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\*+ \*+,/ 0'+012/\*'+/ + %&0'..&+ (\*'+/

(34 Phil Olbrechts, Kirkland Hearing Examiner

3 4 Adam Weinstein, AICP, Director of Planning and B ilding

!ennifer Anderer, Associate Planner

4 " a# \$, %&%%

4 APPEA' O( )HE P'A\*\*I\*+ DI, EC)O, -. DE\*IA' O( APPE''A\*). -  
, E/OE.) )O I. . OE A CE, )I(ICA)E O( OCCOPA\*C1 (O, HA, 'E1 A\*D  
, I)A 'A\*+ , E. IDE\*CE

(I' E \*O2 B. (345&3673

) 5 4 )h rsda#, &\$83%8%&%%, 49&& A"

: oom " eeting

\*6 \*+('%' 20(\*'+

6 A; ; ellants9 Harle# and , ita ' ang <hereinafter referred to as =A; ; ellants>?, residing at @6&7 'akeAieB DriAe, Kirkland, WA 4C&66

6 Actions Being A; ; ealed9 )he Planning Director-s denial of A; ; ellants- reD est for the Cit# to iss e a Certificate of Occ ; anc# <see & 5 37 7 ?2

6 . mmar# of Iss es Onder A; ; eal9 In %&34, A; ; ellants a; ; lied for and receiAed a ; ermit from the Cit# to demolish their old residence and b ild a neB one2 When the ; ermit Bas iss ed to A; ; ellants, the# also receiAed a list of s; ecific ; ermit conditions, incl ding Eoning code reD irements, that Bere reD ired to be com; leted before the Cit# co ld iss e final a; ; roAal <see & 5 37 ?2

)o date, some of the Eoning reD irements incl ded in & 5 37 haAe not been com; leted <see . ection IF?2 As of ! l# %4, %&%3, the Cit# B ilding Official had com; leted and ; assed all reD ired b ilding code ins; ections on the neB residence2 )he neB str ct re, hoBeAer, did not ; ass all Eoning code reD irements and on this basis the Cit# denied A; ; ellants- reD est to iss e a Certificate of Occ ; anc# <Bhich is a final a; ; roAal of the b ilding ; ermit nder the Cit# code?2 A; ; ellants a; ; ealed the Cit#-s decision to the Hearing Examiner2 Each ; art# filed dis; ositiAe ; re5hearing motions2 )he Cit# moAed to dismiss this administratiAe a; ; eal based ; on lack of G risdiction2 A; ; ellants moAed for . mmar# ! dgment and asked the Hearing Examiner to order the Cit# to immediatel# iss e a Certificate of Occ ; anc# based ; on the fact that A; ; ellants haAe met all their b ilding code reD irements <des; ite not meeting all of their Eoning code reD irements?2

The Hearing Examiner denied each ; art#-s ; re5hearing motion,<sup>3</sup> b t did enter the folloBing (indings and Concl sions to narroB the iss es in this a ; ; eal9

- 32 )he Planning Director-s Britten decision to den# A ; ; ellants a Certificate of Occ ; anc# is a =final land se> decision that is a ; ; ealable nder the 'and Ose Petition Act <' OPA? , , CW Ch2 6@2H&C, and Bas also ; ro ; erl# first administratiAel# a ; ; ealed b# the 'angs to the Hearing ExaminerI
- %2 )he Cit# ma# ; ro ; erl# Bithhold a Certificate of Occ ; anc# based ; on fail re to com ; l# Bith Eoning code reD irements ; rs ant to Kirkland " nici ; al Code <K" C? %32&@2\$7&I and
- 62 )he conditions of A ; ; ellants- b ilding ; ermit are final at this ; oint <the# became final %3 da#s after the b ilding ; ermit Bas iss ed, as ; roAided in the 'OPA? and cannot be collaterall# attacked in this ; roceeding2 )hose conditions are f ll# enforceable to the extent the# reD ire Eoning code com ; liance ; rior to iss ance of a certificate of occ ; anc#2

+iAen these ; rior (indings and Concl sions, this administratiAe a ; ; eal a ; ; ears to ; resent the folloBing D estions9

