR LOSS TO IMPROVEMENTS

Section 13.1. Restoration of Common Areas. Except as otherwise provided in this Declaration, in the event of any destruction of any portion of the Common Areas, Common Area Improvements, or any other Improvements insured by the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance shall be used for such purpose. The Board of Directors shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Common Areas, Common Area Improvements, and all other Improvements shall be reconstructed or rebuilt substantially in accordance with the original construction plans if they are available, with such changes as are recommended by the Architectural Control Committee. In the event that the amount available from the proceeds of such insurance policies for such restoration and repair shall be less than the estimated cost of restoration and repair, a special assessment shall be levied by the Board of Directors upon the Owners and their Lots in order to provide the necessary funds for such reconstruction over and above the amount of any insurance proceeds available for such purpose.

Section 13.2. Restoration Obligations of Owners. In the event of the damage or destruction of any portion of a Lot or the Improvements thereon, then it shall be the duty of the Owner of such Lot, as soon as may be practical, to repair and replace the damage or destruction, or such portion thereof as will render such damage or destruction indiscernible from the exterior boundaries of the Lot. Any reconstruction, replacement or repair required by this section shall be in accordance with the original plans and specifications of the Lot or plans and specifications approved by both the Architectural Control Committee.

Section 13.3. Condemnation. In the event the whole, or any part, of the Common Areas shall be taken or condemned by any authority exercising the power of eminent domain, the Board shall have the exclusive rights to prosecute the proceedings; provided, however, that nothing contained herein to the contrary shall prevent an Owner from joining in the proceeding for purposes of claiming that the condemnation action has materially affected said Owner's Lot and any Improvements thereon. The entire award relating to the taking of any part of the Common Area shall be paid to the Board in trust for the benefit of the Owners. The Board shall distribute the award to the Owners in proportion to their Common Expense Percentages; provided, that if a Lot is encumbered by a Mortgage or Mortgages which has or have a provision relating to condemnation, then in lieu of distributing the award to the Owner of said Lot, the Board shall distribute the award directly to the Mortgagee of the Mortgage with the highest priority and seniority for distribution or payment in accordance with the terms and conditions of said Mortgagee's Mortgage.

ARTICLE XIV DURATION AND AMENDMENT

Section 14.1. Duration. This Declaration shall continue in full force until December 31, 2045, unless a Declaration of Termination or Declaration of Renewal is recorded meeting the requirements of an amendment to this Declaration as set forth in Section 14.2. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Lot from the appurtenant Membership in the Association, as long as this Declaration shall continue in full force and effect.

Section 14.2. Amendment. Notice of the subject matter of a proposed amendment to this Declaration in reasonably detailed form shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered. The amendment shall be adopted by the vote, in person or by proxy, or written consent of seventy percent (70%) of the voting power of the Membership of the Association; provided, however, that so long as Declarant owns a minimum of one (1) Lots in TEC Short Plat No. 3 or Tec Short Plat No. 4, or for a period of ten (10) years from the recording of this Declaration, whichever is earlier, no termination or other amendment shall be effective without the written approval of Declarant, which approval shall not be unreasonably withheld. A copy of each amendment which has been properly adopted shall be certified by at least two (2) officers of the Association and the amendment shall be effective when the Certificate of Amendment is recorded. Notwithstanding the foregoing, any of the following amendments, to be effective, must be approved in writing by all of the record holders of First Mortgages encumbering Lots in TEC Short Plat No. 3 and Tec Short Plat No. 4 at the time of such amendment:

14.2.1 Any amendment which affects or purports to affect the validity or priority of encumbrances or the rights or protections granted to Mortgagees as provided in Section 4.11 or which seeks to modify Section 14.2 hereof;

14.2.2 Any amendment which would necessitate a Mortgagee after it has acquired a Lot through foreclosure, to pay more than its proportionate share of any unpaid assessment or assessments; or

14.2.3 Any amendment which would or could result in a Mortgage being canceled by forfeiture.

Section 14.3. Modification by Declarant. For so long as Declarant is the Owner of at least two (2) of the Lots, Declarant, acting alone, may modify or amend this Declaration; provided, however, that (i) any such modification or amendment must be within the spirit and overall intention of the development as set forth herein; (ii) prior to any such modification or amendment, Declarant shall obtain the approval of any governmental agency to such modification or amendment where such approval is necessary; and (iii) any modification or amendment shall not provide for any type of Improvements or uses not presently permitted by this Declaration nor declare any then permitted use to not be permitted. No such modification or amendment shall be effective until the Owners have been given thirty (30) days' prior written notice of the proposed change, and a proper instrument in writing has been executed, acknowledged and recorded by Declarant.

Section 14.4. Governmental Regulation. All valid governmental enactments, ordinances and regulations are deemed to be part of this Declaration and to the extent that they conflict with any provision, covenant, condition or restriction hereof, said conflicting governmental enactment, ordinance and regulation shall control and the provision, covenant, condition or restriction hereof in conflict therewith shall be deemed (i) amended to the extent necessary to bring it into conformity with said enactment, ordinance and regulation while still preserving the intent and spirit of the provision, covenant, condition or restriction or (ii) stricken here from should no amendment conforming to the governmental enactment, ordinance or restriction be capable of preserving the intent and spirit of said provision, covenant, condition or restriction.

ARTICLE XV WAIVER

Neither Declarant, the Association, the Board, the Committee, nor their successors or assigns, shall be liable to any Owner or Occupant of TEC Short Plat No. 3 and Tec Short Plat No. 4 by reason of any mistake in judgment, negligence, nonfeasance, action or inaction or for the enforcement or failure to enforce any provision of this Declaration. Every Owner or Occupant of any of the Lots by acquiring its interest therein agrees that it will not bring any action or suit against Declarant, the Association, the Board or the Committee, or their successors or assigns, to recover any such damages or to seek equitable relief because of same.

ARTICLE XVI GENERAL PROVISIONS

Section 16.1. Legal Proceedings. Failure to comply with any of the terms of this Declaration, the Articles and Bylaws of the Association or regulations adopted pursuant thereto, by an Owner or Occupant, his guests, employees, invitees or tenants, shall be grounds for relief which may include, without limitation, an action to recover sums due for damages, injunctive relief, foreclosure of lien, or any combination thereof, which relief may be sought by Declarant, the Association, the Board of Directors or, if appropriate, by an aggrieved Owner. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision, or any other provision hereof. In addition to any other available remedy, the Association, the Board, any Owner (not at the time in default hereunder) or Declarant shall be entitled to bring an action for damages against any defaulting Owner and, in addition, may enjoin any violation of this Declaration. Any judgment rendered in any action or proceeding pursuant thereto shall include a sum for attorneys' fees, including appeals, in such amount as the Court may deem reasonable, in favor of the prevailing party, as well as the amount of any delinquent payment, together with interest, costs of collection and court costs. Each remedy provided for in this Declaration shall be cumulative and not exclusive or exhaustive.

Section 16.2. Severability. The provisions hereof shall be deemed independent and severable, and a determination of invalidity or partial invalidity or enforceability of any one provision or portion hereof by a court of competent jurisdiction shall not affect the validity or enforceability of any other provisions hereof.

Section 16.3. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the creation and operation of the development and for the maintenance of the Common Areas, and any violation of this Declaration shall be deemed to be a nuisance.

Section 16.4. Headings; Gender; Etc. The article and section headings, titles and captions have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Unless the context otherwise requires, as used herein the singular and the plural shall each include the other and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

Section 16.5. Construction and Sales by Declarant. Nothing in this Declaration shall limit, and no Owner shall do anything which shall interfere with, the right of Declarant to complete any construction of Improvements on the Lots owned by Declarant and the Common Areas, or to alter the foregoing and its construction plans and designs, or to construct such additional Improvements on such Lots and Common Areas as Declarant deems advisable prior to the expiration of the Declarant Control Period. Each Owner, by accepting a deed of a Lot from Declarant, hereby acknowledges that the activities of Declarant may constitute a temporary inconvenience or nuisance to the Owners. Such right shall include, but shall not be limited to, erecting, constructing and maintaining on TEC Short Plat No. 3 and Tec Short Plat No. 4 such structures and displays as may be reasonably necessary for the conduct of its business or completing the work and disposing of the Lots by sale, lease or otherwise. Declarant may use any Lots owned by Declarant as models or real estate sales or leasing offices. This Declaration shall not limit the right of Declarant at any time prior to conveyance of title by deed to the last Lot to establish on the Lots owned by Declarant and the Common Areas additional easements, reservations and rights-of-way to itself, to utility companies, or to other Persons as may from time to time be reasonably necessary for the proper development and disposal of the Lots. Such easements may be created for the construction, installation, maintenance, removal, replacement, operation and use of utilities, including, without limitation, sewers, water and gas pipes and systems, drainage lines and systems, electric power and conduit lines and wiring, telephone conduits, lines and wires, and other utilities, public or private, beneath the ground surface, except vaults, vents, access structures and other facilities required to be above ground surface by good engineering practice, including the right to dedicate, grant or otherwise convey easements for rights-of-way to any public utility or governmental entity for such purposes. In the performance of any work in connection with such utilities, Declarant shall not unreasonably interfere with or disrupt the use of the Common Areas or the facilities located thereon and shall replace and restore the areas and facilities as nearly as possible to the condition in which they were prior to the performance of such work. All or any portion of the rights of Declarant hereunder may be assigned to any successor or successors to all or part of Declarant's respective interest in the Properties, by an express written and recorded assignment.

