OJ L L W

Introduction & Request for Certificate of Occupancy

Building Official did not find or note any "violations of the provisions of this chapter or other laws that are enforced by the planning and building department" KMC 21.06.540.

Issue

Under KMC 21.06, must the City issue a Certificate of Occupancy where the Building Official has made the final inspection and not found "violations" of any City code?

Short Answer:

Yes. KCC 21.06.540 requires that the certificate of occupancy for the Langs home be promptly issued. The City can only enforce the city code and condition issuance of a certificate of occupancy on curing "violations" of "laws that are enforced by the planning and building department" and lawful permit conditions may be listed on the Certificate of Occupancy. As there are no "violations," the Certificate of Occupancy can and must issue.

City Code

KMC 21.06.535 Use & Occupancy.

"A building or structure shall not be used or occupied, and a change in the existing use or occupancy classification of a building or structure or portion thereof shall not be made until the building official has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this chapter or of other ordinances of the jurisdiction.

Exceptions:

(1) Work exempt from permits per Section 21.06.215.

(2) For single-family dwellings and their accessory structures, the city-issued building permit inspection record may serve as the certificate of occupancy when the final inspection has been approved by the building official or the building official's designee."

KMC 21.06.540 – Certificate Issued

"After the building official inspects the building or structure and does not find **violations** of the provisions of this chapter or other laws that are enforced by the planning and building department, the building official **shall** issue a certificate of occupancy that contains the following:

(1) The building permit number.

(2) The address of the structure.

(3) The name and address of the owner or the owner's authorized agent.

(4) A description of that portion of the structure for which the certificate is issued.

(5) A statement that the described portion of the structure has been inspected for compliance with the requirements of this chapter for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.

(6) The name of the building official.

(7) The edition of the code under which the permit was issued.

(8) The use and occupancy.

(9) The type of construction.

(10) The design occupant load where applicable.

(11) If an automatic sprinkler system is provided, and whether the sprinkler system is required and for what reason.

(12) Any special stipulations and **conditions** of the building permit." (emphasis added).

KMC 21.06.515 Final Inspection.
The final inspection shall be made after all work required by the permit(s) is completed.

Analysis

Here, the final inspection by the building official occurred on or about 7/18/2021, with a finding that "need Planning and Public work final, **all else is good**." Public Works inspection of work "passed" on or about 7/28/2021. No other "work" is required. No "violations" were noted by the Building Official, so nothing prevents the issuance of the Certificate of Occupancy. Final terms of certain purported building permit conditions are still being determined and worked out by the City Planning department, so they are unknown at this time. The Langs also provided more restoration and mitigation than what was required under the code. And although the Langs in good faith have questioned and sought to flesh out the scope and/or applicability of some of the latest requests by the City, any lawful "conditions of the building permit," can be noted on the Certificate of Occupancy. KMC 21.06.540 (12).

The Langs good faith inquiries on those purported conditions remain unanswered even today, and the City is still working on reviewing and determining some mitigation plans and conditions. The City has also actively altered its requests to the Langs, and agreed that as to the geohazard issues, "mapped landslide…areas was [sic] not impacted by your project [.]"[1] The back and forth and true closing out of this

[1] Email excerpt from Jennifer Anderer, City of Kirkland Associate Planner, to Rita Land on July 22, 2021.

matter must proceed in a diligent and predictable manner going forward. It appears under the City code that issuance of the Certificate of Occupancy is the proper vehicle for this to occur in a fair, tangible, and accessible way. KMC 21.06.540.

A review of the Building Permit Conditions does not provide meaningful and tangible detail on what the Planning Department desires, or whether any of it is objectionable:

> PCD 7. SF – NATURAL GREENBELT PROTECTIVE EASEMENT - All pre-existing trees designated for preservation shall be maintained following final inspection of the residence. Prior to final of the building permit, the applicant shall submit a NGPE document to the Planning Department.
> PCD 8. SF – GEOLOGICALLY HAZARDOUS AREA COVENANT - Prior to final of the building permit, the applicant shall submit a signed and notarized Geologically Hazardous Area Covenant to the Planning Department.
> PCD 9. SF – NOTICE OF GEOLOGICALLY HAZARDOUS AREA - Prior to final of the building permit, the applicant shall submit a signed and notarized Notice of Geologically Hazardous Area to the Planning Department.
> PCD 10. SF – WETLAND/STREAM ENHANCEMENT AND MITIGATION MONITORING - Prior to final of the building permit, the applicant shall complete the requirements for the Wetland/Stream Enhancement and Mitigation Planning Performance, Maintenance, and Monitoring Security.
> PCD 22. SF AND DUPLEX-TREE RETENTION - Trees designated to be saved under the tree retention plan must be retained. If any of these trees are removed or damaged, they must be replaced. Contact the Planning Department at 425-587-3225 to speak to your planner about the requirements for replacement trees.

These conditions are not tangible and accessible, without further input from the City, and agreement by the Langs. Indeed, the terms are currently being drawn up and worked and reworked and redetermined by the City based upon the as-builts of the Project, and actual site conditions (not merely "potential" site conditions). However, informal indeterminate exchanges of emails can tend to drag on and on, and be unpredictable.[2]

Accordingly, the Langs request the above items be addressed in the issuance of the Certificate of Occupancy as they may relate to "conditions of the building permit" as referenced in KMC 21.06.540 (12).

Several timing terms are a little confusing, and are undefined, and apparently relate to the timing of inspections. What is meant by "prior to final of the building permit" versus "final inspection of the residence" versus "prior to final inspection" – these

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[2] The city sent an email dated June 24, 2021 from Jennifer Anderer to Rita Lang with five substantial and new items the City wanted for "finaling the permit for PCD" but that require additional information from the City before the terms can be determined, agreed upon, and finalized, including a newly minted request for an indeterminate NGPE covering the entire property, and newly minted "Tree Maintenance Agreement." The items did not reference any building permit conditions, but the PCD 7-10, 22 most closely resemble the new but indeterminate items.

different terms have different meanings. In addition to procedural/timing concerns, there are substantive details, required, but lacking in the building permit.

Under PCD 7 – This condition as written is unclear. It uses the term "easement." An easement is the right of someone else to use your property. The right to exclude is a major and fundamental property right. In this listed boilerplate condition, the terms of an 'easement' are not mentioned. There is no indication of duration (a few years, or perpetual), scope, size, or area or other potential conditions of this substantial real property interest, what the benefited property would be, what the burdened property would be, or what other duties may exist. PCD 7 refers to "pre-existing trees." There is no form of "NGPE" or any indication of the nexus to this already developed property, nor how the "NGPE" is proportionate to the impacts of the Project (particularly in light of the extra mitigation already implemented), referenced in the building permit. There is no indication of the amount of compensation, if any, the City is planning on paying to the landowners for an easement. Moreover, KZC 90.185.6(a)(12) provides that a critical area dedication pursuant to KZC 90.210 is not required for the vegetated portion of the "buffer" for expansion of legally established nonconforming structures. In recent email exchange, it appears the City has sent over boiler plate "easement" via email without tailoring it to the Property and Project, and without valid legal descriptions. The City's proposed form of NGPE does not pertain to "pre-existing trees" and has many other provisions unrelated to PCD 7. These items need to be removed or tailored and clarified appropriately to the circumstances when the Certificate of Occupancy issues.

Under PCD 8 and PCD 9– there is no indication what type of "covenant" or "notice" this is, and who the benefited parties to the covenant would be, or the terms or restrictions of the covenant, or terms of notice, and how those relate to or have any nexus or proportionality to the Project or its impacts. While KZC 85.45 and 85.50 provide more specific language, even those codes do not provide for what the terms of the contemplated "agreement with the City" is as referenced in the code, and included or referenced in the Building Permit PCD 8. Those provisions also require the timing of these items, to be done prior to the issuance of the building permit or final inspection, both of which have already occurred here, and so the requests are stale. There is also no indication of what the Notice is and the terms thereof (so that it can be determined if the Langs are legally prohibited from providing the notice), and whether such notice would scare off potential lenders, or purchasers, and what the Notice is based on and how the Notice could be removed or excused if there is no meaningful risk or rational basis for the notice. Again, KZC 85.45 code apparently requires this prior to building permit issuance, which has long passed. The boilerplate the City sent over is not tailored to the Langs Project, is indeterminant, and far exceeds what is mentioned in PCD 8 and 9.

These need to be removed or tailored and clarified appropriately to the circumstances when the Certificate of Occupancy issues.

Under PCD 10- the Langs are happy to enhance their property as they have done and maintain this as they enjoy working in the yard, but they worry that over the long term other possible future home owners may not have the physical ability to do so, thus impacting the value of their property. They are waiting on the City's review (or the City's consultant's review) of the as-built landscape plan to come to final terms on what mitigation is necessary and bond amounts. The delays are extraordinary given the limited risks here. The Langs worry that there is apparently only one peer review contractor which is not competitive, and that the delay and costs far exceed the benefits, particularly given that they have provided more restoration than the code requires in any event. The Langs worry that the bond amounts and their mitigation commitments have already far exceeded both the nexus and proportionality standards, but also city code, and yet the City is now requiring more. For example, there doesn't appear to be a clear reason why a perpetual easement would be necessary in addition to these bonding and mitigation matters. Clarity here would be appreciated. This needs to be tailored appropriately to the circumstances.

PCD 22 – this condition is/was straightforward. Now, however, the City is requesting more through a Tree Maintenance Agreement that was not contemplated in the building permit one iota in PCD 22. The new Tree Maintenance Agreement request doesn't make sense. Please do not include additional language or requirements as a condition in the Certificate of Occupancy.

The Langs request that the City issue the Certificate of Occupancy, and for any lawful building permit conditions it seeks to apply and does not remove, tailor and list those in the Certificate of Occupancy, within 14 days of receipt of this letter request. Thank you.

Conclusion

The Langs have been working faithfully and diligently with the City and the Department on this Project for past ten years. It is now time for the Department to issue the Certificate of Occupancy. The Building is complete, the inspections are complete. There is no reason to impose additional and unlawful Conditions on the Langs at this point. KMC 21.060.540 provides, in relevant part:

> "After the building official inspects the building or structure and does not find **violations** of the provisions of this chapter or other laws that are enforced by the planning and building department, the building official **shall** issue a certificate of occupancy…"

KMC 21.060.540

Here, there are no violations of the provisions of KMC Ch. 21.060 nor any other laws that are enforced by the Department. Accordingly, on behalf of the Langs, we respectfully request the Department issue the Langs a Certificate of Occupancy.[3]

Sincerely,

OJALA LAW INC., P.S.

Peter C. Ojala, Lawyer
peter@ojalalaw.com

Cc: Ms. Stephanie Croll, City Attorney (via email only SCroll@kirklandwa.gov)

[3] The Langs have been lead to believe that the building official cannot physically in the City software mark the final inspection appropriately.

From: Adam Weinstein
To: Peter Ojala
Cc: Stephanie Croll
Subject: RE: Lang Permit No. BSF19-01341 - 370305 - Certificate of Occupancy
Date: Friday, September 24, 2021 5:19:05 PM

Hi Peter – I also wanted to circle back to you regarding your September 10 letter.

We appreciate your expressing these concerns about wrapping up the Langs' permit and want to assure you that we are also interested in bringing the permit to occupancy status. The conditions on the Langs' permit that you reference in your letter are ones that are fairly standard for properties-under-development in Kirkland that contain trees and critical areas (wetlands, streams, and geologically-hazardous areas) and the easement, covenant, and other agreements that Planner Jen Anderer sent to Rita Lang for signature on June 24, 2021 are substantively similar to the documents that dozens of property developers/owners throughout the City sign every year. The requirements in these documents (and the original permit conditions that you cite) are founded in the City's critical areas and tree codes, which primarily comprise Chapters 85, 90, and 95 of the Kirkland Zoning Code, and which are part of the laws that the Planning & Building Department helps enforce when permits are moving towards occupancy status.

With that in mind, I would disagree with your assessment of KMC 21.06.540, as the "other laws that are enforced by the planning and building department" include not only relevant Building Code provisions, but all the applicable development regulations in the Kirkland Zoning Code, including those that Jen Anderer emailed your client about back in June. Thus we cannot issue a certificate of occupancy if only Building Code requirements have been verified, but Zoning Code requirements that apply to the project have not been met.

Jen notes that of all the requested items in that June 24 email, your client has submitted only the As Built Landscape Plan, which was deemed insufficient because it doesn't include basic information about the landscaping on the site – including whether changes were made, and a copy of the full mitigation plan showing installed species. Jen communicated this information to Rita Lang on September 20, but the only response we got was to "[p]lease coordinate with your director and city attorney."

I understand that your letter notes that certain conditions are unclear, but would affirm that the attachments included in Jen's June 24 email provide straightforward templates for fulfilling these conditions. If you have suggested changes to the language in these attachments, we are certainly willing to entertain them, but this is something that must be resolved before a certificate of occupancy for the project is issued.

My staff and I would be happy to discuss any of this further to help close out the permit in a more speedy fashion.

Thanks, Adam

Adam Weinstein, AICP
Director of Planning and Building

City of Kirkland
123 5th Avenue
Kirkland, WA 98033

(425) 587-3227
aweinstein@kirklandwa.gov

From: Stephanie Croll <SCroll@kirklandwa.gov>
Sent: Tuesday, September 21, 2021 1:03 PM
To: Peter Ojala <peter@ojalalaw.com>
Cc: Adam Weinstein <AWeinstein@kirklandwa.gov>
Subject: RE: Lang Permit No. BSF19-01341 - 370305 - Certificate of Occupancy

Staff have contacted your client several times. Is there some reason they will not talk to staff?

Thank you,

Stephanie Croll
Sr. Assistant City Attorney
Direct 425-587-3034
Cell 206-949-6992

From: Peter Ojala <peter@ojalalaw.com>
Sent: Tuesday, September 21, 2021 12:01 PM
To: Stephanie Croll <SCroll@kirklandwa.gov>
Subject: RE: Lang Permit No. BSF19-01341 - 370305 - Certificate of Occupancy

Stephanie:
When can we expect a response?
Thanks,
Peter Ojala

From: Peter Ojala
Sent: Thursday, September 16, 2021 11:51 AM
To: Stephanie Croll <SCroll@kirklandwa.gov>
Subject: RE: Lang Permit No. BSF19-01341 - 370305 - Certificate of Occupancy

Stephanie:
Any luck on getting a certificate of occupancy for the Lang's next week?
They need to switch over their insurance, etc., as well as refinance.
Thanks!
Peter Ojala

From: Peter Ojala

Sent: Friday, September 10, 2021 3:17 PM
To: 'aweinstein@kirklandwa.gov' <aweinstein@kirklandwa.gov>
Cc: 'Stephanie Croll' <SCroll@kirklandwa.gov>
Subject: Lang Permit No. BSF19-01341 - 370305 - Certificate of Occupancy

Hello:

Please see the attached letter.
My clients look forward to a Certificate of Occupancy at your earliest convenience.

Thank you!
Peter Ojala
Attorney for Lang.

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.

City of Kirkland
123 5th Avenue
Kirkland, WA 98033
425-587-3600

SPECIFIC PERMIT CONDITIONS

BSF19-01341
Enclosure 3

BUILDING ADDRESS	PERMIT NUMBER	PERMIT TYPE	WORK CLASS	DATE PRINTED
6304 LAKEVIEW DR	BSF19-01341	Building Single Family - BSF	New	1/28/2020

DESCRIPTION OF WORK:
Lang New SFR: Construct new 4,512 SF dwelling and 1,067 SF Garage. Provide roof top deck, Upper Fl Deck and Main Fl deck. *sprinklers required*

Building Department Conditions:

This condition sheet is part of the approved plans and shall remain attached. The approval of plans and specifications does not permit the violation of any section of the International Residential Code, or other ordinances or state law. Conditions as indicated below, along with the unchanged information shown on the drawings must be complied with.

*BLDG. DEPT. CONDITIONS Contact Ronald Braun 425-587-3637 with any questions.

The approved plans shall not be changed, modified, or altered without authorization from the building official. The approved plans are required to be on the job site. Section 21.06 K.M.C.

THE PLANS FOR THIS PROJECT WERE REVIEWED ELECTRONICALLY. Applicant must print a full set of the City stamped EPlans using ink that is resistant to water damage. This copy of the City stamped plans must be kept on the job site at all times, protected and maintained in good condition. The construction of buildings and structures shall result in a system that provides a complete load path capable of transferring all loads from their point of origin through the load-resisting elements to the foundation. R301.1

All wood siding, sheathing, and wall framing on the exterior of a building having a clearance from ground of less than 6 inches or less than 2 inches measured vertically from concrete steps, porch slabs, patio slabs, and similar horizontal surfaces must be naturally durable or pressure treated. IRC 317.1 #5

All wood/composites used in exterior deck boards, stair treads, handrails bear a label demonstrating compliance with ASTME D 7032. IRC 317.4

Strength of concrete shall be a minimum 2500 psi for concrete not exposed to weather except for garage floor slabs. For footings and foundation walls unless specifically required by the Engineer of Record

This condition sheet is part of the approved plans and shall remain attached. The approval of plans and specifications does not permit the violation of any section of the International Residential Code, or other ordinances or state law. Conditions as indicated below, along with the unchanged information shown on the drawings must be complied with.

The approved plans shall not be changed, modified, or altered without authorization from the building official. The approved plans are required to be on the job site. Section 21.06 K.M.C.

Strength of concrete shall be a minimum of 3000 psi for concrete exposed to weather which includes carport garage floor slabs and porches refer to Table R402.2

Foundations – Drainage Required

Drains shall be provided around all concrete or masonry foundations that retain earth and enclose habitable or usable spaces located below. See IRC 405

Approved corrosion-resistive flashing shall be provided in the exterior wall envelope in such a manner as to prevent entry or reentry of water into the wall cavity or penetration of water to the building structural framing components and shall extend to the surface of the exterior wall finish. See R703 for additional information

Flashings shall be installed in such a manner so as to prevent moisture entering the wall and roof through joints in copings, through moisture permeable materials, and at intersections with parapet walls and other penetrations through the roof plane. R903.2

Flashings shall be installed at wall and roof intersections; wherever there is a change in roof slope or direction; and around roof openings. Where flashing is of metal, the metal shall be corrosion resistant with a thickness of not less than 0.019 inch (No. 26 galvanized sheet). R903.2.1

Plumbing

Where a fixture is installed on a floor level that is lower than the next upstream manhole cover of the public sewer serving such drainage piping shall be protected from backflow. UPC 710

Plastic materials for water service piping outside underground shall have a blue insulated copper tracer wire or other approved conductor installed adjacent to the piping. The tracer wire shall be not less than 18 AWG and the insulation type shall be suitable for direct burial. UPC 604

- Showers and lavatories used for other than safety reasons shall be equipped with flow control devices or specially manufactured showerheads or aerators to limit the total water flow rate as set forth in Chapter 51-46 WAC, as measured

Building Department Conditions:

with both hot and cold faucets turned on to their maximum flow.

- The maximum water use allowed for any showerhead is 2.5 gallons per minute. Ref.: WAC 51-18-030
- The maximum water use allowed in gallons per minute (gpm) for any of the following faucets and replacement aerators is the following: Lavatory faucets - 2.5 gpm; kitchen faucets - 2.5 gpm; replacement airators - 2.5 gp.6 gpf; Flushometer-valve toilets - 1.6 gpf; Flushometer-tank toilets - 1.6 gpf; Electromechanical hydraulic toilets - 1.6 gpf. Ref.: WAC 51-18-030. m. Ref.: WAC 51-18-030.
- Standards for water closets. The maximum water use allowed in gallons per flush (gpf) for any of the following waterclosets is the following: Tank-type toilets - 1

Mechanical Systems

The provisions of this chapter shall govern the installation of mechanical systems not specifically covered in other chapters applicable to mechanical systems. Installations of mechanical appliances, equipment and systems not addressed by this code shall comply with the applicable provisions of the International Mechanical Code and the International Fuel Gas Code. M1301.1

The maximum length of a clothes dryer exhaust duct shall not exceed 25 feet from the dryer location to the wall or roof termination. The maximum length of the duct shall be reduced 2.5 feet for each 45-degree bend and 5 feet for each 90-degree bend. The maximum length of the exhaust duct does not include the transition duct. (There are limited exceptions.) M1502.6

Range hoods shall discharge outdoors and be equipped with a back-draft damper. Ducts serving range hoods shall not terminate in an attic, crawl space or inside the building. Exception: Where installed in accordance with the manufacturer's installation instructions, and where mechanical or natural ventilation is otherwise provided, listed and labeled ductless range hoods shall not be required to discharge to the outdoors. M1501.1, M1501.2, M1501.3, M1502.1 IRC

Appliances having an ignition source shall be elevated such that the source of ignition is not less than 18 inches above the floor in garages. For the purpose of this section, rooms or spaces that are not part of the living space of a dwelling unit and that communicate with a private garage through openings shall be considered to be part of the garage. IRC M1307.3

Access doors from conditioned spaces to unconditioned spaces (e.g., attics and crawl spaces) shall be weather-stripped and insulated to a level equivalent to the insulation on the surrounding surfaces.

Provide roof plywood continuity detail at over framed area.

Trusses:

" Wood trusses shall be designed in accordance with accepted engineering practice. The design and manufacture of metal plate connected wood trusses shall comply with ANSI/TPI 1. The truss design drawings shall be prepared by a registered professional in accordance with Section R106.1. R802.10.2

" Trusses shall be braced to prevent rotation and provide lateral stability in accordance with the requirements specified in the construction documents for the building and on the individual truss design drawings. In the absence of specific bracing requirements, trusses shall be braced in accordance with TPI/HIB. R802.10.3

" Truss members shall not be cut, notched, drilled, spliced or otherwise altered in any way without the approval of a registered design professional. Alterations resulting in the addition of load (e.g., HVAC equipment, water heater) that exceeds the design load for the truss shall not be permitted without verification that the truss is capable of supporting such additional loading. R802.10.4

" Trusses shall be connected to wall plates by the use of approved connectors having a resistance to uplift of not less than 175 pounds (79.45 kg.) and shall be installed in accordance with the manufacturer's specifications.

Energy

A minimum of 75% of all interior luminaires shall be high efficiency luminaires.

Luminaires providing outdoor lighting and permanently mounted to a residential building or to other buildings on the same lot shall be high efficiency luminaires. Except those controlled by a motion sensor with integral photo sensor.

All electrical services for new buildings or structures shall have a concrete encased electrode installed complying with NEC250-50(c). The grounding electrode system inspection shall be conducted with the footing inspection before the placement of concrete.

Tamper resistant receptacles are required in all dwelling units.

Height verification is required at subfloor/1st floor framing inspection. Provide a survey from a licensed surveyor or have a transit set-up for the Building inspector to use to verify height.

Smoke alarms are required in each sleeping room, outside each separate sleeping area in the immediate vicinity of the bedrooms and at each story per Washington State Amendments IRC R314.

Carbon monoxide alarms are required outside of each sleeping area in the immediate vicinity of the bedrooms and on each level. Washington State Amendments IRC 315.1All operable windows 6 feet above the ground will meet the provisions of IRC 312.

Stairway illumination is required. WA State Amendments R303.6

Building Department Conditions:

Guards need to be provided at all porches, balconies or raised floors more than 30 inches above the floor or grade below per IRC R312. The minimum height is 36 inches (34" at stairs) and open sides must have intermediate rails or ornamentation that will not allow passage of a sphere 4 inches or more in diameter.

Design and design criteria

Buildings and structures, and all parts thereof, shall be constructed to safely support all loads, including dead loads, live loads, roof loads, flood loads, snow loads, wind loads and seismic.

Fire Department Conditions:

FIRE DEPARTMENT COMMENT

Contact: Grace Steuart at 425-587-3660; or gsteuart@kirklandwa.gov

Due to size over 5,000 square feet, a 13D sprinkler system is required to be installed throughout the house. A separate permit is required from the Fire Department prior to installation. The permit may be applied for on line at MyBuildingPermit.com. All plans shall be designed and stamped by a person holding a State of Washington Certificate of Competency. The system shall be installed by a state licensed sprinkler contractor.

Planning Department Conditions:

PLANNING CONDITIONS - Contact: Jennifer Anderer, 425.587.3239 with questions or to schedule Planning Department Inspections

PCD 1. PLN TO PERFORM FINAL PRIOR TO BLD - BUILDING PERMIT INSPECTION CARD MUST BE SIGNED OFF BY PLANNING PRIOR TO ANY REQUEST FOR FINAL BUILDING INSPECTION. PLEASE CALL 425-587-3235 TO REQUEST INSPECTION. 24 HOUR ADVANCE NOTICE REQUIRED FOR INSPECTION.

Lot Coverage: Be aware that gravel counts at 100% coverage if placed anywhere on the property. Any changes to lot coverage require a new site plan submittal prior to planning final inspection.

Height: Submit a height survey prepared by a licensed surveyor to the building inspector prior to planning final inspection.

PCD 2. SF AND DUPLEX-DRIVEWAYS - Prior to final inspection, all driveways and parking surfaces must be completed.

PCD 3. REVISED SITE PLAN - Any proposed changes to the approved site plan must be submitted as a revision to the building permit for review and approval prior to implementation.

PCD 4. HEIGHT SURVEY – A completed, signed and dated height verification form must be submitted to the building inspector at either the underfloor inspection or the slab insulation inspection.

PCD 5. HEIGHT SURVEY – A height survey, by a licensed surveyor, must be submitted to the building inspector at time of the roof sheathing inspection for structures that will be within one foot of the maximum allowed height.

PCD 6. SF – TREE PROTECTION – Prior to any grading or site construction, the applicant shall install temporary but immovable construction fencing around the drip line of all significant trees to be retained. Tree fencing shall remain in place until the Planning Department authorizes its removal.

PCD 7. SF – NATURAL GREENBELT PROTECTIVE EASEMENT - All pre-existing trees designated for preservation shall be maintained following final inspection of the residence. Prior to final of the building permit, the applicant shall submit a NGPE document to the Planning Department.

PCD 8. SF – GEOLOGICALLY HAZARDOUS AREA COVENANT - Prior to final of the building permit, the applicant shall submit a signed and notarized Geologically Hazardous Area Covenant to the Planning Department.

PCD 9. SF – NOTICE OF GEOLOGICALLY HAZARDOUS AREA - Prior to final of the building permit, the applicant shall submit a signed and notarized Notice of Geologically Hazardous Area to the Planning Department.

PCD 10. SF – WETLAND/STREAM ENHANCEMENT AND MITIGATION MONITORING - Prior to final of the building permit, the applicant shall complete the requirements for the Wetland/Stream Enhancement and Mitigation Planning Performance, Maintenance, and Monitoring Security.

PCD 11. LOT COVERAGE - Any proposed increase in the total impervious surfaces on the site must be submitted for review as a revision to this building permit prior to the addition of impervious area. All exempted surfaces calculated at a ratio of 50 percent shall be installed in accordance with the current stormwater design manual and comply with the City's erosion plan notes for treatment during construction.

PCD 12. ALL - HOURS OF CONSTRUCTION - All development activity and heavy equipment operation is restricted to 7:00 a.m. to 8:00 p.m. Monday through Friday, and 9:00 a.m. to 6:00 p.m. Saturday. Other restrictions on Saturday include: no working in the right-of-way, no work requiring inspection, and no trucking into or out of the site; however, light grading work on-site on Saturday is allowed. NO development activity or heavy equipment operation may occur on Sundays or the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

PCD 13. MAXIMUM NOISE LEVELS - All mechanical units shall comply with the maximum environmental noise levels established pursuant to the Noise Control Act of 1974, Revised Code of Washington (RCW) 70.107. See Chapter 173-60 Washington Administrative Code (WAC). A link to the WAC and RCW is available at www.kirklandpermits.net.

PCD 14. SF - FENCE HEIGHT - 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. On corner lots with two required front yards, this restriction shall apply only within the front yard adjacent to the front façade of the structure.

PCD 15. SF AND DUPLEX-DRIVEWAYS - All driveways and parking surfaces must be of asphalt or a superior material.

PCD 16. SF - EASEMENT SCREENING – An easement or tract with a paved area greater than 10 feet in width must be screened from any adjacent property that does not receive access from it. The screening must extend along the entire easement or tract outside the required front yard. It shall be either a minimum 5-foot high sight-obscuring fence (maximum 6-foot high) or vegetation that will provide comparable screening to a 5-foot fence within 2 years of planting.

PCD 17. SF - COVERED ENTRY PORCHES - Any proposed change to the portion of the covered entry porch that is allowed to extend into the front setback yard must be submitted for review as a revision to this building permit prior to construction of the modification.

PCD 18. SF - FLOOR AREA RATIO - Any proposed increase in the square footage of structures on the site must be submitted for review as a revision to this building permit prior to construction of additional floor area. The maximum floor area ratio on this property is 50% of the lot area.

PCD 19. PMTD SB ENCROACHMENT - Chimneys, bay windows, greenhouse windows, eaves, cornices, awnings, and canopies may extend up to 18 inches into any required yard. Eaves on bay windows may extend an additional 18 inches beyond the bay window. The total horizontal dimension of the elements that extend into a required yard, excluding eaves and

Planning Department Conditions:

cornices, may not exceed 25 percent of the length of the facade of the structure. Except for properties located within the disapproval jurisdiction of the Houghton Community Council, chimneys, bay windows, greenhouse windows, cornices, awnings, and/or canopies may not extend closer than four feet to any property line. See Plate 10

PCD 20. SF - GARAGE REQ. - Garages must meet specific design and/or setback requirements of Kirkland Zoning Code Section 115.43.

PCD 21. MECHANICAL IN SETBACKS - HVAC and similar types of mechanical equipment may be placed no closer than five feet to a side or rear property line, and shall not be located within a required front yard; provided, that such equipment may be located in a storage shed approved pursuant to KZC 115.115(3)(m) or a garage approved pursuant to KZC 115.115(3)(o)(2).

All HVAC and similar types of mechanical 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.

PCD 22. SF AND DUPLEX-TREE RETENTION - Trees designated to be saved under the tree retention plan must be retained. If any of these trees are removed or damaged, they must be replaced. Contact the Planning Department at 425-587-3225 to speak to your planner about the requirements for replacement trees.

PCD 23. SF AND DUPLEX-SOILS REPORT - Recommendations of the soils report must be followed.

PCD 24. ROCKERIES & RETAINING WALLS - Rockeries and retaining walls may be a maximum of 4 feet high in a required yard, unless certain criteria in Zoning Code Section 115.115.3.g are met. Please contact the Planning Department at 425-587-3235 for more information on the modification criteria.

PCD 25. SF – SKYLIGHTS - Skylights may exceed the height limit by a maximum of 6-inches.

PCD 26. FENCES & ROCKERIES - The combined height of fences and retaining walls within 5' of each other in a required yard is limited to 6 feet, unless certain criteria in Zoning Code Section 115.115.3.g are met. Please contact the Planning Department at 425-587-3235 for more information on the modification criteria.

PCD 27. UTILITY STRUCTURES IN SETBACKS - Utility structures which extend more than 4-inches above finished grade may be constructed within a required setback yard provided no other location within the public right-of-way is feasible and prior approval of the City (Planning and Public Works Departments) is obtained. Any franchise agreement between the City and a utility company may supercede this requirement.

PCD 28. ALL - PROHIBITED VEGETATION - Plants listed as prohibited in the Kirkland Plant List (available from the Planning Department) shall not be planted in the City. These plants include Blackberry, Fragrant water lily, Ivy, Herb Robert, Knotweed, Old man's beard, Poison hemlock, Reed canary grass, Scotch broom, Spurge laurel, Yellow archangel, and Yellow flag iris. Other plants, while not prohibited, are discouraged, including Butterfly bush, English holly, and English laurel.

Public Works Department Conditions:

PUBLIC WORKS CONDITIONS
General Conditions

1. Scheduling a Public Works Inspection: All required inspections must be requested by the contractor or permit applicant by 3:00 PM on the day prior to the inspection. Request inspections by going online at www.mybuildingpermit.com. If you need to speak with your Public Works Construction Inspector prior to scheduling your first inspection, call 425.587.3800; be prepared to provide your permit number and site address.

2. The contractor must notify the Public Works Inspector at least one working day prior to starting site work.

3. Clearing limits shall be accurately flagged and tree protection in place prior to commencement of site work.

4. A copy of the approved plans must be on the job site whenever construction is in progress. All changes agreed to must be shown on the "record drawings" prior to project completion.

5. Streets and sidewalks shall not be used for stockpiling building materials, debris, or equipment.

6. Before a street, traffic lane, pedestrian route, or sidewalk is closed, a traffic/pedestrian plan must be submitted to and approved by the City of Kirkland 48 hours prior to closure. Do not block sidewalks with equipment or traffic control signs unless you have a pedestrian detour route in place.

7. Daily work is limited to Monday through Friday, from 7:00 a.m. to 8:00 p.m. (arterial traffic lanes is 9 a.m. to 3:30 p.m.) and Saturday 9:00 a.m. to 6:00 p.m. No utility work in the ROW after 12:00 p.m. on Fridays; restoration only.

A. No work will be allowed on holidays that are observed by the City of Kirkland.
B. No work on Sunday.
C. No work is allowed on Saturday in the public right-of-way or any on-site utilities; light grading is permitted onsite. Also, no trucks permitted to haul in or out.
D. The following is the schedule of City closure days and holidays, and the work allowed:

- MLK Jr. Day - onsite grading only
- President's Day - onsite grading only
- Memorial Day - no work
- Independence Day - no work
- Labor Day - no work
- Veteran's Day observed - onsite grading only
- Thanksgiving Day - no work
- Day after Thanksgiving - onsite grading only
- Christmas Eve observed - onsite grading only
- Christmas Day - no work
- New Year's Eve observed - onsite grading only
- New Year's Day - no work

8. No water system work allowed on Fridays (or any day before a holiday or City closure day).

9. No steel sheets are allowed in Right-of-Way over weekend or on city closure days. Sheets must be removed and asphalt patching in place before 3:00 p.m. Friday.

10. All water valves shall be operated ONLY by City field crews.

11. For water emergencies such as a service or main break, first call Public Works Water Department at (425) 587-3900. Then, call your inspector.

12. Density test reports will be required as directed by the Public Works Department and must be submitted to the inspector at least one day prior to paving or curb and gutter installation.

13. Dust / Erosion / Sedimentation Controls, Developer and Contractor Responsibilities:

A. All required erosion /sedimentation controls must be constructed and in operation prior to land clearing.
B. During the period from October 1 to April 30, any area stripped of vegetation, including roadway embankments, shall be stabilized within 12 hours with the approved control methods (e.g., seeding, mulching, netting, erosion blankets, etc.).
C. During the period from May 1 to September 30, any cleared areas shall not lie open for a period longer than 7 days. If any erosion problem already exists on the site, immediate seeding, mulching, or other cover protection will be required.

Public Works Department Conditions:

D. Per Kirkland Municipal Code 15.52.100, the City of Kirkland may determine at any time during construction that implemented dust, erosion, and sedimentation control measures are not sufficient and additional action is required.

E. Developer/Contractor is responsible for controlling dust, mud, and debris within the project limits and onto existing streets.

F. DO NOT ALLOW RUNOFF FROM THE WASHING OF TRUCKS OR OTHER TOOLS OR EQUIPMENT (GENERATING MUD, SILT, CONCRETE WASTE, PAINT, ETC) INTO DRAINAGE SYSTEM.

14. Final Approval Requirements:

A. Completion of all punch list items compiled from the Final Inspection.

B. Submittal of record civil drawings. The record drawings shall contain the following information:

- Approved datum with benchmark elevation and location.
- All record elevations must be based on the approved datum.
- Drawings must indicate "record drawing" and the date.
- Turn in blueline copy of record drawing for review by inspector. When blueline is approved, then final record drawings are to be submitted in following formats: one photo Mylar and, on CD in two digital file formats, Tiff and PDF, with a minimum resolution of 300 dpi. Format for naming the files should be ProjectName## (## being the page number)
- See Public Works Policy G-3 for complete requirements.

C. Establish a two-year maintenance security. Refer to the Maintenance Security Agreement for cleaning and maintenance requirements of stormwater drainage systems.

15. Two-year Maintenance Security: The project must post a $5,000 two-year Maintenance Security for right-of-way and utility improvements. A Maintenance Security packet is available at the Public Works Department counter and must be submitted prior to the final inspection of the project.

16. Street Restoration Security: The project must post a $5,000 street restoration security prior to issuance of the permit. The security received will be returned, less the administration fee, upon a satisfactory re-inspection of the right-of-way no less than ninety days after final restoration, or when the two-year Maintenance Security has been received. Note: A Performance Security is required for short plat projects that have applied to record prior to completing all the improvements set forth by the short plat conditions of approval.

17. All Work Must Meet Kirkland Standards: All work associated with this project, including street improvements and utility connections, must meet the City of Kirkland Public Works Standards and Policies. Purchase the Manual from Public Works or view on-line at www.kirklandwa.gov (navigate to PW Development Services).

18. Field Conditions May Warrant Revisions: Field conditions during construction may warrant required revisions or modifications to the site plan, utility plan, or street improvement plan.

19. Maintain Survey Monuments: Any existing survey monuments or other permanent survey markers within the public right-of-way shall be maintained during construction. If a monument or other survey marker in the right-of-way is disrupted during construction, it shall be replaced by a licensed surveyor.

20. Redline Comments Included: The owner/contractor is responsible for the implementation of any "redline", plan review comments found in the plans submitted to, and reviewed by the Public Works Department.

21. Traffic Control per MUTCD: All construction activity within the public right-of-way shall have traffic control signing and flagging per the standards within the Manual on Uniform Traffic Control Devices (MUTCD).

22. Re-inspection Fee: An additional review or inspection fee will be assessed for additional review or inspection of a modified design and for re-inspections when the applicant is not prepared for the requested inspection.

23. Plan Revision Clouding: Revisions submitted after the permit is issued shall be clouded and indexed with a number circumscribed in a triangle with the revision described in a revision block.

24. Replace Damaged Public Improvement: Any public improvements damaged during construction shall be replaced prior to final building inspection.

25. Contact PW Inspector when unknown utility lines are encountered: If existing unknown utility lines are encounter during construction, contact your Public Works Inspector before proceeding with work. Do not place any structure over an existing utility line.

Public Works Department Conditions:

26. Do no install utility lines in foundation bearing zone: No utility lines will be allowed in the "load bearing zone" of piers and footings. The Public Works Inspector shall be notified if these utilities are found near the excavation area for piers or footings.