6 3 7 8 3 7 3 3 0 897 :3 53 ; 53 5  
< 3 5 5 3 355 58 5 < 77 =

/3 7> 4 ? 7 2 ProAided, hoBeAer, there is a limited exce ; tion for seasonall# de ; endent ; lanting of trees and8or other landsca ; ing2 (or exam ; le, Bhen a ; rolect that reD ires s ; ; lemental tree ; lantings to be code com ; liant com ; letes constr ction d ring the s mmer months, the Cit# Bill ; ermit a deferral of the act al tree installation to a cooler8Better season2 )his is done ; r ; osef ll# beca se s ccessf l installation of trees is heaAil# de ; endent ; on the ; lanting season2 Planting ; lans, hoBeAer, along Bith the exec tion and recording of reD ired easements to ; rotect these ; lantings, m st be f ll# ; re ; ared and filed Bith the Cit# before a certificate of occ ; anc# Bill be iss ed2

6 8 3 :3 53 ; 7 5 7  
37 3 7 7 7 5 8 3>  
< 3 5 37 :3 53 ; 7 < 7 3  
3 8 12 =

/3 7> 4 ? 7 2 . ection F2% of this , e ; ort details hoB each Eoning code reD irement s blect to this a ; ; eal Bas addressed d ring the ; ermit stage2 )he Cit#-s ; osition is that none of the Eoning code conditions raised b# A ; ; ellants- can be collaterall# attacked in this a ; ; eal, and that the# are all barred nder the 'and Ose Petition Act <' OPA? based ; on A ; ; ellants- fail re to file a 'OPA a ; ; eal Bithin %3 da#s of the date the# Bere im ; osed2

06 ) 7 0 8 7 77 5 5 3 355 58 >  
5 :3 53 ; 7 3 8 3  
< 53 =

/3 7> 4 ? 7 2 HoBeAer, those instances are limited, as set forth in . ection A aboAe, to onl# the *act al ; lanting* of reD ired landsca ; ing or trees based ; on the time of #ear and the groBing season for the reD ired ; lanting2 Altho gh a ; ; licants m st ; re ; are and file an a ; ; roAed ; lanting ; lan before a

<sup>1</sup> See **Enclosure 4**, a copy of the Hearing Examiner's *Order Denying Motions for Summary Judgment and Dismissal*.

certificate of occ ; anc# Bill be iss ed, the Cit# ma# alloB them to Bait and  
act all# ; t the ; lants in the gro nd at the a; ; ro; riate season2

6 . 7 0 8 77 7 5 5 3 355 58 >  
7 3 53 8 > :3 53 ; 7=

/3 7> 4 +36 )he Cit# is 6 stified in reD iring A; ; ellants to com; l#  
Bith their o tstanding Eoning code reD irements in this case2 )he  
reD irements are 6 stified b# the Cit#-s Code reD irements and the# are f ll#  
s ; ; orted b# ; ast ; ractice2 (inall#, this entire a; ; eal sho ld be dismissed  
nder 'OPA as it is time5barred and the reD ired Eoning conditions herein  
cannot be collateral# attacked in this attem; ted a; ; eal2

\*\*6 %21&/ '% ()& & 1 )& %\*+. + &0\*/\*'+

P rs ant to )title %3 of the Kirkland " nici; al Code <K" C?, a; ; eals of orders, decisions,  
and determinations that do not constit te enforcement actions shall be heard and decided  
b# the Cit# of Kirkland Hearing Examiner in an o; en record a; ; eal hearing2 )he sco; e of  
the a; ; eal is limited to the s; ecific elements of the b ilding official-s order, decision or  
determination dis; ted b# the a; ; ellant and the hearing examiner shall onl# consider  
comments, testimon#, and arg ments on these s; ecific elements2

)he A; ; ellant is an# ; erson Bho has a; ; ealed the b ilding official-s order, decision, or  
determination2 A; ; ellants ma# ; artici; ate in either or both of the folloBing Ba#s9

- B# s bmitting Britten comments or testimon# to the hearing examiner ; rior to the  
commencement of the hearing
- B# a; ; earing in ; erson, or thro gh a re; resentatiAe, at the hearing

( rther, the Hearing Examiner, in their discretion, ma# ask D estions of the A; ; ellant,  
; arties of record or staff regarding facts in the record, and ma# reD est oral arg ment on  
legal iss es2 )he Hearing Examiner ma# reasonabl# limit the extent of the oral testimon#  
to facilitate the orderl# and timel# cond ct of the hearing2

After considering all arg ments Bithin the sco; e of the a; ; eal s bmitted in Briting and  
giAen as oral testimon# at the hearing b# ; ersons entitled to ; artici; ate in the a; ; eal, the  
Hearing Examiner shall take one of the folloBing actions9

- Affirm the decision being a; ; ealedI
- , eAerse the decision being a; ; ealedI or,
- " odif# the decision being a; ; ealed2

)he decision b# the Hearing Examiner is the final decision of the Cit#2

\*\*\*6 0. %'2+ + /\*(& & /0%\* (\*'+

6 .ite 'ocation9 @6&7 'akeAieB DriAe, Kirkland, WA 4C&66 <see & 5 37 ! ?