Section 16.6. Hold Harmless and Indemnification. Each Owner shall be liable to the Association for any injury to any person or damage to the Common Areas, Common Area Improvements, or any equipment thereon which may be sustained by reason of the negligence of said Owner or of his guests, employees, invitees or tenants, to the extent that any such damage shall not be covered by insurance. The costs incurred by the Association as a result of such

damage shall be deemed a Particularized Assessment of such Owner and his Lot, and shall be subject to levy, enforcement and collection by the Board of Directors in accordance with the assessment and lien procedures provided in this Declaration. The Association further reserves the right to charge a Special Assessment equal to the increase, if any, in the insurance premium directly attributable to the damage or injury caused by such Owner or by the use of the Lot of such Owner. The Association shall hold each Owner safe and harmless from liability for loss or injuries occurring on the Common Areas to the extent that such loss or injuries are covered by insurance then maintained by the Association.

Section 16.7. No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of TEC Short Plat No. 3 and Tec Short Plat No. 4, to the public, or for any public use.

Section 16.8. Nonliability and Indemnification. Except as provided herein, no right, power or responsibility conferred on the Board or the Architectural Control Committee by this Declaration or by the Articles or the Bylaws shall be construed as a duty, obligation or disability charged upon the Board, the Committee, any member of the Board or of the Committee, or any other officer, employee or agent of the Declarant or the Association. No such Person shall be liable to any party other than the Association or a party claiming in the name of the Association for injuries or damage resulting from such Person's acts or omissions within what such Person reasonably believed to be the scope of his Association duties ("Official Acts"), except to the extent that such injuries or damages result from such Person's willful or malicious misconduct. No such Person shall be liable to the Association or to any party claiming in the name of the Association for injuries or damage resulting from such Person's Official Acts, except to the extent that such injuries or damage result from such Persons willful or malicious misconduct. The Association shall pay all expenses incurred by, and satisfy any judgment or fine levied against, any Person as a result of any action or threatened action against such Person to impose liability on such Person for his Official Acts, provided that:

16.8.1 The Board determines that such Person acted in good faith and in a manner such Person reasonably believed to be in the best interests of the Association;

16.8.2 In the case of a criminal proceeding, the Board determines that such Person had no reasonable cause to believe his conduct was unlawful; and

16.8.3 In the case of an action or threatened action by or in the name of the Association, the Board determines that such Person acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

16.8.4 Any determination of the Board required under this Section 16.8 must be approved by a majority vote of a quorum consisting of Directors who are not parties to the action or threatened action giving rise to the indemnification. If the Board fails or refuses to make any such determination, such determination may be made by the vote of a majority of a quorum of the Members of the Association voting at a meeting of the Association called for such purpose, provided that the Person to be indemnified shall not be entitled to vote.

16.8.5 Payments made hereunder shall include amounts paid and expenses incurred in settling any such action or threatened action. This Section 16.8 shall be construed to authorize payments and indemnification to the fullest extent now or hereafter permitted by applicable law.

16.8.6 The entitlement to indemnification hereunder shall inure to the benefit of the estate, executor, administrator, heirs, legatees or devisees of any Person entitled to such indemnification.

Section 16.9. Notices. Except as otherwise provided in this Declaration, in each instance in which notice is to be given to an Owner, the same shall be in writing and may be delivered personally to the Owner, in which case personal delivery of such notice to one or more co-owners of a Lot or to any general partner of a partnership owning a Lot shall be deemed delivery to all co-owners or to the partnership, as the case may be. Personal delivery of such notice to any officer or agent for the service of process on a corporation shall be deemed delivery to the corporation. In lieu of the foregoing, such notice may be delivered by regular United States mail, postage prepaid, addressed to the Owner at the most recent address furnished by such Owner to the Association or, if no such address shall have been furnished, to the street address of such Lot. Such notice shall be deemed delivered two (2) business days after the time of such mailing, except for notice of a meeting of Members or of the Board of Directors, in which case the notice provisions of the Bylaws of the Association shall control. Any notice to be given to the Association may be delivered personally to any Member of the Board of Directors, or sent by United States mail, postage prepaid, addressed to the Association at such address as shall be fixed from time to time and circulated to all Owners.

THIS DECLARATION has been executed on the date first written above.

DECLARANT:

Bennett-SFS, L.L.C.

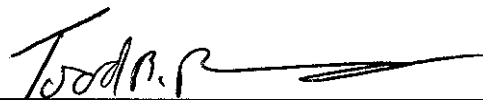
By: 
Todd Bennett
 Its: Member

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTIES

Lots 2 thru 10 and Tract A subdivided as shown in Plat of TEC Short Plat No. 3, recorded in Book 187 of surveys, pages 069 through 071, recording number 20050523900009;

And

Lots A thru B subdivided as shown in Plat of TEC Short Plat No. 4, recorded in Book 187 of surveys, pages 072 through 073, recording number 20050523900009;

all being records King County, Washington .

EXHIBIT "B"
FENCE DETAIL

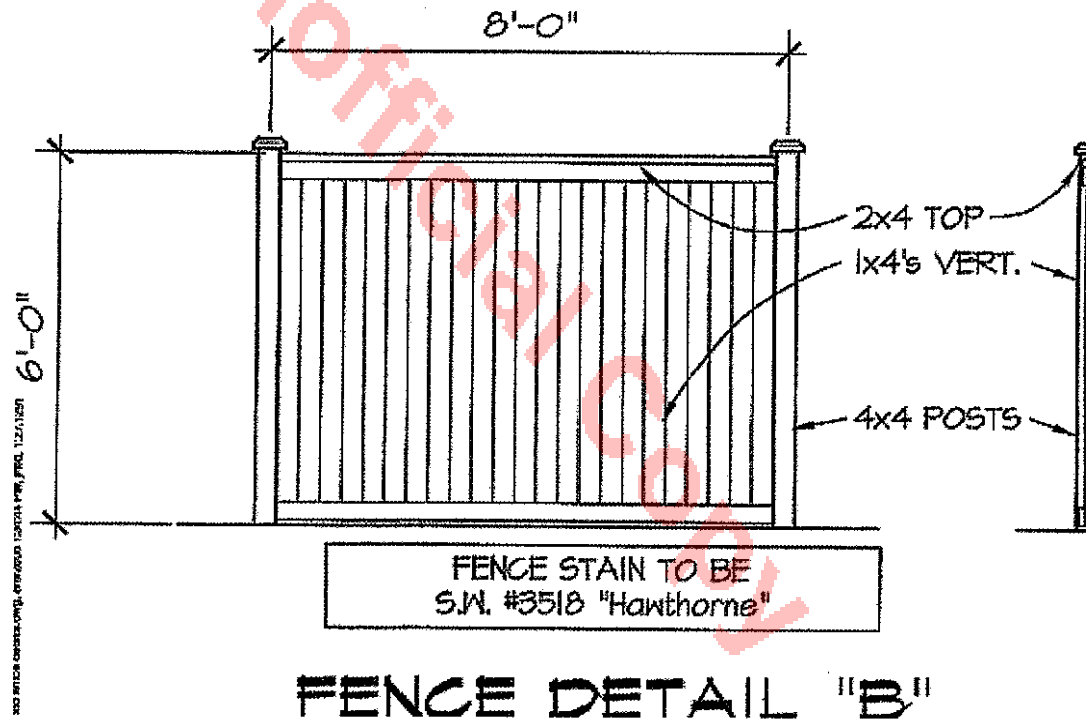
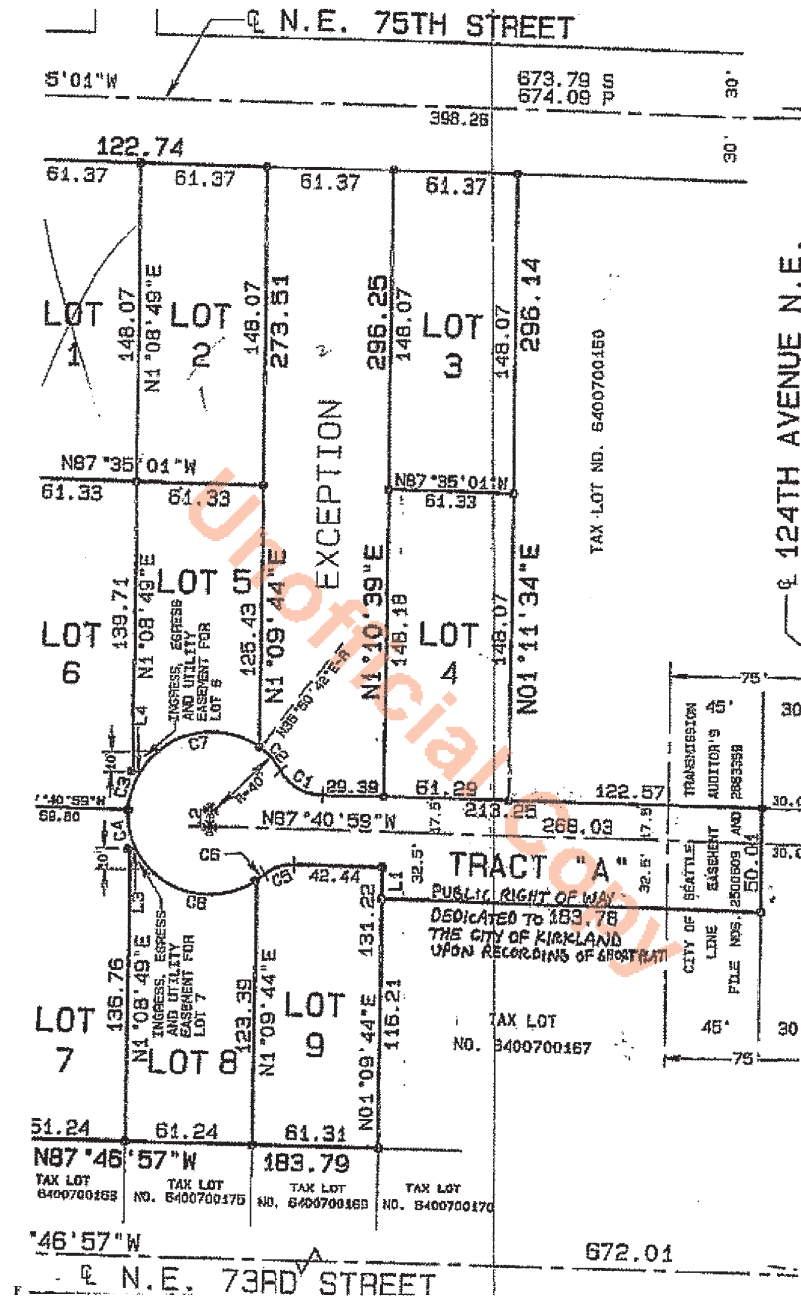