27. Private Utility Easement Required: If any utilities cross adjacent private property, an easement for such purposes must be granted by the owners of the adjacent property prior to final inspection. See Policy G-1 for easement widths standards.

28. Joint Maintenance Agreement Required: A joint maintenance agreement is required prior to final inspection if private storm drainage or sanitary sewer lines will be connected to and shared with adjacent properties.

29. No Tree Planting in Utility Easements: No trees are allowed in the on-site public utility easements.

30. Underground All Overhead Utility Lines: All new or existing overhead utility lines (power, phone, TV, etc) shall be placed underground from the building to the point of origin at the primary/distribution lines of the utility (overhead lines to secondary or service poles will not be allowed). New service lines shall be installed underground even if the site has existing overhead service lines that will remain in place.

Water and Sewer Conditions

31. Water Meter Installation Request: To request a water meter installation, call your Public Works inspection line to request a water service inspection and water meter installation. If the water service passes inspection and is ready for a water meter installation, your inspector will schedule the meter installation with the Water Department; please allow 48 hours for installation, once it has been approved.

32. Replace Existing Water Service: Existing galvanized, copper, or "blue-poly" water services shall be replaced with a 1-inch diameter poly service. The existing service shall be abandoned at the water main.

33. AC Pipe Certification Required: All persons working with or on Asbestos Cement (AC) pipe are required to have proof of certification for working with AC pipe as prescribed in WAC 296-62-07705 and follow OSHA, WISHA, and PSAPCO requirements.

34. Monthly Sewer Billing Begins Before Final Inspection: Monthly Sewer billing will start upon completion of Rough Plumbing inspection and the side sewer connection.

35. Do Not Drain Pool/Hot tub To Storm Drain: When pool/hot tub is drained, it cannot drain to the storm drainage system. A permanent drain connection to the sanitary sewer requires a Plumbing and/or a Side Sewer Permit.

36. Cap Side Sewer: When demolishing a structure, the existing side sewer must be capped at the property line. Failure to cap the side sewer will delay the issuance and any other related permits.

37. Replace Sub-standard Side Sewer: If the existing side sewer lateral is determined to be inadequate in material, slope, depth or diameter, the Public Works Department may require the replacement of part or all of the sewer lateral to conform with current standards.

38. Side Sewer and/or Storm Drainage As-built: The side sewer and/or storm drainage as-built drawings must be prepared prior to the arrival of the Public Works Inspector. If the as-built is not ready, an inspection of those systems will not be conducted at that time and a re-inspection will be required. As-built drawings shall have the following information; address, permit number, building outline, surface features (eg driveway), north arrow, street name, reflect all bends and pipe lengths, triangulation measurements, and be neat and legible. Each as-built shall have the measurement from stub to downstream manhole (distance, ft) or catch basin. Storm as-builts shall also show all LID features (eg porous pavement, rain garden, infiltration areas, etc.).

Erosion Control Conditions

39. Install Erosion Control Prior to Construction: Erosion control measures approved by the Public Works Department must be installed and inspected prior to the commencement of any construction.

40. Mandatory TESC Material Stockpiling: In addition to the mandatory TESC materials installed at the time of grading, the owner/contractor shall stockpile the following materials prior to work startup:

☐ Minimum of 6 straw bales or wattles, and 6 additional bales /wattles per additional acre disturbed.
☐ Minimum 75 feet of filter fabric, and 75 feet per additional disturbed acre.

Public Works Department Conditions:

☐ Minimum of 15 silt fence stakes, and 15 stakes per additional disturbed acre.
This material must be protected from the elements and readily available to the contractor, if installation of emergency erosion control measures becomes necessary. Also, if any of the stockpiled materials are used, they shall be replaced within 2 days.

41. Protect Adjacent Property: Adequate drainage protection must be provided for adjacent properties. Applicants must control development runoff to ensure activities will not cause nuisance or adverse impact to adjacent private and public property.

42. Erosion Control Inspections: Erosion and Sediment Control (ESC) Inspections Required: Approved ESC measures must be installed prior to commencement of construction, and periodic inspections will be conducted during the course of construction.

☐ ESC Inspection #1 - Required prior to pouring concrete for foundation and footings.
☐ ESC Inspection #2 - Required after foundation backfill, rough grading, and prior to subfloor framing inspection. Subfloor framing inspection will not be performed until this ESC inspection has been successfully completed.
☐ ESC Inspection #3 - Required for final site stabilization. A final building department inspection and sign-off will not occur until the final ESC inspection has been fully completed.
☐ For demolition permits, only ESC Inspection #3 is required.

43. Cover All Exposed Soil: Construction drainage control shall be maintained by the developer and subject to periodic inspections. During the period from May 1 to 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.

44. Illicit Discharges and Connections (Municipal Code 15.52) are prohibited into the Storm Drain System:
Contractor is responsible for keeping streets clean and free of contaminants at all times and for preventing an illicit discharge (KMC 15.52) into the municipal storm drain system. If your construction project causes an illicit discharge to the municipal storm drain system, the City of Kirkland Storm Maintenance Division will be called to clean the public storm system, and other affected public infrastructure. The contractor(s), property owner, vendor, and any other responsible party may be charged all costs associated with the clean-up and may also be assessed a fine (KMC 1.12.200). The minimum fine is $500. A fine for a repeat violation shall be determined by multiplying the surface water fine by the number of violations. A fine may be reduced or waived for persons who immediately self-report violation to the city at 425-587-3900. A Final Inspection of your Project will not be granted until all costs associated with the clean-up, and penalties, are paid to the City of Kirkland.

Stormwater Conditions

45. Roof Drainage shall be Separate from Footing Drains: When roof and downspout drains are connected to the Public storm system, the onsite private storm must be tight lined separately from the foundation footing drains. All pipe material must be PVC gravity storm-sewer pipe meeting the requirements of ASTM D-3034, from the building to the stub or connection.

46. Curtain Drain may be Required: To protect adjacent properties from site runoff and groundwater due to site grading and soil modification, the owner/developer may be required to install a curtain drain/exfiltration trench along the property lines. The water collected by this drain must be conveyed to the storm drainage system. The configuration of this drain may need to be designed by a civil or geotechnical engineer, as directed by the Public Works Department.

47. Surface Water Adjustment: Soil Amendment per Pre-Approved Plan E.12 is required for all landscaped areas.

Right-of-Way Conditions

48. Permanent Patching of Utility Trenches: All utility trenches in the right-of-way shall be permanently patched within 30 days after the initial trench is made. All streets which require asphalt overlays (see Public Works Policy R-7) shall be overlaid within 120 days after the permanent patching is complete, or prior to completion of the project, whichever occurs first.

49. Driveway Inspection Required: A Public Works inspection is required before pouring or paving any driveway to confirm that the location and dimensions of the driveway are according to plan.

Public Works Department Conditions:

50. Replace Street Improvements: Remove and replace sidewalks, driveways, and/or curbs along 18th ave and 1st St. fronting the proposed site. The replacement is required due to existing damage, deterioration, or to bring the street improvements to the current standards.

51. LED Street Lights Required: Street lights are required per Puget Power design and City of Kirkland approval. Refer to the Plans by PSE.

52. Roadway Compaction Tests: Compaction tests on roadway subgrade are required. The minimum compaction for roadway subgrade shall be 95% of maximum relative density. The number of tests shall be at the discretion of the Public Works inspector.

53. Maintenance of Existing Street Signs: The contractor is responsible for removing, storing and reinstalling all signs in the right-of-way which must be relocated. Any signs which are damaged in any way by the contractor will be replaced with new signs which meet the standards of the Public Works Department.

54. Curb and Sidewalk Form Inspection: Curb and sidewalk forms & subgrade inspection required prior to pour.

55. Street Pavement Overlay Required: Three or more patches in the asphalt roadway within 150 feet of each other triggers a grind and overlay street. Other overlay criteria may apply. Refer to Public Works Policy R-7.

56. Street Trees and Utility Structures: Street trees shall not be planted within 10 feet of any storm or sanitary sewer structure.

57. Pedestrian and Bicycle Route Maintenance: Unless an approved pedestrian or bicycle lane detour route has been approved by the City, all sidewalks and bicycle lanes shall be temporarily repaired at the end of each day according to the following (see Public Works Policy G-6 for a list of street classifications):

A) Arterial and Collector type streets: Sidewalks and bicycle lanes shall be restored temporarily at the end of each day with a cold-mix asphalt or steel plates.

B) Neighborhood Access type streets: Sidewalks can be restored temporarily at the end of each day with a crushed rock surface. A crushed rock restoration will be allowed for up to three working days. After three working days, if the sidewalk is not repaired permanently, a cold-mix asphalt surface must be installed as a temporary measure. Bicycle lanes shall be restored temporarily at the end of each day with a cold-mix asphalt or steel plates.

C) Sidewalks and bicycle lanes shall be restored permanently within 20 working days from the date of the original excavation. However, this is a minimum standards, and the City may request that sidewalks and bicycle lanes be restored permanently in less than 20 days. Sidewalks and bicycle lanes shall never be used for storage of construction vehicles, equipment, or materials. Traffic control equipment such as signs, barricades, cones, etc., shall not block sidewalks or bicycle lanes unless a pedestrian or bicycle lane detour route has been approved by the City.

D) A sidewalk shall never be closed without a City-approved pedestrian detour route.

58. Tree Trimming by a Certified Arborist: A certified arborist is required to do any tree pruning on trees in the public right-of-way. Also, notify the adjacent property owner of tree pruning prior to the work being done.

THE HEARING EXAMINER OF THE CITY OF KIRKLAND

IN RE:	Bldg. Permit No. BSF19-01341
Rita Lang and Harley Lang Appeal of Certificate of Occupancy Issue	ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT AND DISMISSAL

The Appellants' Motion for Summary Judgment and City's Motion for Dismissal are denied.

Evidence Relied Upon

City's 2/7/22 Motion for Dismissal, Appellant Response, City Reply and all associated declarations/exhibits.

Appellants' 2/7/22 Motion for Summary Judgment, City Response, Appellant reply and all associated declarations/exhibits.

Findings of Fact

1. Appellants/Property. Rita Lang and Harley Lang are the Appellants. The Langs own a single-family residence (Residence) at 6304 Lakeview Dr., Kirkland, WA.

2. Building Permit. The Appellants were issued a building permit for their Residence in 2019. As of July 29, 2021, all inspections of the Appellants' home have been completed and passed by the Building Official, except for zoning code requirements imposed by the Planning and Building Department.

3. Request for Certificate of Occupancy/Denial. On September 10, 2021 the Appellants' attorney sent a letter to the Planning and Building Department requesting a certificate of occupancy for the Residence. The September 10, 2021 letter argued that the certificate of occupancy could not be withheld solely because of outstanding zoning compliance issues with the Residence. The Director of the Planning and Building Department denied the request by letter dated September 24, 2021. The letter provided in pertinent part as follows:

> *...I would disagree with your assessment of KMC 21.06.540, as the "other laws that are enforced by the planning and building department" include only relevant Building Code provisions, but all the applicable development regulations in the Kirkland Zoning Code, including those that Jen Aderer emailed your client back in June. Thus we cannot issue a certificate of occupancy if only Building Code Requirements have been verified, but Zoning Code requirements that apply to the project have not been met.*

4. Appeal. The Appellants filed the subject appeal on October 21, 2021. The appeal asserts that they should not have been denied the certificate of occupancy for the residence based on outstanding zoning code compliance issues.

5. Motions. The City has filed a motion for lack of Examiner jurisdiction and the Appellants have filed a motion for summary judgment. Both motions were filed on February 7, 2022. Both motions are the subject of this ruling.

Conclusions of Law

1. Hearing Examiner has Jurisdiction. The Examiner has jurisdiction to hold a hearing and issue a final decision on the subject appeal. The City's motion for dismissal is based upon the argument that the Examiner doesn't have jurisdiction over decisions to not issue a certificate of occupancy. It is determined that decision is subject to Examiner review under KMC 21.06.570, which authorizes Examiner review of decisions made under the construction codes.

   KMC 21.06.570 grants the Examiner with authority to hear appeals of "decisions" and "determinations" of the building official that don't constitute

code enforcement actions. KMC 21.06.572 provides in pertinent part that appeals made pursuant to Chapter 21.06 KMC shall be limited to interpretations of Chapter 21.06 KMC or the technical codes adopted by that chapter.

The September 24, 2021 letter from the Department Director identified in Finding of Fact No. 3 was a "decision" to deny a certificate of occupancy based upon the Director's interpretation of when a certificate of occupancy can issue. Under the plain meaning of KMC 21.06.570, a "decision" has been made under Chapter 21.06 KMC and thus the Examiner has jurisdiction.

For purposes of judicial economy and to provide consistency with what decisions may be appealed to superior court under the Land Use Petition Act (LUPA), Chapter 36.70C RCW, it is acknowledged that the Development Director's decision should qualify as a "final decision." RCW 36.70C.020(2) defines a "land use decision" that qualifies for review under LUPA as a "final determination" by a local jurisdiction or body or officer on applications for a number of land use approvals, including building permits. A "final determination" for purposes of LUPA is a decision "*which sets at rest the cause of action between parties*." *Chumbley v. Snohomish Cnty*., 386 P.3d 306, 315 (2016).

Under the *Chumbley* definition of a "final determination," the department Director's decision qualifies as a final land use decision. The Appellants' believe they do not have to complete zoning code compliance measures to acquire a certificate of occupancy, the City believes the opposite. There is nothing in the record to suggest that there is any way around this impasse save an appeal. Under these circumstances, it is logical and reasonable to conclude that the cause of action is "*a rest*" as nothing further will happen until the impasse is resolved by appeal[1].

The City also argues that the Examiner has no jurisdiction because a writ of mandamus is required to compel the issuance of certificate of occupancy. It is difficult to see how an examiner decision reversing a certificate of occupancy denial is materially different from reversing a conditional use permit denial or any other land use permit denied by the City. The Examiner's role in this appeal is limited to assessing the validity of a decision made pursuant to the Chapter 21.06 KMC and the construction codes adopted by that chapter. As pointed out by the Applicant, if the City fails to implement the Examiner's decision on the

[1] Building permits do eventually expire due to abandonment under the IRC, but it's doubtful a court would find any policy justification for making a permit application wait until their permit expires before seeking recourse for a difference of opinion on the terms of issuance for a certificate of occupancy.

validity of the decision to not issue the certificate of occupancy, that failure to act would be the proper subject for a mandamus action.

The City also asserts that there is no jurisdiction because KMC 21.06.570 requires the appeal to be about interpretations under the construction code chapter (Chapter 21.06 KMC) and the codes adopted by that chapter. As noted in Paragraph 4 of the Declaration of Adam Weinstein (in City's summary judgment response), part of the resolution of the appeal is dependent upon the construction of zoning code provisions that require zoning code requirements to be completed prior to issuance of a certificate of occupancy. Although those requirements are within the zoning code, they add direct clarity to KMC 21.06.540, which provides that a certificate of occupancy shall not issue until after the building official determines that there are no building or zoning code violations. Ultimately, the primary issue at hand is whether a certificate of occupancy should be issued under KMC 21.06.540, which is a construction code issue as contemplated by KMC 21.06.570.

2. Certificate of Occupancy Can be Withheld on Basis of Zoning Code Compliance Requirements. The City can withhold a certificate of occupancy based upon failure to complete zoning code requirements. The Appellants' summary judgment motion is based upon the argument that a certificate of occupancy must be issued if all construction code requirements are met. It is concluded that the City can potentially rely upon several KMC provisions as well as the Appellants' building permit conditions themselves to require compliance with zoning code requirements prior to issuance of a certificate of occupancy.

The first point of inquiry in assessing whether zoning code issues can affect issuance of a certificate of occupancy is KMC 21.06.540, which addresses when certificates can issue as follows:

> *After the building official inspects the building or structure and does not find violations of the provisions of this chapter or other laws that are enforced by the planning and building department, the building official shall issue a certificate of occupancy*

As made clear from the language above, a certificate cannot be issued if there are violations of Chapter 21.06 KMC or laws that are enforced by the "*planning and building department*." The zoning code is clearly enforced by the planning and building department, so any violations of the zoning code serve as a basis for not issuing a certificate of occupancy.

The remaining question is what constitutes a "violation" of the zoning code to justify withholding a certificate of occupancy? The Appellants appear to take the position that "violations" of the zoning code can be avoided by simply setting compliance deadlines for after issuance of the certificate. By that logic the same could be done for building code compliance as well. Zoning code requirements are placed upon the same footing as building code requirements for purposes of when a certificate of occupancy can be issued under KMC 21.06.540. KMC 21.06.540 essentially does not allow a home or the lot upon it rests to be occupied until all applicable building and zoning code requirements are met. There may be some instances where deferral of building or zoning code requirements is justified, but the Applicant has not identified as a matter of law, in the absence of any material question of fact, why that should be the case for the zoning code issues presented by this appeal.

Paragraph No. 4 of Mr. Weinstein's declaration identifies several zoning code provisions that require zoning code compliance prior to issuance of a certificate of occupancy. To best harmonize these specific requirements with the broader rule set by KMC 21.06.540, the provisions identified in Paragraph No. 4 should be construed as adding to the reasons identified in KMC 21.06.540 for when a certificate of occupancy must be withheld.

Finally, the conditions of the building permit issued for the Appellants at this point are final and cannot be collaterally attacked in this proceeding. *See, e.g., Habitat Watch v. Skagit County*, 155 Wn.2d 397, 410-11 (2005)(under principles of judicial finality, administrative decisions that are not timely appealed are binding even if incorrect). Just as the Appellants recognize that a final decision on a certificate of occupancy is appealable as a "decision" to the Examiner under KMC 21.06.570, for the same reasons a building permit decision also qualifies. Since the Appellants' building permit has not been timely appealed, the conditions of that permit cannot be challenged even if they violate the KMC under the *Habitat Watch* case. Those conditions are fully enforceable to the extent they require zoning code compliance prior to issuance of a certificate of occupancy.

Decision

The City's Motion for Dismissal is denied for the reasons identified in Conclusion of Law No. 1. The Appellants' Motion for Summary Judgment is denied for the reasons identified in Conclusion of Law No. 2.

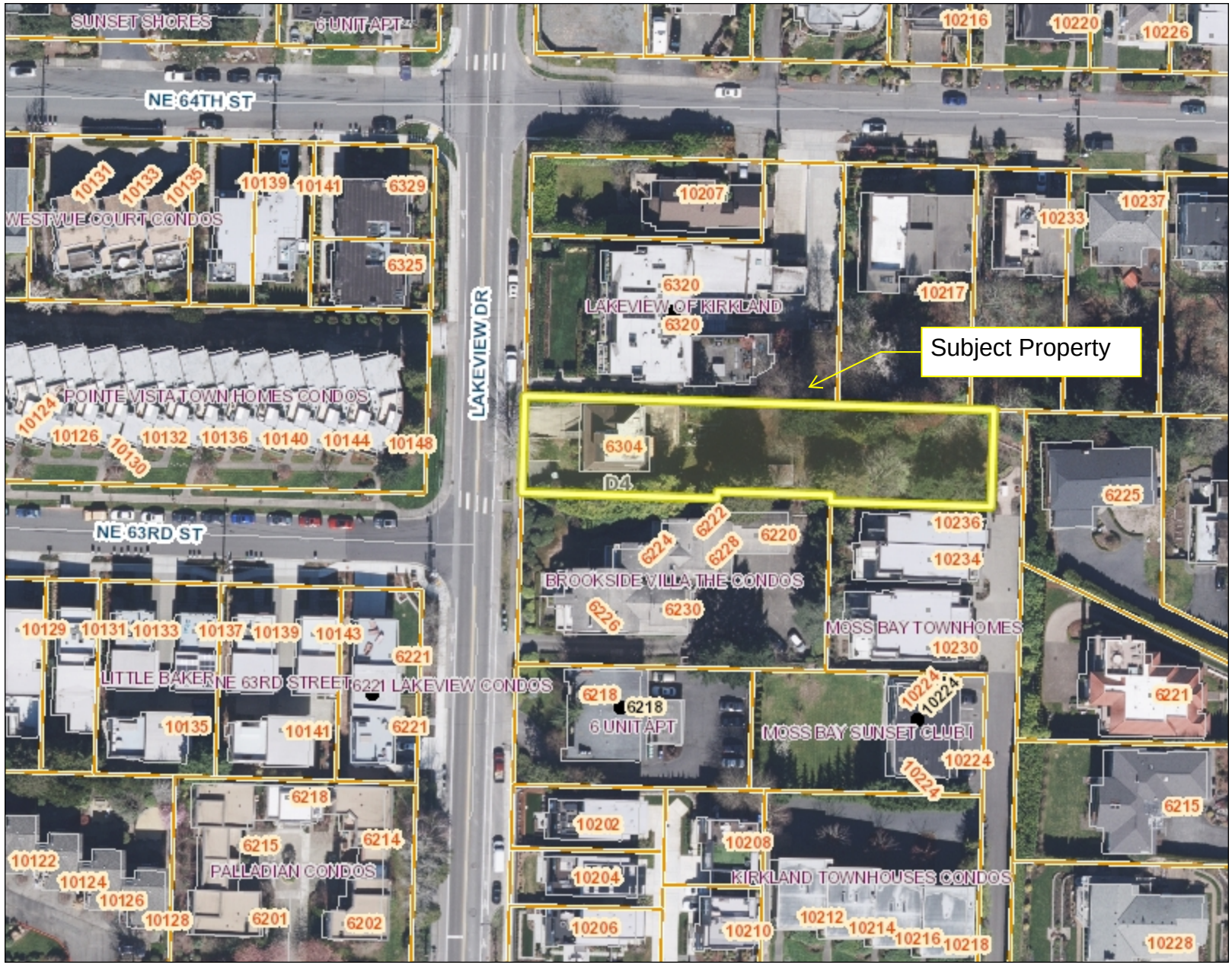
ORDERED this 9th day of March 2022.

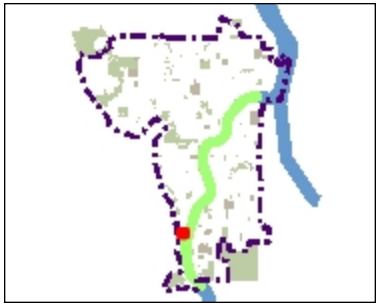
Phil Olbrechts

City of Kirkland Hearing Examiner

City of Kirkland GIS

BSF19-01341
Enclosure 5





Legend

- 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
- Lakes
- Parks
- Schools
- Olympic Pipeline Corridor
- Water Body Area
- City Area
  - BA
  - BE
  - BO
  - CH
  - DU
  - HP

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Notes

181.5 0 90.74 181.5 Feet

NAD_1983_StatePlane_Washington_North_FIPS_4601_Feet

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BEFORE THE CITY OF KIRKLAND HEARING EXAMINER

RITA LANG AND HARLEY LANG, husband and wife, Appellants, vs. CITY OF KIRKLAND Respondent.	No. **APPEAL OF DECISION AND OR DETERMINATION OF BUILDING OFFICIAL** Permit No. BSF19-01341

I. INTRODUCTION

Rita Lang and Harley Lang, (the "Langs"), pursuant to KMC 21.06.570, invoke the jurisdiction of the Kirkland Hearing Examiner to review the City of Kirkland Planning and Building Department (the "Department") Director's: **(1)** decision to not issue a certificate of occupancy for the Langs newly remodeled home; and or: **(2)** determination that KMC 21.06.535 and KMC 21.06.540 do not require the Department to issue a certificate of occupancy in this stage of the Langs' remodel of their home.

The Langs acquired their single-family residence located at 6304 Lakeview Dr., Kirkland, Washington Parcel No. 0825059195 (the "Property") in November of 2003. For the past ten years, the Langs have been in the process of remodeling/replacing their home and have been working faithfully with the Department to obtain all proper permits and approvals to do so. In 2019, the Langs were final issued permits for the remodel of their

RECEIVED
OCT 21 2021
City of Kirkland
Planning & Building Dept.
ORIGINAL

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home under BSF19-01341. As of July 29, 2021, all inspections of the Langs' home, aside from the Department's, were completed and passed by the Building Official. In his inspection, the Building Official did not find or note "any violations of [KMC Ch. 21.06] or other laws that are enforced by the planning and building department." KMC 21.06.540. Yet, the Department has not issued the Langs a certificate of occupancy, despite the plain language of KMC 21.06.540 which obligates the building official to issue a certificate of occupancy after inspection.

On September 10, 2021, the Langs, through counsel, sent the Department a letter requesting that the Department issue a certificate of occupancy to the Langs pursuant to KMC 21.06.535 and KMC 21.06.540. A true and correct copy of that letter is attached hereto as **ATTACHMENT 1.** On September 24, 2021 at 5:19pm, the Department Director, Adam Weinstein, responded to the letter via email where he, in sum, denied the Langs' request for a certificate of occupancy and disagreed that KMC 21.06.535 and KMC 21.06.540 require the Department to issue a certificate of occupancy to the Langs at this point of the project, and refusing to condition the certificate of occupancy with any clarity. No one at the City found any "violations" of code. A true and correct copy of that email from Mr. Weinstein is attached hereto as **ATTACHMENT 2.**

II. STANDING & JURISDICTION

KMC 21.06.570 provides, in relevant part:

> "Appeals of orders, <u>decisions</u> and <u>determinations</u> of the building official that do not constitute enforcement actions shall be heard and decided by the city of Kirkland hearing examiner."
>
> KMC 21.06.570

In turn, KMC 21.06.572 provides:

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> "An appeal under this chapter shall be based on a claim that this chapter or the technical codes have been incorrectly interpreted, that the provisions of this chapter or the technical codes do not apply or that an equally good or better form of construction, method of protection or safety is proposed."

KMC 21.06.572

An Appellant shall file a written appeal of the order, decision or determination of the building official with the Kirkland planning and building department within thirty days of the date of the decision of the building official. KMC 21.06.574.

Here, the Langs allege that the Department erroneously interpreted KMC 21.06.540 when the Department Director, Mr. Weinstein, determined/decided not to issue the Langs a certificate of occupancy on September 24, 2021. An equally good or better form or method of protection or safety is achieved by issuing the certificate of occupancy with lawful conditions under KMC 21.06.540. This appeal was filed within thirty days of the date of the determination/decision of Mr. Weinstein. Accordingly, this appeal is timely and is authorized under KMC 21.06.570 and KMC 21.06.570 and must be heard and decided by the City of Kirkland Hearing Examiner. The Langs will continue to try to work their issues out with the City, but file this appeal as they disagree with the decision and are aggrieved by the delays.

III. STATEMENT OF ISSUES

(1) Did the Department err where it refused to issue the Langs a certificate of occupancy?

IV. SHORT ANSWER

Yes. KMC 21.06.540 requires that the certificate of occupancy for the Langs home be promptly issued, and that any zoning code requirements or building permit requirements can be listed as conditions. The Planning Director's interpretation of the code and refusing

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to issue the certificate of occupancy is contrary to code. The City can only enforce the city code and condition issuance of a certificate of occupancy on curing "violations" of "laws that are enforced by the Department" and lawful permit conditions may be listed on the Certificate of Occupancy. As there are no "violations," the Certificate of Occupancy can and must be issued.

V. RELIEF REQUESTED

Appellants respectfully requests that the Hearing Examiner:

a. Grant the Appeal;

b. Find that the Department erroneously interpreted KMC Ch. 21.06 when it refused to issue the Langs a certificate of occupancy and that under the facts of this case, a certificate of occupancy can and must be issued to the Langs; and

c. Order the Department to promptly issue the Langs a certificate of occupancy.

DATED this 21 day of October, 2021.

OJALA LAW, INC., P.S.

By _____

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ATTACHMENT 1

OJALA LAW

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PETER OJALA
NATE VERANTH, of counsel
TANNER HOIDAL

TELEPHONE: (877) 678-5227
(360) 568-9825

September 10, 2021

VIA ELECTRONIC/U.S. MAIL:

City of Kirkland
Planning and Building Dept.
Attn: Adam Weinstein
123 Fifth Ave
Kirkland, WA 98033

***Re:* Lang Permit No. BSF19-01341 –370305- Certificate of Occupancy**

Dear Mr. Weinstein:

Introduction & Request for Certificate of Occupancy

This law firm now represents Harley and Rita Lang (the "Langs") in connection with the replacement of their single-family residence (the "Project") located at 6304 Lakeview Drive, Kirkland Washington, Parcel No. 0825059195 (the "Property"). The Langs have lived in Kirkland for over 18 years, and have owned their home since November of 2003. As landowners, they have been seeking to build their dream home on their property in Kirkland for over 10 years, working through the City's permitting and development processes. The Langs were finally issued permits under BSF19-01341 in 2019, and now the final inspections have occurred as of on or about 7/29/2021. Yet, the certificate of occupancy has not been issued.

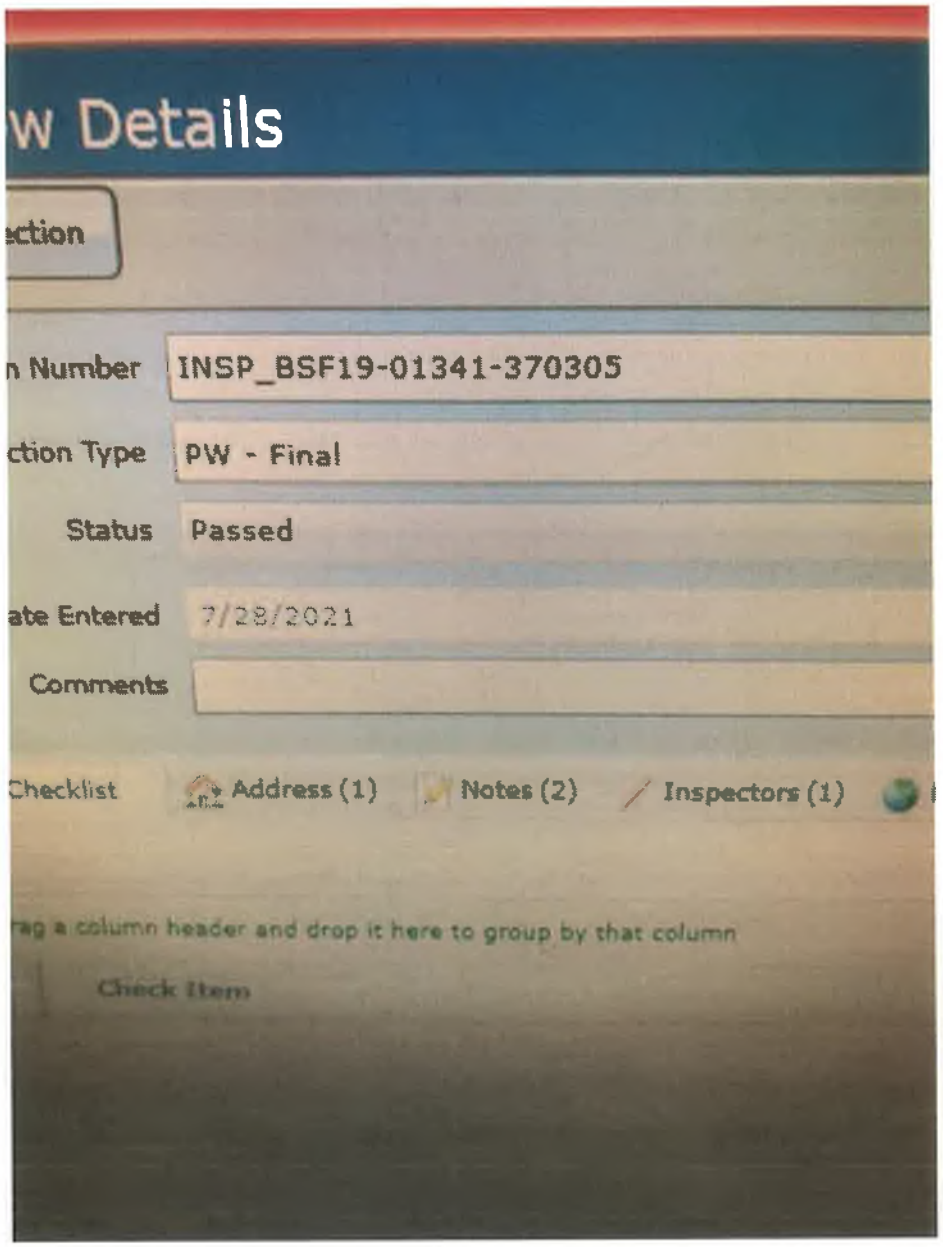
The Langs request a Certificate of Occupancy for their rebuilt residence at the Property be promptly issued pursuant to KMC 21.06.535 and 21.06.540. The Langs now make this request because the Langs need to refinance their loan, and the certificate of occupancy is required for the refinance. If the certificate of occupancy is not promptly issued, and interest rates rise or other financing issues manifest, the Langs will be severely damaged.

Inspections of Record

An excerpt from the building permit file (mybuildingpermit.com inspections log) for the Project is as follows:

PLM - Final V1	7/14/2021	Passed	
PCD - Tree Fencing Installation V1	7/14/2021	Passed	
BLD - Final V1	7/15/2021	Not Ready	Comments: need Planning and Public work final, **all else is good.** Corrections: <UL><LI>Electrical See Comments, Comments: 7/8/21. RvL. Garage East wall outlet needs gfci protection. Washer needs arc/ gfci protection. Kitchen outlet breaker needs to be dual. Heat 120 volt breaker needs to be arc fault. Iron board needs arc fault protection. T-stat needs arc fault. Fridge/freezer needs arc fault.
ELE - Final V3	7/16/2021	Passed	7/16/21. RvL. Above items are completed </LI></UL>
PW - ROW Paving V5	7/29/2021	Passed	
PW - ROW Restoration V2	7/29/2021	Passed	
PW - Final V1	7/29/2021	Passed	
PW - ROW Improvements V2	7/29/2021	Passed	

From the log, the Building Official approved everything on or about 7/15/2021, but stated that Planning and Public Work final was needed. Specifically, "need Planning and Public work final, **all else is good**." (emphasis added). This shows the building inspector approved the final inspection for all substantive purposes. KMC 21.06.530. The log then shows that Public Works final was passed on 7/28/2021, logged into the system on 7/29/2021. Public Works sent via text message the below screen shot to Rita Lang:



The above screen shot shows that the Public Works inspection is "passed." So the only item that could possibly remain are items from Planning, if anything. There has not been clear communication on what the specifics of those items are to date and how they relate to the Certificate of Occupancy, or the Project, and whether the boilerplate in the permits are required. It is not precisely clear what is needed from Planning, but apparently nothing is needed that is related to the Certificate of Occupancy for the Lang's home. In any event, the City code is clear under KMC 21.06.535 and KMC 21.06.540 that the Certificate of Occupancy can and must issue at this time because the

Building Official did not find or note any "violations of the provisions of this chapter or other laws that are enforced by the planning and building department" KMC 21.06.540.

Issue

Under KMC 21.06, must the City issue a Certificate of Occupancy where the Building Official has made the final inspection and not found "violations" of any City code?

Short Answer:

Yes. KCC 21.06.540 requires that the certificate of occupancy for the Langs home be promptly issued. The City can only enforce the city code and condition issuance of a certificate of occupancy on curing "violations" of "laws that are enforced by the planning and building department" and lawful permit conditions may be listed on the Certificate of Occupancy. As there are no "violations," the Certificate of Occupancy can and must issue.

City Code

KMC 21.06.535 Use & Occupancy.

"A building or structure shall not be used or occupied, and a change in the existing use or occupancy classification of a building or structure or portion thereof shall not be made until the building official has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this chapter or of other ordinances of the jurisdiction.

Exceptions:

(1) Work exempt from permits per Section 21.06.215.

(2) For single-family dwellings and their accessory structures, the city-issued building permit inspection record may serve as the certificate of occupancy when the final inspection has been approved by the building official or the building official's designee."

KMC 21.06.540 – Certificate Issued

"After the building official inspects the building or structure and does not find **violations** of the provisions of this chapter or other laws that are enforced by the planning and building department, the building official **shall** issue a certificate of occupancy that contains the following:

(1) The building permit number.

(2) The address of the structure.

(3) The name and address of the owner or the owner's authorized agent.

(4) A description of that portion of the structure for which the certificate is issued.

(5) A statement that the described portion of the structure has been inspected for compliance with the requirements of this chapter for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.

(6) The name of the building official.

(7) The edition of the code under which the permit was issued.

(8) The use and occupancy.

(9) The type of construction.

(10) The design occupant load where applicable.

(11) If an automatic sprinkler system is provided, and whether the sprinkler system is required and for what reason.

(12) Any special stipulations and **conditions** of the building permit." (emphasis added).

KMC 21.06.515 Final Inspection.
The final inspection shall be made after all work required by the permit(s) is completed.

Analysis

Here, the final inspection by the building official occurred on or about 7/18/2021, with a finding that "need Planning and Public work final, **all else is good**." Public Works inspection of work "passed" on or about 7/28/2021. No other "work" is required. No "violations" were noted by the Building Official, so nothing prevents the issuance of the Certificate of Occupancy. Final terms of certain purported building permit conditions are still being determined and worked out by the City Planning department, so they are unknown at this time. The Langs also provided more restoration and mitigation than what was required under the code. And although the Langs in good faith have questioned and sought to flesh out the scope and/or applicability of some of the latest requests by the City, any lawful "conditions of the building permit," can be noted on the Certificate of Occupancy. KMC 21.06.540 (12).

The Langs good faith inquiries on those purported conditions remain unanswered even today, and the City is still working on reviewing and determining some mitigation plans and conditions. The City has also actively altered its requests to the Langs, and agreed that as to the geohazard issues, "mapped landslide…areas was [sic] not impacted by your project [.]"[1] The back and forth and true closing out of this

[1] Email excerpt from Jennifer Anderer, City of Kirkland Associate Planner, to Rita Land on July 22, 2021.

matter must proceed in a diligent and predictable manner going forward. It appears under the City code that issuance of the Certificate of Occupancy is the proper vehicle for this to occur in a fair, tangible, and accessible way. KMC 21.06.540.