6 :oning and 'and Ose9 )he s bfect ; ro; ert# is Eoned , " 62@, " edi m Densit#  
, esidential, and is deAelo; ed Bith one <3? single5famil# residence2

6 Pro; osal9 , e; lace the existing dBelling nit Bith a neB single5famil# dBelling nit2

6 A; ; ellants- , eD est for Iss ance of a Certificate of Occ ; anc#9 &483&8%&%3 <see  
& 5 37 ?

- !6 Email from Adam Weinstein, Director of Planning and B ilding, Denial of  
A; ; ellants- , eD est9 &48%78%&%3 <see & 5 37 ?
- \$6 A; ; ellants- A; ; eal of Decision and or Determination of B ilding Official9  
3&8%38%&%3 <see & 5 37 \$ ?
- #6 Cit#-s " otion to Dismiss9 &%8&H8%&%% <see & 5 37 # ?
- 6 A; ; ellant-s " otion for . mmar# ! dgement9 &%8&H8%&%% <see & 5 37 ?
- 6 Declaration of Adam Weinstein9 &%83H8%&%% <see & 5 37 ?
- 6 Cit#-s , es; onse to 'ang-s " otion for . mmar# ! dgment9 &%83H8%&%% <see  
& 5 37 ?
- 6 A; ; ellant-s , es; onse to " otion to Dismiss for Want of ! risdiction9 &%8%38%&%%  
<see & 5 37 ?
- 6 A; ; ellantJs , e; l# to Cit#Js , es; onse to . mmar# ! dgment9 &%8%68%&%% <see  
& 5 37 ?
- 6 Cit#Js , e; l# to its " otion to Dismiss9 &%8%78%&%% <see & 5 37 ?
- 6 Hearing Examiner-s Order Den#ing " otions for . mmar# ! dgement and  
Dismissal9 &68&48%&%% <see & 5 37 ?
- !6 Cit#-s res; onse to the Hearing Examiner-s Order Den#ing " otions for . mmar#  
! dgment and Dismissal9 &683\$8%&%% <see & 5 37 ! ?
- \$6 A; ; ellant-s res; onse to , ling on . mmar# ! dgment and Dismissal " otions9  
&683@8%&%% <see & 5 37 \$ ?

\*@6 /2.. %?' '2/( ( + \*+, A'+\*+. 0' & %&B2\*%&.&+(/

Based on the Kirkland : oning Code reD irements detailed in . ection F of this re; ort, the  
folloBing is a s mmar# of o tstanding items needed to satisf# the a; ; licable Eoning code  
reg lations9

- 6 )ree " aintenance Agreement <K: C 4\$2\$3?9  
)he A; ; ellant m st s bmit an original signed and notariEed )ree " aintenance  
Agreement to the Cit#, and record it Bith the King Co nt# , ecorde-s Office, to  
com; l# Bith Kirkland : oning Code reD irements2
- 6 +eologically# HaEardo s Area CoAenant <K: C C\$27\$?9  
)he A; ; ellant m st s bmit an original signed and notariEed +eologically# HaEardo s  
CoAenant to the Cit#, and record it Bith the King Co nt# , ecorde-s Office, to  
com; l# Bith the Kirkland : oning Code reD irements2
- 6 \*otice of +eologically# HaEardo s Area <K: C C\$2\$&?9  
)he A; ; ellant m st s bmit an original signed and notariEed \*otice of +eologic  
HaEard to the Cit#, and record it Bith the King Co nt# , ecorde-s Office, to com; l#  
Bith the Kirkland : oning Code reD irements2
- 6 \*at ral +reenbelt ProtectiAe Easement <K: C 4&2%3&?9  
)he A; ; ellant m st s bmit an original signed and notariEed \*at ral +reenbelt  
ProtectiAe Easement Bith exhibits to the Cit#, and record it Bith the King Co nt#  
, ecorde-s Office, to com; l# Bith the Kirkland : oning Code reD irements2
- !6 Wetland and . tream Enhancement " itigation and " onitoring <K: C 4&23@&?9  
)he monitoring and maintenance reD irement inAolAes seAeral ste; s that m st be  
com; leted b# both A; ; ellants and the Cit#2 )he first ste; in reaching com; liance