EXHIBIT "C"
LANDSCAPE MAINTENANCE FOR "TRACT A"





CITY OF KIRKLAND

Planning and Building Department

123 Fifth Avenue, Kirkland, WA 98033

425.587.3600 - www.kirklandwa.gov

CITY OF KIRKLAND NOTICE OF APPLICATION

ADSIT SHORT PLAT, CASE NO. [SUB20-00171](#)

(An electronic copy of this notice is available at www.kirklandwa.gov/depart/planning/Development_Info/Notices.)

PROPOSAL: Mike Smith of Merit Homes, Inc., the applicant, is requesting a Process I Short Plat Permit to divide one 21,809 SF parcel into 3 parcels of approximately 7,206 SF, 7,277 SF, and 7,326 SF in the RSX 7.2 zone. The application was received by the City on March 12, 2020 and was deemed complete on April 10, 2020. The Notice of Application for this project was delayed due to Governor Inslee's "Stay Home, Stay Healthy" proclamation (20-25).

LOCATION: [7319 124th Avenue NE](#)

NEIGHBORHOOD: South Rose Hill

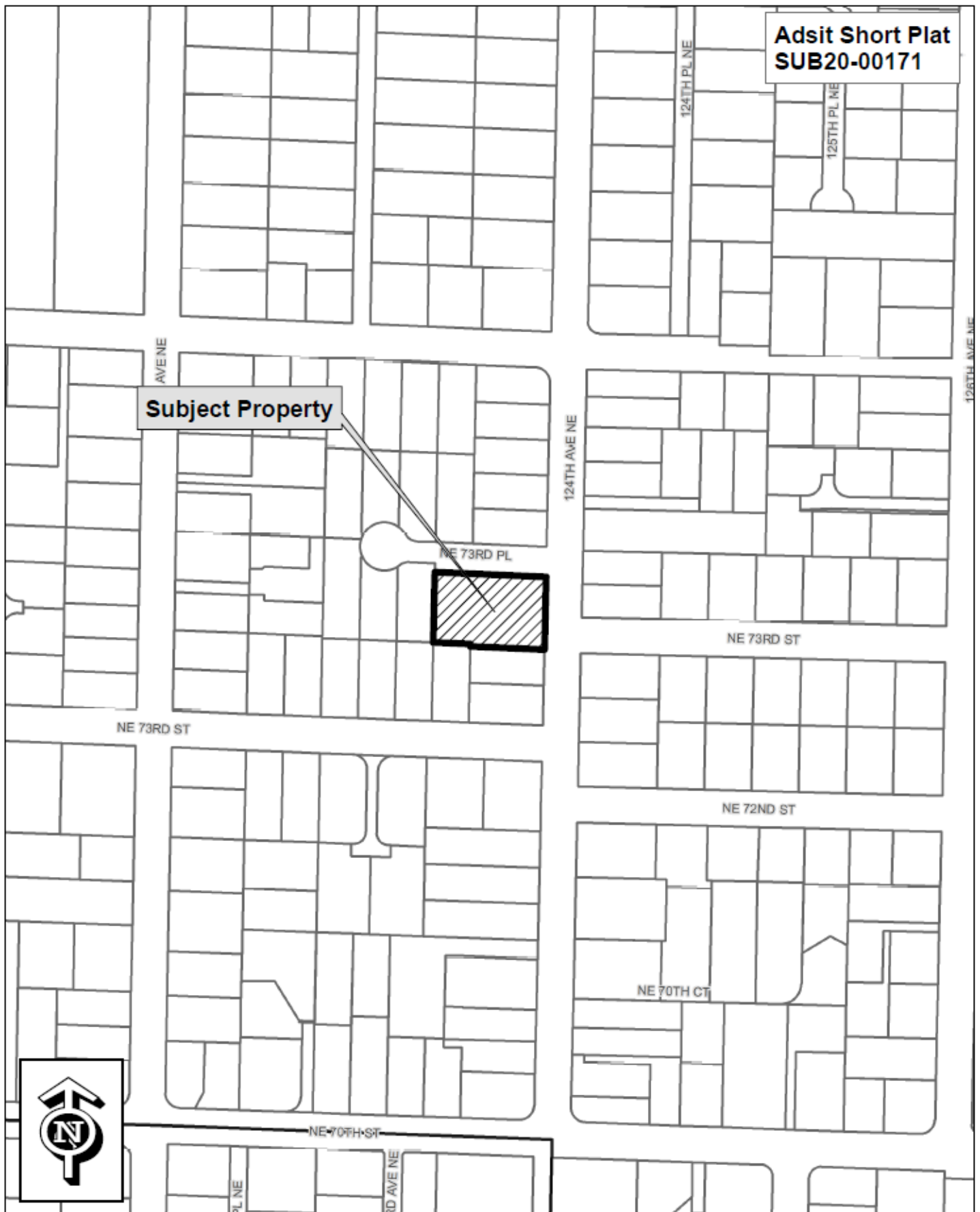
REVIEW PROCESS: The decision on this application will be made by the Planning Director. Prior to the decision, there is an opportunity for the public to submit written comments, as described below. The Director will also receive a report from the Planning and Building Department staff making a recommendation on the application. The decision will be based on whether the application complies with Kirkland's Zoning Code and other applicable codes.

PUBLIC COMMENT: Comments may be provided in writing only. **To be considered, written comments must be received prior to 5 p.m. on August 10, 2020.** Send written comments to project planner, Kaylie Duffy, 123 5th Avenue, Kirkland, WA 98033 or to e-mail kduffy@kirklandwa.gov. **Please indicate your name, mailing address, e-mail address and refer to permit number SUB20-000171.** A copy of the Director's decision will be mailed to those providing written comments before the comment deadline. Others may obtain copies from the Planning and Building Department.

APPEALS: *The Planning Director's decision may be appealed to the Hearing Examiner only by the applicant or those who submitted written comments by the comment deadline.* Additional information about how to appeal will appear in the staff report and Planning Director's decision.

FOR MORE INFORMATION: For more information about this application, please contact project planner, Kaylie Duffy, City of Kirkland Planning and Building Department at 425.587.3228 or kduffy@kirklandwa.gov. (Additional, including the proposed project drawings and technical and environmental documents, is available at www.mybuildingpermit.com). Application materials are contained in the official file in the Planning and Building Department, 123 5th Avenue, Kirkland and may be requested from the project planner. Existing environmental documents that evaluate the proposal include: Arborist Report.

Publishing Date: July 23, 2020



20050523900009

187/069

TEC SHORT PLAT NO. 3

A PORTION OF THE SE1/4 OF THE NW1/4 SECTION 9, T.25N., R.5E., W.M.

Short Plat ATTACHMENT 5
City of Kirkland

FILE NO. SPL04-00010

SHORT SUBDIVISION DEDICATION

KNOW ALL PEOPLE BY THESE PRESENTS that we, the undersigned being all of the owners of the land hereby short subdivided, hereby declare this short plat to be the graphic representation of the short subdivision made hereby, and do hereby dedicate to the use of the public forever all streets and avenues not shown as private hereon and dedicate the use thereof for all public purposes not inconsistent with the use thereof for public highway purposes, and also the right to make all necessary slopes for cuts and fills upon the lots shown hereon in the original reasonable grading of said streets and avenues, and further dedicate to the use of the public all the easements and tracts shown on this short plat for all public purposes as indicated hereon, including but not limited to parks, open space, utilities and drainage unless such easements or tracts are specifically identified on this short plat as being dedicated or conveyed to a person or entity other than the public.