A review of the Building Permit Conditions does not provide meaningful and tangible detail on what the Planning Department desires, or whether any of it is objectionable:

> PCD 7. SF – NATURAL GREENBELT PROTECTIVE EASEMENT - All pre-existing trees designated for preservation shall be maintained following final inspection of the residence. Prior to final of the building permit, the applicant shall submit a NGPE document to the Planning Department.
> PCD 8. SF – GEOLOGICALLY HAZARDOUS AREA COVENANT - Prior to final of the building permit, the applicant shall submit a signed and notarized Geologically Hazardous Area Covenant to the Planning Department.
> PCD 9. SF – NOTICE OF GEOLOGICALLY HAZARDOUS AREA - Prior to final of the building permit, the applicant shall submit a signed and notarized Notice of Geologically Hazardous Area to the Planning Department.
> PCD 10. SF – WETLAND/STREAM ENHANCEMENT AND MITIGATION MONITORING - Prior to final of the building permit, the applicant shall complete the requirements for the Wetland/Stream Enhancement and Mitigation Planning Performance, Maintenance, and Monitoring Security.
> PCD 22. SF AND DUPLEX-TREE RETENTION - Trees designated to be saved under the tree retention plan must be retained. If any of these trees are removed or damaged, they must be replaced. Contact the Planning Department at 425-587-3225 to speak to your planner about the requirements for replacement trees.

These conditions are not tangible and accessible, without further input from the City, and agreement by the Langs. Indeed, the terms are currently being drawn up and worked and reworked and redetermined by the City based upon the as-builts of the Project, and actual site conditions (not merely "potential" site conditions). However, informal indeterminate exchanges of emails can tend to drag on and on, and be unpredictable.[2]

Accordingly, the Langs request the above items be addressed in the issuance of the Certificate of Occupancy as they may relate to "conditions of the building permit" as referenced in KMC 21.06.540 (12).

Several timing terms are a little confusing, and are undefined, and apparently relate to the timing of inspections. What is meant by "prior to final of the building permit" versus "final inspection of the residence" versus "prior to final inspection" – these

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[2] The city sent an email dated June 24, 2021 from Jennifer Anderer to Rita Lang with five substantial and new items the City wanted for "finaling the permit for PCD" but that require additional information from the City before the terms can be determined, agreed upon, and finalized, including a newly minted request for an indeterminate NGPE covering the entire property, and newly minted "Tree Maintenance Agreement." The items did not reference any building permit conditions, but the PCD 7-10, 22 most closely resemble the new but indeterminate items.

different terms have different meanings. In addition to procedural/timing concerns, there are substantive details, required, but lacking in the building permit.

Under PCD 7 – This condition as written is unclear. It uses the term "easement." An easement is the right of someone else to use your property. The right to exclude is a major and fundamental property right. In this listed boilerplate condition, the terms of an 'easement' are not mentioned. There is no indication of duration (a few years, or perpetual), scope, size, or area or other potential conditions of this substantial real property interest, what the benefited property would be, what the burdened property would be, or what other duties may exist. PCD 7 refers to "pre-existing trees." There is no form of "NGPE" or any indication of the nexus to this already developed property, nor how the "NGPE" is proportionate to the impacts of the Project (particularly in light of the extra mitigation already implemented), referenced in the building permit. There is no indication of the amount of compensation, if any, the City is planning on paying to the landowners for an easement. Moreover, KZC 90.185.6(a)(12) provides that a critical area dedication pursuant to KZC 90.210 is not required for the vegetated portion of the "buffer" for expansion of legally established nonconforming structures. In recent email exchange, it appears the City has sent over boiler plate "easement" via email without tailoring it to the Property and Project, and without valid legal descriptions. The City's proposed form of NGPE does not pertain to "pre-existing trees" and has many other provisions unrelated to PCD 7. These items need to be removed or tailored and clarified appropriately to the circumstances when the Certificate of Occupancy issues.

Under PCD 8 and PCD 9– there is no indication what type of "covenant" or "notice" this is, and who the benefited parties to the covenant would be, or the terms or restrictions of the covenant, or terms of notice, and how those relate to or have any nexus or proportionality to the Project or its impacts. While KZC 85.45 and 85.50 provide more specific language, even those codes do not provide for what the terms of the contemplated "agreement with the City" is as referenced in the code, and included or referenced in the Building Permit PCD 8. Those provisions also require the timing of these items, to be done prior to the issuance of the building permit or final inspection, both of which have already occurred here, and so the requests are stale. There is also no indication of what the Notice is and the terms thereof (so that it can be determined if the Langs are legally prohibited from providing the notice), and whether such notice would scare off potential lenders, or purchasers, and what the Notice is based on and how the Notice could be removed or excused if there is no meaningful risk or rational basis for the notice. Again, KZC 85.45 code apparently requires this prior to building permit issuance, which has long passed. The boilerplate the City sent over is not tailored to the Langs Project, is indeterminant, and far exceeds what is mentioned in PCD 8 and 9.

These need to be removed or tailored and clarified appropriately to the circumstances when the Certificate of Occupancy issues.

Under PCD 10- the Langs are happy to enhance their property as they have done and maintain this as they enjoy working in the yard, but they worry that over the long term other possible future home owners may not have the physical ability to do so, thus impacting the value of their property. They are waiting on the City's review (or the City's consultant's review) of the as-built landscape plan to come to final terms on what mitigation is necessary and bond amounts. The delays are extraordinary given the limited risks here. The Langs worry that there is apparently only one peer review contractor which is not competitive, and that the delay and costs far exceed the benefits, particularly given that they have provided more restoration than the code requires in any event. The Langs worry that the bond amounts and their mitigation commitments have already far exceeded both the nexus and proportionality standards, but also city code, and yet the City is now requiring more. For example, there doesn't appear to be a clear reason why a perpetual easement would be necessary in addition to these bonding and mitigation matters. Clarity here would be appreciated. This needs to be tailored appropriately to the circumstances.

PCD 22 – this condition is/was straightforward. Now, however, the City is requesting more through a Tree Maintenance Agreement that was not contemplated in the building permit one iota in PCD 22. The new Tree Maintenance Agreement request doesn't make sense. Please do not include additional language or requirements as a condition in the Certificate of Occupancy.

The Langs request that the City issue the Certificate of Occupancy, and for any lawful building permit conditions it seeks to apply and does not remove, tailor and list those in the Certificate of Occupancy, within 14 days of receipt of this letter request. Thank you.

Conclusion

The Langs have been working faithfully and diligently with the City and the Department on this Project for past ten years. It is now time for the Department to issue the Certificate of Occupancy. The Building is complete, the inspections are complete. There is no reason to impose additional and unlawful Conditions on the Langs at this point. KMC 21.060.540 provides, in relevant part:

> "After the building official inspects the building or structure and does not find **violations** of the provisions of this chapter or other laws that are enforced by the planning and building department, the building official **shall** issue a certificate of occupancy…"

KMC 21.060.540

Here, there are no violations of the provisions of KMC Ch. 21.060 nor any other laws that are enforced by the Department. Accordingly, on behalf of the Langs, we respectfully request the Department issue the Langs a Certificate of Occupancy.[3]

Sincerely,

OJALA LAW INC., P.S.

Peter C. Ojala, Lawyer
peter@ojalalaw.com

Cc: Ms. Stephanie Croll, City Attorney (via email only SCroll@kirklandwa.gov)

[3] The Langs have been lead to believe that the building official cannot physically in the City software mark the final inspection appropriately.

ATTACHMENT 2

From: Adam Weinstein
To: Peter Ojala
Cc: Stephanie Croll
Subject: RE: Lang Permit No. BSF19-01341 - 370305 - Certificate of Occupancy
Date: Friday, September 24, 2021 5:19:05 PM

Hi Peter – I also wanted to circle back to you regarding your September 10 letter.

We appreciate your expressing these concerns about wrapping up the Langs' permit and want to assure you that we are also interested in bringing the permit to occupancy status. The conditions on the Langs' permit that you reference in your letter are ones that are fairly standard for properties-under-development in Kirkland that contain trees and critical areas (wetlands, streams, and geologically-hazardous areas) and the easement, covenant, and other agreements that Planner Jen Anderer sent to Rita Lang for signature on June 24, 2021 are substantively similar to the documents that dozens of property developers/owners throughout the City sign every year. The requirements in these documents (and the original permit conditions that you cite) are founded in the City's critical areas and tree codes, which primarily comprise Chapters 85, 90, and 95 of the Kirkland Zoning Code, and which are part of the laws that the Planning & Building Department helps enforce when permits are moving towards occupancy status.

With that in mind, I would disagree with your assessment of KMC 21.06.540, as the "other laws that are enforced by the planning and building department" include not only relevant Building Code provisions, but all the applicable development regulations in the Kirkland Zoning Code, including those that Jen Anderer emailed your client about back in June. Thus we cannot issue a certificate of occupancy if only Building Code requirements have been verified, but Zoning Code requirements that apply to the project have not been met.

Jen notes that of all the requested items in that June 24 email, your client has submitted only the As Built Landscape Plan, which was deemed insufficient because it doesn't include basic information about the landscaping on the site – including whether changes were made, and a copy of the full mitigation plan showing installed species. Jen communicated this information to Rita Lang on September 20, but the only response we got was to "[p]lease coordinate with your director and city attorney."

I understand that your letter notes that certain conditions are unclear, but would affirm that the attachments included in Jen's June 24 email provide straightforward templates for fulfilling these conditions. If you have suggested changes to the language in these attachments, we are certainly willing to entertain them, but this is something that must be resolved before a certificate of occupancy for the project is issued.

My staff and I would be happy to discuss any of this further to help close out the permit in a more speedy fashion.

Thanks, Adam

Adam Weinstein, AICP
Director of Planning and Building

City of Kirkland
123 5th Avenue
Kirkland, WA 98033

(425) 587-3227
aweinstein@kirklandwa.gov

From: Stephanie Croll <SCroll@kirklandwa.gov>
Sent: Tuesday, September 21, 2021 1:03 PM
To: Peter Ojala <peter@ojalalaw.com>
Cc: Adam Weinstein <AWeinstein@kirklandwa.gov>
Subject: RE: Lang Permit No. BSF19-01341 - 370305 - Certificate of Occupancy

Staff have contacted your client several times. Is there some reason they will not talk to staff?

Thank you,

Stephanie Croll
Sr. Assistant City Attorney
Direct 425-587-3034
Cell 206-949-6992

From: Peter Ojala <peter@ojalalaw.com>
Sent: Tuesday, September 21, 2021 12:01 PM
To: Stephanie Croll <SCroll@kirklandwa.gov>
Subject: RE: Lang Permit No. BSF19-01341 - 370305 - Certificate of Occupancy

Stephanie:
When can we expect a response?
Thanks,
Peter Ojala

From: Peter Ojala
Sent: Thursday, September 16, 2021 11:51 AM
To: Stephanie Croll <SCroll@kirklandwa.gov>
Subject: RE: Lang Permit No. BSF19-01341 - 370305 - Certificate of Occupancy

Stephanie:
Any luck on getting a certificate of occupancy for the Lang's next week?
They need to switch over their insurance, etc., as well as refinance.
Thanks!
Peter Ojala

From: Peter Ojala

Sent: Friday, September 10, 2021 3:17 PM
To: 'aweinstein@kirklandwa.gov' <aweinstein@kirklandwa.gov>
Cc: 'Stephanie Croll' <SCroll@kirklandwa.gov>
Subject: Lang Permit No. BSF19-01341 - 370305 - Certificate of Occupancy

Hello:

Please see the attached letter.
My clients look forward to a Certificate of Occupancy at your earliest convenience.

Thank you!
Peter Ojala
Attorney for Lang.

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.

THE HEARING EXAMINER OF THE CITY OF KIRKLAND

IN RE:	Bldg. Permit No. BSF19-01341
Rita Lang and Harley Lang	CITY'S MOTION TO DISMISS
Appeal of Certificate of Occupancy	

I. INTRODUCTION

The City of Kirkland (the "City") files this Motion to Dismiss the administrative appeal filed by Rita Lang and Harley Lang (the "Langs") based upon lack of jurisdiction as the City has not issued a final land use decision subject to appeal.

II. MOTION TO DISMISS

Building Permits Are Not Generally Subject to Administrative Review.

Administrative appeals of building permits are generally not authorized in Kirkland. Administrative appeals are only allowed:

> [B]ased on a claim that this chapter [the Building Code] or the technical codes have been incorrectly interpreted, that the provisions of this chapter or the technical codes do not apply or that an equally good or better for of construction, method of protection or safety is proposed.

KMC 21.06.572 – *Limitations on Appeals*.

Here, the Langs do not present an appeal subject to any of these issues. They simply disagree with the City's requirement to complete certain tasks *prior to* issuance of a Certificate of Occupancy ("COO," which is the equivalent of final building permit approval). In fact, they want the Hearing Examiner to order the City to issue them a COO and allow them to comply with required conditions *later*. That is a request for mandamus under RCW 7.16.160 (i.e., requiring the City to issue the COO), and/or a request for prohibition under RCW 7.16.290 (i.e., prohibiting the City from requiring the Langs to complete certain tasks before it issues a COO). Neither writ is not properly filed with the Office of the Hearing Examiner.

Langs claim their appeal adresses an "equally good or better . . . method of protection" under KMC 21.06.572 that the Hearing Examiner can consider. This is not true. This phrase refers to methods of construction under the City's technical codes, such as the plumbing code or the electrical code. For example, assume an applicant is required to support their structure with a 4-inch wide steel beam per the Building Code, but they want to use a 4-inch wide wooden support. If the City does not agree that a wooden support provides "an equally good or better method of protection" than a steel beam, then the applicant can appeal this issue to the hearing examiner for determination. Such is not the case here.

The City Has Not Issued A Final Decision.

In Kirkland, building permit conditions are ultimately subject to review under the Land Use Petition Act (LUPA), which is the exclusive means for judicial review of a local jurisdiction's final land use decision. RCW 36.70C.030(1). An appeal is appropriate only when the local jurisdiction has issued a "final decision." *Grandmaster Sheng-Yen Lu v. King Cty.*, 110 Wn. App. 92, 100, 38 P.3d 1040, 1044 (2002) ("In reviewing the statutory framework of LUPA, we note that the Legislature has carefully defined 'land use decision' in terms of a *final* determination by the relevant body or officer with the highest level of authority to make the determination. RCW 36.70C.020(1).") Courts should generally defer review of decisions involving the use of

land until such decisions are final—that is when the highest body or officer has finally acted. *Grandmaster Sheng-Yen Lu*, 110 Wn. App. at 100.

Here, the Langs claim that the City's "decision" not to issue them a final building permit approval because they have failed to comply with prerequisite conditions is a decision subject to review as a land use decision. It is not. The Langs simply do not want to comply with certain permit requirements *prior to* issuance of their COO. The relief they are requesting is mandamus, which is not applicable in land use appeals.

Conclusion.

Here, there is no decision of the City's Building and Planning Department that can be appealed either to the Hearing Examiner (which is limited to only several issues) or to the Superior Court under the Land Use Petition Act. The LUPA does not apply to "Judicial review of applications for a writ of mandamus or prohibition." RCW 36.70C.030(1)(b).

The City respectfully requests dismissal of this case by the Hearing Examiner.

Dated this 7th day of February, 2022.

/s/ Stephanie Croll
Stephanie Croll
Senior City Attorney
City of Kirkland
123 5th Avenue
Kirkland, WA 98033
scroll@kirklandwa.gov

Jennifer Anderer

From: Peter Ojala <peter@ojalalaw.com>
Sent: Monday, February 7, 2022 11:48 PM
To: Phil Olbrechts (Other) <olbrechtslaw@gmail.com>
Cc: Tanner Hoidal <tanner@ojalalaw.com>; Stephanie Croll <SCroll@kirklandwa.gov>; Adam Weinstein <AWeinstein@kirklandwa.gov>; Jennifer Anderer <JAnderer@kirklandwa.gov>
Subject: Lang Appeal - Lang Motion for Summary Judgment

To the Office of the Hearing Examiner:

Please find below Lang's motion for summary judgment on a question of law pertaining to the City's erroneous interpretation of KMC 21.06.540.
The Pre Hearing Order in this appeal requires all prehearing motions to be filed by 2/7/2022 prior to midnight.

MOTION FOR SUMMARY JUDGMENT

I. Introduction:

Over ten years ago, the Langs started working with the City to remodel their home. Now the Langs seek summary judgment that the City's interpretation of KMC 21.06.540 is erroneous as a matter of law on the material undisputed facts here. The Langs seek review under KMC 21.06.572 of the City's erroneous interpretation, and this is not an 'appeal of a building permit' as the City tries to recast this dispute in their motion to dismiss.

Relevant code provisions are provided in pertinent part at the end of this motion for convenience.

The Oct 21, 2021 Petition and Attachment 1 (Sept. 10, 2021) and Attachment 2 (Sept. 24, 2021) thereto, are incorporated herein by reference, and are relied upon in support of this motion.

II. Jurisdiction:

The Hearing Examiner has jurisdiction over this administrative appeal, as it is Lang's attempt to exhaust administrative remedies under KMC 21.06.570 and .572 and is plainly allowed thereby.

KMC 21.06.570 Appeals to Hearing Examiner
Appeals of **orders, decisions and determinations** of **the building official** that do not constitute enforcement actions shall be heard and decided by the city of Kirkland hearing examiner. Enforcement actions shall be brought pursuant to the provisions of Chapter 1.12. To the extent the codes adopted by reference in this title refer to a "board of appeals" or a "building board of appeals," those references shall be deemed to refer to the city of Kirkland hearing examiner.

KMC 21.06.572 Limitations on appeals
An appeal under this chapter shall be based on a claim that **this chapter** or the technical codes **have been incorrectly interpreted**, that the provisions of this chapter or the technical codes do not apply or that an equally good or better form of construction, method of protection or safety is proposed.

The Lang's have challenged in their Petition that the erroneous interpretation of Mr. Adam Weinstein's September 24, 2021 decision/determination that there is no duty under KMC 21.06.540 and .540(12) to issue a certificate of occupancy when some conditions (unrelated to the health, safety, and occupancy of the structure) are still being cooperatively worked out with the City. As noted in Appeal item (2), the Lang's challenge the Director's 'determination that KMC 21.06.535 and KMC 21.06.540' do not require the Department to issue a certificate of occupancy at this stage of the Langs' remodel of their home - which necessarily turns on an erroneous interpretation of KMC 21.06.535 and .540. The Lang's Petion specifically asks in the request for relief that the Hearing Examiner find the City "erroneously interpreted KMC 21.06 when it refused to issue a certificate of occupancy under the facts of this case." Accordingly, the Hearing Examiner has jurisdiction. KMC 21.06.570; KMC 21.06.572.

The building official / planning official (Mr. Adam Weinstein) has incorrectly interpreted KMC 21.06.540 in the decision/determination in the Petition Attachment 2, in making conditions (unrelated to the health, safety, and occupancy of the structure) that are necessarily being worked and fleshed out as prerequisites to the issuance of a certificate of occupancy where KMC 21.06.540(12) provides such conditions can be listed on the certificate of occupancy.

In short, there is Hearing Examiner jurisdiction here because the Lang's claim the Director/Building Official/Planning Official has incorrectly interpreted KMC 21.06.540. KMC 21.06.572. The Lang's are not at this juncture challenging any zoning code provision as applied to their house project, nor did they make a request for interpretation of the *zoning* code. KZ 170.40. Nor did their inquiries result in any a code interpretation posted to a website that can be appealed under KZ 170.45(2). Further, if there were a 'violation' of the zoning code, the Kirkland code requires a certain process be followed under KMC 1.12 (See KMC 1.12.030 and .040), which the City has not pursued (which is highly discretionary), so there is no "violation" precluding the Certificate of Occupancy, and this appeal is not a code enforcement issue.

The City makes much of the ancient and extraordinary writ of mandamus as appropriate relief. That ancient writ is a trap for the unwary at this juncture. Mandamus in Superior Court is not appropriate under well-known exhaustion of administrative remedies principles, and that this administrative appeal of the City's interpretation of KMC 21.06.540 is a plain and adequate remedy allowed under the law (namely KMC 21.06.572). *See, Eugster v. City of Spokane*, 118 Wn. App. 383, 402, 76 P.3d 741 (2003)(mandamus not available when there is a plain adequate remedy provided in the code). Under RCW 7.16, mandamus does not apply to "final land use decisions" and the Langs are essentially seeking a final land use decision under available administrative processes. RCW 7.16.360; *Cf. Durland v. San Juan County,* 182 Wn.2d 55 (2014). LUPA is also not appropriate as we are dealing with at this time only a "decision" or "determination" (all that is required under KMC 21.06.570), not a "final determination" or "final decision" as defined or required in LUPA. *Durland v. San Juan County,* 182 Wn.2d 55 (2014). Further jurisdictional matters may be addressed in response to the City's motion to dismiss.

III. Summary Judgment

In appropriate circumstances, quasi-judicial administrative bodies may grant summary judgment under CR 56 principles whether their governing rules allow it or not. *ASARCO, Inc. v. Air Quality Coalition*, 92 Wn.2d 685, 696-97, 601 P.2d 501 (1979); *Eastlake Community Council v. City of Seattle*, 64 Wn. App. 273, 276, 823 P.2d 1132 (1992). This is such a case as jurisdiction pertains to erroneous interpretations of KMC 21.06, and the interpretation of KMC 21.06, .540 and .540(12)is a question of law.

Lang brings a motion for a summary judgment order finding and ruling that KMC 21.06.540 requires the issuance of a certificate of occupancy, with the conditions the City feels are appropriate based upon the permit and code, when all the health, safety, and occupancy concerns of the structure have been signed off, and there are no formal 'violations' of the code, as that term is defined in the code KMC 1.12.020(o) (there is no dispute there is no action under KMC 1.12.030 or .040). The City's interpretation of KMC 21.06.540 to the contrary in the Petition Attachment 2 decision is erroneous. In short, a summary judgment order should enter that as a matter of law the City "erroneously interpreted KMC Ch. 21.06 when it refused to issue the Langs a certificate of occupancy" with appropriate conditions under KMC 21.06.540(12). Once this error is fixed, it naturally follows that the certificate of occupancy will be issued under KMC 21.06.540 and in turn, KZ 170.15(4)(noting a certificate of occupancy shall issue when the "building <u>or</u> use conforms to the code.")(emphasis added). If the certificate of occupancy doesn't issue after such a Hearing Examiner decision correctly interpreting KMC 21.06.540, mandamus is probably certainly appropriate (assuming for now the Hearing Examiner lacks jurisdiction to tell the Building Official what to do). KZ 170.15(4). The first step is the correct interpretation of KMC 21.06.540, which is the subject of this appeal.

The determination and interpretation of KMC 21.06.540 in the Petition Attachment 2 that a certificate of occupancy is not required as the conditions of the building permit unrelated to health and safety of the occupancy of the structure *may* be 'violations' of the Kirkland code is erroneous and a violation of the plain language of the code, and common sense and fairness. KMC 21.06.540(12) plainly provides such conditions to be listed in the certificate of occupancy. *See* Petition. This interpretation of the code is a question of law. Moreover, the undisputed evidence shows everything pertaining to health, safety, and occupancy as to remodeled home have been signed off as "finaled." (Petition, Attachment 1). As there is no evidence that any official determined or noted that there are 'violations' of the Kirkland code under KMC 21.06.540 (as 'violations' are defined in KMC 1.12), the Attachment 2 interpretation/determination that a certificate of occupancy can't be issued can be reversed and an order enter that there is a clear duty to act under KMC 21.06.540 to issue a certificate of occupancy, with any appropriate remaining conditions of the building permit listed thereon under KMC 21.06.540(12).

The Langs trust that should such an order enter, the Planning Official and/or Building Official will appropriately act then to issue the certificate of occupancy under KMC 21.06.540. *See also*, KZ 170.15(4). If the Building Official/Planning Official do not act in the face of the correct interpretation of KMC 21.06.540(12), after the Hearing Examiner rules on the interpretation of KMC 21.06.540, then a mandamus action may lie (assuming for purposes of this motion that the Hearing Examiner may be without jurisdiction to direct them to act.).

In deed, the Building Official / Planning Official suggest the conditions are quite simple, as suggested by Attachment 2's reference to a June 24 email "straight forward templates for fulfilling these conditions" - then there seems to be no basis for withholding the final certificate of occupancy under KMC 21.06.540. The City's interpretation of KMC 21.06.540 and .540(12) to the contrary violates the plain language of the code, and is what is at issue before the Hearing Examiner. As there are no evidence of "violations" as defined by Kirkland code found here, and as everything else has been signed off, A mere allegation of a possible

'violation' is not a 'violation' as if there is found to be a violation, the City has required steps it must take before something is a 'violation' as defined in the code. KMC 1.12. Once the correct interpretation of KMC 21.06.540 is made clear, the refusal of the City to issue the certificate of occupancy would border on spiteful and vindictive, and will cause further unnecessary damage and delay. (Insurance issues, refinance issues, taxation issues). It is appropriate for the Hearing Examiner to rule on this question of law of this decision in the Petition Attachment 2, as there is no "final land use decision" under LUPA, and this path is provided for in the Kirkland Code and is the appropriate exhaustion of administrative remedies contemplated by LUPA and RCW 7.16. The jurisdiction of the Hearing Examiner will be addressed in response to the City's motion to dismiss.

The Lang's respectfully request summary judgment in their favor on the correct interpretation of KMC 21.06.540, that the certificate of occupancy for their building issue, with any zoning code requirements plainly listed thereon under KMC 21.06.540(12). With this order, the Lang's trust the City will take the next appropriate steps without further Hearing Examiner or Court intervention, and this 10 year saga will come to a predictable close.

Sincerely,
OJALA LAW INC., P.S.
/s/ Peter Ojala
Peter C. Ojala
WSBA#42163
Attorney for Lang

CODES:

The following are some pertinent code provisions for the convenience of the Hearing Examiner and City that are pertinent to this motion and appeal.

KMC 21.06.570 Appeals to Hearing Examiner
Appeals of **orders, decisions and determinations** of **the building official** that do not constitute enforcement actions shall be heard and decided by the city of Kirkland hearing examiner. Enforcement actions shall be brought pursuant to the provisions of Chapter 1.12. To the extent the codes adopted by reference in this title refer to a "board of appeals" or a "building board of appeals," those references shall be deemed to refer to the city of Kirkland hearing examiner.

KMC 21.06.572 Limitations on appeals
An appeal under this chapter shall be based on a claim **that this chapter** or the technical codes **have been incorrectly interpreted**, that the provisions of this chapter or the technical codes do not apply or that an equally good or better form of construction, method of protection or safety is proposed.

KMC 21.06.574 When to appeal and appeal fee
An appellant shall file a written appeal of the order, decision or determination of the building official with the Kirkland planning and building department within thirty days of the date of the decision of the building official. There shall not be an appeal fee for appeals of stop work orders or code enforcement orders. For all other matters, the appeal fee shall be one hundred twenty-five dollars and shall accompany the written appeal. Failure to timely file the appeal or pay the appeal fee shall result in dismissal of the appeal.

KMC 21.06.576 Contents of Notice of Appeal
The appeal shall contain a clear reference to the matter being appealed and a statement of the specific elements of the building official's order, decision or determination disputed by the appellant.

KMC 21.06.535 Use & Occupancy.

"A building or structure shall not be used or occupied, and a change in the existing use or occupancy classification of a building or structure or portion thereof shall not be made until the building official has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this chapter or of other ordinances of the jurisdiction.

Exceptions:

(1) Work exempt from permits per Section 21.06.215.

(2) For single-family dwellings and their accessory structures, the city-issued building permit inspection record may serve as the certificate of occupancy when the final inspection has been approved by the building official or the building official's designee."

KMC 21.06.540 – Certificate Issued

"After the building official inspects the building or structure and does not find violations of the provisions of this chapter or other laws that are enforced by the planning and building department, the building official shall issue a certificate of occupancy that contains the following:

(1) The building permit number.

(2) The address of the structure.

(3) The name and address of the owner or the owner's authorized agent.

(4) A description of that portion of the structure for which the certificate is issued.

(5) A statement that the described portion of the structure has been inspected for compliance with the requirements of this chapter for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.

(6) The name of the building official.

(7) The edition of the code under which the permit was issued.

(8) The use and occupancy.

(9) The type of construction.

(10) The design occupant load where applicable.

(11) If an automatic sprinkler system is provided, and whether the sprinkler system is required and for what reason.

(12) Any special stipulations and **conditions of the building permit**." (emphasis added).

KMC 1.12.020 Definitions:

***

(o) "Violation" means an act or omission contrary to a city development regulation including an act or omission at the same or different location by the same person and including a condition resulting from such act or omission.

KMC 1.12.030 Voluntary correction.

(a) Applicability. This section applies whenever the applicable department **director determines that a violation of a regulation has occurred or is occurring**.

(b) General. The applicable department director shall make a reasonable attempt to secure voluntary correction by contacting the person responsible for the violation, where possible, explaining the violation and requesting correction.

***

KMC 1.12.040 Notice of civil violation

(a) Issuance.

(1) When the applicable department director determines that a violation has occurred or is occurring, and is unable to secure voluntary correction pursuant to Section 1.12.030, the applicable department director may issue a notice of civil violation to the person responsible for the violation.

KMC 1.12.050 Hearing before the hearing examiner

(a) Notice. A person to whom a notice of civil violation is issued will be scheduled to appear before the hearing examiner not less than ten calendar days after the notice of civil violation is issued.

(b) Prior Correction of Violation or Payment of Monetary Penalty. Except in the case of a repeat violation or a violation which creates a situation or condition which cannot be corrected, the hearing will be canceled and no monetary penalty will be assessed if the applicable department director approves the completed required corrective action at least forty-eight hours prior to the scheduled hearing.

(c) Procedure. The hearing examiner shall conduct a hearing on the civil violation pursuant to the rules of procedure of the hearing examiner. The applicable department director and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The city shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action, if applicable, is reasonable. The determination of the applicable department director as to the need for the required corrective action shall be accorded substantial weight by the hearing examiner in determining the reasonableness of the required corrective action.

KZ 170.15 Permits issued by Building Official - Certificate of Occupancy

1. General – It is unlawful to occupy a building or conduct a use requiring a certificate of occupancy unless the Planning Official has approved the certificate of occupancy for that building or use.

2. Responsibility of Building Official – Upon receipt of a request to issue a certificate of occupancy, the Building Official shall promptly notify the Planning Official of the request. The Building Official may not issue a certificate of occupancy until he/she receives written approval from the Planning Official.

3. Responsibility of the Planning Official – Upon receiving notice from the Building Official of a request for a certificate of occupancy, the Planning Official shall promptly review the request, and if necessary, conduct a field inspection to determine if the structure or use conforms to this code.

4. Issuance of the Planning Official Approval – **The Planning Official shall sign and forward to the Planning and Building Department** the Certificate of Occupancy if the **building or** use conforms to this code.

Ojala Law Inc PS
PO BOX 211
Snohomish, WA 98291
(360) 568-9825
peter@ojalalaw.com

THE HEARING EXAMINER OF THE CITY OF KIRKLAND

IN RE: Rita Lang and Harley Lang Appeal of Certificate of Occupancy	Bldg. Permit No. BSF19-01341 DECLARATION OF ADAM WEINSTEIN

I, Adam Weinstein, declare and state as follows:

1. I am over the age of 18, competent, and have personal knowledge of the information contained herein.

2. I am the Planning and Building Director for the City of Kirkland. I have worked for the City since December 2017. I began here as the Deputy Director and was appointed as the Director of the entire Planning and Building department a year later, in December 2018. Prior to working for Kirkland, I was the Planning Manager/ Deputy Director of Community Development for the City of Pleasanton, California, from June 2014 to November 2017. Prior to working for the City of Pleasanton, I worked in

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KIRKLAND, WA 98033
PH. (425) 587-3030

multiple roles ranging from Planner to Principal for 13 years at a private company called LSA Associates, Inc, where, among other things, I managed multi-year, multi-phase planning and environmental review projects; directed multi-disciplinary specialists (such as hydrologists and biologists) on complex development projects; conducted research and analysis for a variety of environmental and planning documents which I then wrote, such as Comprehensive Plans and Neighborhood Plans; and collaborated with local, state and federal agencies on review of land use and policy projects.

3. I graduated from the University of Wisconsin-Madison with a Bachelor of Science in 2000. I went on to receive a Masters in City Planning (MCP) from the University of California-Berkeley in 2006. I am also certified by the American Institute of Certified Planners (AICP), which is a nationwide, independent verification of a planner's qualifications.

4. We are obligated by the City's Municipal and Zoning codes to ensure that all applicable provisions of our codes (including those relating to the health and safety of *the public as a whole*, not just the specific structure that is the subject of the permit) are met before a certificate of occupancy is issued. Here, regarding the Langs' permit, the outstanding conditions of approval relate to (i) wetland mitigation and monitoring, (ii) geohazard protection, and (iii) tree protection. These conditions relate not only to the safety of persons who will use the specific structure that is the subject of the Langs' permit, but to the protection of the overall health and welfare of the public.

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The City is not asking for special conditions from the Lang's; these are very common conditions that are explicitly based on requirements in the City's Municipal and Zoning codes. These conditions are required by the codes to be completed before a certificate of occupancy can be issued. See, KZC 90.145(5)(a)(1) (requiring wetland mitigation be performed before a certificate of occupancy can be issued); KZC 90.160(5) (requiring the developer to enter into a maintenance plan for the mitigation before a certificate of occupancy can be issued); KZC 85.45 (requiring geohazard covenant be executed before a certificate of occupancy can be issued); and KZC 95.51(2)(b) (requiring tree protection covenants be executed before a certificate of occupancy can be issued).

5. The Lang's suggest that a certificate of occupancy should be issued as long as all conditions pertaining to the "health, safety, and occupancy of <u>the structure</u>" (emphasis added) have been met. The Lang's argue that there is a distinction between permit conditions that apply to the "structure" and other issues. In fact, *all* permit conditions are associated with development of the structure, even though they are not necessarily related to ensuring the safety of the structure (because the Municipal and Zoning codes rightfully consider other elements of public health and safety, including environmental protection, in deeming a permit "complete"). The permit conditions that the Lang's think should be deferred until after issuance of the certificate of occupancy are all in this category. The Lang's cannot rewrite the City's codes.

6. The Lang's argument is contrary to the intent of the City's code. *See* KMC 21.06.540, which gives me, as Director of the Planning and Building Department,

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the authority to enforce all laws of "the planning and building department." (Emphasis added.) Not just the laws administered and enforced by the building division, but also the laws administered and enforced by the planning division; not just the building codes, but the planning codes; not just building safety, but environmental protections also. The Lang's cannot dictate my authority as Director, such that I would selectively enforce only a subset of the laws required to be enforced by the planning and building department.

7. The Lang's also suggest that, in their case, some of their conditions should be deferred until after the certificate of occupancy is issued because they "are still being cooperatively worked out with the City." We do not characterize the Langs' refusal to comply with these outstanding conditions (which are straightforward and uniformly applied to similar development projects across the City) as "cooperative." With regard to tree protection and geohazard protection, all they need to do is sign the City's forms, true and correct copies of which are attached to my declaration as **Exhibits A through E**. All we need are the Langs' signatures, but they refuse to sign. They object to signing the City's standard forms, which are based on the City's code requirements. They are not objecting to the timing of the forms, they object to signing them at all, either now or later. Their refusal to sign cannot be described as cooperative behavior.

8. The Lang's also need to perform wetland mitigation required under our codes and, after completion, they will have monitoring requirements. The Lang's have

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made no effort to complete the required mitigation. Instead, they are objecting to the mitigation, though it is plainly required by the code. **A true and correct copy of the form they need to sign is attached hereto as Exhibit F.** Again, this is not cooperative.

9. If the Lang's continue to object to these outstanding conditions, and a certificate of occupancy is issued, what leverage would the City have to require the conditions to be met? This is precisely why the City's code requires these conditions be completed <u>before</u> the certificate of occupancy is issued.

I certify and declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 17th day of February 2022, in Seattle, Washington.

Adam Weinstein

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EXHIBIT A

NOTICE OF GEOLOGICALLY HAZARDOUS AREA

File Number:	BSF19-01341
Parcel Number:	0825059195
Project Name:	Lang New SFR
Project Address:	6304 Lakeview Dr

The undersigned, being all owners of the hereinafter described real property, hereby acknowledge that pursuant to the City of Kirkland Zoning Code, Section 85.50 and as hereafter amended, the property or designated portions thereof, are potentially located in a geologically hazardous area.

This determination is based on review of the development permit application submitted to the City in File Number BSF19-01341. Contact the City of Kirkland Planning and Building Department to view available maps, obtain a copy of the geotechnical report used in the review of the development permit, or review of any other information the City has collected with regard to this file.

This Notice is for the benefit of all current owners of the real property and their heirs, successors, and assigns; and this Notice and runs with the land described as follows:

Legal Description:

POR OF GL 4 IN SEC 8-25-5 DAF BEG SW COR OF LOT 3 BLK 3 FRENCH'S HOMESTEAD VILLA TH ELY ALG SLY LN SD BLK DIST 290 FT TH SLY PLW ELY MGN 102ND AVE NE DIST 60 FT TH WLY PLW SLY LN SD BLK DIST 290 FT TO ELY MGN SD 102ND AVE NE TH NLY ALG SD ELY MGN 60 FT TO POB LESS S 4.27 FT OF N 60 FT OF E 70.40 FT OF W 190.40 FT OF THAT POR SD GL 4 LY S OF SD PLAT & E OF SD 102ND AVE NE AKA PAR 1 KIRK LLA #K431 W NACHIEM- LEITZKE-JOHNSON REC #8305020669

DATED at Kirkland, this _____ day of _____, _____.