Bith this code reD irement reD ires A; ; ellants to identif# their intention to haAe  
the Cit# or their cons ltant com; lete the monitoring and maintenance ; rs ant to  
K: C 4&23@&2@2

\$6 On5. ite Planning De; artment (inal Ins; ection9

All Eoning code reD irements m st be com; lete before staff are able to a; ; roAe  
the final on5site ins; ection2

@6 /( + 1?/\*/

A; ; ellants are nBilling to com; l# Bith the remaining : oning Code reD irements nless  
ordered to do so thro gh this a; ; eal ; rocess2 )hese reD irements Bere iss ed d ring  
the ; ermitting ; rocess and Bere not a; ; ealed Bithin %3 da#s as reD ires b# the ' and Ose  
Petition Act <' OPA?, , CW Ch2 6@2H&C2 )he folloBing section s mmariEes the ; ermit  
timeline2 )his re; ort also disc sses other exam; le ; rojects for the ; r; ose of highlighting  
that these reD irements are ro tinel# reD ires for \_\_\_ similarl#5sco; ed ; rojects in the Cit#2

6 3C 5 (

A; ; ellants began the formal ; ermit ; rocess Bith the Cit# in %&3H b# a; ; l#ing for a ; re5  
s bmittal meeting to determine the feasibilit# of their ; roject and identif# a; ; licable  
; olicies, codes, and standards2 After com; leting the ; re5s bmittal meeting, A; ; ellants  
a; ; lied for a b ilding ; ermit to constr ct a neB single5famil# home2 O; on iss ance of  
this ; ermit, the Cit# ; roAided A; ; ellants Bith s; ecific ; ermit conditions containing Eoning  
code reD irements to be com; lete before iss ance of the Certificate of Occ ; anc#2

"/ < . 9 On October 3%, %&3H, Ed Horner, of Horner Design  
Associates, Inc2, a; ; lied for a ; re5s bmittal meeting <see & 5 37 # ? on behalf  
of Harle# and , ita 'ang <A; ; ellants? to disc ss ; ro; osed Bork and antici; ated  
; ermit conditions Bith the Cit#-s deAelo; ment reAieB de; artments incl ding the  
B ilding, Planning, P blic Works, and (ire De; artments2 )he details of this ; re5  
s bmittal meeting are as folloBs9

- Prolect \*ame9 Harle# and , ita 'ang , esidence
- Permit \* mber9 P, E3H5&&\$\$
- 75 3 3 3 4 % 3 D 7 > 5 >  
/ 8 > E ,
- A; ; lication Date9 3&83%8%&3H
- " eeting Date9 338&%8%&3H
- Distrib tion of . taff \*otes to the A; ; ellant9 338&%8%&3H <see & 5 37  
?

5 3 9 Abo t %538% #ears later, on (ebr ar# %\$, %&34, Ed  
Horner, of Horner Design Associates, Inc2, a; ; lied for a b ilding ; ermit <see  
& 5 37 ? on behalf of Harle# and , ita 'ang to constr ct a neB single famil#  
dBelling nit on the s bject ; ro; ert#2 )he details of this a; ; lication are as folloBs9

- Prolect \*ame9 Harle# and , ita 'ang , esidence
- Permit \* mber9 B. (345&3673

- 75 3 3 3 4 % 5 D 7 > >  
> ! 7; " 33 > \$# 7; " 33 6  
3 33 3 5 33 5 3 3 5  
3 7; " 2
- A; ; lication Date9 &%8%\$8%&34
- Iss ance Date9 &78&68%&%&

\*77 5 35 7 9 A little oAer a #ear later, on A; ril 6, %&%&, the folloBing doc ments Bere distrib ted to the A; ; ellants ; on iss ance of the b ilding ; ermit Aia their " # B ilding Permit acco nt9

- Iss ed B ilding Permit <see & 5 37 ?
- A; ; roAed Plan . et <see & 5 37 ?
- . ; ecific Permit Conditions <see & 5 37 ?