Further, the undersigned owners of the land hereby short subdivided waive for themselves, their heirs and assigns and any person or entity deriving title from the undersigned, any and all claims for damages against the City of Kirkland, its successors and assigns which may be occasioned by the establishment, construction, or maintenance of roads and/or drainage systems within this short subdivision other than claims resulting from inadequate maintenance by the City of Kirkland.

Further, the undersigned owners of the land hereby short subdivided agree for themselves, heirs and assigns to indemnify and hold the City of Kirkland, its successors and assigns, harmless from any damage, including any cost of defense, claimed by persons within or without this short subdivision to have been caused by alterations of the ground surface, vegetation, drainage or surface or subsurface water flows within this short subdivision or by establishment, construction or maintenance of the roads within this short subdivision. Provided, this waiver and indemnification shall not be construed as releasing the City of Kirkland, its successors or assigns from liability for damages, including the cost of defense, resulting in whole or in part from the negligence of the City of Kirkland, its successors, or assigns.

This subdivision dedication, waiver of claims and agreement to hold harmless is made with the free consent and in accordance with the desires of said owners.

IN WITNESS WHEREOF we set our hands and seals.

Timothy E. Cowen
TIMOTHY E. COWEN
PRESIDENT OF TEC HOMES, INC.

Cynthia L. Altheide
REPRESENTATIVE OF ACTION MORTGAGE COMPANY
(A SUBSIDIARY OF STERLING SAVINGS BANK)

Julie Mulhern
FABRICE HUDRY
Julie Mulhern, Asst. Vice President
REPRESENTATIVE OF WASHINGTON
MUTUAL BANK, FA

Marie-Alexandre Hudry
MARIE-ALEXANDRE HUDRY



RECORDER'S CERTIFICATE

Filed for record this 23 DAY OF MAY 2005, AT 3:10 P.M.
IN BOOK 187 OF SURVEYS AT PAGES 069-071.

Donna M. Sullivan
Supt. of RECORDS

SURVEYOR'S CERTIFICATE

This map correctly represents a survey made by me or under my direction, in conformance with the requirements of the Survey Recording Act at the request of TEC HOMES INC ON JANUARY 14TH, 20 05.

Jeff R. Harstad

13731
Certificate No.



HARSTAD CONSULTANTS

LAND SURVEYORS
2024 W. LK. SAMMAMISH P.WY. NE
REDMOND, WA. 98052
(425) 747-8336

ACKNOWLEDGEMENTS

STATE OF WASHINGTON
COUNTY OF KING

THIS IS TO CERTIFY THAT ON THIS 21st DAY OF JANUARY, 2005, BEFORE ME PERSONALLY APPEARED TIMOTHY E. COWEN TO BE KNOWN TO BE THE REPRESENTATIVE OF TEC HOMES, INC. WHO EXECUTED THIS SHORT PLAT AND ATTACHMENTS AND, WHERE APPLICABLE VOLUNTARILY EXECUTED THE ATTACHED OR REFERENCED DEED OF DEDICATION FOR THE USES AND PURPOSES MENTIONED THEREIN, AND ON OATH, STATED THAT HE WAS AUTHORIZED TO EXECUTE THIS SHORT PLAT AND ANY DEED OF DEDICATION IT MAY ENCOMPASS. WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.



Cynthia L. Altheide
NOTARY PUBLIC IN AND FOR THE
STATE OF WASHINGTON, RESIDING AT
12-26-06

MY COMMISSION EXPIRES ON

STATE OF WASHINGTON
COUNTY OF KING

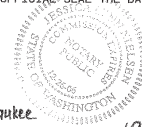
THIS IS TO CERTIFY THAT ON THIS 24TH DAY OF JANUARY, 2005, BEFORE ME PERSONALLY APPEARED CYNTHIA L. ALTHEIDE TO ME KNOWN TO BE THE REPRESENTATIVE OF ACTION MORTGAGE COMPANY (A SUBSIDIARY OF STERLING SAVINGS BANK), WHO EXECUTED THIS SHORT PLAT AND ATTACHMENTS AND, WHERE APPLICABLE VOLUNTARILY EXECUTED THE ATTACHED OR REFERENCED DEED OF DEDICATION FOR THE USES AND PURPOSES MENTIONED THEREIN, AND ON OATH, STATED THAT HE/SHE WAS AUTHORIZED TO EXECUTE THIS SHORT PLAT AND ANY DEED OF DEDICATION IT MAY ENCOMPASS. WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.



Cynthia L. Altheide
NOTARY PUBLIC IN AND FOR THE
STATE OF WASHINGTON, RESIDING AT
REDFORD, WASHINGTON
MY COMMISSION EXPIRES ON 5/7/07

STATE OF WASHINGTON
COUNTY OF KING

THIS IS TO CERTIFY THAT ON THIS 14TH DAY OF JAN, 2005, BEFORE ME PERSONALLY APPEARED FABRICE AND MARIE-ALEXANDRE HUDRY, WHO EXECUTED THIS SHORT PLAT AND ATTACHMENTS AND, WHERE APPLICABLE VOLUNTARILY EXECUTED THE ATTACHED OR REFERENCED DEED OF DEDICATION FOR THE USES AND PURPOSES MENTIONED THEREIN, AND ON OATH, STATED THAT THEY WERE AUTHORIZED TO EXECUTE THIS SHORT PLAT AND ANY DEED OF DEDICATION IT MAY ENCOMPASS. WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.



Julie Mulhern
NOTARY PUBLIC IN AND FOR THE
STATE OF WASHINGTON, RESIDING AT
12-26-06
MY COMMISSION EXPIRES ON

STATE OF WASHINGTON
COUNTY OF KING

THIS IS TO CERTIFY THAT ON THIS 19 DAY OF JANUARY, 2005, BEFORE ME PERSONALLY APPEARED JULIE MULHERN TO ME KNOWN TO BE THE REPRESENTATIVE OF WASHINGTON MUTUAL SAVINGS BANK, WHO EXECUTED THIS SHORT PLAT AND WHO EXECUTED THIS SHORT PLAT AND ATTACHMENTS AND, WHERE APPLICABLE VOLUNTARILY EXECUTED THE ATTACHED OR REFERENCED DEED OF DEDICATION FOR THE USES AND PURPOSES MENTIONED THEREIN, AND ON OATH, STATED THAT HE/SHE WAS AUTHORIZED TO EXECUTE THIS SHORT PLAT AND ANY DEED OF DEDICATION IT MAY ENCOMPASS. WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR FIRST ABOVE WRITTEN.



Lisa L. Morehead
NOTARY PUBLIC IN AND FOR THE
STATE OF WASHINGTON, RESIDING AT
Wisconsin 8-12-07
MY COMMISSION EXPIRES ON



20050523900009

187/070

TEC SHORT PLAT NO. 3

A PORTION OF THE SE1/4 OF THE NW1/4 SECTION 9, T.25N., R.5E., W.M.

Short Plat
City of Kirkland

ATTACHMENT 5

FILE NO. SPL04-00010

LEGAL DESCRIPTION

THE NORTH 50 FEET OF LOT 6 AND ALL OF LOTS 7 AND 8, BLOCK 2, ORCHARD HEIGHTS ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 19 OF PLATS, PAGE(S) 89, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THE SOUTH 120 FEET OF THE NORTH 170 FEET OF SAID LOT 6;

EXCEPT THE SOUTH 130 FEET OF SAID LOT 7;

AND EXCEPT THAT PORTION OF THE SOUTH 120 FEET OF THE NORTH 170 FEET OF SAID LOT 7 LYING EAST OF THE EAST LINE OF THE WEST 61.3 FEET OF SAID LOT 7;

AND EXCEPT THE SOUTH 130 FEET OF SAID LOT 8;

TOGETHER WITH LOT 3, BLOCK 2, ORCHARD HEIGHTS, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 19 OF PLATS, PAGE(S) 89, RECORDS OF KING COUNTY, WASHINGTON.

TOGETHER WITH LOT 4, BLOCK 2, ORCHARD HEIGHTS, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 19 OF PLATS, PAGE(S) 89, RECORDS OF KING COUNTY, WASHINGTON.