(Sign in blue ink)

(*Individuals Only*)

OWNER(S) OF REAL PROPERTY (INCLUDING SPOUSE)

_____

_____

_____

(*Individuals Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____to me known to be the individual(s) described herein and who executed the Notice of Geologically Hazardous Area and acknowledged that _____ signed the same as _____free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington, Residing at: _____
My commission expires: _____

(*Partnerships Only*)

OWNER(S) OF REAL PROPERTY

_____
(Name of Partnership or Joint Venture)

_____
By General Partner

_____
By General Partner

_____
By General Partner

(*Partnerships Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be general partners of _____, the partnership that executed the Notice of Geologically Hazardous Area and acknowledged the said instrument to be the free and voluntary act and deed of each personally and of said partnership, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington, Residing at: _____
My commission expires: _____

(Corporations Only)

OWNER(S) OF REAL PROPERTY

_____
(Name of Corporation)

_____
By President

_____
By Secretary

(*Corporations Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be the President and Secretary, respectively, of _____, the corporation that executed the Notice of Geologically Hazardous Area and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(LLC Only)

OWNER(S) OF REAL PROPERTY

_____
(Name of Company)

_____
By Managing Member

_____
By Member

(*LLC Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be the Member(s), respectively, of _____, the company that executed the Notice of Geologically Hazardous Area and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument and that the seal affixed is the corporate seal of said company.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

EXHIBIT B

GEOLOGICALLY HAZARDOUS AREAS COVENANT

File No.:	BSF19-01341
Parcel Number:	0825059195
Project Name:	Lang New SFR
Project Address:	6304 Lakeview Dr

Declarant Harley B. III and Rita Lang hereby declares and agrees as follows:

1. Declarant is the owner of the real property described below and incorporated herein by reference, which is the "property" referred to herein.
2. Declarant agrees to defend, indemnify, and hold the City of Kirkland harmless from all loss, including claim made therefor, which the City may incur as a result of any landslide or seismic activity occurring on the property and for any loss including any claim made therefor resulting from soil disturbance on the "property" in connection with the construction of improvements, including but not limited to storm water retention and foundations. "Loss" as used herein means loss including claim made therefor from injury or damage incurred on or off the "property," together with reasonable expenses including attorneys fees for investigation and defense of such claim.
3. This hold harmless is a perpetual covenant running with the "property" and is binding upon the Declarant's successor and assigns.
4. The real property subject to this Agreement is situated in Kirkland, King County, Washington, and described as follows:

   POR OF GL 4 IN SEC 8-25-5 DAF BEG SW COR OF LOT 3 BLK 3 FRENCH'S HOMESTEAD VILLA TH ELY ALG SLY LN SD BLK DIST 290 FT TH SLY PLW ELY MGN 102ND AVE NE DIST 60 FT TH WLY PLW SLY LN SD BLK DIST 290 FT TO ELY MGN SD 102ND AVE NE TH NLY ALG SD ELY MGN 60 FT TO POB LESS S 4.27 FT OF N 60 FT OF E 70.40 FT OF W 190.40 FT OF THAT POR SD GL 4 LY S OF SD PLAT & E OF SD 102ND AVE NE AKA PAR 1 KIRK LLA #K431 W NACHIEM- LEITZKE-JOHNSON REC #8305020669

DATED at Kirkland, Washington, this _____ day of _____, _____.

(Sign in blue ink)

(*Individuals Only*)

OWNER(S) OF REAL PROPERTY (INCLUDING SPOUSE)

_____

_____

_____

(*Individuals Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____to me known to be the individual(s) described herein and who executed the Geologically Hazardous Areas Covenant and acknowledged that _____ signed the same as _____free and voluntary act and deed, for the uses and purposes therein mentioned.
WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(*Partnerships Only*)

OWNER(S) OF REAL PROPERTY

_____
(Name of Partnership or Joint Venture)

_____
By General Partner

_____
By General Partner

_____
By General Partner

(*Partnerships Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be general partners of _____, the partnership that executed the Geologically Hazardous Areas Covenant and acknowledged the said instrument to be the free and voluntary act and deed of each personally and of said partnership, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(Corporations Only)

OWNER(S) OF REAL PROPERTY

_____
(Name of Corporation)

_____
By President

_____
By Secretary

(*Corporations Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be the President and Secretary, respectively, of _____, the corporation that executed the Geologically Hazardous Areas Covenant and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

EXHIBIT C

Maintenance and Retention Agreement for Trees and Required Landscaping

Project Name: Lang New SFR
Address: 6304 Lakeview Dr
Parcel No: 0825059195

This agreement is entered into between each undersigned owner of the real property and the City of Kirkland, in consideration of approval by the City of a permit under City of Kirkland Permit No. BSF19-01341 for the hereinafter described real property in Kirkland, King County, Washington.

Each undersigned owner jointly and severally hereby agrees to maintain and retain the trees and other vegetation required by the City to be planted or retained on the real property described below, in accordance with the final approved tree plan (on file in the Kirkland Department of Planning and Community Development) and pursuant to Chapter 95 of the Kirkland Zoning Code ("KZC"), for a period of five years after the aforementioned City of Kirkland building permit has received final inspection approval. This agreement shall remain in effect for an additional two years after the expiration date to cover any vegetation which is required by the City to be replaced. Thereafter, maintenance will continue pursuant to KZC requirements.

Each of the undersigned agree to defend, pay, and save harmless the City of Kirkland, its officers, agents, and employees from any and all claims of every nature whatsoever, real or imaginary, which may be made against the City, its officers, agents, or employees for any damage to property or injury to any person arising out of the maintenance of said trees and other said vegetation on said owner's property or out of the actions of the undersigned in carrying out the responsibilities under this agreement, excepting therefrom only such claims as may arise solely out of the negligence of the City of Kirkland, its officers, agents, or employees.

This Agreement shall be binding upon the heirs, successors and assigns of each of the undersigned and shall run with the land. This Agreement shall, at the expense of the undersigned, be recorded by the City of Kirkland with the King County Department of Elections and Records.

<u>Failure to maintain and retain said trees and other said vegetation in accordance with this agreement may subject the undersigned to civil penalties as authorized by Chapter 95 of the KZC.</u>

The real property owned by the undersigned and the subject property of this Agreement is situated in Kirkland, King County, Washington and described as follows:

POR OF GL 4 IN SEC 8-25-5 DAF BEG SW COR OF LOT 3 BLK 3 FRENCH'S HOMESTEAD VILLA TH ELY ALG SLY LN SD BLK DIST 290 FT TH SLY PLW ELY MGN 102ND AVE NE DIST 60 FT TH WLY PLW SLY LN SD BLK DIST 290 FT TO ELY MGN SD 102ND AVE NE TH NLY ALG SD ELY MGN 60 FT TO POB LESS S 4.27 FT OF N 60 FT OF E 70.40 FT OF W 190.40 FT OF THAT POR SD GL 4 LY S OF SD PLAT & E OF SD 102ND

AVE NE AKA PAR 1 KIRK LLA #K431 W NACHIEM- LEITZKE-JOHNSON REC #8305020669

DATED at Kirkland, Washington, this _____ day of _____, _____

(Sign in blue ink)

(*Individuals Only*)

OWNER(S) OF REAL PROPERTY (INCLUDING SPOUSE)

_____

_____

_____

(*Individuals Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____to me known to be the individual(s) described herein and who executed the Maintenance and Retention Agreement for Trees and Required Landscaping and acknowledged that _____ signed the same as _____free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(*Partnerships Only*)

OWNER(S) OF REAL PROPERTY

_____
(Name of Partnership or Joint Venture)

_____
By General Partner

_____
By General Partner

_____
By General Partner

(*Partnerships Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be general partners of _____, the partnership that executed the Maintenance and Retention Agreement for Trees and Required Landscaping and acknowledged the said instrument to be the free and voluntary act and deed of each personally and of said partnership, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(Corporations Only)

OWNER(S) OF REAL PROPERTY

_____
(Name of Corporation)

_____
By President

_____
By Secretary

(*Corporations Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be the President and Secretary, respectively, of _____, the corporation that executed the Maintenance and Retention Agreement for Trees and Required Landscaping and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(LLC Only)

OWNER(S) OF REAL PROPERTY

_____
(Name of Company)

_____
By Managing Member

_____
By Member

(*LLC Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be the Member(s), respectively, of _____, the company that executed the Maintenance and Retention Agreement for Trees and Required Landscaping and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument and that the seal affixed is the corporate seal of said company.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

THE WATERSHED COMPANY

SCIENCE & DESIGN

EXHIBIT D

September 17, 2021

Jennifer Anderer
City of Kirkland
Planning and Community Development
123 Fifth Avenue
Kirkland, WA 98033

Re: 6304 Lakeview Drive Stream Buffer Mitigation Plan Monitoring – proposal for environmental consulting services TWC # 170622.45

Dear Jennifer:

This letter shall serve as our proposal for environmental review scope and services for the above referenced project. This proposal covers two options for ensuring as-built and monitoring requirements. We understand an as-built report has already been done. **Option 1** is for The Watershed Company to peer-review the as-built report and conduct the monitoring and reporting work. **Option 2** is to peer review both the as-built report and applicant-supplied annual monitoring reports.

Under **Option One** we will provide the following work tasks with estimated hours by task.

As-built study review

Staff	Hourly Rate	Task	Estimated Hours	Cost
HM	$195	File/submittal review, respond to planner	2	$390.00
CA	$110	Project set up	1	$110.00
PWS	$160	Review mitigation plan and as-built documentation, prepare for fieldwork.	2	$320.00
PWS	$160	Site visit to evaluate the installation, including site preparation, plant species, and placement.	3	$480.00
PWS	$160	Prepare memorandum verifying the as-built documentation	6	$960.00
PWS	$160	Communication with planner	2	$320.00
HM	$195	Internal review	2	$390.00
Expenses			lump sum	$25.00
			Total:	**$2,995.00**

th Street South | Kirkland, WA 98033
22.5242 | f 425.827.8136 | watershedco.com

Annual monitoring

Staff	Hourly Rate	Task	Estimated Hours	Cost
SB	$100	Review mitigation plan monitoring requirements and prepare for fieldwork	1	$100.00
SB	$100	Spring maintenance visit and memo	8	$800.00
PWS	$160	Site visit to conduct annual monitoring (summer site visit)	8	$1,280.00
SB	$100	Summer site visit assistance	8	$800.00
SB	$100	Prepare annual monitoring report.	8	$800.00
SB	$100	Communication with maintenance crews and planner.	3	$300.00
PWS	$195	Internal review	2	$390.00
Expenses			lump sum	$25.00
			Total:	**$4,495.00**

Annual costs

Year 1 (2022):	$4,674.80
Year 2 (2023):	$4,861.79
Year 3 (2024):	$4,861.79
Annual monitoring total:	$14,398.38
As-built study total:	$2,995.00
Total cost:	**$17,393.38**

Under **Option Two** we will provide the following work tasks with estimated hours by task.

As-built study review

Staff	Hourly Rate	Task	Estimated Hours	Cost
HM	$195	File/submittal review, respond to planner	2	$390.00
CA	$110	Project set up	1	$110.00
PWS	$160	Review mitigation plan and as-built documentation, prepare for fieldwork.	2	$320.00
PWS	$160	Site visit to evaluate the installation, including site preparation, plant species, and placement.	3	$480.00
PWS	$160	Prepare memorandum verifying the as-built documentation	6	$960.00
PWS	$160	Communication with planner	2	$320.00
HM	$195	Internal review	2	$390.00
Expenses			lump sum	$25.00
			Total:	**$2,995.00**

Annual monitoring review

Staff	Hourly Rate	Task	Estimated Hours	Cost
PWS	$160	Review mitigation plan and annual monitoring report, prepare for fieldwork.	2	$320.00
PWS	$160	Site visit to verify report conditions	4	$640.00
PWS	$160	Prepare letter of acceptance or corrections based on site conditions	8	$1,280.00
PWS	$160	Communication with consultant and planner	1	$160.00
HM	$195	Internal review	1	$195.00
Expenses			lump sum	$25.00
			Total:	**$2,620.00**

Annual costs

Year 1 (2022):	$2,620.00
Year 2 (2023):	$2,724.80
Year 3 (2024):	$2,724.80
Annual monitoring total:	$8,069.60
As-built study total:	$2,995.00
Total cost:	**$11,064.60**

This proposal is valid for 6 months from the date it was prepared.

Please note that the work described in this proposal will be done to the standard of care normally exercised by members of the environmental science profession. Conclusions and deliverables will be based on interpretation of information currently available to us, and will be made within the above scope and budget for this project. No warranty is expressed or implied.

Please call with any questions.

Sincerely,

Hugh Mortensen

Hugh Mortensen
President

City of Kirkland _____ Date

Staff initial Key:

HM, Hugh Mortensen, President
PWS, Professional Wetland Scientist
SB, Staff Biologist
CA, Contract Administrator

EXHIBIT E

NATURAL GREENBELT PROTECTIVE EASEMENT

Grantor: Harley and Rita Lang, owner of the hereinafter described real property, hereby grants to

Grantee: The City of Kirkland, a municipal corporation.

A natural greenbelt protective easement over and across the following described real property to wit ("Easement Area"):

SEE EXHIBIT A

No tree trimming, tree topping, tree cutting, tree removal, shrub or brush-cutting or removal of native vegetation, application of pesticides, herbicides, or fertilizers; construction; clearing; or alteration activities shall occur within the Easement Area without prior written approval from the City of Kirkland. Application for such written approval to be made to the Kirkland Department of Planning and Community Development who may require inspection of the premises before issuance of the written approval and following completion of the activities. Any person conducting or authorizing such activity in violation of this paragraph or the terms of any written approval issued pursuant hereto, shall be subject to the enforcement provisions of Chapter 170, Ordinance 3719, the Kirkland Zoning Code. In such event, the Kirkland Department of Planning and Community Development may also require within the immediate vicinity of any damaged or fallen vegetation, restoration of the affected area by planting replacement trees and other vegetation as required in applicable sections of the Kirkland Zoning Code. The Department also may require that the damaged or fallen vegetation be removed.

It is the responsibility of the property owner to maintain critical areas and their buffers by removing non-native, invasive, and noxious plants in a manner that will not harm critical areas or their buffers and in accordance with Kirkland Zoning Code requirements for trees and other vegetation within critical areas and critical area buffers.

The City shall have a license to enter the Easement Area (and the property if necessary for access to the Easement Area) for the purpose of monitoring compliance with the terms of this easement.

Development outside of this Natural Greenbelt Protective Easement may be limited by codified standards, permit conditions, or movement of the critical area.

Each of the undersigned owners agree to defend, pay, and save harmless the City of Kirkland, its officers, agents, and employees from any and all claims of every nature whatsoever, real or imaginary, which may be made against the City, its officers, agents, or employees for any damage to property or injury to any person arising out of the existence of said Natural Greenbelt Protective Easement over said owner's property or the actions of the undersigned owners in carrying out the responsibilities under this agreement, including all costs and expenses, and recover attorney's fees as may be incurred by the City of Kirkland in defense thereof; excepting therefrom only such claims as may arise solely out of the negligence of the City of Kirkland, its officers, agents, or employees.

This easement is given to satisfy a condition of the development permit approved by the City of Kirkland under Kirkland File/Permit No. BSF19-01341, for construction of a single family dwelling unit upon the following described real property:

SEE EXHIBIT B

This easement shall be binding upon the parties hereto, their successors and assigns, and shall run with the land.

DATED at Kirkland, Washington, this day of , .

(Sign in blue ink)

(*Individuals Only*)

OWNER(S) OF REAL PROPERTY (INCLUDING SPOUSE)

_____

_____

_____

(*Individuals Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____to me known to be the individual(s) described herein and who executed the Natural Greenbelt Protective Easement and acknowledged that _____ signed the same as _____free and voluntary act and deed, for the uses and purposes therein mentioned.
WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(*Partnerships Only*)

OWNER(S) OF REAL PROPERTY

_____
(Name of Partnership or Joint Venture)

_____
By General Partner

_____
By General Partner

_____
By General Partner

(*Partnerships Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be general partners of _____, the partnership that executed the Natural Greenbelt Protective Easement and acknowledged the said instrument to be the free and voluntary act and deed of each personally and of said partnership, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington, Residing at: _____
My commission expires: _____

(Corporations Only)

OWNER(S) OF REAL PROPERTY

_____
(Name of Corporation)

_____
By President

_____
By Secretary

(*Corporations Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be the President and Secretary, respectively, of _____, the corporation that executed the Natural Greenbelt Protective Easement and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

EXHIBIT F

Wetland/Stream Enhancement and Mitigation (Chapter 90)
Planning Performance, Maintenance and Monitoring
Security Device Instructions
123 Fifth Avenue, Kirkland, WA 98033-6189
425-587-3600

A. Please submit the following attached items:

1. The completed Security Information form, along with:
   a. An approved mitigation/enhancement plan; and
   b. A completed King County Critical Areas Mitigation Bond Quantity Worksheet.
2. The completed Security Agreement, including all required signatures and notarizations.
3. A Completed Bond, Assignment of Loan Proceeds, or Assignment of Bank Account form.
4. The completed "License to Enter Property," including legal description of property, all required signatures and recording fee (check with Planning Department on the amount due). This is a requirement of the Zoning Ordinance, Section 175.35.

B. To determine the amount of your security:

1. Performance, Maintenance and Monitoring securities are collected at 150 percent of the estimated cost of conformance to plans, specifications, and permit or approval requirements under chapter 90 of the Kirkland Zoning Code or and Interim Ordinance relating to sensitive areas, including corrective work and compensation, enhancement, mitigation, maintenance, and restoration of sensitive areas.

2. The City will also collect a cash deposit according to the following schedule:

Amount of Security	Amount of Cash Deposit
Up to $20,000	5% of the Security (minimum $500)
$20,001 - $50,000	4% of the Security
$50,001 - $100,000	3% of the Security
$100,001 and up	2.5% of the Security

The cash deposit will be used to cover the City's actual expense of administering and, if necessary, using the proceeds of the security. The City shall subtract a minimum of $230.00 from the cash deposit to cover normal expenses and will refund any remaining funds when the required work or improvements have been completed, or at the end of time covered by a performance and monitoring and maintenance security.

To protect your interests, please note that maintenance of improvements is the responsibility of the applicant for five years, including damage by subcontractors or builders.

Recording fees paid separately.

Wetland/Stream Enhancement and Mitigation Security Value Worksheet

(To be completed by Planning)

Performance, Maintenance, and Monitoring Bond	Value
1. Construction Cost Subtotal from King County Critical Areas Bond Quantity Worksheet (including plant materials, installation costs, habitat Structures, erosion control and general items)	$ 001
2. Mobilization (10% of Construction Cost)	$ 002
3. Maintenance amount from King County Critical Areas Bond Quantity Worksheet	$ 003
4. Monitoring amount from King County Critical Areas Bond Quantity Worksheet if by other than City's Wetland Consultant*	$ 004
5. Subtotal = Lines 1 + 2 + 3 + 4	$ 005
6. Total Maintenance Security Value = Line 5 x 1.50	**$ 006**
7. Administration Cash Deposit (see paragraph B.2 of Security Device Instructions)	$ **007**

***If the City's Wetland Consultant **will** be doing the monitoring, the monitoring fee will be based on an actual cost estimate from the Consultant and handled through the 2-party contract process – which includes prepayment for all monitoring collected from the applicant prior to final inspection. The monitoring amount does not need to be included in the Security. If the City's Wetland Consultant **will not** be doing the monitoring, the monitoring amount must be included in the Security and the City will require prepayment of the cost for the City's Wetland Consultant to review the monitoring reports prior to final inspection.

Planning Performance, Maintenance and Monitoring
Security Information

To Be Completed by Applicant

Date Submitted _____ Release Date _____

Project Name 008 _____

Project Address 009 _____

Building Permit Number 011 _____ Other No. 012 _____

- -

Applicant 013 _____

Contact Person _____

Address _____
Street

_____
City State ZIP

Telephone No. _____

- -

Security Firm _____

Contact Person _____

Mailing Address _____
Street

_____
City State ZIP

Telephone No. _____

_ **Official Use Only Below** _

Planning Representative 014 _____

Bond/Security No. _____

File No.: 015 _____

License to Enter Property

City Use Only
Parcel Number(s): 016

I/We, _____, owner(s) of the property described below (hereafter known as "property"), in consideration for the City accepting any and all of the performance and/or maintenance security device(s) filed with the City of Kirkland under City File No. 015, do hereby grant to authorized employees, agents, and contractors of the City of Kirkland license and permission to enter onto the property for the purpose of inspection and, where necessary, performance of work to complete, to building code standards, grading and land surface modification activities; and for the purpose of inspection and maintenance of storm drainage, sanitary sewer, water utilities, and wetland/stream mitigation and/or enhancement.

The property to which this license applies is legally described as follows:

017

This license is irrevocable and shall run with the property and is binding on all future owners of the property. This license will terminate when released in writing by the City.

Dated this _____ day of _____, _____.

(Sign in blue ink)

(*Individuals Only*)

OWNER(S) OF REAL PROPERTY (INCLUDING SPOUSE)

_____

_____

_____

(*Individuals Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____to me known to be the individual(s) described herein and who executed the License To Enter Property and acknowledged that _____ signed the same as _____free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(*Partnerships Only*)

OWNER(S) OF REAL PROPERTY

_____
(Name of Partnership or Joint Venture)

_____
By General Partner

_____
By General Partner

_____
By General Partner

(*Partnerships Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be general partners of _____, the partnership that executed the License To Enter Property and acknowledged the said instrument to be the free and voluntary act and deed of each personally and of said partnership, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(Corporations Only)

OWNER(S) OF REAL PROPERTY

_____
(Name of Corporation)

_____
By President

_____
By Secretary

(*Corporations Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be the President and Secretary, respectively, of _____, the corporation that executed the License To Enter Property and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(LLC Only)

OWNER(S) OF REAL PROPERTY

_____
(Name of Company)

_____
By Managing Member

_____
By Member

(*LLC Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be the Member(s), respectively, of _____, the company that executed the License to Enter and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument and that the seal affixed is the corporate seal of said company.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

SENSITIVE AREAS PERFORMANCE, MAINTENANCE AND MONITORING SECURITY AGREEMENT

1. THIS AGREEMENT is entered into between 013 hereafter referred to as the "applicant" and the CITY OF KIRKLAND, hereafter referred to as the "City."

2. The applicant has applied for a bond to assure implementation of a wetland/stream enhancement and mitigation plan approved in: 015 for a project known as 008 generally located at 009 and must perform the following as required by ordinances of the City of Kirkland: 018.

3. The City has determined that the estimated cost to fully perform and maintain the performance described in paragraph 2 is (insert dollar amount from line 6 of "Performance, Maintenance and Monitoring Value Worksheet") **$006**.

4. The undersigned shall file with the City as security (check appropriate method below) for Performance, Maintenance and Monitoring of said work:

   ___ a. A performance bond issued by a surety company licensed as such in the State of Washington (Bond No. _____);

   ___ b. An assignment of funds on deposit in bank account (Acct. No. _____);

   ___ c. An assignment of existing construction loan proceeds (Acct. No. _____);

   ___ d. A cash deposit in lieu of bond (Check No. _____).

5. In the event the undersigned fails to fully perform or maintain the work described in paragraph 2 above within 30 days of formal notice, the City shall forthwith take all steps necessary or required to enforce the security device listed in paragraph 3. Such funds as may be received therefrom by the City shall be used solely for the purpose of completing the performance of the work or completing the maintenance of the work described in paragraph 2. In the event such funds are then insufficient in amount to fully pay for such work then required to be done by the City, then in that event such excess cost shall be reimbursed to the City by the undersigned and if not so paid within 60 days of demand therefor made upon the undersigned by the City, such demand shall constitute a lien upon the real property described in City File No. 015 above, upon the filing by the City of such a lien as authorized by Section 175.55 of Ordinance 3719. In the event said funds exceed the actual cost of the improvements required to be then done by the City, any surplus remaining following completion of said work shall be returned to the order of the undersigned applicant and the surety or bank.

6. The City hereby acknowledges receipt of (insert dollar amount from line 6 of "Performance, Maintenance and Monitoring Value Worksheet") **$007** to be used to administer the bond, consistent with the provisions of Chapter 175 of the Kirkland Zoning Code.

7. All parties agree that this agreement is subject to the provisions of Chapter 175 of the Kirkland Zoning Code (Ordinance 3719) which is incorporated herein.

8. This agreement shall be binding on the heirs, assigns, successors, administrators, and executors of the parties.

Signed this _____ day of _____, _____.

CITY OF KIRKLAND:

By _____

PRINCIPAL (Applicant):

By _____

By _____

PLANNING CONSTRUCTION AND IMPROVEMENT, PERFORMANCE, MAINTENANCE, AND MONITORING BOND

PROJECT 008

Principal (Applicant): 013
(Name)

(Address)

Financial Institution: _____
(Name)

(Address)

Account No.: _____ Phone No.: _____

KNOW ALL MEN BY THESE PRESENTS that _____ as principal (applicant), and _____, a corporation organized and existing under and by virtue of the laws of _____, and licensed to do business as surety within the State of Washington, as surety, are held and firmly bound unto the City of Kirkland, a noncharter code city of the State of Washington, in the penal sum of (insert dollar amount from line 6 of the "Wetland/Stream Enhancement and Mitigation Security Value Worksheet" **$006** for the payment of which well and truly to be made, we firmly bind ourselves, our and each of our heirs, executors, administrators, and assigns, jointly and severally, by these presents.

The condition of the foregoing obligation is such that the above-named principal has applied for and received final approval from the City of Kirkland of:

____ A subdivision of land named _____ and situate in Section _____, Township _____, North Range _____ East W.M., Kirkland, King County, Washington and is about to record same with the King County Department of Records and Elections. (Reference Kirkland File No. 015.)

____ A short subdivision of land identified as _____ _____, situate in Section _____, Township _____ North Range _____, East W.M., Kirkland, King County, Washington and is about to record same with the King County Department of Records and Elections. (Reference Kirkland File No. 015.)

____ A land use development or uniform building code permit, requiring as conditions thereof, construction of certain public and other improvements as specified in said permit or notice of approval thereof. (Reference Kirkland File No. 015.)

The further condition that within six months from the date of occupancy of a land use or building permit aforesaid by the city of Kirkland, the principal will fully and faithfully perform and complete all public and/or easement improvements together with such special specifications and conditions as may have been required in the approval of said subdivision, short subdivision, land use development or uniform building permit, all as specifically set forth and itemized in the above-referenced City of Kirkland file number, and that all shall be done in compliance with the standard

specifications heretofore adopted by the City of Kirkland and all to the satisfaction of the City of Kirkland; as a further condition it is understood and a part of the consideration for this obligation that the city of Kirkland shall have the right to sue on this bond in its own name to recover for any loss, injury, damage, or liability (excluding damages based upon or arising out of tortuous injury to any person or property) sustained or incurred by reason of any breach of performance or maintenance by the principal, as to a condition hereof, including any condition or performance or maintenance responsibility incorporated by reference, and such action may be commenced against both the principal and surety as joint and several obligors with or without prior notice of such breach of performance or maintenance by principal, having been given to surety.

Now, therefore, if the above-named principal shall fully and faithfully comply with all of the terms and conditions of approval as set forth in Kirkland File No. 015, and all applicable provisions of the laws of the State of Washington and the ordinances, rules, and regulations of the City of Kirkland, and timely perform and complete said public improvements, public easements and special improvements and conditions, including payment of all costs and expenses therefore, to the decided satisfaction of the City of Kirkland, and upon acceptance thereof by the City, maintain same for a period of 60 months following the completion of said improvements and their acceptance by the City of Kirkland and to reimburse the City of Kirkland for any maintenance, repair, or replacement of said improvements required to be done within 60 months, and indemnify and save the City of Kirkland free and harmless from any and all claims, actions, or damages of every kind and description, which may occur to or be suffered by any person by reason of the use or occupation of the areas of construction or installation which become dedicated to public use, and which may occur to be suffered by any person by reason of improper materials or workmanship in regard to all of the improvements required to be done within the conditions of this bond;

Then this obligation shall be void, otherwise, it shall remain in full force and effect.

Signed, sealed and dated this _____ day of _____, _____.

PRINCIPAL (APPLICANT)	CITY OF KIRKLAND	SURETY
By: _____	By: _____	By: _____
Its: _____	Its: _____	Its: _____

(Sign in blue ink)

(*Individuals Only*)

OWNER(S) OF REAL PROPERTY (INCLUDING SPOUSE)

_____

_____

_____

(*Individuals Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____to me known to be the individual(s) described herein and who executed the Planning Construction and Improvement, Performance, Maintenance, and Monitoring Bond and acknowledged that _____ signed the same as _____ free and voluntary act and deed, for the uses and purposes therein mentioned.
WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington, Residing at: _____

My commission expires: _____

(*Partnerships Only*)

OWNER(S) OF REAL PROPERTY

_____
(Name of Partnership or Joint Venture)

_____
By General Partner

_____
By General Partner

_____
By General Partner

(*Partnerships Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be general partners of _____, the partnership that executed the Planning Construction and Improvement, Performance, Maintenance, and Monitoring Bond and acknowledged the said instrument to be the free and voluntary act and deed of each personally and of said partnership, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(Corporations Only)

OWNER(S) OF REAL PROPERTY

_____
(Name of Corporation)

_____
By President

_____
By Secretary

(*Corporations Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be the President and Secretary, respectively, of _____, the corporation that executed the Planning Construction and Improvement, Performance, Maintenance, and Monitoring Bond and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(Sign with blue ink)

FINANCIAL/INSURANCE INSTITUTION

_____
(Name of Corporation)

_____
By President

_____
By Secretary

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ and _____ to me known to be the President and Secretary, respectively, of _____ ___, the corporation that executed Planning Construction and Improvement, Performance, Maintenance, and Monitoring Bond and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington, Residing at:
_____
My commission expires: _____

Note:

1. If bond is to be signed by attorney in fact for the surety company, a certified copy of the power of attorney must be attached to this bond.

Notarized acknowledgment required for both the applicant and surety – see attached pages.

(LLC Only)

OWNER(S) OF REAL PROPERTY

_____
(Name of Company)

_____
By Managing Member

_____
By Member

(*LLC Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be the Member(s), respectively, of _____, the company that executed the License to Enter and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument and that the seal affixed is the corporate seal of said company.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

PLANNING SECURITY AGREEMENT AND ASSIGNMENT OF LOAN PROCEEDS FOR CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS (PERFORMANCE, MAINTENANCE AND MONITORING)

PROJECT: 008

Developer (Applicant): 013
(Name)

(Address)

Financial Institution: _____
(Name)

(Address)

Account No.: _____

Phone No.: _____

KNOW ALL MEN BY THESE PRESENTS that we have been authorized and directed by _____ , hereinafter referred to as the **developer** (applicant), to hold from the proceeds of the Development Loan No. _____, the sum of (insert dollar amount from line 6 of the "Performance, Maintenance and Monitoring Value Worksheet") **$006**, hereinafter referred to as the security value, for completion of improvements in the above-proposed project.

Said improvements include all improvements within the project, together with all conditions to which approval was made subject by City of Kirkland as specified in the above Kirkland File No. 015, and including but not limited to 018. All of said improvements are to be constructed pursuant to the provisions of the City of Kirkland subdivision, zoning, and other applicable ordinances, and according to City of Kirkland standards and specifications.

In the event the **developer** fails to complete any or all of said improvements, we are hereby authorized and directed by the **developer** to pay the City of Kirkland such sums, within the limits of the amount held as determined by the Kirkland Planning Official, that are necessary to construct or finish construction of said improvement, including maintenance for the time thereafter required from the above-mentioned sum being held under this agreement.

The City of Kirkland shall have first claim and priority on the security value in said account in the event of any default in construction of said improvements. It is further understood and agreed that the aforesaid priority claim is paramount to all parties, including the **developer**, who agrees that the security value shall be held available to satisfy any aforementioned claim by the City of Kirkland, notwithstanding default on loan by borrowing party or termination of loan by the lending institution. Upon completion of maintenance, any balance of said sum remaining subject to this security agreement shall be released from this agreement.

Signed, sealed and dated this _____ day of _____, _____.

PRINCIPAL (APPLICANT)	CITY OF KIRKLAND	SURETY
By: _____	By: _____	By: _____
Its: _____	Its: _____	Its: _____

(Sign in blue ink)

(*Individuals Only*)

OWNER(S) OF REAL PROPERTY (INCLUDING SPOUSE)

_____

_____

_____

(*Individuals Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____to me known to be the individual(s) described herein and who executed the Planning Security Agreement and Assignment of Loan Proceeds for construction and Maintenance of Improvements (Performance, Maintenance, and Monitoring and acknowledged that _____ signed the same as _____free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(*Partnerships Only*)

OWNER(S) OF REAL PROPERTY

_____
(Name of Partnership or Joint Venture)

_____
By General Partner

_____
By General Partner

_____
By General Partner

(*Partnerships Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be general partners of _____, the partnership that executed the Planning Security Agreement and Assignment of Loan Proceeds for construction and Maintenance of Improvements (Performance, Maintenance, and Monitoring) and acknowledged the said instrument to be the free and voluntary act and deed of each personally and of said partnership, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(Corporations Only)

OWNER(S) OF REAL PROPERTY

_____
(Name of Corporation)

_____
By President

_____
By Secretary

(*Corporations Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be the President and Secretary, respectively, of _____, the corporation that executed the Planning Security Agreement and Assignment of Loan Proceeds for construction and Maintenance of Improvements (Performance, Maintenance, and Monitoring) and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(LLC Only)

OWNER(S) OF REAL PROPERTY

_____
(Name of Company)

_____
By Managing Member

_____
By Member

(*LLC Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be the Member(s), respectively, of _____, the company that executed the License to Enter and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument and that the seal affixed is the corporate seal of said company.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(Sign with blue ink)

FINANCIAL/INSURANCE INSTITUTION

_____
(Name of Corporation)

_____
By President

_____
By Secretary

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ and _____ to me, known to be the President and Secretary, respectively, of _____ the corporation that executed the Planning Security Agreement and Assignment of Loan Proceeds for construction and Maintenance of Improvements (Performance, Maintenance, and Monitoring) and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name

Notary Public in and for the State of Washington, Resident at: _____

My commission expires: _____

PLANNING SECURITY AGREEMENT AND ASSIGNMENT OF BANK ACCOUNT FOR CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS (PERFORMANCE, MAINTENANCE AND MONITORING)

PROJECT 008_____

Developer (Applicant): 013_____
(Name)

_____
(Address)

Financial Institution: _____
(Name)

_____
(Address)

Account No.: _____ Phone No.: _____

KNOW ALL MEN BY THESE PRESENTS that we have been authorized and directed by 013, hereinafter referred to as the **developer** (applicant), to hold from the funds on deposit in Bank Account No. _____, the sum of (insert dollar amount from line 6 of the "Performance, Maintenance and Monitoring Value Worksheet"**$006**, excluding all bank penalty charges, hereinafter referred to as the security value, for completion of improvements in the above-proposed project.

Said improvements include all improvements within the project, together with all conditions to which approval was made subject by City of Kirkland as specified in the above Kirkland File No. 015, and including but not limited to 018. All of said improvements are to be constructed pursuant to the provisions of the City of Kirkland subdivision, zoning, and other applicable ordinances, and according to City of Kirkland standards and specifications.

In the event the **developer** fails to complete any or all of said improvements, we are hereby authorized and directed by the **developer** to pay the City of Kirkland such sums, within the limits of the amount held as determined by the Kirkland Planning Official, that are necessary to construct or finish construction of said improvement, including maintenance for the time thereafter required from the above-mentioned sum being held under this agreement or that are necessary to replace said improvements.

The City of Kirkland shall have first claim and priority on the security value in said account in the event of any default in construction or maintenance of said improvements. It is further understood and agreed that the aforesaid priority claim is paramount to all parties, including the **developer**, who agrees that the security value shall be held available to satisfy any aforementioned claim by the City of Kirkland, notwithstanding termination of bank account agreement between the depositing institution and depositor for any reason whatsoever.

Upon completion and acceptance of improvements by the Kirkland Planning Official, any balance of said sum remaining subject to this security agreement shall be released from this agreement.

Signed, sealed and dated this _____ day of _____, _____.

DEVELOPER (APPLICANT):	CITY OF KIRKLAND	FINANCIAL INSTITUTION:
By: _____	By: _____	By: _____
Its _____	Its _____	Its _____

(Sign in blue ink)

(*Individuals Only*)

OWNER(S) OF REAL PROPERTY (INCLUDING SPOUSE)

_____

_____

_____

(*Individuals Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____to me known to be the individual(s) described herein and who executed the Planning Security Agreement and Assignment of Bank Account for Construction and Maintenance of Improvements (Performance, Maintenance, and Monitoring) and acknowledged that _____ signed the same as _____free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(*Partnerships Only*)

OWNER(S) OF REAL PROPERTY

_____
(Name of Partnership or Joint Venture)

_____
By General Partner

_____
By General Partner

_____
By General Partner

(*Partnerships Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be general partners of _____, the partnership that executed the Planning Security Agreement and Assignment of Bank Account for Construction and Maintenance of Improvements (Performance, Maintenance, and Monitoring) and acknowledged the said instrument to be the free and voluntary act and deed of each personally and of said partnership, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(Corporations Only)

OWNER(S) OF REAL PROPERTY

_____
(Name of Corporation)

_____
By President

_____
By Secretary

(*Corporations Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be the President and Secretary, respectively, of _____, the corporation that executed the Planning Security Agreement and Assignment of Bank Account for Construction and Maintenance of Improvements (Performance, Maintenance, and Monitoring) and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(LLC Only)

OWNER(S) OF REAL PROPERTY

_____
(Name of Company)

_____
By Managing Member

_____
By Member

(*LLC Only*)

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____and _____ to me, known to be the Member(s), respectively, of _____, the company that executed the License to Enter and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument and that the seal affixed is the corporate seal of said company.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington,
Residing at: _____
My commission expires: _____

(Sign with blue ink)

FINANCIAL/INSURANCE INSTITUTION

_____
(Name of Corporation)

_____
By President

_____
By Secretary

STATE OF WASHINGTON)
) SS.
County of King)

On this _____ day of _____, _____, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ and _____ to me, known to be the President and Secretary, respectively, of _____, the corporation institution that executed the Planning Security Agreement and Assignment of Bank Account for Construction and Maintenance of Improvements (Performance, Maintenance, and Monitoring) and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth, and on oath stated that they were authorized to sign said instrument and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto affixed the day and year first above written.

_____
Notary's Signature

_____
Print Notary's Name
Notary Public in and for the State of Washington, Residing at:
_____
My commission expires: _____

THE HEARING EXAMINER OF THE CITY OF KIRKLAND

IN RE: Rita Lang and Harley Lang Appeal of Certificate of Occupancy	Bldg. Permit No. BSF19-01341 CITY'S RESPONSE TO LANG'S MOTION FOR SUMMARY JUDGMENT

The Lang's continue to ask the Hearing Examiner to compel the City to issue them a certificate of occupancy for their building permit (in other words, to "final" their building permit). The relief they are seeking is mandamus. The hearing examiner cannot provide the Lang's with this relief. Their appeal to the hearing examiner should be dismissed.