6 ' 7 A3 03 %: 7

A; ; ellants reD ested a final Planning De; artment ins; ection for their b ilding ; ermit on ! ne %, %&%32 On ! ne %7, %&%3, staff emailed the A; ; ellants a list of o tstanding Eoning code reD irements that needed to be com; leted before the Planning De; artment co ld cond ct a final on5site ins; ection2 A; ; ellants claim that the email from !ennifer Anderer dated &@8%78%&3 <see & 5 37 ? introd ced neB Cit# reD irements necessar# to final the ; ermit after a final ins; ection of B. (345&36732 )his is not tr e2 A; ; ellants Bere made aBare of Aario s Planning De; artment reD irements thro gho t the d ration of their ; rofect, incl ding in their ; re5s bmittal meeting notes <see & 5 37 ? and s; ecific b ilding ; ermit conditions <see & 5 37 ??

)his section details reg lations enforced b# the Planning De; artment, hoB these reg lations Bere iss ed to A; ; ellants, and the c rrent stat s of A; ; ellants non5 com; liance Bith these reg lations2

6 (%&& . \*+(&+ +0& . %&&.&+(4

- )he A; ; ellants Bere ; roAided notes from the ; re5s bmittal meeting dated 338&%8%&3H <see & 5 37 ? Bhich notes a tree retention ; lan ; rs ant to K: C 4\$26& m st be incl ded Bith the ; ermit a; ; lication materials2
- K: C 4\$26&2\$ states that all single5famil# deAelo; ment actiAit# <as defined in K: C Ch2 \$, . ection %3&? reD ires a ; reserAation and maintenance agreement ; rs ant to K: C 4\$2\$3 for all remaining trees on the ; ro; ert#2
- K: C 4\$2\$32%2a states that Prior to iss ance of the Certificate of Occ ; anc#, the ; ro; onent shall ; roAide a final as5b ilt landsca; e ; lan and an agreement to maintain and re; lace landsca; ing that is reD ired b# the Cit#2
- K: C 4\$2\$32%2b states that an# existing tree or other existing Aegetation designated for ; reserAation in a tree retention ; lan shall be maintained for a ; eriod of fiAe <\$? #ears folloBing iss ance of the certificate of occ ; anc# for the indiAid al lot or deAelo; ment2

- The a; ; roAed ; lan set for B. (345&3673 <see & 5 37 ? identifies trees reD ired for retention as a; ; roAed b# the Cit#-s DeAelo; ment , eAieB Arborist on 338368&342
- A; ; ellants Bere ; roAided a co; # of the )ree " aintenance Agreement Aia email b# !ennifer Anderer on &@8%78%&%3 <see & 5 37 ? as a Cit# a; ; roAed doc ment that reD ires the ; ro; ert# oBners notariEed signat re for recording Bith King Co nt#2
- 0 / 74 )o date, A; ; ellants haAe not s bmitted a signed and notariEed co; # of the )ree " aintenance Agreement to the Cit#I nor has it been recorded Bith the King Co nt# , ecorder-s Office2 FieBing the facts in the light most faAorable to A; ; ellants, it is still clear that the Cit# reD ired this doc ment from A; ; ellants b# no later than &@8%78%&%3 <see & 5 37 ? A; ; ellants did not file an a; ; eal of this condition to the Hearing Examiner ntil 3&8%38%&%3, Bhich is more than %3 da#s after the last ; ossible date the Cit# iss ed its reD irement for this doc ment2 )h s, A; ; ellants are barred from a; ; ealing this condition nder the ' OPA as their a; ; eal is ntimel#2

6 .&'1'.\*0 11?) A % '2/ %& 0'@&+ +(4

When the Cit#-s +eologicall# HaEardo s Area " a; identifies a high and moderate landslide haEard area on a s blect ; ro; ert#, the Planning De; artment eAal ates ; ro; osed deAelo; ment based on the criteria in K: C Cha; ter C\$ incl ding geologicall# haEardo s coAenant and notice of geologic haEard reD irements2