EXCEPT THAT PORTION OF SAID LOTS DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF N.E. 75TH STREET AND 124TH AVENUE N.E.; SAID INTERSECTION BEING A MONUMENT IN CASE AS EXISTED ON FEBRUARY 25, 2004, THENCE S4°13'24"W ALONG THE CENTERLINE OF SAID 124TH AVENUE N.E., A DISTANCE OF 325.88 FEET; THENCE LEAVING SAID CENTERLINE N87°40'59"W, A DISTANCE OF 30.01 FEET TO THE SOUTHEAST CORNER OF LOT 5, BLOCK 2, SAID ORCHARD HEIGHTS ADDITION, THENCE CONTINUING N87°40'59"W ALONG THE SOUTH LINE OF SAID LOT 5 AND LOT 4, A DISTANCE OF 183.86 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING N87°40'59"W ALONG THE SOUTH LINE OF SAID LOT 4, A DISTANCE OF 29.39 FEET TO A POINT ON A TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 25.00 FEET; THENCE LEAVING SAID SOUTH LINE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 56°53'47", AN ARC DISTANCE OF 24.83 FEET TO A REVERSE CURVE HAVING A RADIUS OF 40.00 FEET, THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 23°22'06", AN ARC DISTANCE OF 16.31 FEET TO THE WEST LINE OF SAID LOT 4; THENCE N4°09'44"E ALONG SAID WEST LINE, A DISTANCE OF 273.51 FEET TO THE SOUTH MARGIN OF SAID N.E. 75TH STREET; THENCE S87°35'01"E ALONG SAID SOUTH MARGIN, A DISTANCE OF 61.37 FEET; THENCE LEAVING SAID SOUTH MARGIN S1°10'39"W, A DISTANCE OF 296.25 FEET TO THE TRUE POINT OF BEGINNING.

SITUATE IN THE CITY OF KIRKLAND, COUNTY OF KING, STATE OF WASHINGTON.

CITY OF KIRKLAND

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

EXAMINED, REVIEWED, AND APPROVED BY THE CITY OF KIRKLAND PURSUANT TO THE SHORT SUBDIVISION PROVISIONS OF TITLE 22 (LAND SUBDIVISION). KIRKLAND MUNICIPAL CODE, THIS 14th DAY OF May, 2005

Eric Smith
DIRECTOR, DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

DEPARTMENT OF ASSESSMENT

EXAMINED AND APPROVED THIS 23rd DAY OF May, 2005

Scott Noble *David Kinsinger*
KING COUNTY ASSESSOR Deputy Assessor
Pcl. #640070-0130, 0131, 0141, 0160

RECORDER'S CERTIFICATE

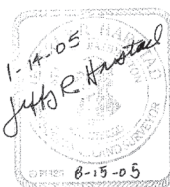
Filed for record this 23rd day of May at 11 in book 1 of 1
of pages 1 at the request of See Sheet

Manager

Supt. of Records

NOTES

1. ADDRESSING SHALL BE IN ACCORDANCE WITH KIRKLAND BUILDING DIVISION POLICY MANUAL NUMBER 9.001, "ASSIGNMENT OF STREET AND ROAD SIGNAGE".
2. UTILITY MAINTENANCE: EACH PROPERTY OWNER SHALL BE RESPONSIBLE FOR MAINTENANCE OF THE SANITARY SEWER OR STORM WATER STUB FROM THE POINT OF USE ON THEIR OWN PROPERTY TO THE POINT OF CONNECTION IN THE CITY SANITARY SEWER MAIN OR STORM WATER MAIN. ANY PORTION OF A SANITARY SEWER OR SURFACE WATER STUB, WHICH JOINTLY SERVES MORE THAN ONE PROPERTY, SHALL BE JOINTLY MAINTAINED AND REPAIRED BY THE PROPERTY OWNERS SHARING SUCH STUB. THE JOINT USE AND MAINTENANCE SHALL "RUN WITH THE LAND" AND WILL BE BINDING ON ALL PROPERTY OWNERS WITHIN THIS SUBDIVISION, INCLUDING THEIR HEIRS, SUCCESSORS AND ASSIGNS.
3. PUBLIC RIGHT-OF-WAY SIDEWALK AND VEGETATION MAINTENANCE: EACH PROPERTY OWNER SHALL BE RESPONSIBLE FOR KEEPING THE SIDEWALK ABUTTING THE SUBJECT PROPERTY CLEAN AND LITTER FREE. THE PROPERTY OWNER SHALL ALSO BE RESPONSIBLE FOR THE MAINTENANCE OF THE VEGETATION WITHIN THE ABUTTING LANDSCAPE STRIP. THE MAINTENANCE SHALL "RUN WITH THE LAND" AND WILL BE BINDING ON ALL PROPERTY OWNERS WITHIN THIS SUBDIVISION, INCLUDING THEIR HEIRS, SUCCESSORS AND ASSIGNS.



HARSTAD CONSULTANTS

LAND SURVEYORS
2024 W. LK. SAMAMISH PWY. NE
REDMOND, WA 98052
(425) 747-8336

SHEET 2 OF 3

224

187/07

Short Plat
City of Kirkland

ATTACHMENT 5

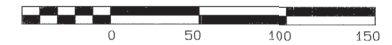
A PORTION OF THE SE1/4 OF THE NW1/4 SECTION 9, T.25N., R.5E., W.M.

FILE NO. SPL04-00010



1"=50'

GRAPHIC SCALE



HORIZONTAL DATUM

KING COUNTY AERIAL SURVEY (K.C.A.S.)

LEGEND

- - SET 1/2" REBAR W/CAP-LS13731
 ● - SET STANDARD CITY OF KIRKLAND MON IN CASE
 P - PLAT
 S- SURVEY
 M - MEASURE

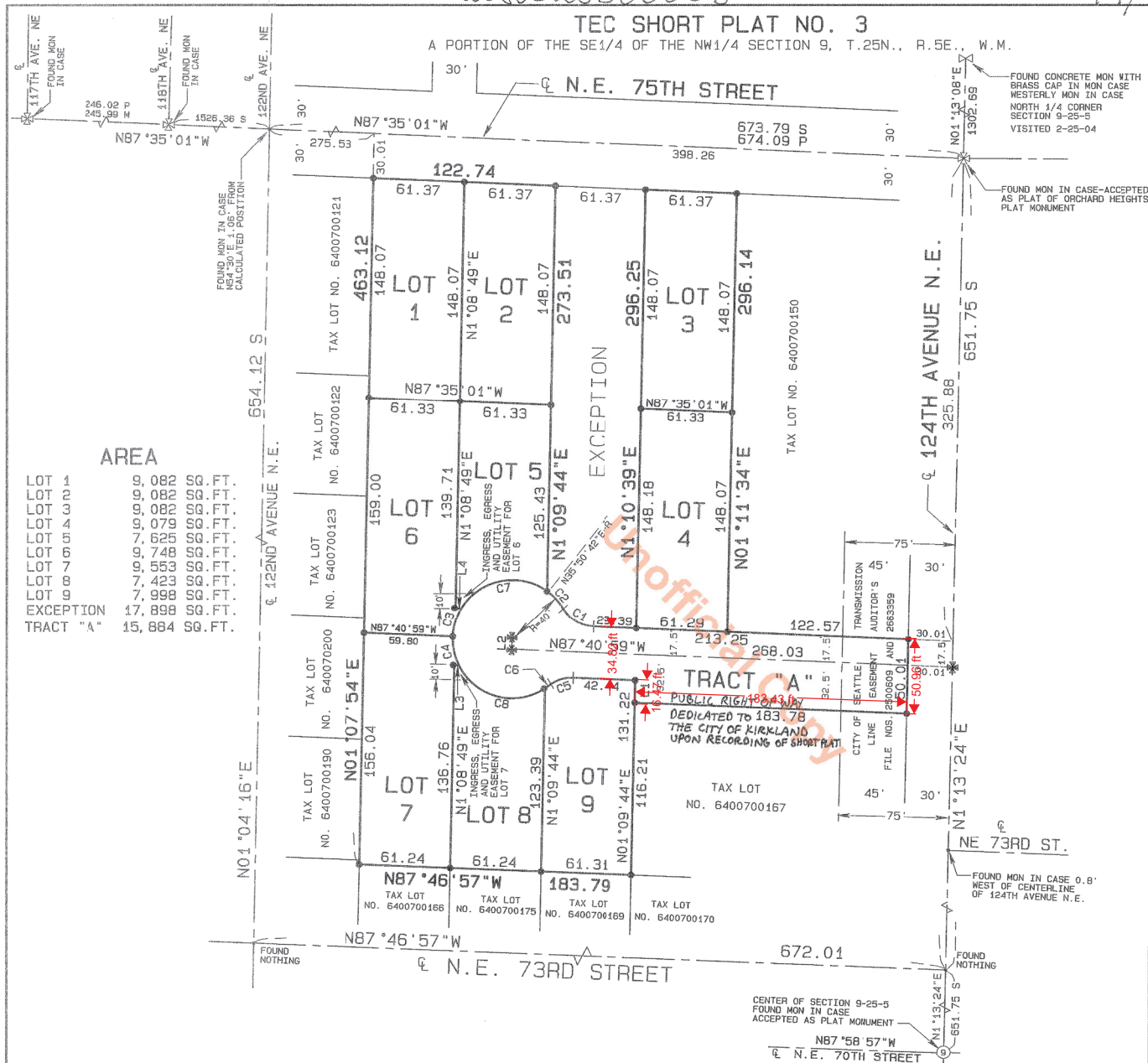
LINE TABLE

	BEARING	DISTANCE
L1	N01°09'44"E	15.00
L2	N02°19'01"E	7.00
L3	N87°40'59"W	3.02
L4	N87°40'59"W	3.81

CURVE TABLE

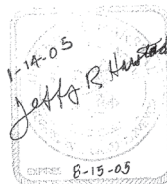
	RADIUS	DELTA	ARC
C1	25.00	56°53'47"	24.83
C2	40.00	23°22'06"	16.31
C3	40.00	28°38'52"	20.00
C4	40.00	28°38'52"	20.00
C5	25.00	40°24'00"	17.63
C6	40.00	4°33'48"	3.19
C7	40.00	94°52'49"	66.24
C8	40.00	97°14'20"	67.85

AREA		
LOT 1	9,082	SQ.FT.
LOT 2	9,082	SQ.FT.
LOT 3	9,082	SQ.FT.
LOT 4	9,079	SQ.FT.
LOT 5	7,625	SQ.FT.
LOT 6	9,748	SQ.FT.
LOT 7	9,553	SQ.FT.
LOT 8	7,423	SQ.FT.
LOT 9	7,998	SQ.FT.
EXCEPTION	17,898	SQ.FT.
TRACT "A"	15,884	SQ.FT.