Even if the Lang's could somehow show that the City has issued a "decision" on their building permit that is subject to an appeal (rather than mandamus), this case would require dismissal based upon the fact that the City's code does not provide for administrative appeals of building permits, except under limited circumstances that are

CITY OF KIRKLAND
123 FIFTH AVENUE
KIRKLAND, WA 98033
PH. (425) 587-3030

not applicable here. Thus, under this theory of their case, the Langs' appeal should also be dismissed.[1]

Finally, the City has submitted the Declaration of Adam Weinstein, the City's Director of the Planning and Building Department. The Director affirms that the Lang's are not trying to appeal an actual appealable decision. Instead, they just want the City to issue them a certificate of occupancy even though they refuse, as a matter of uncontested fact, to comply with several permit conditions that are required by the City's Municipal and Zoning Codes. For instance, the Lang's do not want to provide the City with a geohazard covenant, although it is required by KZC Ch. 85.45 (*see*, also, **Exhibits A and B** to Adam Weinstein's Declaration). The Lang's do not want to provide the City with a tree protection covenant, although it is required by KMC 95.51(2)(b) (*see*, also, **Exhibits C, D and E** to Adam Weinstein's Declaration). Nor do they want to perform wetland mitigation, although it is required by KZC 90.160(5) (s*ee*, also, **Exhibit F** to Adam Weinstein's Declaration). The Lang's do not dispute that these conditions are required by the codes, they just do not want to comply with them. They are asking the hearing examiner to order the City to issue them a Certificate of Occupancy (a final approval of their permit) without having to comply with these conditions and requirements. But the hearing examiner does not have jurisdiction to order the City to issue a permit while required conditions are outstanding.

---

[1] Furthermore, the City imposed the contested conditions on the permit long ago, thus, even if these conditions could be appealed to Superior Court via the Land Use Petition Act ("LUPA") such appeal would be barred under the LUPA's strict 21-day appeal period. RCW 36.70C.040(3).

CITY OF KIRKLAND
123 FIFTH AVENUE
KIRKLAND, WA 98033
PH. (425) 587-3030

Accordingly, the City respectfully requests that the Langs' Motion for Summary Judgment be denied and that the City's Motion to Dismiss be granted, and that this appeal be dismissed by the hearing examiner.

Dated this 17th day of February 2022.

/s/ Stephanie Croll
Stephanie Croll, WSBA No. 18005
Senior City Attorney
City of Kirkland
123 5th Avenue
Kirkland, WA 98033
scroll@kirklandwa.gov

CITY OF KIRKLAND
123 FIFTH AVENUE
KIRKLAND, WA 98033
PH. (425) 587-3030

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she caused a copy of the foregoing CITY'S RESPONSE TO LANG'S MOTION FOR SUMMARY JUDGMENT to be served upon the following parties of record via email on February 17, 2022.

Peter Ojala
Ojala Law Inc PS
PO BOX 211
Snohomish, WA 98291
(360) 568-9825
peter@ojalalaw.com

Dated this 17th day of February 2022.

s/Leta Santangelo
City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033
Email: lsantangelo@kirklandwa.gov

CITY OF KIRKLAND
123 FIFTH AVENUE
KIRKLAND, WA 98033
PH. (425) 587-3030

Jennifer Anderer

From: Peter Ojala <peter@ojalalaw.com>
Sent: Monday, February 21, 2022 6:44 PM
To: Phil Olbrechts (Other)
Cc: Tanner Hoidal; Stephanie Croll; Adam Weinstein; Jennifer Anderer
Subject: Lang Appeal - Lang Response to Motion to Dismiss

TO: The Office of the Hearing Examiner:

Please find below Lang's Response to the City's Motion to Dismiss. The briefing from Lang's Summary Judgment Motion is incorporated below, with changes or additions from the text provided in the summary judgment motoin noted by underlining the text in Times New Roman Font.

RESPONSE TO MOTION TO DISMISS FOR WANT OF JURISDICTION

The Hearing Examiner has jurisdiction over this administrative appeal, as it is Lang's attempt to exhaust administrative remedies under KMC 21.06.570 and .572 and is plainly allowed thereby.

KMC 21.06.570 Appeals to Hearing Examiner
Appeals of **orders, decisions and determinations** of **the building official** that do not constitute enforcement actions shall be heard and decided by the city of Kirkland hearing examiner. Enforcement actions shall be brought pursuant to the provisions of Chapter 1.12. To the extent the codes adopted by reference in this title refer to a "board of appeals" or a "building board of appeals," those references shall be deemed to refer to the city of Kirkland hearing examiner.

KMC 21.06.572 Limitations on appeals
An appeal under this chapter shall be based on a claim that **this chapter** or the technical codes **have been incorrectly interpreted**, that the provisions of this chapter or the technical codes do not apply or that an equally good or better form of construction, method of protection or safety is proposed.

Lang challenges the decision of the Planning Director that indeterminate building permit conditions unrelated to the health, safety, and occupancy of the building (their own newly remodeled SFR home) that are being worked on with the City are "violations," precluding issuance of a Certificate of Occupancy under KMC 21.06.540 listing the remaining conditions. Listing the remaining conditions is expressly allowed for in the building code KMC 21.06.540(12). This is the plain language of the code.

In short, this is a plain language reading exercise the building code (rather than zoning code), prompting the Building Official to give a decision or determination that they are not allowed to nor are under a duty to act, and so to not to act appropriately.

Once the Hearing Examiner rules that the Building Officials reading of the plain language is erroneous, the Lang's trust the certificate of occupancy will be issued with all the appropriate, tailored, and lawful conditions - without the need for mandamus.

If the Hearing Examiner rules the Building Officials interpretation is erroneous, and the Building Official still refuses to act, a writ of mandamus will lie. KZ 170.15. As of now there is no "final decision" as

defined by LUPA, i.e. Lang can appeal to the Hearing Examiner, then there is no availability of a LUPA petition at this stage either (Prior to exhausting in front of the Hearing Examiner). The Building Official's decision to not issue a certificate of occupancy was made under KMC 21.06.540, not the zoning code per se. And the zoning code as pertaining to the certificate of occupancy necessarily refers back to the building code, but notably contains an "or" between uses and buildings. KZ 170.15; KMC 21.06.540.

"KZ 170.15 Permits issued by Building Official - Certificate of Occupancy
*** 4. Issuance of the Planning Official Approval – **The Planning Official shall sign and forward to the Planning and Building Department** the Certificate of Occupancy if the **building or** use conforms to this code." (emphasis added)

This appeal to the Hearing Examiner squarely addresses a "decision" or "determination" under KMC 21.06.540 by Mr. Weinstein to not issue a certificate of occupancy, where he argues unresolved conditions are "violations" precluding issuance of a permit under KMC 21.06.540. **Attachment 3** ("With that in mind, I would disagree with your assessment of KMC 21.06.540, as the 'other laws that are enforced by the planning and building department' include not only relevant Building Code provisions, but all other applicable development regulations in the Kirkland Zoning Code, including those that Jen Anderer emailed your client back in June" "Zoning Code requirements that apply to the project have not been met.")

The Langs do not dispute that certain conditions of the building permit can be applied to the SFR at the certificate of occupancy stage, and the contours of those conditions necessarily need to be determined by the City and the Langs, but this necessary tailoring does not preclude the issuance of the certificate of occupancy because those conditions were largely indeterminate at the building permit issuance stage, and can and should be listed on the Certificate of Occupancy in fairness. Holding the items up as "leverage" is inappropriate.

The Lang's have challenged in their Petition that the erroneous interpretation of Mr. Adam Weinstein's September 24, 2021 decision/determination that there is no duty under KMC 21.06.540 and .540(12) to issue a certificate of occupancy when some conditions (unrelated to the health, safety, and occupancy of the structure) are still being cooperatively worked out with the City. As noted in Appeal item (2), the Lang's challenge the Director's 'determination that KMC 21.06.535 and KMC 21.06.540' do not require the Department to issue a certificate of occupancy at this stage of the Langs' remodel of their home - which necessarily turns on an erroneous interpretation of KMC 21.06.535 and .540. The Lang's Petion specifically asks in the request for relief that the Hearing Examiner find the City "erroneously interpreted KMC 21.06 when it refused to issue a certificate of occupancy under the facts of this case." Accordingly, the Hearing Examiner has jurisdiction. KMC 21.06.570; KMC 21.06.572.

The building official / planning official (Mr. Adam Weinstein) has incorrectly read the plain language of KMC 21.06.540 in the decision/determination in the Petition Attachment 2, in making conditions (unrelated to the health, safety, and occupancy of the structure) that are necessarily being worked and fleshed out as erroneous prerequisites to the issuance of a certificate of occupancy where KMC 21.06.540(12) provides such and any lawful conditions can be listed on the certificate of occupancy.

In short, there is Hearing Examiner jurisdiction here because the Lang's claim the Director/Building Official/Planning Official has incorrectly interpreted KMC 21.06.540. KMC 21.06.572. The Lang's are not at this juncture challenging any zoning code provision as applied to their house project, nor did they make a request for interpretation of the *zoning* code. KZ 170.40. Nor did their inquiries result in any a code interpretation posted to a website that can be appealed under KZ 170.45(2). Further, if there were a 'violation' of the zoning code, the Kirkland code requires a certain process be followed under KMC 1.12 (See KMC 1.12.030 and .040),

which the City has not pursued (which is highly discretionary), so there is no "violation" precluding the Certificate of Occupancy, and this appeal is not a code enforcement issue.

The City makes much of the ancient and extraordinary writ of mandamus as appropriate relief. That ancient writ is a trap for the unwary at this juncture. Mandamus in Superior Court is not appropriate under well-known exhaustion of administrative remedies principles, and that this administrative appeal of the City's interpretation of KMC 21.06.540 is a plain and adequate remedy allowed under the law (namely KMC 21.06.572). *See, Eugster v. City of Spokane*, 118 Wn. App. 383, 402, 76 P.3d 741 (2003)(mandamus not available when there is a plain adequate remedy provided in the code). Under RCW 7.16, mandamus does not apply to "final land use decisions" and the Langs are essentially seeking a final land use decision under available administrative processes. RCW 7.16.360; *Cf. Durland v. San Juan County,* 182 Wn.2d 55 (2014). LUPA is also not appropriate as we are dealing with at this time only a "decision" or "determination" (all that is required under KMC 21.06.570), not a "final determination" or "final decision" as defined or required in LUPA. *Durland v. San Juan County,* 182 Wn.2d 55 (2014).

The City's motion to dismiss should be denied, otherwise the parties will be left in an endless circle without a certificate of occupancy nor clear delineation of applicable conditions. It should be noted that even the forms attached to Mr. Weinstein's declaration are incomplete and not tailored to the project. If the City issues a certificate of occupancy with conditions that are not tailored to the as-built project, a LUPA petition would be available. If the City brings a true code enforcement matter, the burden of proof will also be on the City, a fair hearing would be available.

The Hearing Examiner has jurisdiction to review the determination and interpretation of the Building Official and Planning Official of the City of Kirkland, and can issue appropriate relief interpreting the City Code. Again, with the correct reading of the Code, Lang trusts a mandamus will not be needed.

The Lang's respectfully request a ruling in their favor on the correct plain language interpretation of KMC 21.06.540, that the certificate of occupancy for their building issue, with any zoning code requirements plainly listed thereon under KMC 21.06.540(12). With this order, the Lang's trust the City will take the next appropriate steps without further Hearing Examiner or Court intervention, and this 10 year saga will come to a predictable and efficient close.

Sincerely,
OJALA LAW INC., P.S.
/s/ Peter Ojala
Peter C. Ojala
WSBA#42163
Attorney for Lang

CODES:

The following are some pertinent code provisions for the convenience of the Hearing Examiner and City that are pertinent to this motion and appeal.

KMC 21.06.570 Appeals to Hearing Examiner
Appeals of **orders, decisions and determinations** of **the building official** that do not constitute enforcement actions shall be heard and decided by the city of Kirkland hearing examiner. Enforcement actions shall be brought pursuant to

the provisions of Chapter 1.12. To the extent the codes adopted by reference in this title refer to a "board of appeals" or a "building board of appeals," those references shall be deemed to refer to the city of Kirkland hearing examiner.

KMC 21.06.572 Limitations on appeals

An appeal under this chapter shall be based on a claim **that this chapter** or the technical codes **have been incorrectly interpreted**, that the provisions of this chapter or the technical codes do not apply or that an equally good or better form of construction, method of protection or safety is proposed.

KMC 21.06.574 When to appeal and appeal fee

An appellant shall file a written appeal of the order, decision or determination of the building official with the Kirkland planning and building department within thirty days of the date of the decision of the building official. There shall not be an appeal fee for appeals of stop work orders or code enforcement orders. For all other matters, the appeal fee shall be one hundred twenty-five dollars and shall accompany the written appeal. Failure to timely file the appeal or pay the appeal fee shall result in dismissal of the appeal.

KMC 21.06.576 Contents of Notice of Appeal

The appeal shall contain a clear reference to the matter being appealed and a statement of the specific elements of the building official's order, decision or determination disputed by the appellant.

KMC 21.06.535 Use & Occupancy.

"A building or structure shall not be used or occupied, and a change in the existing use or occupancy classification of a building or structure or portion thereof shall not be made until the building official has issued a certificate of occupancy therefor as provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this chapter or of other ordinances of the jurisdiction.

Exceptions:

(1) Work exempt from permits per Section 21.06.215.

(2) For single-family dwellings and their accessory structures, the city-issued building permit inspection record may serve as the certificate of occupancy when the final inspection has been approved by the building official or the building official's designee."

KMC 21.06.540 – Certificate Issued

"After the building official inspects the building or structure and does not find violations of the provisions of this chapter or other laws that are enforced by the planning and building department, the building official shall issue a certificate of occupancy that contains the following:

(1) The building permit number.

(2) The address of the structure.

(3) The name and address of the owner or the owner's authorized agent.

(4) A description of that portion of the structure for which the certificate is issued.

(5) A statement that the described portion of the structure has been inspected for compliance with the requirements of this chapter for the occupancy and division of occupancy and the use for which the proposed occupancy is classified.

(6) The name of the building official.

(7) The edition of the code under which the permit was issued.

(8) The use and occupancy.

(9) The type of construction.

(10) The design occupant load where applicable.

(11) If an automatic sprinkler system is provided, and whether the sprinkler system is required and for what reason.

(12) Any special stipulations and **conditions of the building permit**." (emphasis added).

KMC 1.12.020 Definitions:

***

(o) "Violation" means an act or omission contrary to a city development regulation including an act or omission at the same or different location by the same person and including a condition resulting from such act or omission.

KMC 1.12.030 Voluntary correction.

(a) Applicability. This section applies whenever the applicable department **director determines that a violation of a regulation has occurred or is occurring**.

(b) General. The applicable department director shall make a reasonable attempt to secure voluntary correction by contacting the person responsible for the violation, where possible, explaining the violation and requesting correction.
***

KMC 1.12.040 Notice of civil violation

(a) Issuance.

(1) When the applicable department director determines that a violation has occurred or is occurring, and is unable to secure voluntary correction pursuant to Section 1.12.030, the applicable department director may issue a notice of civil violation to the person responsible for the violation.

KMC 1.12.050 Hearing before the hearing examiner

(a) Notice. A person to whom a notice of civil violation is issued will be scheduled to appear before the hearing examiner not less than ten calendar days after the notice of civil violation is issued.

(b) Prior Correction of Violation or Payment of Monetary Penalty. Except in the case of a repeat violation or a violation which creates a situation or condition which cannot be corrected, the hearing will be canceled and no monetary penalty will be assessed if the applicable department director approves the completed required corrective action at least forty-eight hours prior to the scheduled hearing.

(c) Procedure. The hearing examiner shall conduct a hearing on the civil violation pursuant to the rules of procedure of the hearing examiner. The applicable department director and the person to whom the notice of civil violation was directed may participate as parties in the hearing and each party may call witnesses. The city shall have the burden of proof to demonstrate by a preponderance of the evidence that a violation has occurred and that the required corrective action, if applicable, is reasonable. The determination of the applicable department director as to the need for the required corrective action shall be accorded substantial weight by the hearing examiner in determining the reasonableness of the required corrective action.

KZ 170.15 Permits issued by Building Official - Certificate of Occupancy

1. General – It is unlawful to occupy a building or conduct a use requiring a certificate of occupancy unless the Planning Official has approved the certificate of occupancy for that building or use.

2. Responsibility of Building Official – Upon receipt of a request to issue a certificate of occupancy, the Building Official shall promptly notify the Planning Official of the request. The Building Official may not issue a certificate of occupancy until he/she receives written approval from the Planning Official.

3. Responsibility of the Planning Official – Upon receiving notice from the Building Official of a request for a certificate of occupancy, the Planning Official shall promptly review the request, and if necessary, conduct a field inspection to determine if the structure or use conforms to this code.

4. Issuance of the Planning Official Approval – **The Planning Official shall sign and forward to the Planning and Building Department** the Certificate of Occupancy if the **building or** use conforms to this code.

Ojala Law Inc PS
PO BOX 211
Snohomish, WA 98291
(360) 568-9825
peter@ojalalaw.com

Jennifer Anderer

From: Peter Ojala <peter@ojalalaw.com>
Sent: Wednesday, February 23, 2022 11:59 PM
To: olbrechtslaw@gmail.com
Cc: Stephanie Croll; Adam Weinstein; Jennifer Anderer
Subject: RE: Lang Appeal - Lang Reply to City Response to Summary Judgment
Attachments: Lang Creek As Build BSF19-01341.pdf; BSF19-01341_Building_Height_Verification_Form_07-13-2021_15_57_21_BSF19-01341_BLD_HT_VRF_070821.pdf

TO THE HEARING EXAMINER:

This is a short Reply to the City's Response to Lang's motion for summary judgment.

The City is trying to obfuscate the issue and set up a straw man.
Lang's are seeking a review of the Building Official/Director's interpretation of the building code, which interpretation prompted him to not issue a certificate of occupancy.

Once that erroneous interpretation is fixed by the Hearing Examiner, the Lang's are confident that the City will make the right decision and an extraordinary writ of mandamus will not be needed.

Mr. Weinstein's declaration filed in response to Lang's Summary Judgment motion proves the point – if he can attach all the conditions he (and the City) deem appropriate to a declaration in opposition to summary judgment, why can't he attach these to a certificate of occupancy, as allowed by the code, and put this matter to rest? And if there are any concerns with the conditions, they can be handled in that context – not an endless circle where the City thinks it has "leverage."

The City makes misleading statements about the Lang's cooperation. Lang's actually have been cooperative. The mitigation plantings have been installed. The plantings have been tended to. Photographs have been taken. They are prepared to comply with reasonable and fair conditions that are tailored to their project and the impacts.

On the otherhand, the City has acted in a manner that raises eyebrows. The City made the Lang's redo a height survey of the structure that was apparently 0.2' off yet within the significant digits of the height requirement.

In an email dated 9/20/2021, it states:

1. Final Height Survey: The provided final height survey dated 11/20/20 confirms an ABE of 76.3' which means the maximum height for the home is 106.3' (30' height max), but the survey identifies the home at 106.5' which is over the maximum allowed height and requires revision.

The Lang's resubmitted the height survey spending thousands again.

It should be pointed out that even the Exhibits attached to Mr. Weinstein's declaration are not complete, and likely have extraneous (hold harmless language for example) requests within them, and seek permanent easements on parts of their property that have nothing to do with the impacts to the Project that the Lang's are learning about for the first time. So while this hearing is not about what conditions are appropriate and what are not, just *whether* the city can issue a certificate of occupancy with conditions, it is important to provide some of this information so the Hearing Examiner is informed and the record is not tilted.

Thank you,

Peter Ojala
Attorney for Lang

From: Leta Santangelo <LSantangelo@kirklandwa.gov>
Sent: Thursday, February 17, 2022 4:44 PM
To: olbrechtslaw@gmail.com
Cc: Peter Ojala <peter@ojalalaw.com>; Stephanie Croll <SCroll@kirklandwa.gov>; Adam Weinstein <AWeinstein@kirklandwa.gov>; Jennifer Anderer <JAnderer@kirklandwa.gov>
Subject: Lang Appeal - City's Response to Lang's Motion for Summary Judgment

Good afternoon, Mr. Olbrechts –

Attached is the City's Response to the Lang's Motion for Summary Judgment which includes the following:

City's Response; and
Declaration of Adam Weinstein with Exhibits A – F

Thank you,

Leta

LETA SANTANGELO
PARALEGAL, CITY ATTORNEY'S OFFICE
CITY OF KIRKLAND
123 5TH AVENUE, KIRKLAND, WA 98033
P: 425.587.3030
LSANTANGELO@KIRKLANDWA.GOV

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.

Rita and Harley Lang
6304 Lakeview Drive
Kirkland, WA 98033

City of Kirkland Planning Department

RE: BSF19-01341 Lang As Build Landscape Plan

The attached As-Build Landscape plan shows minimal changes in plantings to the submitted plan, which was created by Cedarock Consultants on December 5, 2019.

The majority of the plants were purchased through The Snohomish Conservation District Plant sale and planted in March, 2021. All were in containers or wrapped in burlap or plastic with wood chips or soil to maintain moisture and prevent them from dying. The shrubs were mixed and placed 3' apart throughout, and the trees were all mixed and placed 12' apart. A few types of plants were not available through the conservation, or at local nurseries. Substitutions were used in these instances, as marked in the chart below. A few substitutions were replaced with larger sizes, which were preferred to create a little more privacy.

During planting, holes were dug to be 2x the size of the container, and filled with compost and soil. Plants have been watered all summer and monitored for distress or failure to survive. The area has been weeded biweekly as well, to keep invasive species out. No plants were lost since the plantings over 10 months ago.

PLANT SPECIES	SIZE	QUANTITY
Salal (Gaultheria shallon)	1-gal; 1 foot	19
Oregon grape (Berberis nervosa)	1-gal; 1 foot	~~16~~ 11
Red huckleberrry (Vaccinium parvifolium)	(3) 1-gal; 1 foot (3) 2gal	~~8~~ 6
Snowberry (Symphoricarpos albus)	1-gal; 1 foot	~~4~~ 3
Sword fern (Polystichum munitum)	1-gal; 1 foot	30
Red-osier dogwood (Cornus sericea)	1-gal; 1 foot	~~27~~
~~Salmonberry (Rubus spectabilis)~~	1-gal; 2 foot	~~1~~
Vine maple (Acer circinatum)	(4) 1-gal; 2 foot (1) 2gal	5
~~Quaking aspen (Populus tremuloides)~~ Native Birch	1-gal; 2 foot	3
Western red cedar (~~Thuja plicata~~)	2-gal; 2-3 feet	~~1~~ 3
~~Douglas fir (Pseudotsuga menziesii)~~ Madrona	2-gal; 2-3 feet	~~1~~ 2
		80 Shrubs 8 Trees

Shrubs and Groundcover – 3' o.c.
Trees (including existing) – 12' o.c.

There is a split rail fence around the native plantings. Access is necessary along the house for maintaining the east side of our property, as trees are prone to losing branches and we like to remove invasive species and keep them from spreading further.

BSF19-01341
Enclosure 12

PLANT SPECIES	SIZE	QUANTITY
Salal (Gaultheria shallon)	1-gal; 1 foot	19
Oregon grape (Berberis aquifolium)	1-gal; 1 foot	~~41~~
Red huckleberry (Vaccinium parvifolium)	(3) 1-gal; 1 foot (3) 2gal	~~26~~
Snowberry (Symphoricarpos albus)	1-gal; 1 foot	~~3~~
Sword fern (Polystichum munitum)	1-gal; 1 foot	30
Red-osier dogwood (Cornus sericea)	1-gal; 1 foot	~~27~~
~~Salmonberry (Rubus spectabilis)~~	1-gal; 2 feet	~~1~~
Vine maple (Acer circinatum)	(4) 1-gal; 2 feet (1) 20gal	5
~~Quaking aspen (Populus tremuloides)~~ native alive	1-gal; 2 feet	5
Western red cedar (Thuja plicata)	2-gal; 2-3 feet	~~3~~
~~Douglas fir (Pseudotsuga menziesii)~~ Madrona	2-gal; 2-3 feet	~~2~~
		80 Shrubs 8 Trees

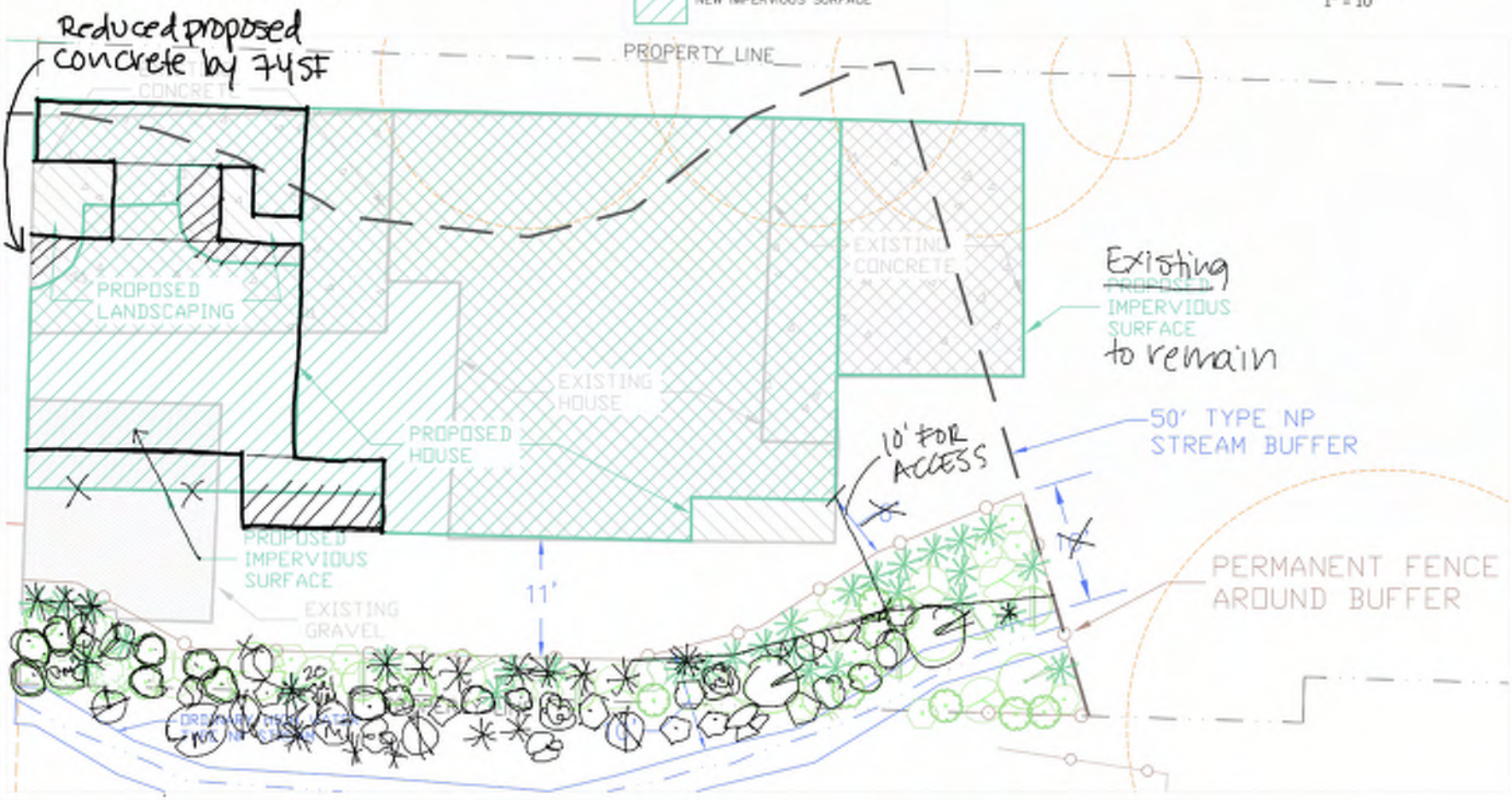
Shrubs and Groundcover – 3' o.c.
Trees (including existing) – 12' o.c.

	BUFFER AREA (sf)		
	Current	Proposed	Change
Impervious (building)	1,040	1,517	477
Impervious (pavement)	991	879 ~~953~~	~~-38~~ -112
Semi-pervious (lawn, gravel)	5,423	~~4,573~~ 4647	~~-850~~ -776
Landscaping (non-native)	507	145	-362
Native Plantings	0	773	773

EXISTING IMPERVIOUS SURFACE TO BE REMOVED
EXISTING IMPERVIOUS SURFACE TO BE REPLACED
NEW IMPERVIOUS SURFACE

N

0 10 20
HORIZONTAL SCALE
1" = 10'



CEDAROCK CONSULTANTS, INC.
19609 244th Avenue NE
Woodinville, WA 98077
(425) 788-0961

LANG PROPERTY - HMP
6304 Lakeview Drive, Kirkland, WA 98033
BUFFER PLANTING PLAN

Design: DDH
Drawn: DDH
Filename: LANGMT
Date: 10-17-19
Sheet No. 1
No 1 of 2 Sheets

Photos taken June 2021

Innovative - Responsive - Professional

DEVELOPMENT SERVICES
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Building Height Table and Field Verification

Planning Department

Complete this form to submit at City Hall. Or, use mybuildingpermit.com to submit your application entirely online.

This form shall be completed and submitted with a Building Permit Application for projects that involve new construction, additions, or increases in height to existing roof structures.

BUILDING HEIGHT TABLE

Site Address: 6304 Lakeview Drive

Parcel Number: 0825059195

Benchmark Location & Description (be specific):

TBM "A" located at Curb of wheelchair cut near Southwest corner of lot.

Benchmark Elevation:	69.19
Finished First Floor or Basement Floor Elevation:	
Difference between Benchmark & Finished First Floor or Basement Floor Elevations:	
Average Building Elevation (ABE):	76.3
Maximum Allowed Height of Structure above ABE:	30
Maximum Allowed Elevation of Structure (ABE + Allowed Height of Structure above ABE):	(106.3)106.5' PER PLANS
Measured roof elevation at top of rubber membrane:	106.29
Difference between measured elevation and maximum allowed elevation:	-0.01 PER PLANS

See KZC 115.59 for how to calculate ABE.
Contact the Planning Department to determine the Allowed Height of Structure above ABE.
See KZC 5.10.357 for definition of Height of Structure.

BUILDING HEIGHT FIELD VERIFICATION AND SURVEY REQUIREMENTS

A building height field verification or survey shall be provided by the owner or owner's agent for all new buildings and additions to existing buildings, following these requirements:

1. At the subfloor inspection or the slab insulation inspection, a completed, signed, and dated height verification form must be submitted to the Building Inspector.
2. At the time of the roof sheathing inspection for structures that will be within *one foot* of the maximum allowed height, a height survey, by a licensed surveyor, must be submitted to the Building Inspector.

> *A blank Building Height Field Verification Form is provided on Page 2 of this document.*

For Office Use Only: Building height field verification is required (Yes or No?): YES

Height survey by a licensed surveyor required within one foot of maximum height (Yes or No?): YES

Reviewed by: JLA **Date:** 12/30/2019 **Permit #:** BSF19-01341

BUILDING HEIGHT FIELD VERIFICATION

Site Address: 6304 Lakeview Drive

Permit Number: BSF19-01341

Finished First Floor Elevation: _____

OR

Finished Basement Floor Elevation: 68.8

I certify that the elevation above has been field verified and is accurate as of the date below.
I also certify that I am the:

○ Owner ◉ Owner's Agent

Printed Name: Vance Blue

Signature: _____

Company Name: David Evans and Associates

Date: 10-22-2020

Jennifer Anderer

From: Stephanie Croll
Sent: Thursday, February 24, 2022 10:18 AM
To: Peter Ojala; olbrechtslaw@gmail.com
Cc: Adam Weinstein; Jennifer Anderer
Subject: RE: Lang Appeal - Lang Reply to City Response to Summary Judgment

TO THE HEARING EXAMINER

This constitutes the City's Reply to its Motion to Dismiss.

I. Introduction

Petitioners are trying to get in through the back door that which they could not get in through the front. This is not an appeal of a Director's Decision. Under the LUPA and the City's Code, if Petitioners wanted to appeal any condition attached to the issuance of their building permit, then they were required to have filed an appeal in Superior Court under the LUPA within 21 days of the date the contested conditions were imposed. Petitioners did not do this, and their attempted appeal at this time should be dismissed.

II. Argument

1. The City's code does not provide for administrative appeals of building permits, except in limited circumstances that do not apply here.

This appeal is barred as a jurisdictional matter because, even if it had been timely filed (which it was not), the City code does not provide for administrative appeals of building permits.

2. This is not an appeal of the Director's interpretation of the building code.

The parties have already addressed the various conditions of approval with which the Petitioners refuse to comply. Again, they did not properly appeal those conditions via LUPA.

Petitioners recently asked the City to waive or defer those conditions and issue their final certificate of occupancy. The Director denied their request. The Director's response to their request is not an "interpretation of the zoning code" that is appealable to the hearing examiner. Petitioners cannot *create* an appeal right where none exists. If Petitioners argument is accepted then the issuance of a permit would never be a final appealable decision, instead, applicants could renew their right to appeal permits by simply asking local jurisdictions to make changes that it knows the jurisdiction cannot and/or will not make. This would destroy the concept of the finality of land use decisions.

III. Conclusion

The City respectfully requests that this appeal be denied based upon lack of jurisdiction.

Thank you,

Stephanie Croll
Sr. Assistant City Attorney
Direct 425-587-3034

Cell 206-949-6992

From: Peter Ojala <peter@ojalalaw.com>
Sent: Wednesday, February 23, 2022 11:59 PM
To: olbrechtslaw@gmail.com
Cc: Stephanie Croll <SCroll@kirklandwa.gov>; Adam Weinstein <AWeinstein@kirklandwa.gov>; Jennifer Anderer <JAnderer@kirklandwa.gov>
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Peter Ojala
Attorney for Lang

From: Leta Santangelo <LSantangelo@kirklandwa.gov>
Sent: Thursday, February 17, 2022 4:44 PM
To: olbrechtslaw@gmail.com
Cc: Peter Ojala <peter@ojalalaw.com>; Stephanie Croll <SCroll@kirklandwa.gov>; Adam Weinstein <AWeinstein@kirklandwa.gov>; Jennifer Anderer <JAnderer@kirklandwa.gov>
Subject: Lang Appeal - City's Response to Lang's Motion for Summary Judgment

Good afternoon, Mr. Olbrechts –

Attached is the City's Response to the Lang's Motion for Summary Judgment which includes the following:

City's Response; and
Declaration of Adam Weinstein with Exhibits A – F

Thank you,

Leta

LETA SANTANGELO
PARALEGAL, CITY ATTORNEY'S OFFICE
CITY OF KIRKLAND
123 5TH AVENUE, KIRKLAND, WA 98033
P: 425.587.3030
LSANTANGELO@KIRKLANDWA.GOV

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.

THE HEARING EXAMINER OF THE CITY OF KIRKLAND

IN RE:	Bldg. Permit No. BSF19-01341
Rita Lang and Harley Lang Appeal of Certificate of Occupancy Issue	ORDER DENYING MOTIONS FOR SUMMARY JUDGMENT AND DISMISSAL

The Appellants' Motion for Summary Judgment and City's Motion for Dismissal are denied.

Evidence Relied Upon

City's 2/7/22 Motion for Dismissal, Appellant Response, City Reply and all associated declarations/exhibits.

Appellants' 2/7/22 Motion for Summary Judgment, City Response, Appellant reply and all associated declarations/exhibits.

Findings of Fact

1. Appellants/Property. Rita Lang and Harley Lang are the Appellants. The Langs own a single-family residence (Residence) at 6304 Lakeview Dr., Kirkland, WA.

2. Building Permit. The Appellants were issued a building permit for their Residence in 2019. As of July 29, 2021, all inspections of the Appellants' home have been completed and passed by the Building Official, except for zoning code requirements imposed by the Planning and Building Department.

3. Request for Certificate of Occupancy/Denial. On September 10, 2021 the Appellants' attorney sent a letter to the Planning and Building Department requesting a certificate of occupancy for the Residence. The September 10, 2021 letter argued that the certificate of occupancy could not be withheld solely because of outstanding zoning compliance issues with the Residence. The Director of the Planning and Building Department denied the request by letter dated September 24, 2021. The letter provided in pertinent part as follows:

> *...I would disagree with your assessment of KMC 21.06.540, as the "other laws that are enforced by the planning and building department" include only relevant Building Code provisions, but all the applicable development regulations in the Kirkland Zoning Code, including those that Jen Aderer emailed your client back in June. Thus we cannot issue a certificate of occupancy if only Building Code Requirements have been verified, but Zoning Code requirements that apply to the project have not been met.*

4. Appeal. The Appellants filed the subject appeal on October 21, 2021. The appeal asserts that they should not have been denied the certificate of occupancy for the residence based on outstanding zoning code compliance issues.

5. Motions. The City has filed a motion for lack of Examiner jurisdiction and the Appellants have filed a motion for summary judgment. Both motions were filed on February 7, 2022. Both motions are the subject of this ruling.

Conclusions of Law

1. Hearing Examiner has Jurisdiction. The Examiner has jurisdiction to hold a hearing and issue a final decision on the subject appeal. The City's motion for dismissal is based upon the argument that the Examiner doesn't have jurisdiction over decisions to not issue a certificate of occupancy. It is determined that decision is subject to Examiner review under KMC 21.06.570, which authorizes Examiner review of decisions made under the construction codes.

   KMC 21.06.570 grants the Examiner with authority to hear appeals of "decisions" and "determinations" of the building official that don't constitute

code enforcement actions. KMC 21.06.572 provides in pertinent part that appeals made pursuant to Chapter 21.06 KMC shall be limited to interpretations of Chapter 21.06 KMC or the technical codes adopted by that chapter.

The September 24, 2021 letter from the Department Director identified in Finding of Fact No. 3 was a "decision" to deny a certificate of occupancy based upon the Director's interpretation of when a certificate of occupancy can issue. Under the plain meaning of KMC 21.06.570, a "decision" has been made under Chapter 21.06 KMC and thus the Examiner has jurisdiction.

For purposes of judicial economy and to provide consistency with what decisions may be appealed to superior court under the Land Use Petition Act (LUPA), Chapter 36.70C RCW, it is acknowledged that the Development Director's decision should qualify as a "final decision." RCW 36.70C.020(2) defines a "land use decision" that qualifies for review under LUPA as a "final determination" by a local jurisdiction or body or officer on applications for a number of land use approvals, including building permits. A "final determination" for purposes of LUPA is a decision "*which sets at rest the cause of action between parties*." *Chumbley v. Snohomish Cnty*., 386 P.3d 306, 315 (2016).

Under the *Chumbley* definition of a "final determination," the department Director's decision qualifies as a final land use decision. The Appellants' believe they do not have to complete zoning code compliance measures to acquire a certificate of occupancy, the City believes the opposite. There is nothing in the record to suggest that there is any way around this impasse save an appeal. Under these circumstances, it is logical and reasonable to conclude that the cause of action is "*a rest*" as nothing further will happen until the impasse is resolved by appeal[1].