KIRKLAND, WA 98033-9180
153 - 5TH AVENUE
CITY OF KIRKLAND
CITY CLERK
RECORDED AT THE REQUEST OF

OPEN

**HARSTAD CONSULTANTS**

LAND SURVEYORS
2024 W. LK. SAMMAMISH PWY. NE
REDMOND, WA. 98052
(425) 747-8336

BEFORE THE HEARING EXAMINER
CITY OF KIRKLAND

In the Matter of the Appeal of:

No. SUB20-00171

William Watson and the Rosewood of
Kirkland Homeowners Association,

CITY'S REPLY IN SUPPORT OF
APPLICANT'S MOTION FOR
SUMMARY JUDGMENT

Appellants,

Merit Homes, Inc.

Applicant/Respondent,

City of Kirkland Planning and Building
Department,

Respondent,

From the Decision of the City of Kirkland,
Regarding the Adsit Short Plat

I. Introduction

The City respectfully requests that Merit Homes, Inc., Applicant's Motion for Summary Judgment be granted and this appeal be dismissed by the Hearing Examiner as a matter of law. At its heart, Appellant's claim is that because they have used the City's right-of-way as their own, and paid to maintain landscaping on it, they should now be considered the owners of the right-of-way, which is plainly and simply an adverse possession claim. But because public right-of-way cannot be taken by adverse possession, Appellant's have

CITY'S REPLY / APPLICANT'S
MOTION FOR SUMMARY JUDGMENT – 1

CITY OF KIRKLAND
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KIRKLAND, WA 98033
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FAX (425) 587-3025

1 attempted to manufacture other theories. But those theories are all aimed at the same result,
 2
 3 i.e., that Appellant's "own" the right-of-way. This is a claim that must fail.
 4

5 In sum, it is undisputed that all of Tract A is City right-of-way. Because the City has
 6
 7 a duty to use the right-of-way for the public benefit, which includes providing access from
 8
 9 private property to City streets, Appellant's have no viable claims in this matter and their
 10
 11 appeal should be dismissed.
 12
 13

14 II. City's Response

15 1. **Tract A was clearly dedicated in full to the City as a public right-of-way**

16
 17 There are no facts in dispute. Tract A was dedicated to the City as right-of-way in
 18
 19 the TEC Short Plat No 3. It is true, as argued by Appellants, that a dedicator's intent should
 20
 21 be considered if there is a dispute as to the scope of a dedication. "The intention of the
 22
 23 owner is the very essence of every dedication." *Frye v. King County*, 151 Wash. 179, 182,
 24
 25 275 P. 547 (1929) (citation omitted). When a public dedication is made via plat, "the intent
 26
 27 must be adduced from the plat itself." *Kiely v. Graves*, 173 Wn.2d 926, 933, 271 P.3d 226,
 28
 29 230 (2012). Lines on a plat, as well as words, may be considered to determine a dedicator's
 30
 31 intent. *Cummins v. King County*, 72 Wn.2d 624, 627, 434 P.2d 588 (1967); *Kiely*, 173
 32
 33 Wn.2d at 933. Here, the words and lines of the TEC Short Plat No. 3 clearly indicate that *all*
 34
 35 of Tract A was dedicated to the City for right-of-way. For instance, the face of the plat
 36
 37 clearly states:
 38
 39
 40
 41
 42
 43

44 **Tract "A" – Public right-of-way dedicated to the City of Kirkland**
 45 **upon recording of the subdivision.**
 46
 47

1 *Ex. D, p. 3.*¹ There are no exceptions to this dedication language. The dedication contains
 2
 3 no language indicating that Tract A is reserved for a purpose other than public right-of-way.
 4
 5 Furthermore, Tract A is clearly drawn on the plat in lines. No portion of Tract A is set aside
 6
 7 for any purpose other than public right-of-way. Finally, the plat also contains the following
 8
 9 dedication language:
 10

11
 12 [T]he undersigned . . . do hereby dedicate to the use of the public forever
 13 all streets and avenues not shown as private hereon . . . and further
 14 dedicate to the use of the public all the easements **and tracts** shown on
 15 this short plat for all public purposes as indicated thereon . . .
 16
 17

18 *Ex. D, p. 1 (emphasis added).*
 19

20 **2. A principal use of the right-of-way is to provide access to adjacent parcels**
 21

22 Pursuant to the City of Kirkland's zoning code, a right-of-way is defined as follows:
 23

24
 25 Land dedicated primarily to the movement of vehicles and pedestrians
 26 and providing for primary access to adjacent parcels. Secondly, the
 27 land provides space for utility lines and appurtenances and other publicly
 28 owned devices.
 29

30 KZC 5.10.805 (emphasis added).
 31

32
 33 Contrary to Appellant's contention otherwise, providing a house (a single-family
 34 residence) with a driveway access to the street is not an improper use of right-of-way. It is,
 35 in fact, a core and fundamental use of right-of-way. The Appellants have cited no authority
 36
 37 in support of their argument and it should be rejected.
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47

¹ Exhibit D to the Appeal filed by Appellants.

1 **3. The City has both constitutional and statutory authority to regulate the rights**
 2 **of way within its City limits**

3
 4 Municipalities have broad authority to manage and regulate the rights-of-way. That
 5
 6 authority stems from the police power under the Washington State Constitution (Article XI,
 7
 8 Section 11), as well as statutes such as RCW 35A.11.020, which provides code cities² with
 9
 10 broad power “in regard to the acquisition, sale, ownership, improvement, maintenance,
 11
 12 protection, restoration, **regulation, use,** leasing, disposition, vacation, abandonment or
 13
 14 beautification **of public ways.**” (Emphasis added.)
 15
 16

17
 18 **4. Appellant’s use of the unused right-of-way portion of an improved street for**
 19 **landscaping is not contrary to the City’s easement for public purposes, but**
 20 **Appellant’s use was and is limited by the public’s primary rights**
 21

22 It is true that the City’s interest in the right-of-way dedicated as Tract A is an
 23
 24 easement right. But even though abutting property owners may own the fee title to the
 25
 26 property underlying the public right-of-way, they can only use that property, if at all, subject
 27
 28 to the easement for public travel. They cannot obstruct such public travel over the right-of-
 29
 30 way - either vehicular travel on the improved roadway or pedestrian travel on the sidewalk.³
 31
 32
 33
 34
 35

36 ² Kirkland is a code city.

37
 38 ³ KMC 19.04.010 Obstructions in right-of-way.
 39

40 **It is a simple crime for any person** to drop, deposit, leave or permit to be deposited upon a
 41 street or sidewalk **or within other portions of the public right-of-way** any object,
 42 structure, construction material, equipment or other natural or artificial thing which obstructs
 43 or tends to obstruct vehicles or persons traveling thereon; **except as provided in Section**
 44 **19.04.050** or otherwise authorized by city ordinance or specific permission of the city. . . .
 45 (emphasis added).
 46
 47

Here, Tract A is an *open* and *improved* right-of-way (opened and improved as NE 73rd Pl), with an *unused* right-of-way portion on the south side.⁴ It is this unused right-of-way portion that Appellant's are trying to claim as their own. But the City's code, in fact, specifically addresses the right of abutting property owners to use the unused right-of-way portion of an improved street for landscaping, as Appellant's have done.

KMC 19.04.050 Private use of street right-of-way or fairway without permit prohibited.

It is unlawful for any person to either temporarily or permanently use or utilize any portion of a street right-of-way (whether or not improved and including sidewalk or walkway) or fairway, as defined in Section 14.16.020(b), for personal use, place of business or other private use, without first obtaining from the city a street use permit; **provided, however, that this section shall not be construed to prohibit the incorporation of the unused right-of-way portion of an improved street into the landscaping design of the abutting private property.**

Appellant's argue that when the developer of their plat filed CC&R's for their neighborhood (a year *after* the plat was recorded and Tract A had been dedicated in full to the City as right-of-way), the developer indicated its "intent" for the unused portion of Tract A to be granted in fee to Appellants, simply because the CC&R's authorize Appellant's to maintain landscaping in that area. There are many holes in this argument. The first hole, however, is that the CC&R's grant Appellants no more rights to the "unused right-of-way portion of an improved street" then they already have under City code, KMC 19.04.050,

⁴ While the surface of the disputed right-of-way is currently unused for street or sidewalk purposes, the City does in fact have a storm drainage system installed within its right-of-way at this location (a vault and a pipe). The storm drainage system is installed pursuant to the right-of-way easement created by the original dedication of Tract A – no separate easement exists to support the City's installation and maintenance of this storm drain.

1 referenced above. The developer was not attempting to grant Appellants any additional
2
3 rights in this portion of Tract A, it was simply identifying rights they already had under the
4
5 City's code and, importantly, identifying a process for all owners to share in the costs
6
7 associated with maintaining this area while it remained unused right-of-way. Second,
8
9 property rights are not transferrable via CC&Rs; they must be transferred by a recorded
10
11 deed, *see* RCW 64.04.010, or a recorded subdivision, *see* RCW 58.08.015.
12
13

14 III. CONCLUSION

15
16
17 There is no dispute that Tract A was transferred to the City as right-of-way. Based
18
19 upon this undisputed fact, all of Appellant's claims fail. Thus, the City joins in Merit
20
21 Homes' motion for summary judgment and requests dismissal of Appellant's appeal to the
22
23 Hearing Examiner.
24
25

26
27
28 DATED: November 18, 2020

CITY OF KIRKLAND

29
30
31 By: Stephanie Croll
32 Stephanie E. Croll
33 Sr. Assistant City Attorney, WSBA #18005
34 Attorney for the City of Kirkland
35 Email: scroll@kirklandwa.gov
36
37
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47

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she caused a copy of the foregoing CITY'S
REPLY IN SUPPORT OF APPLICANT'S MOTION FOR SUMMARY JUDGMENT to be
served upon the following counsel of record via email, on November 18, 2020:

Kirkland Hearing Examiner
City of Kirkland
c/o Planning and Building Department
123 5th Avenue
Kirkland, WA 98033
susan@susandrummond.com

Applicant:

Duana T. Koloušková
Dean Williams
Johns Monroe Mitsunaga Koloušková, PLLC
11201 SE 8th Street, Suite 120
Bellevue, WA 98004
Kolouskova@jmmlaw.com
lamp@jmmlaw.com

Attorneys for Applicant Merit Homes, Inc.

Appellants:

Robert D. Maxwell
Holmquist + Gardiner, PLLC
1000 Second Ave., Suite 1770
Seattle WA 98104
rob@lawhg.net

Attorneys for Appellants Rosewood of Kirkland HOA & William Watson

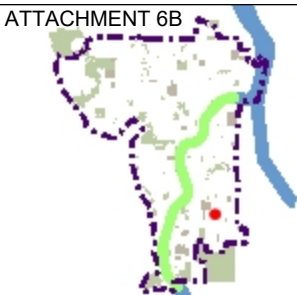
/s/ Leta Santangelo
Leta Santangelo

CERTIFICATE OF SERVICE

CITY OF KIRKLAND
123 FIFTH AVENUE
KIRKLAND, WA 98033
PH. (425) 587-3030
FAX (425) 587-3025



City of Kirkland GIS



Legend

Aging and Failing Projects

- Aging and Failing
- Completed
- Unfunded

Address

- Other Address
- Current Address
- Current ADU
- Pending Address

- City Limits
- Grid
- QQ Grid
- Cross Kirkland Corridor
- Regional Rail Corridor
- Streets
- Parcels
- Place Names
- Buildings
- Parks
- Schools
- Olympic Pipeline Corridor
- Catch Basin
- Private SW Manhole
- Kirkland SW Manhole
- Other Points
- Pipes Tanks Etc

1: 517



Notes

86.1 0 43.07 86.1 Feet

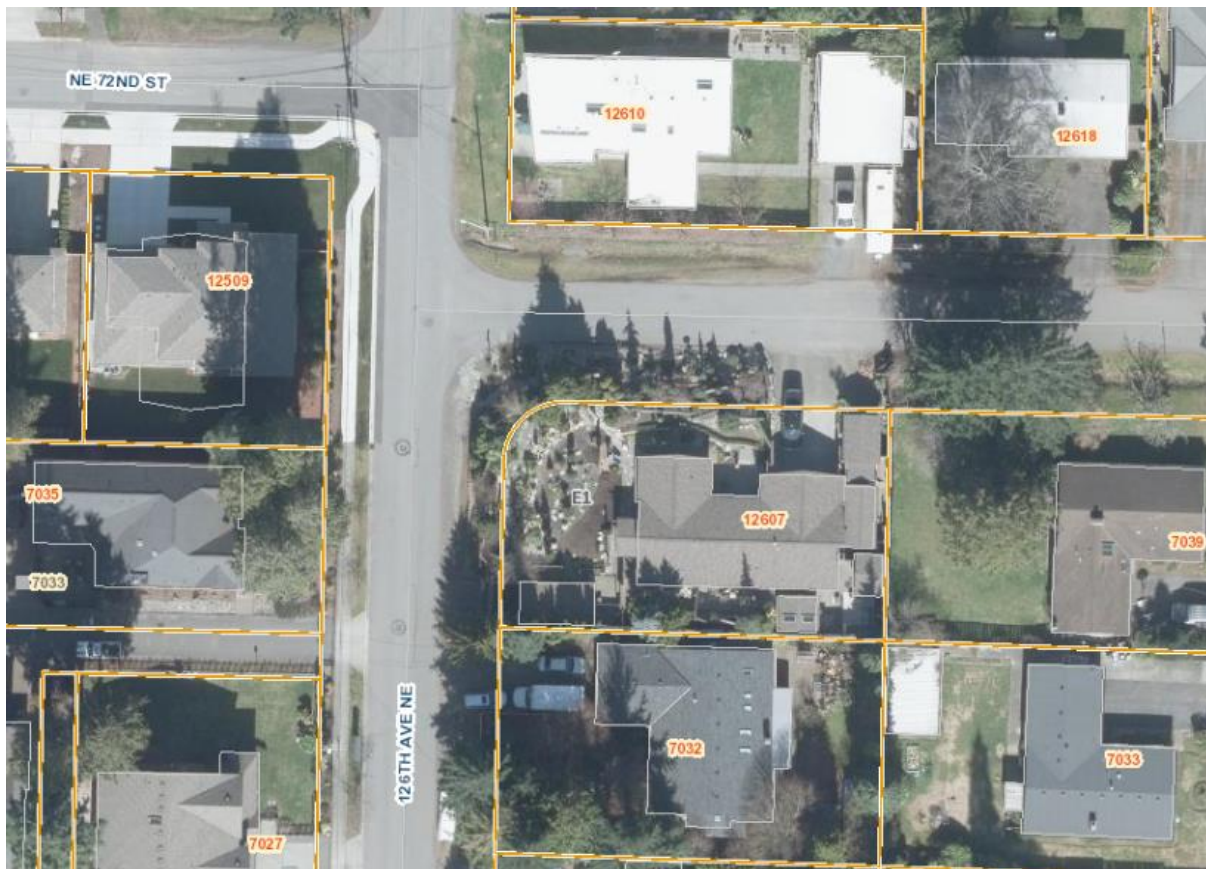
NAD_1983_StatePlane_Washington_North_FIPS_4601_Feet

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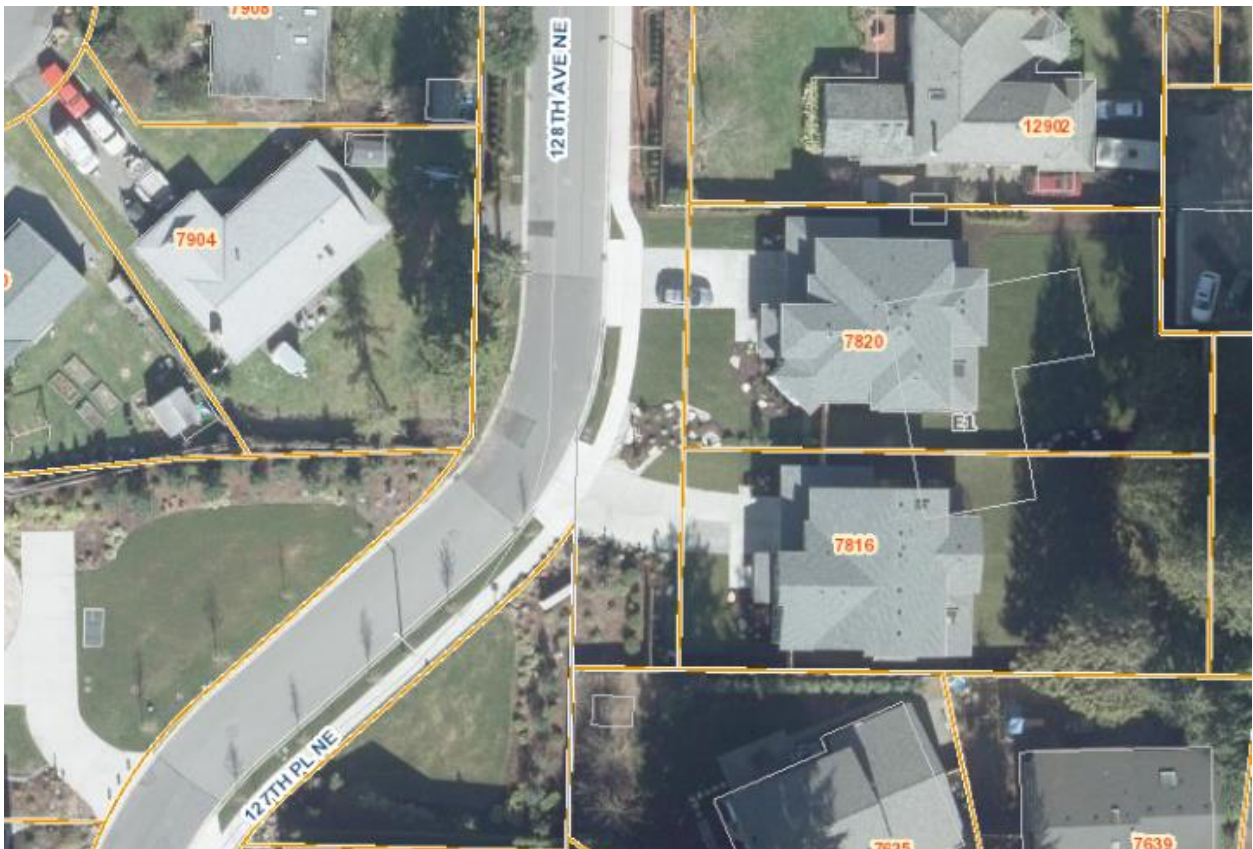
EXAMPLES OF LANDSCAPING IN THE CITY OF KIRKLAND RIGHT-OF-WAY