The City also argues that the Examiner has no jurisdiction because a writ of mandamus is required to compel the issuance of certificate of occupancy. It is difficult to see how an examiner decision reversing a certificate of occupancy denial is materially different from reversing a conditional use permit denial or any other land use permit denied by the City. The Examiner's role in this appeal is limited to assessing the validity of a decision made pursuant to the Chapter 21.06 KMC and the construction codes adopted by that chapter. As pointed out by the Applicant, if the City fails to implement the Examiner's decision on the

[1] Building permits do eventually expire due to abandonment under the IRC, but it's doubtful a court would find any policy justification for making a permit application wait until their permit expires before seeking recourse for a difference of opinion on the terms of issuance for a certificate of occupancy.

validity of the decision to not issue the certificate of occupancy, that failure to act would be the proper subject for a mandamus action.

The City also asserts that there is no jurisdiction because KMC 21.06.570 requires the appeal to be about interpretations under the construction code chapter (Chapter 21.06 KMC) and the codes adopted by that chapter. As noted in Paragraph 4 of the Declaration of Adam Weinstein (in City's summary judgment response), part of the resolution of the appeal is dependent upon the construction of zoning code provisions that require zoning code requirements to be completed prior to issuance of a certificate of occupancy. Although those requirements are within the zoning code, they add direct clarity to KMC 21.06.540, which provides that a certificate of occupancy shall not issue until after the building official determines that there are no building or zoning code violations. Ultimately, the primary issue at hand is whether a certificate of occupancy should be issued under KMC 21.06.540, which is a construction code issue as contemplated by KMC 21.06.570.

2. Certificate of Occupancy Can be Withheld on Basis of Zoning Code Compliance Requirements. The City can withhold a certificate of occupancy based upon failure to complete zoning code requirements. The Appellants' summary judgment motion is based upon the argument that a certificate of occupancy must be issued if all construction code requirements are met. It is concluded that the City can potentially rely upon several KMC provisions as well as the Appellants' building permit conditions themselves to require compliance with zoning code requirements prior to issuance of a certificate of occupancy.

The first point of inquiry in assessing whether zoning code issues can affect issuance of a certificate of occupancy is KMC 21.06.540, which addresses when certificates can issue as follows:

> *After the building official inspects the building or structure and does not find violations of the provisions of this chapter or other laws that are enforced by the planning and building department, the building official shall issue a certificate of occupancy*

As made clear from the language above, a certificate cannot be issued if there are violations of Chapter 21.06 KMC or laws that are enforced by the "*planning and building department*." The zoning code is clearly enforced by the planning and building department, so any violations of the zoning code serve as a basis for not issuing a certificate of occupancy.

The remaining question is what constitutes a "violation" of the zoning code to justify withholding a certificate of occupancy? The Appellants appear to take the position that "violations" of the zoning code can be avoided by simply setting compliance deadlines for after issuance of the certificate. By that logic the same could be done for building code compliance as well. Zoning code requirements are placed upon the same footing as building code requirements for purposes of when a certificate of occupancy can be issued under KMC 21.06.540. KMC 21.06.540 essentially does not allow a home or the lot upon it rests to be occupied until all applicable building and zoning code requirements are met. There may be some instances where deferral of building or zoning code requirements is justified, but the Applicant has not identified as a matter of law, in the absence of any material question of fact, why that should be the case for the zoning code issues presented by this appeal.

Paragraph No. 4 of Mr. Weinstein's declaration identifies several zoning code provisions that require zoning code compliance prior to issuance of a certificate of occupancy. To best harmonize these specific requirements with the broader rule set by KMC 21.06.540, the provisions identified in Paragraph No. 4 should be construed as adding to the reasons identified in KMC 21.06.540 for when a certificate of occupancy must be withheld.

Finally, the conditions of the building permit issued for the Appellants at this point are final and cannot be collaterally attacked in this proceeding. *See, e.g., Habitat Watch v. Skagit County*, 155 Wn.2d 397, 410-11 (2005)(under principles of judicial finality, administrative decisions that are not timely appealed are binding even if incorrect). Just as the Appellants recognize that a final decision on a certificate of occupancy is appealable as a "decision" to the Examiner under KMC 21.06.570, for the same reasons a building permit decision also qualifies. Since the Appellants' building permit has not been timely appealed, the conditions of that permit cannot be challenged even if they violate the KMC under the *Habitat Watch* case. Those conditions are fully enforceable to the extent they require zoning code compliance prior to issuance of a certificate of occupancy.

Decision

The City's Motion for Dismissal is denied for the reasons identified in Conclusion of Law No. 1. The Appellants' Motion for Summary Judgment is denied for the reasons identified in Conclusion of Law No. 2.

ORDERED this 9th day of March 2022.

Phil Olbrechts

City of Kirkland Hearing Examiner

On Tue, Mar 15, 2022 at 1:24 PM Stephanie Croll <SCroll@kirklandwa.gov> wrote:

To the Hearing Examiner and Peter Ojala,

The City thanks the Hearing Examiner for his ruling on the prehearing motions. Given the Findings and Conclusions in that Ruling, it appears that there are no further issues left for the Hearing Examiner to decide. The primary legal issues have been decided:

1. The City's Planning Director has authority to require compliance with applicable zoning code regulations before the Certificate of Occupancy is issued; and
2. Conditions of a building permit must be appealed under the LUPA within 21 days of the date a permit is issued.

Would it be acceptable to all to cancel the hearing and have the parties work on a Final Order to present to the Hearing Examiner?

Thank you,

Stephanie Croll

Sr. Assistant City Attorney

Direct 425-587-3034

Cell 206-949-6992

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From: Peter Ojala <peter@ojalalaw.com>
Sent: Wednesday, March 16, 2022 1:38 PM
To: Stephanie Croll <SCroll@kirklandwa.gov>; Phil Olbrechts (Other) <olbrechtslaw@gmail.com>
Subject: RE: FW: Lang Appeal - Ruling on SJ and Dismissal Motions

Dear Hearing Examiner and Ms. Croll:

Request: We would request the decision be revised to articulate whether there is a question of fact for a hearing under Issue 1, or whether the ruling is enough, and the matter is to be remanded to the Director to determine in the first instance whether this case is an "instance where deferral of zoning requirements is justified" or whether this is a factual issue for a hearing examiner hearing?

Background:
My clients need a mechanism to respectfully work with the City to tailor any remaining requirements to their Project, not just sign cookie cutter easements, etc., that could not be determined and were not determined at the building permit issuance stage. Apparently, City Staff is too busy to come out to the site to look at things regarding tailoring any outstanding zoning requirements to the Project. My clients inform me they have invited Jennifer to come to the site, but she has declined. There does not appear to be such a mechanism in City code to tailor cookie cutter requirements, unless the certificate of occupancy issues, for the remaining conditions to be tailored and spelled out and a process provided. Otherwise, people just go in circles. Sign the cookie cutter zoning templates, or else.

Issue 1: The hearing examiner has jurisdiction and ruled in part: "There may be some instances where deferral of building or zoning requirements is justified, but the Applicant has not identified as a matter of law, in the absence of any material question of fact, why that should be the case for the zoning code issues presented by this appeal." This appears to be opposite or at least at odds with what the Director has stated or believed. I am not sure if we can get more relief than this from the Hearing Examiner? But does this leave open a question of fact for a possible hearing (or would this get remanded to the Director to determine) whether, in this particular case, where the building, structures, utilities, etc., have all been cleared, and the only remaining issues are zoning related and inconsequential to occupancy health and safety issues, whether these items should be listed as conditions. Again, there are not any formal "violations" as defined in the code determined in this case at this stage either.

Issue 2: The building permit conditions are what they say they are. The City did not appeal, nor did my clients. No one is trying to collaterally attack a building permit. There wasn't anything to appeal. However, some of the now requested items were simply not known to the City and/or my clients at that time of building permit issuance, and could not be known. As just one example, it wasn't until late 2021 they were informed that NGPE covering a large portion of their back yard far away from the construction site was required which was never on any plans or agreements – as just one example. Another is the $17,000 plant monitoring reporting estimates received last Fall. If there is disagreement on these items, what mechanism is there to address this?

My clients strongly object to the theory they simply refuse to comply, have not complied, or don't intend to comply with site plan/zoning requirements. Why should the City gain any more leverage to induce my clients to sign away things or do things that have recently been discovered by them that are objectionable? This doesn't seem like due process.

The main purpose of this legal process with the city was to get the City to move with haste to process the as builts, inform my clients of necessary changes tailored to the project, and issue the occupancy so they could close out construction financing before rates took off. This objective has not been successful in this effort. That ship may have sailed. The City chooses decision avoidance. The house has been completed for 8 months and the native plantings have been in the ground for over a year. (My clients just bought and planted another batch of plants from the annual native plant sale.) My clients hand dug a mat of bamboo roots, blackberries and ivy, removed a large holly tree, laid down mulch, planted countless native shrubs and trees, painstakingly weeded and watered them all by hand during the hottest summer on record. This spring they are adding to the plan with some additional trees (not to mention beginning to clear non native plants from our backyard which has nothing to do with this project.)

It appears the issues for hearing have been narrowed at least, if there are factual issues for a hearing. My clients are not inclined to simply dismiss or 'cancel' a hearing unless there is firm commitment by City Staff to work through these items in a meaningful and tailored manner.

My clients would agree to another continuance to allow for folks to weigh in on whether there is anything for a "hearing" or whether this should be remanded back on summary rulings.

Thanks,
Peter Ojala

CITY OF KIRKLAND

MyBuildingPermit.com

Land Use Application #478455 - Harley and Rita Lang Residence

Applicant

First Name	Last Name	Company Name
Ed	Horner	Horner Design Associates, Inc.

Number	Street	Apartment or Suite Number	E-mail Address
12114	SE May Creek Park Drive		ed@hornerdesign.net

City	State	Zip	Phone Number	Extension
Newcastle	WA	98056-2678	4252268281	

Contractor

Company Name

Number	Street	Apartment or Suite Number

City	State	Zip	Phone Number	Extension

State License Number	License Expiration Date	UBI #	E-mail Address

Project Location

Number	Street	Floor Number	Suite or Room Number
6304	LAKEVIEW DR		

City	Zip Code	County Parcel Number
KIRKLAND	98033	0825059195

Associated Building Permit Number	Tenant Name
478455	

Additional Information (i.e. equipment location or special instructions).

Work Location

Property Owner

First Name	Last Name or Company Name
Unknown	Unknown

Number	Street	Apartment or Suite Number
6304	LAKEVIEW DR	

City	State	Zip
KIRKLAND	WA	98033

Certification Statement - The applicant states:

I certify that I am the owner of this property or the owner's authorized agent. If acting as an authorized agent, I further certify that I have full power and authority to file this application and to perform, on behalf of the owner, all acts required to enable the jurisdiction to process and review such application. I have furnished true and correct information. I will comply with all provisions of law and ordinance governing this type of application. If the scope of work requires a licensed contractor to perform the work, the information will be provided prior to permit issuance.

Date Submitted: 10/12/2017 **Submitted By:** Ed Horner

CITY OF KIRKLAND

MyBuildingPermit.com

Land Use Application #478455 - Harley and Rita Lang Residence

Project Contact

Company Name: Horner Design Associates, Inc.
Name: Ed Horner **Email:** ed@hornerdesign.net
Address: 12114 SE May Creek Park Drive **Phone #:** 4252268281
Newcastle WA 98056-2678

Project Type	Activity Type	Scope of Work
Any Project Type	Preapplication Services	Presubmittal - Land Use

Project Name: Harley and Rita Lang Residence
Description of Work: Remove existing dwelling and replace with Single Family Dwelling & Garage

Project Details

Preapplication Services Information

Land Use review requested

Jurisdiction: Kirkland
Project Name: Harley and Rita Lang Residence
Application ID: 478455

Supplemental Name: Questions for Staff

Do you have any specfic questions for the Building Department?

No

Do you have any specfic questions for the Fire Department?

No

Do you have any specfic questions for the Planning Department?

The question for Land Use is what will be required to comply with KZC 83.510 and whether a Variance is required to build where the new structure is proposed or a Reasonable Use Exception can be obtained based on KZC 90.180? Is a Process 1 decision from KZC 145 needed? Since the existing structure is nonconforming and the new structure proposed is located where the least new impact to the stream buffer, does this fit the criteria for a Reasonable Use Exception? There is an existing patio to the east of the existing house up to an existing low retaining wall. The owners are proposing a deck in this area so the patio concrete could be removed at demo to allow more infiltration through spaced decking that would reduce impervious area on the site.

Do you have any specfic questions for the Public Works Department?

No

Do you have any other questions?

No

Supplemental Name: Additional Contact Information

Enter Applicant's Email Address:

ed@hornerdesign.net

AN ELECTRONIC COPY OF OR A WEB LINK TO THE STAFF REPORT, MEETING AGENDAS AND THE NOTICE OF FINAL DECISION WILL BE EMAILED TO THE APPLICANT AT THE ABOVE LISTED EMAIL ADDRESS. IF YOU PREFER TO RECEIVE A PAPER COPY, THEY ARE AVAILABLE UPON REQUEST. PLEASE INDICATE IF YOU WOULD ALSO LIKE A COPY OF THESE MATERIALS TO BE SENT TO THE PROPERTY OWNER'S EMAIL ADDRESS:

Yes

If Yes, please enter Owner's Email Address below. If No, please enter N/A:

ritaskip@me.com

Supplemental Name: Right to Enter Property/Hold Harmless Agreement

AUTHORITY TO ENTER PROPERTY/HOLD HARMLESS AGREEMENT -- READ CAREFULLY BEFORE CLICKING AGREE AND ENTERING NAME BELOW

I/we acknowledge that by clicking Agree below and submitting this application I/we are authorizing employees or agents of the City of Kirkland to enter onto the property which is the subject of this application during the hours of 7:00 a.m. to 5:00 p.m., Monday through Friday, for the sole purpose of making any inspection of the limited area of the property which is necessary to process this application. In the event the City determines that such an inspection is necessary during a different time or day, the applicant(s) further agrees that City employees or agents may enter the property during such other times and days as necessary for such inspection upon 24 hours notice to applicant(s), which notice will be deemed received when given either verbally or in writing.

I/we acknowledge that by clicking agree below and submitting this application I/we certify under penalty of perjury, the truth and/or accuracy of all statements, designs, plans and/or specifications submitted with said application and hereby agrees to defend, pay, and save harmless the City of Kirkland, its officers, employees, and agents from any and all claims, including costs, expenses and attorney's fees incurred in investigation and defense of said claims whether real or imaginary which may be hereafter made by any person including the undersigned, his successors, assigns, employees, and agents, and arising out of reliance by the City of Kirkland, its officers, employees and agents upon any maps, designs, drawings, plans or specifications, or any factual statements, including the reasonable inferences to be drawn therefrom contained in said application or submitted along with said application.

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Agree

Jurisdiction: Kirkland
Project Name: Harley and Rita Lang Residence
Application ID: 478455

Enter Full Name of Person(s) Agreeing with Statements Above:

Ed Horner/ Horner Design Associates, Inc.

PROJECT NARRATIVE
6304 LAKEVIEW DRIVE KIRKLAND

The existing dwelling and other hard surfaces on this parcel are located almost entirely in the 50' stream buffer and the 10' structure setback from the buffer. The lot area is 17,099 SF with approx. 680 SF of buildable area not restricted by buffers and building setbacks. The existing impervious areas of roof, concrete and gravel is 3,129 SF. The owners, Harley and Rita Lang propose to replace the existing structure and driveways with a similar footprint which would be slightly expanded but have some areas further set back from the stream OHWM. The area of expansion in the buffer is 750 SF +/- with proposed mitigation as outlined in the STREAM BUFFER MODIFICATION AND MITIGATION PLAN prepared by CEDAROCK CONSULTANTS, INC.

The question for Land Use is what will be required to comply with KZC 83.510 and whether a Variance is required to build where the new structure is proposed or a Reasonable Use Exception can be obtained based on KZC 90.180? Is a Process 1 decision from KZC 145 needed? Since the existing structure is nonconforming and the new structure proposed is located where the least new impact to the stream buffer, does this fit the criteria for a Reasonable Use Exception? There is an existing patio to the east of the existing house up to an existing low retaining wall. The owners are proposing a deck in this area so the patio concrete could be removed at demo to allow more infiltration through spaced decking that would reduce impervious area on the site.

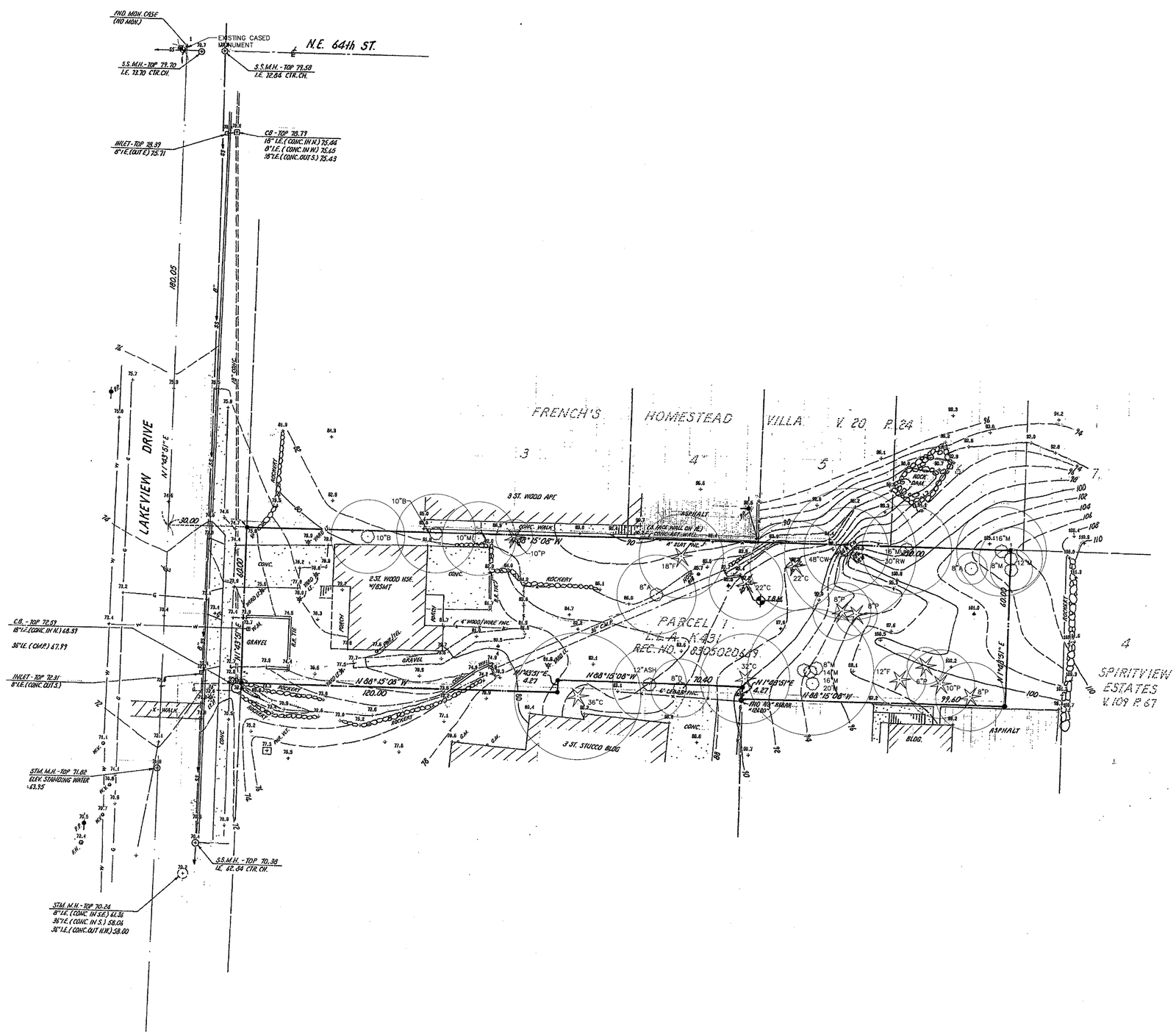
Parcel	082505-9195

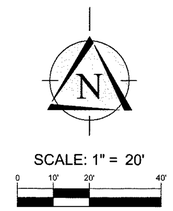
Zoning: RM 3.6

Legal Description

POR OF GL 4 IN SEC 8-25-5 DAF BEG SW COR OF LOT 3 BLK 3 FRENCH'S HOMESTEAD VILLA TH ELY ALG SLY LN SD BLK DIST 290 FT TH SLY PLW ELY MGN 102ND AVE NE DIST 60 FT TH WLY PLW SLY LN SD BLK DIST 290 FT TO ELY MGN SD 102ND AVE NE TH NLY ALG SD ELY MGN 60 FT TO POB LESS S 4.27 FT OF N 60 FT OF E 70.40 FT OF W 190.40 FT OF THAT POR SD GL 4 LY S OF SD PLAT & E OF SD 102ND AVE NE AKA PAR 1 KIRK LLA #K431 W NACHIEM- LEITZKE-JOHNSON REC #8305020669

SW 1/4, SW 1/4, SEC 8, TWP 25 N, RGE 5 E, WM





DATUM - K.C.A.S.
B.M. - CHISELED SQUARE AT THE COR. OF CONC.PATIO, CONDO UNITS S. OF CARILLON PT. APTS. ELEV. 88.43
T.B.M. - SET R.R. SPIKE 02' UP E. SIDE 18" CEDAR. ELEV. 87.12

LEGEND
C.....CEDAR
CW....COTTONWOOD
RW....REDWOOD
P.P.....POWER POLE
F.H.....FIRE HYDRANT

●....PROPERTY CORNER SET 1/2" REBAR W/CAP "TRIAD 18094"

PARCEL AREA : 17,099.39 SQ. FT.

TREE LEGEND

A	ALDER
ASH	MOUNTAIN ASH
B	BIRCH
D	DECIDUOUS
M	MAPLE
CW	COTTONWOOD
RW	REDWOOD
P	PINE
C	CEDAR

TREE DRIP LINE

GENERAL NOTES

1. BOUNDARY LINES SHOWN ARE BASED ON ROS VOL 69 PG 94, REC. NO. 8911159002.
2. THE INFORMATION DEPICTED ON THIS MAP REPRESENTS THE RESULTS OF A SURVEY MADE ON OCTOBER 2, 1989 WITH A UPDATED TREE SURVEY MADE ON OCTOBER 24, 2008 AND CAN ONLY BE CONSIDERED AS INDICATING THE GENERAL CONDITION EXISTING AT THAT TIME.
3. UNDERGROUND UTILITIES WERE LOCATED BASED ON THE SURFACE EVIDENCE OF UTILITIES (PAINT MARKS, SAW CUTS IN PAVEMENT, COVERS, LIDS, ETC.) AND AS-BUILT INFORMATION PROVIDED BY THE UTILITY PURVEYORS. THE CONTRACTOR SHALL VERIFY THE EXACT LOCATION, ELEVATION AND SIZE OF EXISTING UTILITIES PRIOR TO CONSTRUCTION.
4. THE CONTRACTOR SHALL VERIFY THE EXACT LOCATION, ELEVATION AND SIZE OF EXISTING UTILITIES PRIOR TO CONSTRUCTION.

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TRIAD ASSOCIATES
12112 115th Ave. NE
Kirkland, WA 98034-6929
425.821.8448
425.821.3481 fax
800.488.0756 toll free
www.triadassociates.net
Land Development Consultants

TOPOGRAPHIC SURVEY

LANG PROPERTY
10426 NE 53RD ST

CITY OF KIRKLAND, WASHINGTON

NO.	DATE	REVISION	BY	CK

RICK L. MCARDLE
PROJECT MANAGER
NICK A. YINGER, PLS
PROJECT SURVEYOR
PROJECT ENGINEER
PROJECT LANDSCAPE ARCHITECT
FIRST SUBMITTAL DATE: 11/04/2008
SCALE: HORIZ.: 1"=20' VERT.:

STATE OF WASHINGTON 19866 REGISTERED PROFESSIONAL LAND SURVEYOR
11-04-08

STAMP NOT VALID UNLESS SIGNED AND DATED

JOB NO. 08-087

SHEET NO. 1 OF 1

tkrodley, Nov 04, 2008 - 2:55pm
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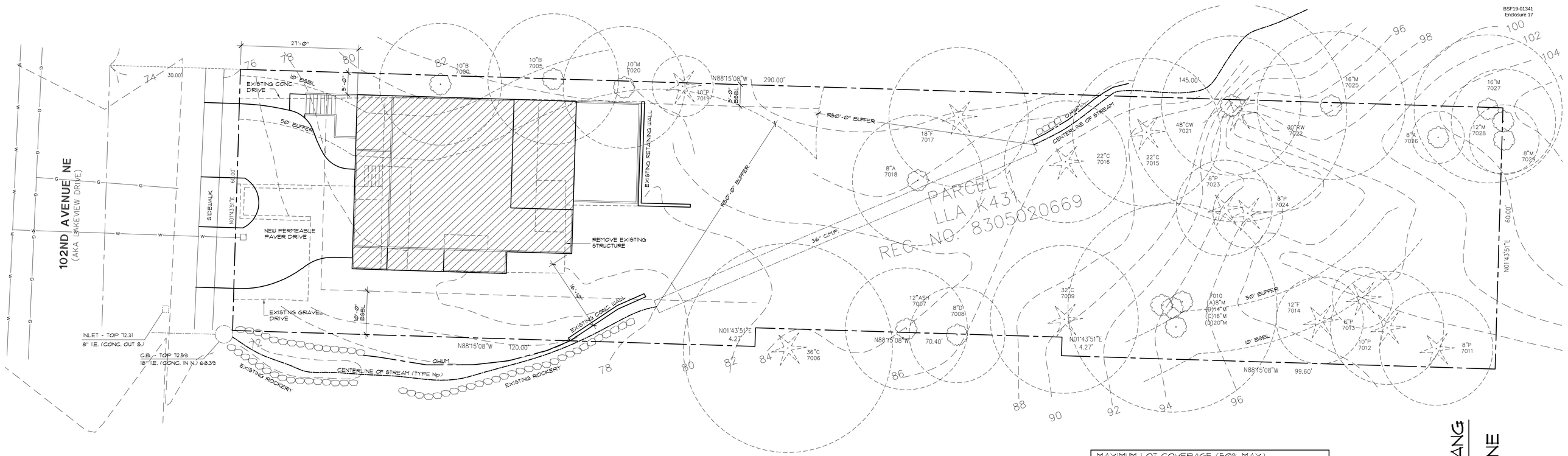
BSF19-01341
Enclosure 17



SITE PLAN

SCALE 1"=10'-0"

6304 LAKEVIEW DR. NE
KIRKLAND, WA 98033

PARCEL #082505-9195

ZONING: RM 3.6

LEGAL DESCRIPTION:

FOR OF GL 4 IN SEC 8-25-5 DAF BEG SW COR OF LOT 3 BLK 3 FRENCH'S HOMESTEAD VILLA TH ELY ALG SLY LN SD BLK DIST 290 FT TH SLY PLW ELY MGN 102ND AVE NE DIST 60 FT TH WLY PLW SLY LN SD BLK DIST 290 FT TO ELY MGN SD 102ND AVE NE TH NLY ALG SD ELY MGN 60 FT TO POB LESS S 4.27 FT OF N 60 FT OF E 70.40 FT OF W 190.40 FT OF THAT FOR SD GL 4 LY S OF SD PLAT & E OF SD 102ND AVE NE AKA PAR 1 KIRK LLA #K431 W NACHIEM- LEITZKE-JOHNSON REC #8305020669

MAXIMUM LOT COVERAGE (50% MAX)		
PROPOSED HOME	1931	SQ. FT.
DRIVE (PERMEABLE PAVERS 50%)	426	SQ. FT.
STAIRS AND FRONT WALK	46	SQ. FT.
DECK (SPACED DECKING 50%)	360	SQ. FT.
PORCH	50	SQ. FT.
TOTAL	2813	SQ. FT.
LOT SQUARE FOOTAGE	17,099	SQ. FT.
PERCENTAGE OF COVERAGE	16.5 %	

FLOOR AREA RATIO (F.A.R.)		
LOWER FLOOR	784	SQ. FT.
GARAGE	1024	SQ. FT.
MAIN FLOOR	1607	SQ. FT.
MAIN FLOOR PORCHES	272	SQ. FT.
UPPER FLOOR	1379	SQ. FT.
UPPER FLOOR PORCH	187	SQ. FT.
ROOF FLOOR	310	SQ. FT.
ROOF DECK (UNCOVERED)	1088	SQ. FT.
TOTAL	6401	SQ. FT.
LOT SQUARE FOOTAGE	17,099	SQ. FT
FLOOR AREA RATIO:	6401/174099 = 37.4%	

HARLEY AND RITA LANG

6304 LAKEVIEW DR. NE
KIRKLAND, WA

JOB # 17028

REVISED:

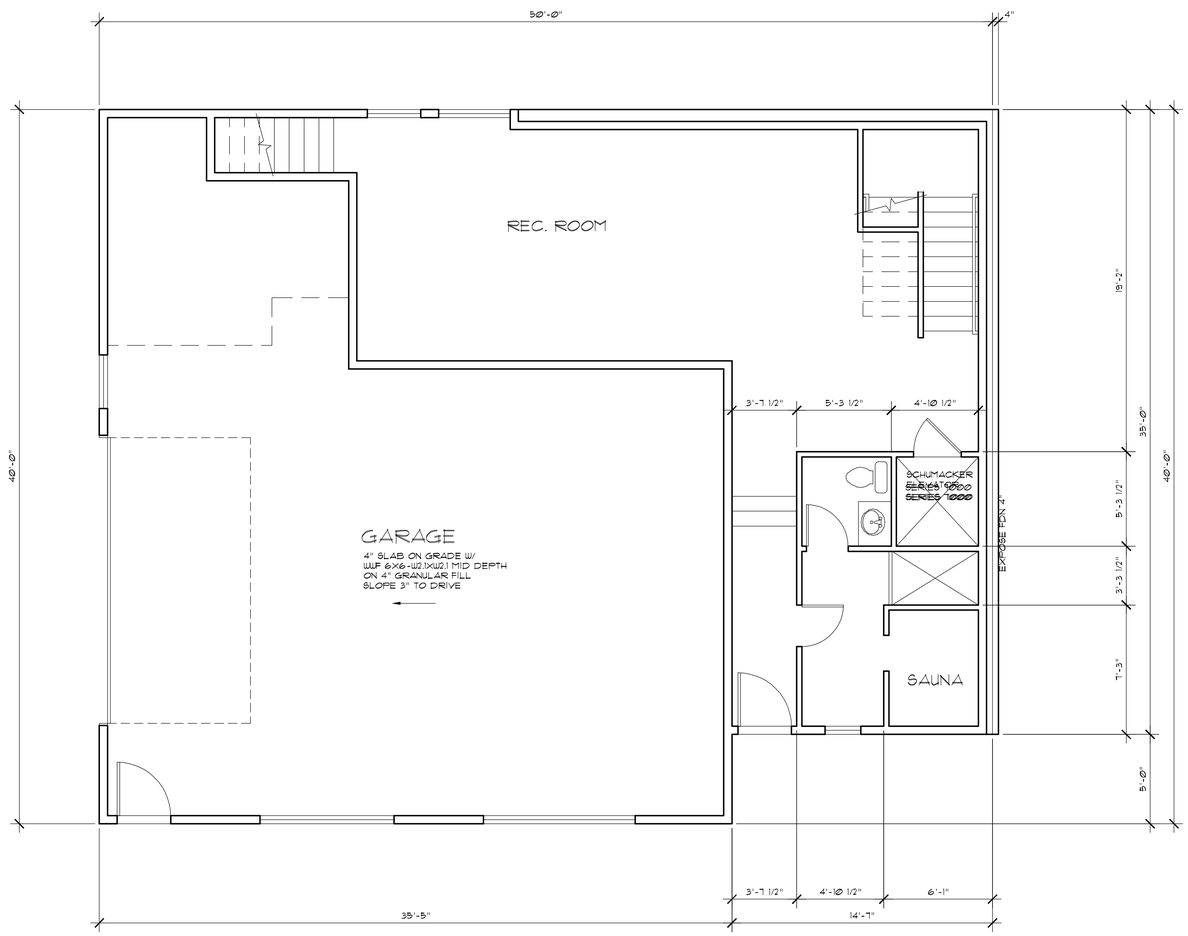
horner design associates inc. (425) 226-8281
12114 se may creek Pk. Dr. newcastle, wa 98056

COPYRIGHT 2017

DATE: 10/11/17
SCALE: 1"=10'-0"

SHEET 01

NOTE: VERIFY ALL DIMENSIONS



LOWER FLOOR PLAN

SCALE: 1/4" = 1' - 0"

0' 1' 5' 10'

HARLEY AND RITA LANG

10426 NE 53RD ST.
KIRKLAND, WA

JOB # 17028

REVISED:

horner
design
associates
inc. (425) 226-8281
12114 se may creek Pk. Dr. newcastle, wa 98056

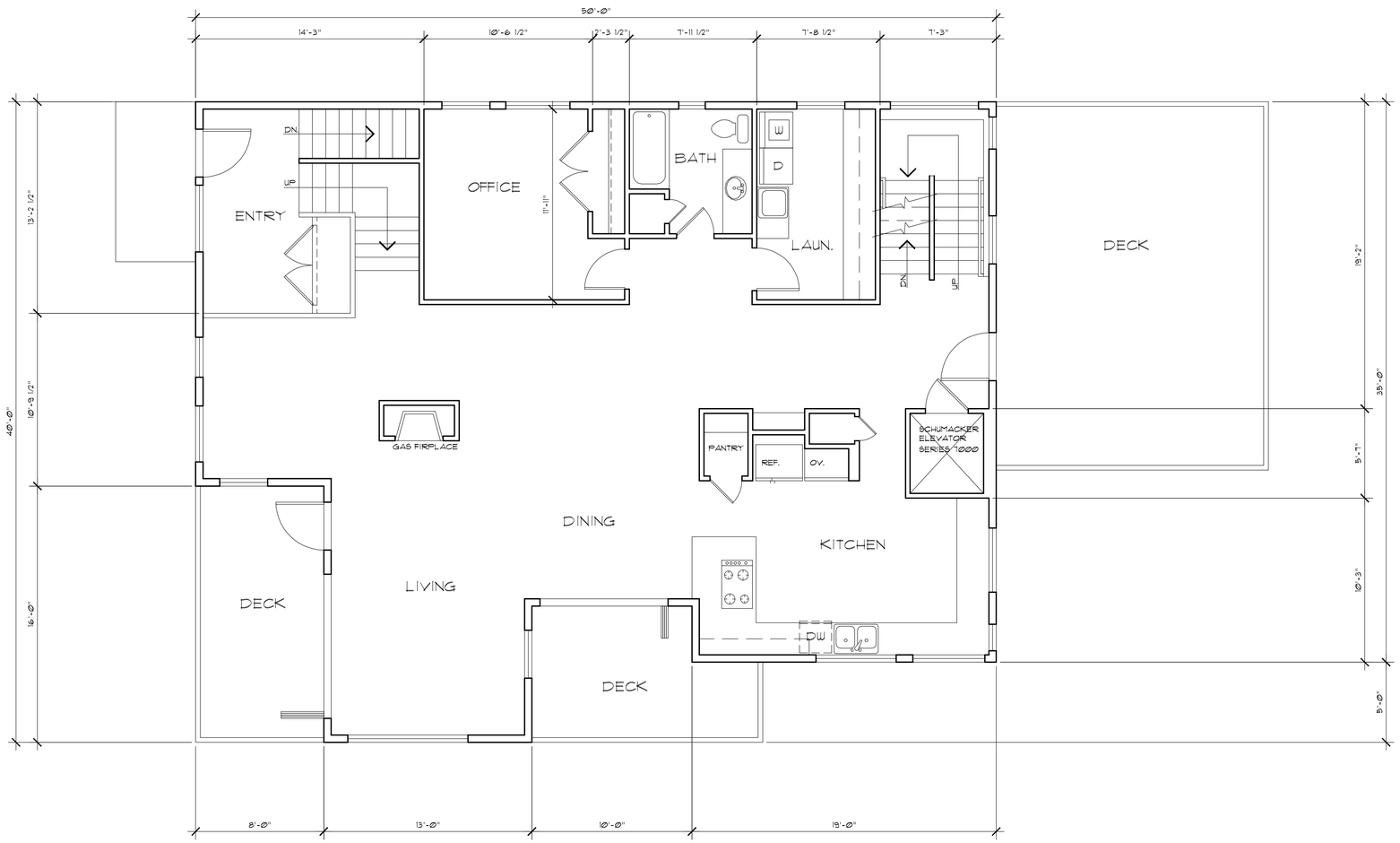
COPYRIGHT 2016

DATE:

SCALE:
1/4"=1'-0"

SHEET
A1

NOTE: VERIFY ALL DIMENSIONS



MAIN FLOOR PLAN

SCALE: 1/4" = 1' - 0"

0' 1' 5' 10'

8' DOOR HT. (TYP. U.N.O.)