EXAMPLE #1: NE CORNER OF NE 65TH ST AND 113TH AVE NE



EXAMPLE #2: SOUTHEAST CORNER OF NE 72ND ST AND 126TH AVE NE

EXAMPLE #3: WHERE 128TH AVE NE TURNS INTO 127TH PL NE (EAST SIDE OF STREET)



Kaylie Duffy

From: Mike Smith <Mike@merithomesinc.com>
Sent: Tuesday, September 1, 2020 11:39 AM
To: William Watson
Cc: John Burkhalter; Jamie Ward; Josh Lysen; Kaylie Duffy
Subject: RE: Adsit project - thanks all for meeting

Good day everyone,

We've received the existing neighborhood HOA documents and have discussed what it would take to join the existing. We think it would be difficult, and that it's likely we'd have to vacate / eliminate the existing Association entirely, and replace it. It's likely everyone in the neighborhood would need to agree in principle, and to specific provisions. They'd all likely need to sign documents accomplishing all this. It's quite possible the lots on 75th would refuse to sign unless they were excused from the maintenance entirely, and also that the other lots would balk at letting those out. We've been at this a long time, and know that getting numbers of people to agree on anything is tough sledding.

However, the primary goal expressed at our site meeting was that the HOA would like our project to share in landscape maintenance costs. It should be relatively straightforward to prepare a Maintenance Agreement that would accomplish this without disturbing the existing HOA agreements. This would increase the number of lots sharing costs, which would benefit all the existing owners compared to today. If owners in the Tec Short Plat are willing to prepare such a Maintenance Agreement, we'd be willing to review in good faith, and likely sign it ultimately.

This would pertain to the lot on 73rd only. Those on 124th wouldn't benefit by the 73rd landscaping, burdening them with maintenance costs would be irrational.

Please let us know if you think this is a sensible approach.

Thanks very much,

Mike

From: Mike Smith
Sent: Monday, August 31, 2020 6:44 AM
To: William Watson <bill.watson@pjassociation.com>
Cc: John Burkhalter <JBurkhalter@kirklandwa.gov>; Jamie Ward <JWard@kirklandwa.gov>; Josh Lysen <Josh@merithomesinc.com>; Kaylie Duffy <KDuffy@kirklandwa.gov>
Subject: RE: Adsit project - thanks all for meeting

My apologies all, I was out of office last week and it sounds like the drawing link didn't work. This happens somewhat often, unfortunately. I've attached the markup to this message.

Bill – I looked through my messages and didn't find any docs you sent. If you could send again, I'd appreciate it.

On 73rd landscaping, there is no plan now. It will depend how the house sits and what will provide the most visual appeal.

Mike

From: William Watson <bill.watson@pjassociation.com>
Sent: Sunday, August 23, 2020 10:03 AM
To: Mike Smith <Mike@merithomesinc.com>
Cc: John Burkhalter <JBurkhalter@kirklandwa.gov>; Jamie Ward <JWard@kirklandwa.gov>; Josh Lysen <Josh@merithomesinc.com>; Kaylie Duffy <KDuffy@kirklandwa.gov>
Subject: Re: Adsit project - thanks all for meeting

I have forwarded-document to Mike Smith, waiting on a response and agreement to what will be agreed to here before anything else moves forward.

How much area is planning on being opened to the access from 73rd pl,

"while still allowing access and visual appeal to the new home."

Bill Watson

On Aug 14, 2020, at 1:31 PM, Mike Smith <Mike@merithomesinc.com> wrote:

To everyone concerned:

At the site meeting, we discussed 3 primary issues of concern that we said we'd look into - 1) – 3) below, according to 7/31 message below. I asked if there were further concerns and didn't receive any.

I've linked a [drawing to consider](#) , depicting the three substantive topics:

1. *Removal of trees along south side to see if there are opportunities for retention;*

There are 5 trees total along our south line – 3, 4, 5, 6, 9. Of these, 3 – 5 are basically impossible, they're in the foundation of the home. We are open to discussing retention of Trees 6 and 9 when we get closer to work starting. Up to now, it hasn't been our intent to retain, and these aren't ideal candidates. Still, we are sensitive to neighbor concerns and will discuss with all concerned as the work gets closer.

2. *Intersection of 124th and 73rd to review likely fence locations and possible landscaping improvements;*

We do have a super basic landscaping plan, which doesn't include anything here beyond planter strip. The existing goes almost to the sidewalk, though we don't have any survey info on where exactly it is. Similar to 1), going further in early design isn't part of our current work flow. We will work with the neighborhood to see what could be done there once we see where all the new improvements fall.

3. *Access to the western lot to see what opportunities are there to reduce visual impact to the landscaped area*

We will remove as little landscaping as possible along 73rd, while still allowing access and visual appeal to the new home.

There was another issue discussed – the possibility of one or more of the new homes joining the existing homeowners' association. We will consider this once we receive a copy of the existing. If Mr. Watson would be so kind as to send a copy, we will review and continue discussion on that point.

Thanks again, have a restful weekend.

Mike

From: Mike Smith
Sent: Friday, July 31, 2020 10:30 AM
To: Bill Watson <bill.watson@pjassociation.com>; John Burkhalter <JBurkhalter@kirklandwa.gov>;
 Jamie Ward <JWard@kirklandwa.gov>; Josh Lysen <josh@merithomesinc.com>; Kaylie Duffy
 <KDuffy@kirklandwa.gov>
Subject: Adsit project - thanks all for meeting

Good day,

I had this written out and thought I had sent already, apologies for the delay.

Thanks all for the meeting onsite, it was informative and helpful. Over the next several days, Merit will be reviewing a few issues:

1. Removal of trees along south side to see if there are opportunities for retention;
2. Intersection of 124th and 73rd to review likely fence locations and possible landscaping improvements;
3. Access to the western lot to see what opportunities are there to reduce visual impact to the landscaped area


Bill – if you could send us a copy of your CC&Rs we can review those to see whether joining the HOA would be possible.

We're not in position to speak to parking on 73rd, nor any signage concerns.

Please let me know if there is anything I've missed here.

Thanks so much, we look forward to continuing discussions.

Mike

S. Michael Smith
 MERIT HOMES
 < >
 Development Manager
 209-788-9860 206-755-2660
Mike@MeritHomesInc.com | www.MeritHomesInc.com | [Facebook](#)
 811 Kirkland Ave, Suite 200, Kirkland, WA 98033

Kaylie Duffy

From: Kaylie Duffy
Sent: Wednesday, July 22, 2020 3:22 PM
To: William Watson
Subject: RE: 2000-171

Hi Bill,

My apologies for the lack of communication – I've been trying to get you in contact with the appropriate folks to answer your easement and water metering questions. I've been calling/emailing the Public Works reviewer on this project, but it turns out he is on vacation, and therefore I reached out to his supervisor, John Burkhalter, on Monday to get you the answers you need. I emailed him twice today about your questions, and he said he'd give you a call back.

I've also alerted the applicant, Mike Smith from Merit Homes, to reach out to you as well. I can assure you that we will address any issues with the HOA prior to any decisions made on this short plat application.

I'm very sorry that we're not running at full speed due to COVID and working from home, but I will keep reaching out to Public Works until we get you the answers you need.

Best,

Kaylie Duffy | Planner
 Planning & Building Department
 City of Kirkland
 p: 425.587.3228

From: William Watson <bill.watson@pjassociation.com>
Sent: Wednesday, July 22, 2020 1:51 PM
To: Kaylie Duffy <KDuffy@kirklandwa.gov>
Subject: 2000-171

Please return our call, you mentioned you would call back, we pay well above \$100,000.00 in property tax for this hoa and desire a phone, more than 1 every 20th request.

Bill Watson

President,
Pararescue Association
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Strengthening relationships among all USAF Pararescuemen and Combat Rescue Officers – past, present, and future; fostering camaraderie among those who have earned the title, PJ/CRO; while providing an extended community for all USAF Pararescuemen/CRO's and their families.