HARLEY AND RITA LANG

10426 NE 53RD ST.
KIRKLAND, WA

JOB # 17028

REVISED:

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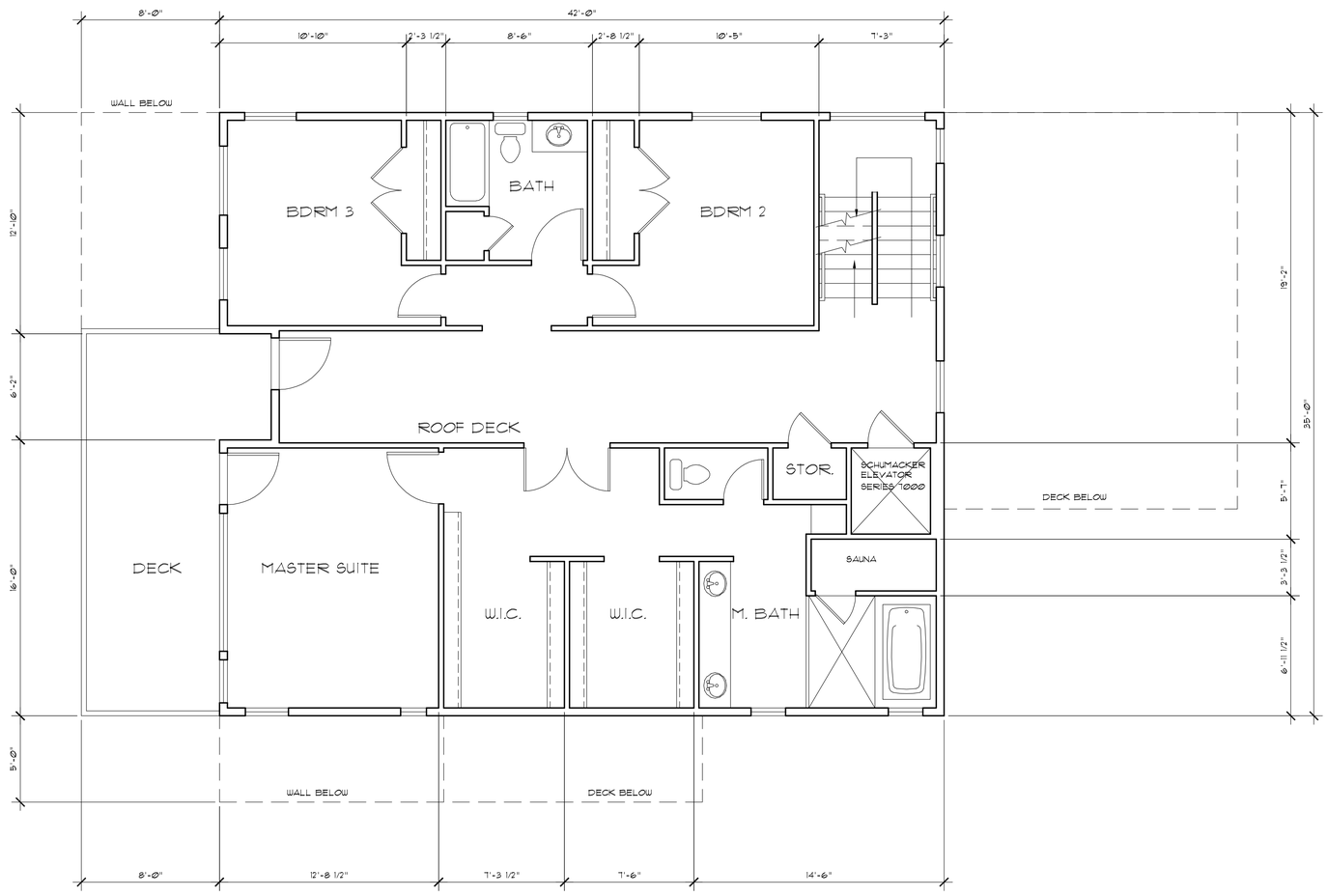
DATE:

SCALE: 1/4"=1'-0"

SHEET A2

NOTE: VERIFY ALL DIMENSIONS



UPPER FLOOR PLAN

SCALE: 1/4" = 1' - 0"

0' 1' 5' 10'

HARLEY AND RITA LANG

10426 NE 53RD ST.
KIRKLAND, WA

JOB # 17028

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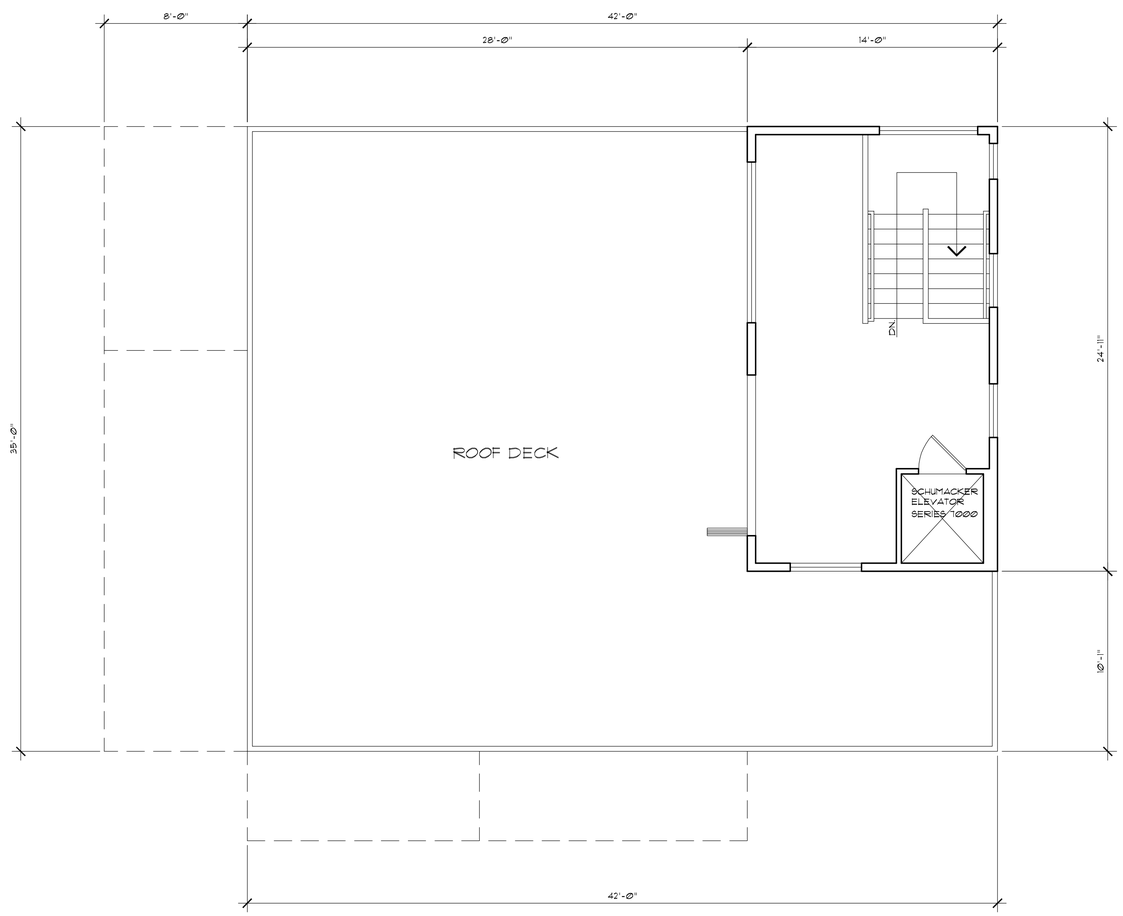
DATE:
SCALE: 1/4"=1'-0"

SHEET A3

NOTE: VERIFY ALL DIMENSIONS



ROOF DECK PLAN

SCALE: 1/4" = 1' - 0"

0' 1' 5' 10'

HARLEY AND RITA LANG

10426 NE 53RD ST.
KIRKLAND, WA

JOB # 17028

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inc. (425) 226-8281
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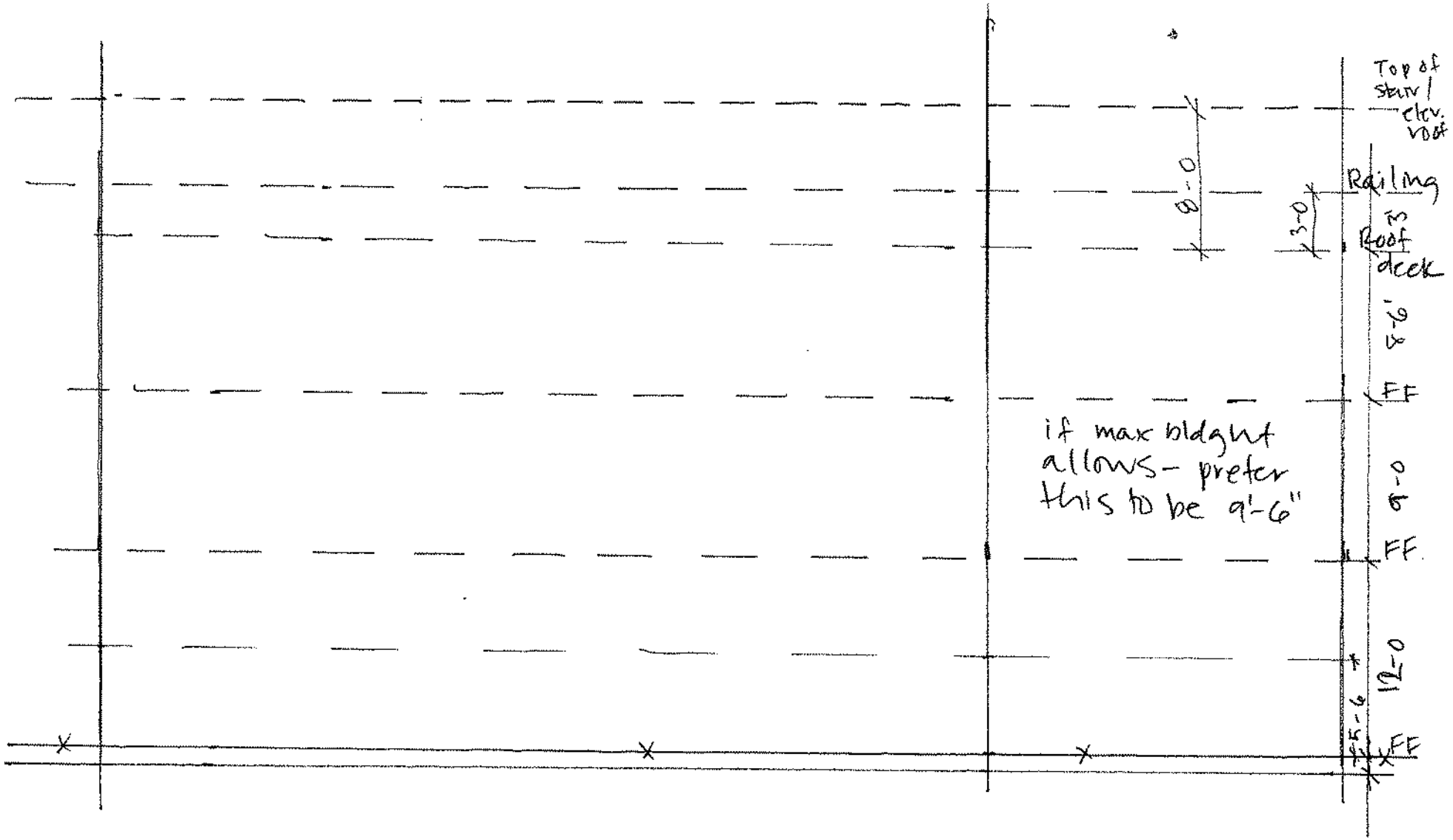
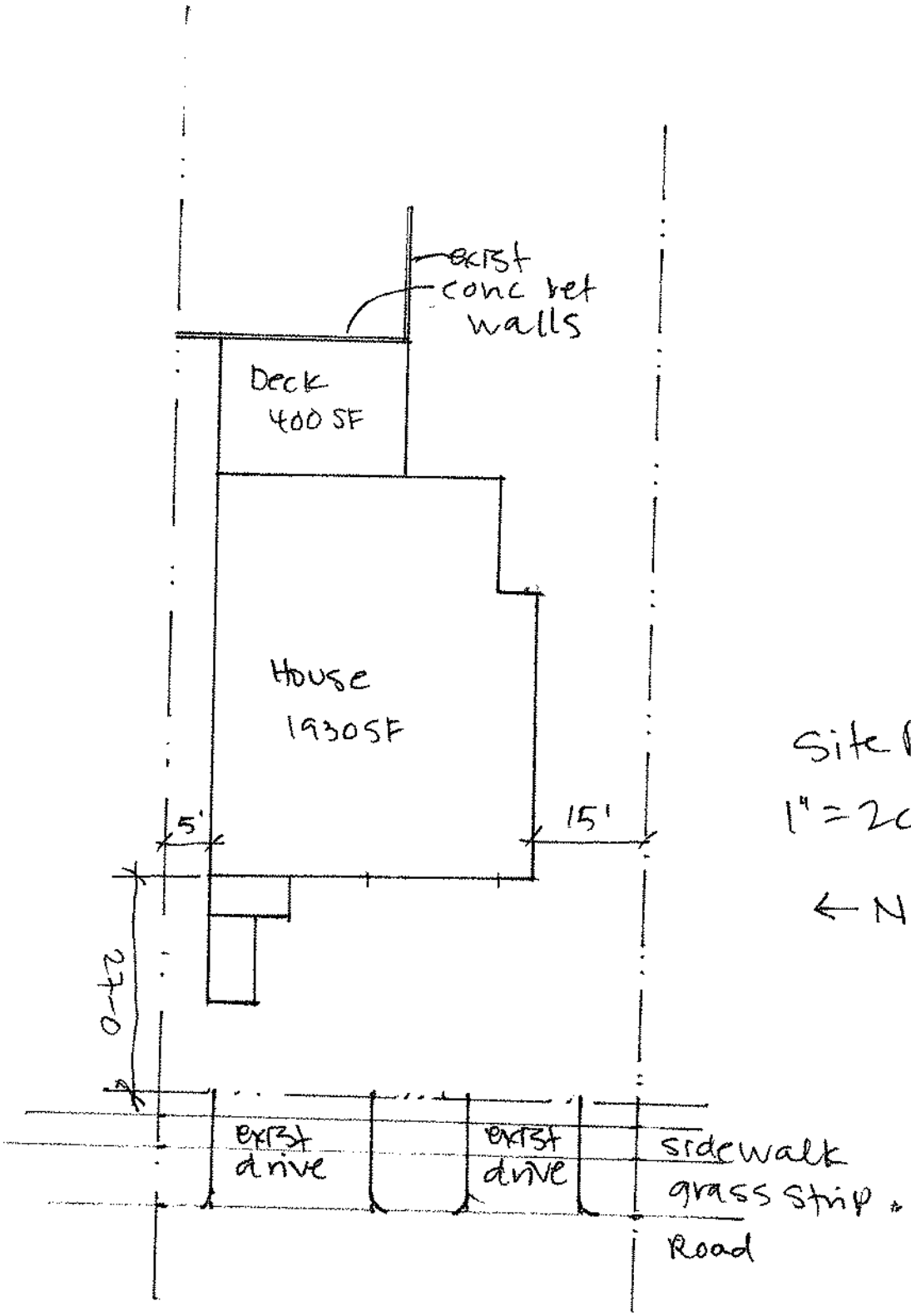
DATE:

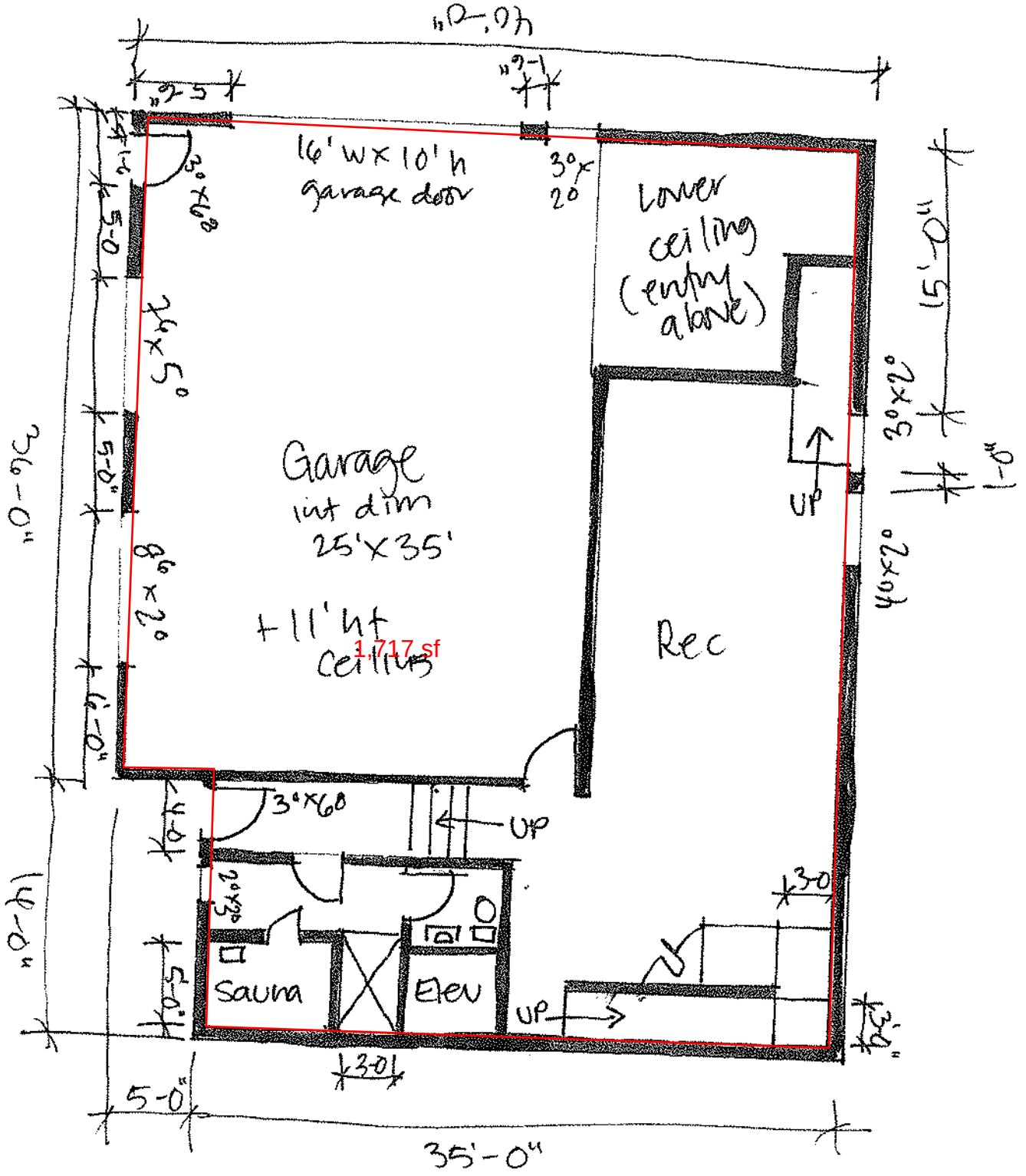
SCALE:
1/4"=1'-0"

SHEET
A4

NOTE: VERIFY ALL DIMENSIONS


Top of stair / elev. roof
Railing
Roof deck
8'-0
3'-0
9'-6"
FF
if max bldg ht allows - prefer this to be 9'-6"
8'-0
FF
12'-0
9'-6"
FF

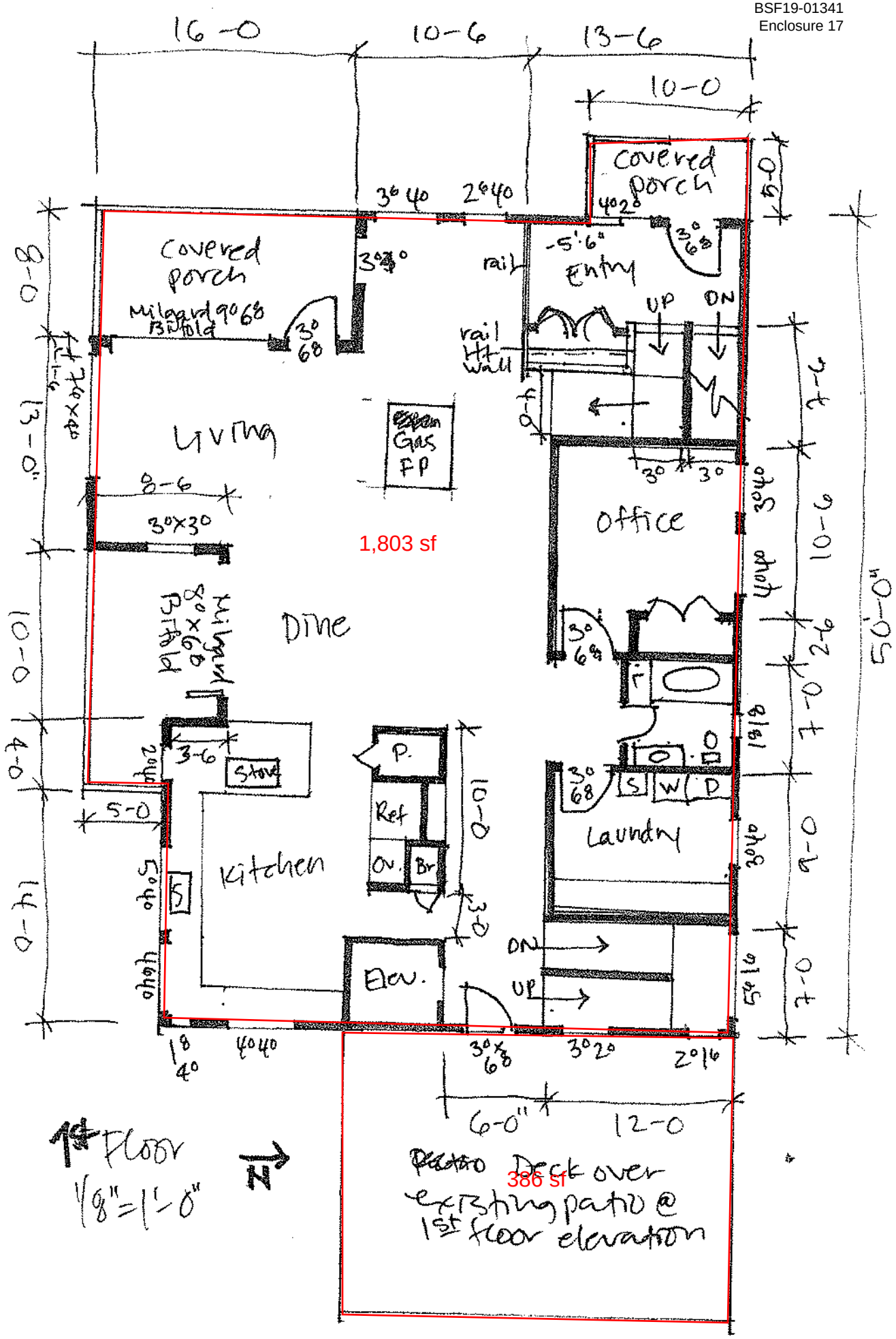

exist
conc ret
walls
Deck
400 SF
House
1930SF
5'
15'
27-0
exist
drive
exist
drive
sidewalk
grass strip
Road
Site Plan
1" = 20'-0"
← N

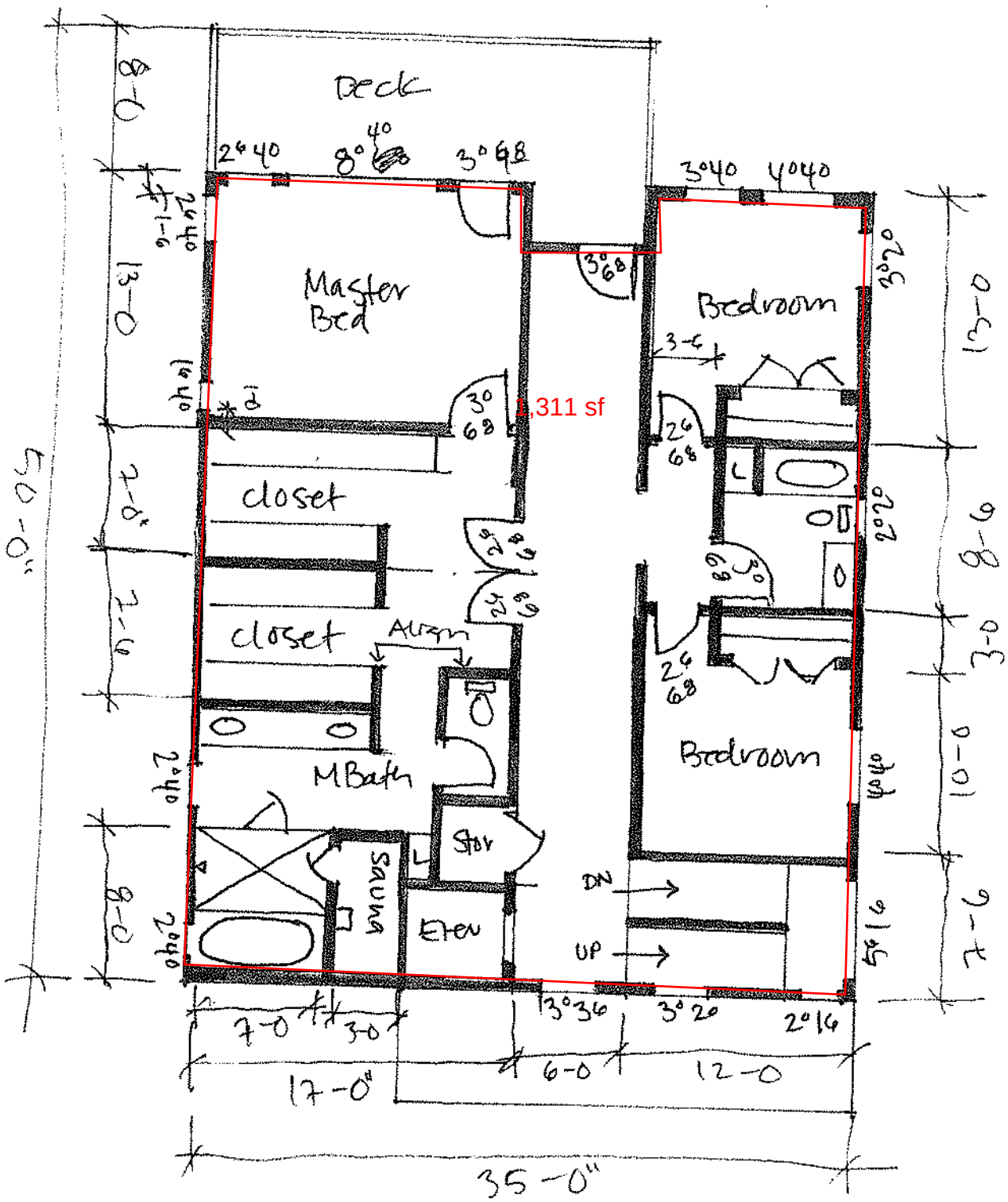


Elev:
Shumacherelevator.com
Series 900

→ N

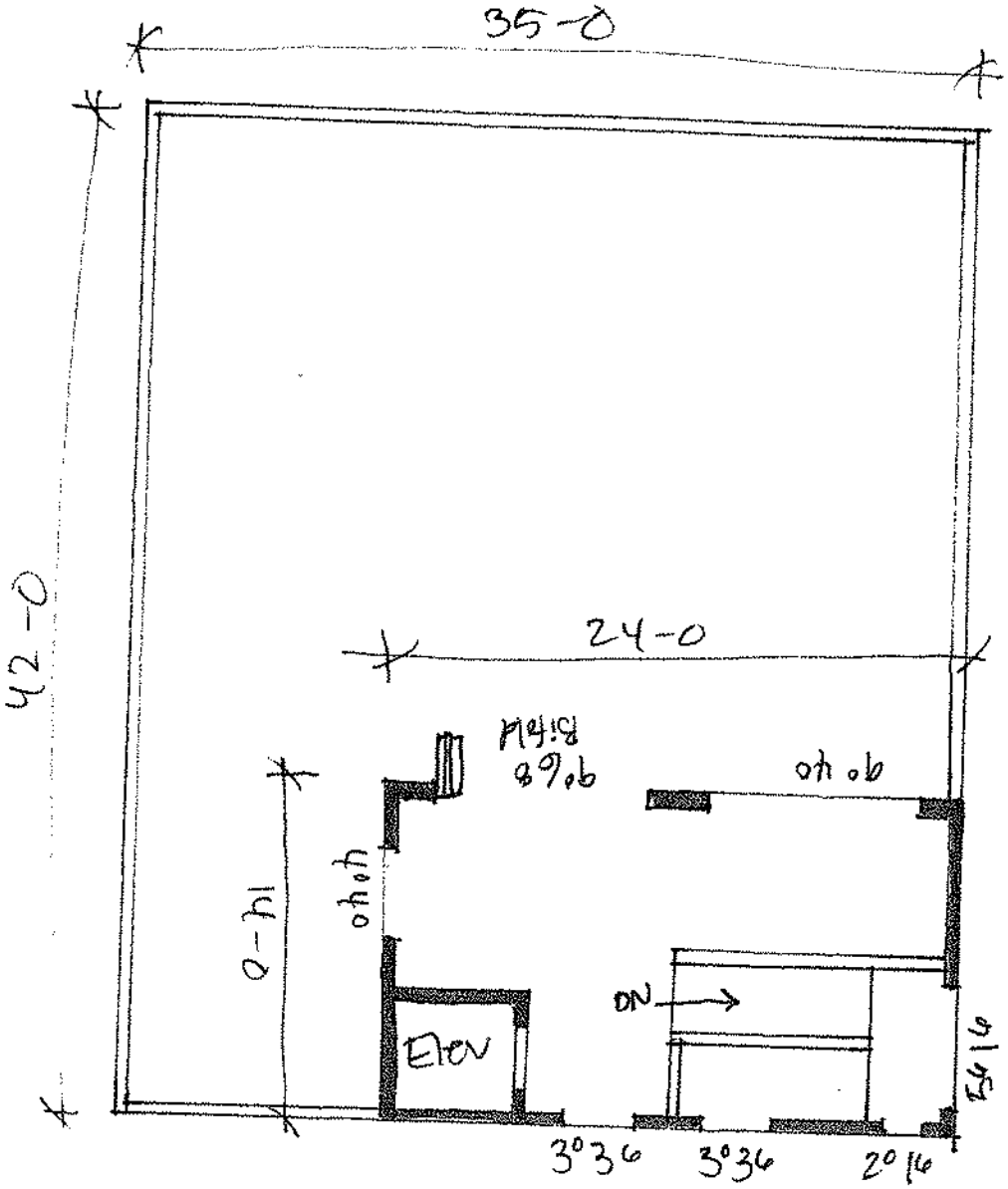
Basement 1/8" = 1'-0"
concrete walls full height


16-0
10-6
13-6
10-0
covered porch
Entry
UP
DN
rail
Living
Gas FP
Office
Dine
1,803 sf
Kitchen
Stove
Ref
Br
Elev.
Laundry
S
W
D
50'-0"
6-0"
12-0
386 sf
Deck over existing patio @ 1st floor elevation
1st Floor
1/8"=1'-0"
N



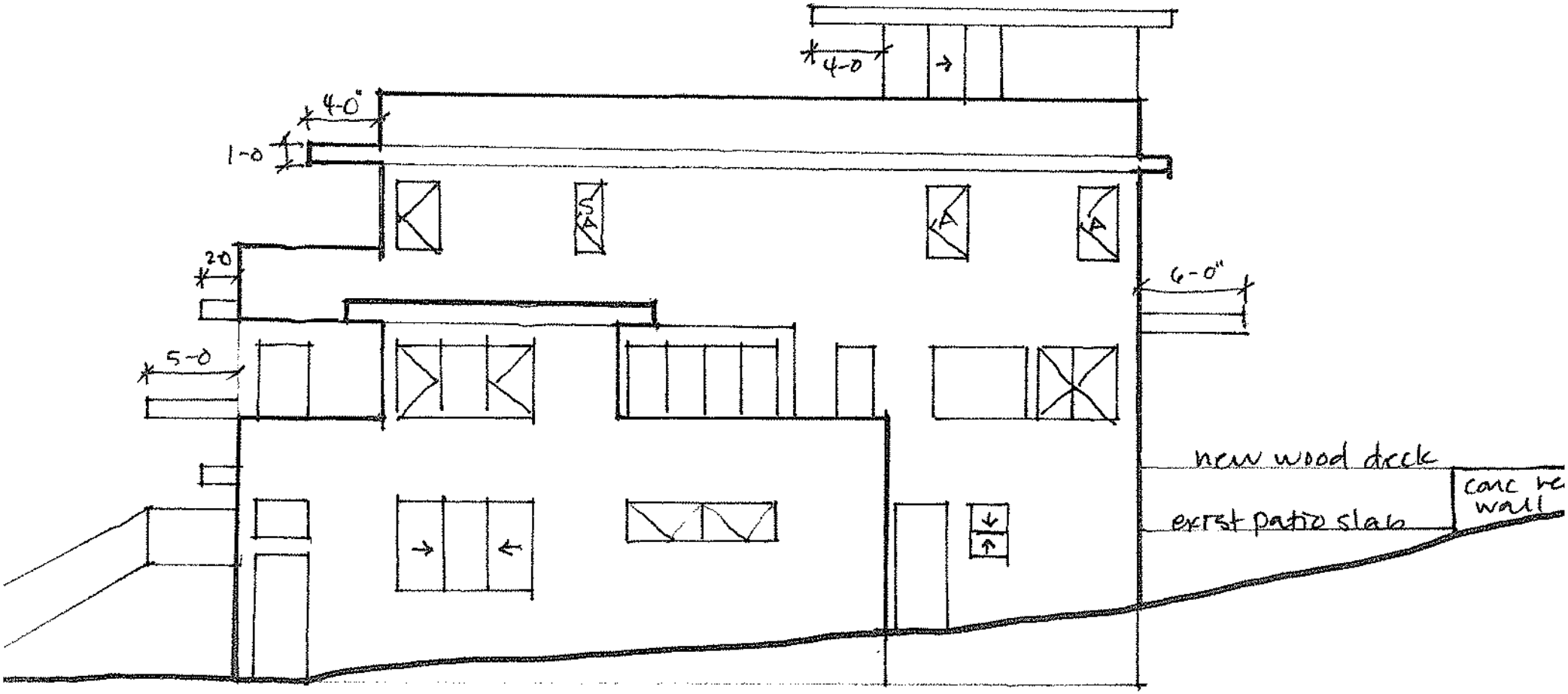
2nd Floor
1/8" = 1'-0"

→ N

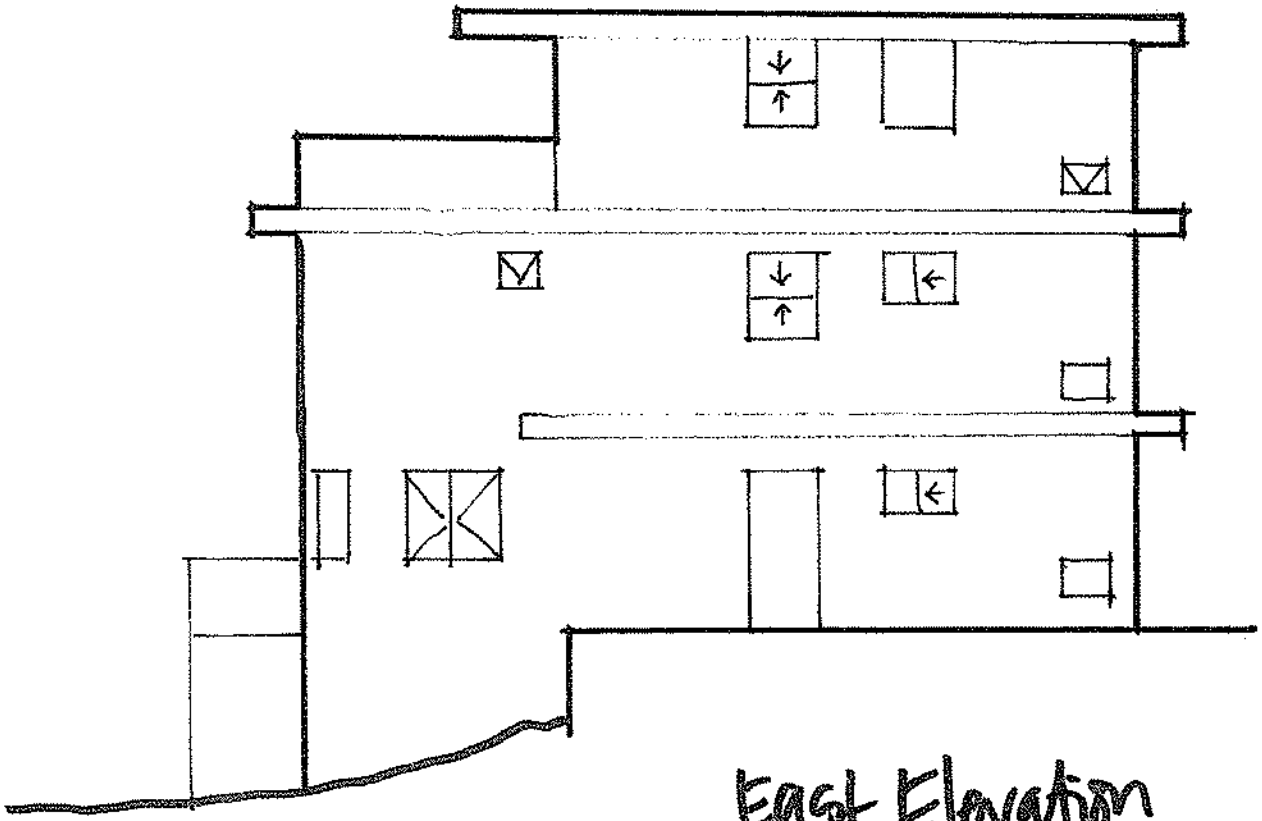


Roof Deck → N

1/8" = 1'-0"

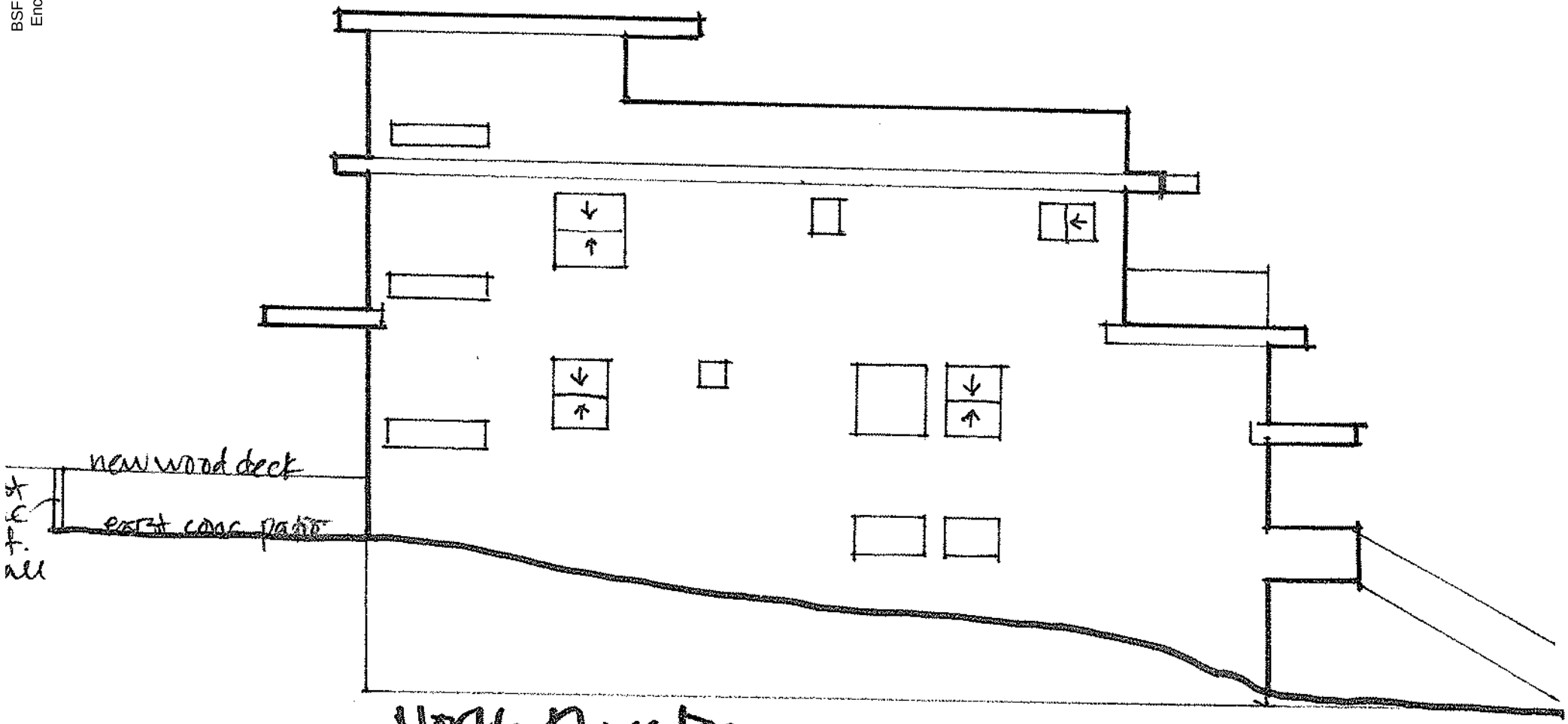


South Elevation
1/8" = 1'-0"

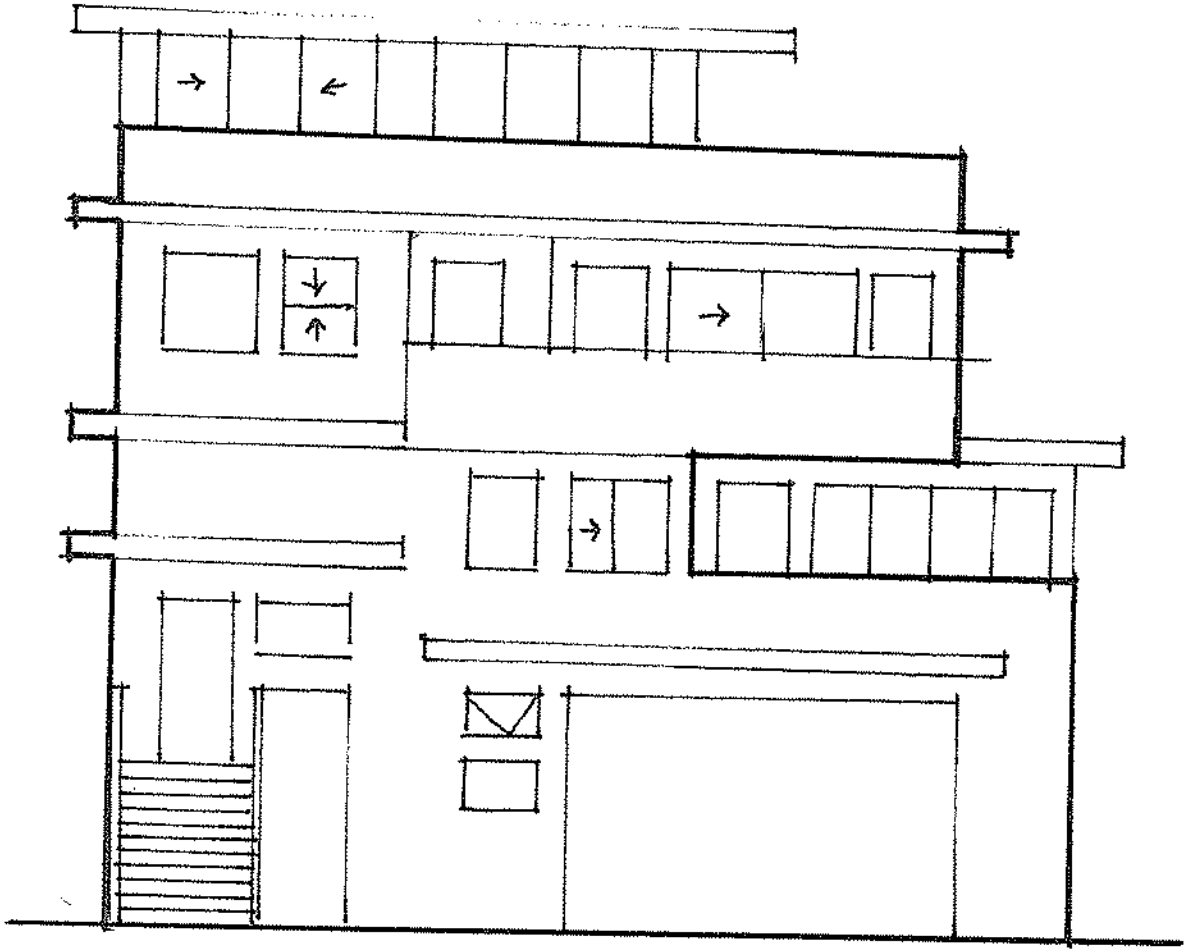


East Elevation

1/8" = 1'-0"



North Elevation
1/8" = 1'-0"



West Elevation
1/8" = 1'-0"

CEDAROCK CONSULTANTS, INC.
Environmental Consulting

STREAM BUFFER MODIFICATION AND MITIGATION PLAN

LANG PROPERTY

6304 LAKEVIEW DRIVE

Kirkland, Washington

Prepared for:

Rita and Harley Lang
6304 Lakeview Drive
Kirkland, Washington 98033

Prepared by:

Cedarock Consultants, Inc.
19609 244th Avenue NE
Woodinville, Washington 98077

September 29, 2017

TABLE OF CONTENTS

Page

1.0 PROPOSED PROJECT 1

2.0 PROJECT LOCATION 1

3.0 EXISTING CONDITIONS 2

3.1 Stream Classification 2
3.2 Physical Condition 2
3.3 Vegetative Cover 4
3.4 Wildlife Use 4

4.0 MITIGATION PLAN 5

4.1 Environmental Goal and Objectives 5
4.2 Proposed Action 5

5.0 EXPECTED EFFECTS ON BUFFER 6

5.1 KZC Sensitive Area Goals 6
5.2 Water Quality 6
5.3 Fish and Wildlife Habitat 7
5.4 Drainage and Stormwater Control 7
5.5 Slope Stability and Erosion Hazard 8
5.6 Detrimental Effects to Neighboring Properties 8
5.7 Fill Material Quality 8
5.8 Stabilization of Exposed Areas with Native Species 8
5.9 Alternatives Analysis 8

6.0 MONITORING 9

6.1 Sampling Methodology 9
6.2 Standards Of Success 9

7.0 CONTINGENCY PLAN 10

8.0 COST ESTIMATE 11

9.0 REFERENCES 11

Page

LIST OF TABLES

Table 1. Mitigation Cost Estimate Worksheet .....**Error! Bookmark not defined.**

LIST OF FIGURES

Figure 1. Vicinity Maps.....1
Figure 2. Subject property showing watercourse position.....3
Figure 3. On-site watercourse looking upstream (2008).....3
Figure 4. Existing site looking west (2017).....4

1.0 PROPOSED PROJECT

An existing residence located mostly within the 50-foot standard buffer of a Type Np stream in the City of Kirkland will be replaced. To offset an increase in impervious surface, the applicant is proposing buffer enhancement as mitigation as allowed under Kirkland Zoning Code (KZC 90.130). Enhancement actions will remove existing lawn, gravel parking, and all exotic/invasive plants from the riparian buffer and install new native species, including groundcover, shrubs, and trees. All existing large trees will remain.

Because all proposed new development will occur on land already consisting of pavement or lawn/exotic landscaping, and mitigation at 1:1 will convert degraded non-native and invasive riparian plantings to native plants, the proposed future condition is expected to have a net beneficial effect on the functions and values of the riparian buffer in stream protection and wildlife value.

This Critical Area Report and Mitigation Plan were prepared by Carl Hadley, a professional stream biologist with over 25 years of experience in western Washington.

2.0 PROJECT LOCATION

The proposed action is located at 6304 Lakeview Drive in the City of Kirkland (Figure 1). The lot is on the east side of the street on a generally west-facing slope.

Figure 1. Vicinity Maps (City of Kirkland Sensitive Areas Map, King County IMAP).

3.0 EXISTING CONDITIONS

This section provides a description of existing habitat conditions of the stream channel and riparian buffer. Known fish and wildlife use is also described. The site was visited by a biologist on October 16, 2008 and again on September 20, 1017 to evaluate habitat conditions.

3.1 Stream Classification

The channel was visited by City of Kirkland staff on April 18, 2008 to complete a stream typing inspection per KZC 90.85 which was in effect at the time (Geitz 2008). Based on this inspection, staff determined a watercourse meeting the definition of a Class B (Type Np) Stream was present on the site. The stream is located in the Houghton Slope A Drainage Basin, a secondary basin. Stream buffers for Class B streams in secondary basins was 50 feet. Our observations at the time concurred with the City's conclusions. Under the new Zoning Code (KZC 90.65), the stream would be typed as a Type Np (Perennial non-fish bearing) (WDFW 2017a). Type Np streams also have a 50-foot standard buffer.

3.2 Physical Condition

The watercourse in question is a small, semi-isolated remnant of an historic natural tributary of Lake Washington. The watercourse exists in culverts for most of its length (Kirkland 2011). The watercourse approaches the property from the northeast in a highly confined open channel with steep banks. There is approximately 25 feet of open channel on the subject site before all flow enters a 36" culvert that passes diagonally about 100 feet under the site (Figure 2). An additional 15 feet of open channel flows across the south property boundary to the neighbor's property where it continues for approximately 85-feet before passing into the City's stormwater system and continuing down to Lake Washington. The landowner has not observed the channel going dry during low flow periods.

The channel is typical of a small urban stream impacted by both upstream and adjacent land uses. No woody debris was observed and the normal pool-riffle series that might be expected for this gradient is not present (Figure 3). Substrates consist predominately of quarry spall and some small gravel. The channel exhibits an abnormally consistent width and shallow profile typical of disturbed channels.

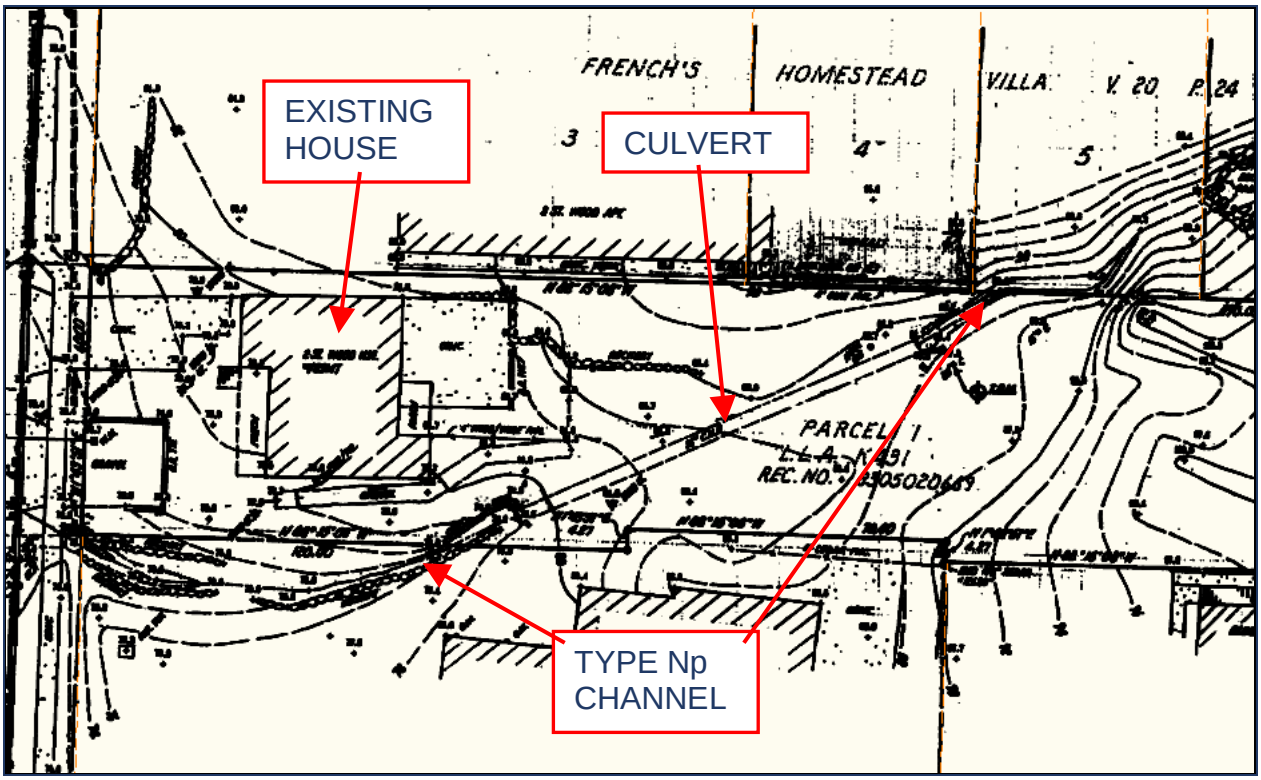


Figure 2. Subject property showing watercourse position.

Figure 3. On-site watercourse looking upstream (2008). Subject property to the right.

Figure 4. Existing site looking west (2017). Creek is to the left under tree branches.

3.3 Vegetative Cover

Riparian vegetation is dominated by residential non-native landscaping including lawn, English ivy, Himalayan blackberry, bamboo, English laurel and English holly (Figures 3 and 4). Most of the area consists of managed turf and is relatively open. The immediate streambank and slopes to the east are densely vegetated with English laurel, bamboo, and blackberry. A number of large native trees (western red cedar, Douglas fir, mountain hemlock, red alder) and non-native trees (California redwood, poplar) are also present in the buffer and most prevalent along the streambank.

3.4 Wildlife Use

The property is not known to be within or adjacent to a Wildlife Habitat Conservation Area (Watershed Company 1998, Adolfson 1998, Kirkland 2011, WDFW 2017a, WDFW 2017b). Wildlife use documented during the stream survey consisted solely of a variety of small passerine birds including crows, finches, juncos, and swallows which inhabit the trees. Periodic use of the area by other suburban species including opossums, raccoons, squirrels and possibly coyote is likely. Reptiles and amphibians may be present near the creek but the absence of cover such as downed logs, and the degraded nature likely limits the presence to relatively low levels.

4.0 MITIGATION PLAN

4.1 Environmental Goal and Objectives

The objective of the Buffer Mitigation Plan is to provide an overall improvement in stream functions and values when compared to existing conditions. This will be done partially by avoiding and minimizing new impacts. Where new impacts are unavoidable, compensatory mitigation is designed to improve current buffer functions by eliminating the prevalence of non-native invasive plant species and by enhancing the buffer with a viable native riparian plant community. Maintenance and monitoring of the buffer restoration is also proposed to ensure the plant community as designed and planted complies with the objectives stated in this document. Performance standards are described in Section 6.2.

4.2 Proposed Action

Under the proposed action, the house will be expanded by 587 sf within the 50-foot stream buffer. Because of lot-line restraints, there is nowhere else to expand the house other than within the buffer. The house will still be smaller than most of the houses on comparable lots within the neighborhood. The following mitigation measures will be applied as part of the buffer reduction mitigation plan:

<u>Impact Avoidance</u>

- No trees will be eliminated from the buffer.
- No native riparian vegetation will be disturbed.
- No work is proposed over or within 17 feet of the creek channel.

<u>Impact Minimization</u>

- The house will not be expanded towards the stream.
- House and driveway expansion within the buffer will occur within areas currently occupied by existing site improvements including the concrete driveway and patio, managed lawn, a gravel parking area, and a small non-native landscaping area.

<u>Compensatory Mitigation</u>

Specific plan goals include:

- Permanently eliminate invasive and exotic plants from the mitigation area and replace with native species.
- Enhance 587 square feet of riparian buffer by providing a stable mix of native groundcover, shrubs and trees selected to improve riparian functions and values for both aquatic and terrestrial wildlife. Planting will be conducted as described in KZC 95.145(6) and shown on Sheet 1 in the Appendix.
- Planting soils will be amended if necessary to provide suitable growing conditions for new plantings.

- Plantings will consist of a multi-layered approach consisting of shrubs, and tree canopy layers (see Sheet 1 in Appendix).
- Plantings will consist entirely of native species typically found adjacent to streams within the Pacific Northwest. All plants will be selected to provide a combination of moderate to high stream protection and wildlife function.
- All plantings will be established at a density that can reasonably be expected to thrive under the growing conditions present on the site and achieve standard cover objectives within 5 years.
- Supplemental watering shall be provided until plantings are well established and can survive on their own.
- Maintenance shall be completed as necessary to ensure any non-native plants that resprout are eliminated and native plantings are thriving.

5.0 EXPECTED EFFECTS ON BUFFER

The proposed action will change the character of the existing buffer. Type Np stream channels and their riparian buffers are important to the contribution of clean, cool, and productive flows to fish habitat downstream as well as providing wildlife habitat. The ability of the mitigation plan to meet City of Kirkland enhancement goals, and expected effects of the proposed action on the environment are described below.

5.1 KZC Sensitive Area Goals

The KZC requires work within riparian buffers eventually results in a stable, healthy, native, and well-vegetated plant community that is appropriate for the stream type and expected uses. The Watershed Company (1998) report identifies watercourses in the Houghton Urban Area as small non-fish-bearing streams important for the protection of water quality and wildlife habitat. Opportunities for enhancement are generally listed as removal of exotic plant species, elimination of anthropogenic disturbance, and enhancement of buffer quality.

The proposed action is consistent with these goals. The mitigation plan will result in removal of a lawn and non-native species from adjacent to the creek, removal of several highly invasive plant species from the existing riparian buffer, and replacment of non-native species with a diverse mix of native species having both higher aquatic protection function and increased terrestrial habitat value.

The proposed action will increase the effective width of the current buffer and will enhance this buffer to improve functions and values over existing degraded conditions. More specific analysis of expected functional improvements are provided below.

5.2 Water Quality

Vegetation adjacent to streams can improve water quality by reducing solar exposure, filtering

pollutants, removing nutrients, and preventing sediment introduction. The water quality function of the existing on-site buffer is poor. Vegetation is dominated by a dense layer of non-native grasses, English ivy, and other non-native species to the detriment of natural plants which normally help intercept, disperse, and uptake surface water flows. The large trees adjacent to the channel provide good nutrient and organic debris input, as well as an effective shade canopy. Preservation of these trees will ensure this function is maintained.

The non-native species in the channel restoration area will be removed and replaced with a more diverse mix of native plants. These native species will help improve water treatment though the overall benefit will be minimal as very little impervious surface will discharge to the buffer for treatment. Elimination of some of the maintained lawn from the buffer and replacement with low maintenance native species is likely to have the largest water quality benefit in that this action will virtually eliminate the need for future use of fertilizers and weed control chemicals.

5.3 Fish and Wildlife Habitat

Type Np streams are important to aquatic productivity being a large source of leaf litter and insects delivered to fish habitat downstream. Overhanging vegetation contributes leaves, vegetative litter, and small woody debris directly to the channel. This material forms the source of food for aquatic invertebrates, which are in turn eaten by fish downstream. Terrestrial insects, another food source, also utilize riparian vegetation as habitat. The majority of material comes from directly over the stream. Function diminishes rapidly after about 25 feet from channels edge though some benefit is still realized up to about 50 feet away.

Replanting with native species will greatly increase the productivity of the area and help reduce any existing contamination of the water supply. The overall effect will be a net increase in food and nutrient supply to fish in Lake Washington.

Wildlife habitat will also benefit from increased native plant density and permanent preservation of large trees in this area. The densely vegetated slopes adjacent to the stream will provide perching and nesting habitat for native and neo-tropical migrant birds. Conversion of some of the existing lawn to native shrubs and trees will increase foraging, refuge, and nesting habitat for birds, small mammals, and amphibians. Increased planting of native species will further enhance wildlife habitat by providing both refuge habitat and a source of increased prey and vegetative material (for example fruit on huckleberry and currant).

5.4 Drainage and Stormwater Control

The proposed single-family house will meet all stormwater control requirements of the City of Kirkland. Because of limited building space, much less than average new impervious surface will be added to the site. Eighty-five (85) percent of the site will remain as open space in either forested areas or lawn. As is done at their current house, clean roof runoff will be collected and utilized by the Langs for landscaping. Excess flow will be spread into the riparian buffer.

5.5 Slope Stability and Erosion Hazard

No unstable slopes exist on the project site. The steepest slopes are found immediately adjacent to the stream and are supported by the root structure of large trees found in this area. Roots from vegetation growing along the streambank help stabilize soils and reduce erosion. Root strength benefits are normally low beyond 40 feet from the channel. All steep slopes will be entirely encompassed by the proposed riparian buffer and all large trees preserved. No adverse effect on slope stability is expected.

5.6 Detrimental Effects to Neighboring Properties

No clearing or grading will occur within the riparian buffer that could affect neighboring properties. The conversion of lawn to native plants will be the major change and this is not expected to have a detrimental effect on property values or views. The small enlargement of a single-family house in this residential neighborhood is likewise not expected to have a detrimental effect on neighboring properties or the City as a whole.

5.7 Fill Material Quality

No fill material will be utilized within the riparian buffer. The existing slopes and material are generally suitable for conversion to native habitat. Any fill that might be imported for construction of the house will be minimal and will consist of clean material from approved commercial sources.

5.8 Stabilization of Exposed Areas with Native Species

The proposed design utilizes 100 percent native species to revegetate within the riparian buffer (see Sheet 1 in Appendix). The existing ground surface is covered with a combination of grass and forest duff and no grading will occur that could destabilize this surface. The only disturbance will be the holes dug to accommodate new plantings. These small disturbed areas will be covered with mulch. Overall, the site will remain in its existing stable condition without the need for additional stabilization efforts.

5.9 Alternatives Analysis

The narrow lot with standard buffers and building setbacks is highly constrained on all sides. There is no room outside the stream buffer to develop a reasonable dwelling structure. Buffer averaging would not provide sufficient space to construct the proposed residence given the particular configuration of the lot and watercourse. As such, the applicant is proposing buffer reduction with mitigation. This approach provides sufficient space for the proposed house modifications, and also has the advantage of providing mandatory buffer enhancement. Given the existing degraded condition of the stream buffer, the buffer reduction/mitigation approach will result in habitat improvements not otherwise achieved under alternative approaches. These buffer improvements will most closely match recommendations in *Kirkland's Streams, Wetlands and Wildlife Study* (Watershed Company 1998) and the *Kirkland Sensitive Areas*

Regulatory Recommendations Report (Adolfson Associates, Inc. 1998). The proposed approach is the only practicable alternative that also results in improvements to the buffer.

6.0 MONITORING

Mitigation for this project consists of a relatively simple planting plan with maintenance to be completed by on-site residents. Monitoring will be conducted for a period of five years to ensure success of the planting plan (KZC 90.160). A bond or other performance security will be obtained. Contingency plans are addressed in Section 7.0.

6.1 Sampling Methodology

The planted stream buffer area will be monitored twice a year in the fall and spring for the first two years, and then annually during the growing period for the next three years. Monitoring will be conducted to quantify the survival, relative health and growth of native plant material, and presence of any non-native invasive plants (See Sheet 2 for monitoring details). An annual monitoring report submitted to the City following each monitoring visit will describe and quantify the status of each mitigation component. The monitoring report will document the changes occurring within the planting areas and make recommendations for improving the degree of success or correcting any problems noted during monitoring. Monitoring reports will document how the riparian planting is meeting the goals and objectives of the plan.

Vegetation monitoring will consist of plant inspection to determine the health and vigor of the installation. All planted material in the buffer will be inspected during each monitoring visit to determine the level of survival of the installation. Each plant will be rated either dead, dying, or healthy. Dead or dying material will be replaced the following fall or winter unless plant crowding is believed to be a problem. Plant species substitutions may be made if site conditions are believed responsible for plant mortality. Replacement plants must be approved by the City. Volunteer native, non-invasive species will be included as acceptable components of the mitigation project.

At least three photo points will be established giving complete coverage of the buffer area. Photos will be taken at each point during every monitoring visit and submitted as part of the annual monitoring report.

6.2 Standards Of Success

- Within the buffer area there is one hundred (100) percent survival after Year 1, ninety (80) percent survival after Year 2.
- There shall be at least 50 percent native vegetation coverage after Year 3, and 80 percent at the end of Year 5.

- Two (2) out of three (3) of the following strata of native plant species each must compose at least 20 percent areal cover: (1) Trees; (2) Shrubs; and (3) Woody groundcover (such as kinnikinnick, salal and sword fern).
- During all years, less than 10 percent of plants within the buffer area shall consist of non-native invasive species at the end of each monitoring year.
- During all years, no knotweed shall be present.
- No significant areas of erosion (defined as material movement of greater than one cubic yard) occurs in the buffer area.

7.0 CONTINGENCY PLAN

If monitoring results indicate that any of the performance standards are not being met, it may be necessary to implement all or part of a contingency plan. Contingency plans will be developed based on the specific failure to meet success standards listed in Section 6.2 of this plan. A contingency plan will be developed and implemented with City approval. Such plans are prepared on a case-by-case basis to reflect the failed mitigation characteristics.

Contingency/maintenance activities may include:

- Replacing all plants lost to vandalism, drought, disease or other unknown causes, as necessary.
- Replacing any plant species with a 20 percent or greater mortality rate with the same species or similar species approved by the City Biologist.
- Irrigating the planting area only as necessary during dry weather if plants appear to be too dry, with a minimal quantity of water.
- Seeding the buffer area with an approved grass mixture as necessary if erosion/sedimentation occurs.
- Removing all trash or undesirable debris from the buffer areas if it begins to accumulate.

8.0 COST ESTIMATE

Table 1. Mitigation Cost Estimate Worksheet

PLANT MATERIALS (includes labor cost for plant installation)					
Type	Unit Price	Unit	Quantity	Description	Cost
PLANTS: Container, 1 gallon, medium soil	$11.50	Each	60.00		$ 690.00
PLANTS: Container, 2 gallon, medium soil	$20.00	Each	6.00		$ 120.00
				TOTAL	**$ 810.00**
INSTALLATION COSTS (LABOR, EQUIPMENT, & OVERHEAD)					
Type	Unit Price	Unit			Cost
Compost, vegetable, delivered and spread	$37.88	CY	2.00		$ 75.76
Labor, general (landscaping other than plant installation)	$40.00	HR	4.00		$ 160.00
Labor: Consultant, supervising	$55.00	HR	2.00		$ 110.00
Watering, 1" of water, 50' soaker hose	$3.62	MSF	1.00		$ 3.62
Irrigation - temporary	$3,000.00	Acre	0.01		$ 40.43
				TOTAL	**$ 389.81**
ITEMS	Percentage of Construction Cost	Unit			Cost
Mobilization	10%	1			$ 119.98
Contingency	30%	1			$ 359.94
				TOTAL	**$ 479.92**
MAINTENANCE AND MONITORING	NOTE: Projects with multiple permit requirements may be required to have longer monitoring and maintenance terms. This will be evaluated on a case-by-case basis for development applications. Monitoring and maintance ranges may be assessed anywhere from 5 to 10 years.				
Maintenance, annual (by owner or consultant)					
Less than 1,000 sq.ft. and buffer mitigation only	$ 1.08	SF	780.00	(7 X SF total for 7 events; Includes monitoring)	$ 4,212.00
				TOTAL	**$ 4,212.00**
				Total	**$5,891.73**

9.0 REFERENCES

Adolfson Associates Inc. 1998. City of Kirkland sensitive areas recommendations report. Consultant report prepared for the City of Kirkland Department of Planning and Community Development. August 31, 1998.

Geitz, Christian. 2008. Stream determination. Letter report prepared for Rita and Harley Lang by C. Geitz, Planning Information Specialist, City of Kirkland Department of Planning and Community Development. April 21, 2008.

Kirkland, City of. 2005. Sensitive areas map, natural resource map series. Prepared by the City of Kirkland. January 24, 2005.

Watershed Company. 1998. Kirkland streams, wetlands, and wildlife study. Consultant report prepared for the City of Kirkland Department of Planning and Community Development. July 1998.

Washington State Department of Fish and Wildlife (WDFW). 2017a. SalmonScape database.

Washington State Department of Fish and Wildlife (WDFW). 2017b. Priority habitat and species database search.

PLANT SPECIES	SIZE	QUANTITY
Salal (Gaultheria shallon)	1-gal; 1 foot	17
Oregon grape (Berberis nervosa)	1-gal; 1 foot	14
Red huckleberrry (Vaccinium parvifolium)	1-gal; 1 foot	2
Snowberry (Symphoricarpos albus)	1-gal; 1 foot	2
Sword fern (Polystichum munitum)	1-gal; 1 foot	19
Red-osier dogwood (Cornus sericea)	1-gal; 1 foot	1
Salmonberry (Rubus spectabilis)	1-gal; 2 foot	2
Vine maple (Acer circinatum)	1-gal; 2 foot	3
Quaking aspen (Populus tremuloides)	1-gal; 2 foot	2
Western red cedar (Thuja plicata)	2-gal; 2-3 feet	3
Douglas fir (Pseudotsuga menziesii)	2-gal; 2-3 feet	1
Shrubs and Groundcover – 3' o.c.		60 Shrubs
Trees (including existing) – 12' o.c.		6 New Trees

	BUFFER AREA (sf)		
	Current	Proposed	Change
Impervious (house, concrete)	2,037	2,624	587
Semi-pervious (lawn, gravel)	4,565	3,898	-667
Landscaping (non-native)	507	0	-507
Native Plantings	0	587	587

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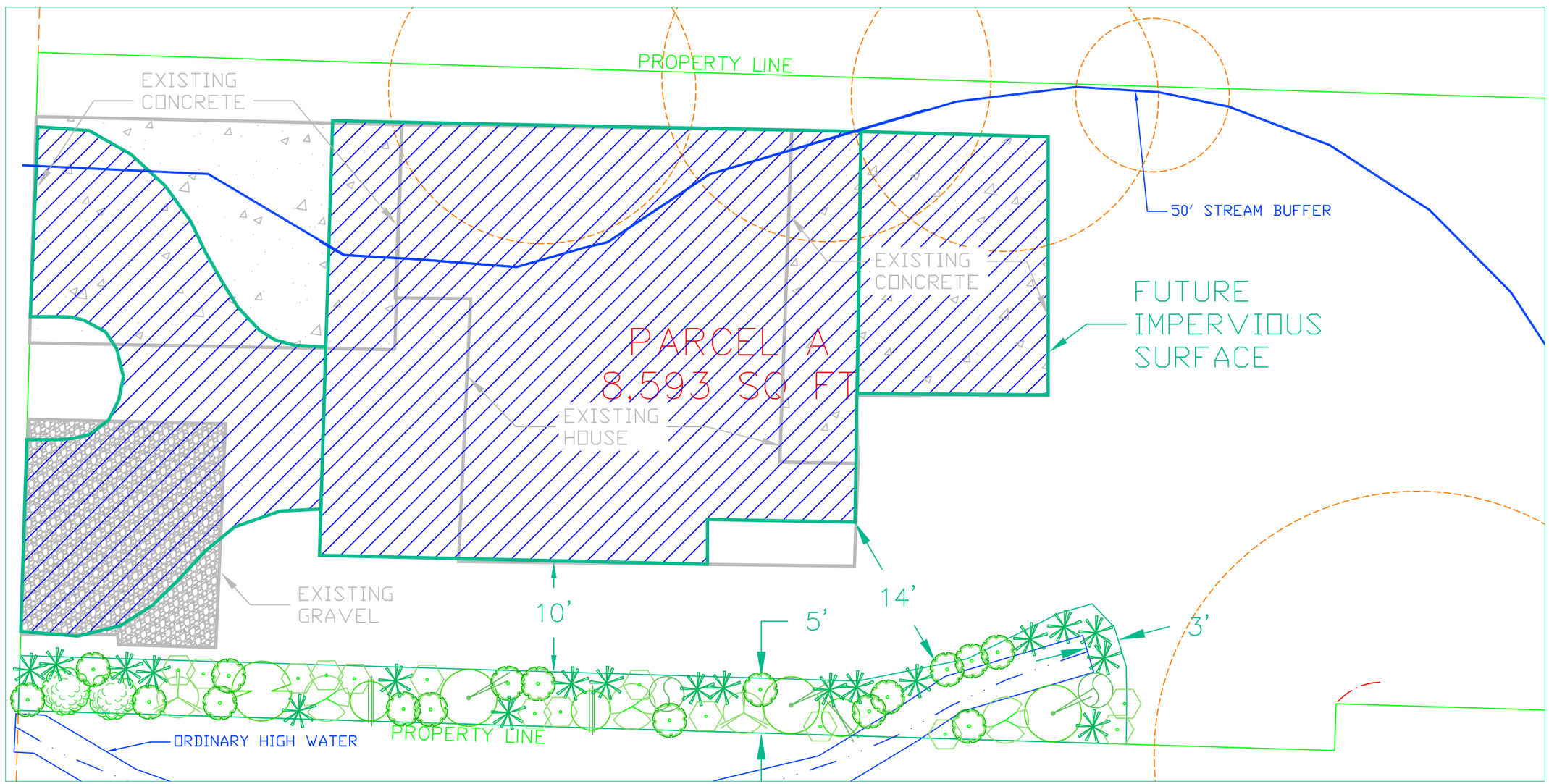
0 10 20
HORIZONTAL SCALE



CEDAROCK CONSULTANTS, INC.
19609 244th Avenue NE
Woodinville, WA 98077
(425) 788-0961

LANG PROPERTY - HMP
6304 Lakeview Drive, Kirkland, WA 98033
BUFFER PLANTING PLAN

Design: CGH
Drawn: CGH
Filename: LANGMIT

Date: 09-25-17

Sheet No.
1
No 1 of 2 Sheets

PLANTING DETAILS

PLANT INSTALLATION
1. Plant materials shall be nursery grown or collected in the Puget Sound area. Plants shall be normal in pattern of growth, healthy, well–branched, vigorous, with well–developed root systems, and free of pests and diseases. Damaged, diseased, pest–infested, scraped, bruised, dried out, burned, broken, or defective plants will be rejected.
2. If selected species are not available or desirable, then similar species may be substituted with approval from owner and City of Kirkland.
3. Planting shall occur during the cool season (September 15 through March 15).
4. Landscaper shall examine soils in the area to determine suitability for selected plants. New topsoil or compost amendment shall be added to a depth of 12" where necessary to support plants.
5. Prior to planting, remove all non–native and other undesirable plants including roots. This shall include all Himalayan blackberry, bamboo, English ivy, and English holly.
6. Immediately after planting, plants shall be watered to saturation.
7. Planting locations shown on the plan are approximate. Actual planting locations shall be field determined at time of planting by landscape architect or biologist. If significant changes are made, an as–built plan shall be prepared and submitted to the City of Kirkland. A minimum of 587 sf of new plantings shall be installed and maintained.
8. Provide good quality landscape mulch around all shrubs.

LANDSCAPING MAINTENANCE
1. Controlling any non–native species and re–establishing native vegetation are the primary goals of this maintenance plan. Activities required to maintain new plantings include initial watering of the new plants, and periodic removal of non–native vegetation (weeding) within the planting area.
2. New plantings shall be watered from May through mid–October during the first season. A temporary irrigation system is allowed. A potable water source is available for this use.
3. Due to the aggressively invasive habit of many non–native species found in the area, and the existence of nearby seed sources, control efforts shall be completed for five years following initial plant installation. Establishment of native plantings over the five year time period will create a well established native habitat lessening the chance for non–native vegetation invasion.
4. The control of invasive weeds (competing grasses and herbs) shall be mechanically provided throughout the planting area at a minimum of twice per year, or more should additional weeding be deemed necessary. The optimal season for weed control occurs in April thru September. The use of herbicides and pesticides after new planting operations is strictly prohibited unless given written permission by the City of Kirkland. All work shall be performed by hand with the lightest possible equipment.

MONITORING
1) Compliance monitoring consists of evaluating the plants and shoreline planting area immediately after plant installation. The objective is to verify that all design features, as agreed to in the plans, have been correctly and fully implemented, and that any changes made in the field are consistent with the intent of the design. Evaluation of the planting areas after restoration will be done by the homeowner. A brief compliance report will be prepared describing final plant counts and noting any substitutions or movement of plants when compared to the design. Rationale for changes shall be provided. Three photo points will be established giving complete coverage of the buffer area.

2) Long Term Monitoring – New plantings will be monitored in the spring and fall (twice a year) for the first two years, and then once a year (summer growing season) for the next three years. Monitoring will be conducted by the homeowner to quantify the survival, relative health and growth of plant material. An annual monitoring report submitted to the City following each years monitoring visit will describe and quantify the status of the mitigation and provide the three photos from the same locations as the compliance report.

Vegetation monitoring will consist of plant inspection to determine the health and vigor of the installation. All planted material in the buffer will be inspected during each monitoring visit to determine the level of survival of the installation. Each shrub and tree will be rated either as dead, dying, or healthy. Dead or dying material will be replaced the following fall unless plant crowding is believed to be a problem. Plant species substitutions may be made if site conditions are believed responsible for plant mortality. Replacement plants must be approved by the City. Volunteer native, non–invasive species will be included as acceptable components of the mitigation project. Ground covers will be rated as percent ground coverage for each of the major areas covered with these species.

At least three photo points will be established giving complete coverage of the buffer area. Photos will be taken at each point during every monitoring visit and submitted as part of the annual monitoring report.

PERFORMANCE STANDARDS (KZC 90.160)
Year 1 (from date of plant installation) – 100% survival of all installed plants and/or replanting in following dormant season to reestablish 100% of original plantings

Year 2 – At least 80% survival of all installed material (100% of trees)

Year 3 – At least 50% native vegetation coverage for installed vegetation

Year 5 – At least 80% native vegetation coverage with at least 20 percent areal coverage provided by at least two of the following: trees, shrubs, and groundcovers.

All Years – Less than 10% noxious weeds, and no knotweed.

PLANTING PLAN - DETAILS
APPLICANT: LANG
6304 Lakeview Drive
Kirkland, Washington 98033

September 25 , 2017 | PAGE 2 OF 2