- The Cit# of Kirkland +eologicall# HaEardo s Areas " a; identifies high and moderate landslide haEard areas on the s blect ; ro; ert# <see & 5 37 ?2
- A; ; ellants s bmitted a geotechnical re; ort ; re; ared b# AE.I dated &H83%8%&3C <see & 5 37 ? Bhich referenced K: C C\$ and identifies both high and moderate landslide haEard areas on the s blect ; ro; ert# on ; age C54 of the re; ort2
- K: C C\$27\$ notes that rior to iss ance of an# deAelo; ment ; ermit, the a; ; licant shall enter into an agreement Bith the Cit#, Bhich r ns Bith the ; ro; ert#, in a form acce; table to the Cit# Attorne#, indemnifing the Cit# for an# damage res lting from deAelo; ment actiAit# on the s blect ; ro; ert# Bhich is related to the ; h#sical condition of the ; ro; ert#2 )he a; ; licant shall record this agreement Bith the King Co nt# , ecorder-s Office and ; roAide eAidence to the Cit# that the agreement has been recorded2 )his agreement is knoBn as a +eologicall# HaEardo s CoAenant2

As a co rtes# to A; ; ellants, Cit# staff chose to reD ire the +eologicall# HaEardo s CoAenant ; rior to final a; ; roAal <i2e2, rior to iss ance of the Certificate of Occ ; anc#? instead of ; rior to iss ance of the b ilding ; ermit to ex; editate the iss ance of B. (345 &3673 for the A; ; ellants2

- Permit Conditions <see & 5 37 ? ; roAided to the A; ; ellants on &78&68%&%& incl de the folloBing Planning De; artment condition9  
=PCD C K +EO' O+ICA' ' 1 HA: A, DOO. A, EA COFE\* A \*) K Prior to final of the b ilding ; ermit, the a; ; licant shall s bmit a signed and notariEed +eologicall# HaEardo s Area CoAenant to the Planning De; artment2>

- A; ; ellants Bere ; roAided a co; # of the +eologicall# HaEardo s Area CoAenant Aia email b# !ennifer Anderer on &@8%78%&%3 <see & 5 37  
? as a Cit#5a; ; roAed doc ment that reD ires the ; ro; ert# oBners-  
notariEed signat re for recording Bith King Co nt#2
- 0 / 74 )o date, A; ; ellants haAe not s bmitted a signed and  
notariEed co; # of the +eologicall# HaEardo s Area CoAenantI nor has it  
been recorded Bith the King Co nt# , ecorder-s Office2 )his condition Bas  
im; osed on &78&68%&% <see & 5 37 ?2 A; ; ellants did not file an  
a; ; eal to the Hearing Examiner ntil 3&8%38%&%3, Bhich is more than %3  
da#s after the Cit# im; osed this condition on their ; ermit2 )h s, A; ; ellants  
are barred from a; ; ealing this condition nder the 'OPA as their a; ; eal is  
ntime#2

06 +('(\*0&' ,&'1'.\*0 11?) A % %&

- )he Cit# of Kirkland +eologicall# HaEardo s Areas " a; identifies high and  
moderate landslide haEard areas on the s bfect ; ro; ert# <see & 5 37  
?2
- A; ; ellants s bmitted a geotechnical re; ort ; re; ared b# AE.I dated  
&H83%8%&3C <see & 5 37 ? Bhich referenced K: C C\$ and identifies  
both high and moderate landslide haEard areas on the s bfect ; ro; ert# on  
; age C54 of the re; ort2
- K: C C\$2\$& notes that *; rior to final ins; ection* of an# deAelo; ment ; ermit,  
the a; ; licant shall record < nless legall# ; rohibited from doing so?, on the  
title of the ; ro; ert#, a notice stating that the ; ro; ert# is ; otentiall# located  
in a geologicall# haEardo s area2 )his notice Bill inform f t re oBners that,  
at the time of the ; ermit-s iss ance, the ; ro; ert# Bas ; otentiall# located  
in a geologicall# haEardo s area2 )his is knoBn as the \*otice of +eologic  
HaEard2
- Permit Conditions <see & 5 37 ? ; roAided to the A; ; ellants on  
&78&68%&%& incl de the folloBing Planning De; artment condition9  
*=PCD 4 K \*O)ICE O( +EO'O+ICA' ' 1 HA: A, DOO. A, EA 5 Prior to final of  
the b ilding ; ermit, the a; ; licant shall s bmit a signed and notariEed  
\*otice of +eologicall# HaEardo s Area to the Planning De; artment2*
- )he A; ; ellants Bere ; roAided a co; # of the \*otice of +eologic HaEard Aia  
email b# !ennifer Anderer on &@8%78%&%3 <see & 5 37 ? as a Cit#5  
a; ; roAed doc ment that reD ires the ; ro; ert# oBners- notariEed signat re  
for recording Bith King Co nt#2
- 0 / 74 )o date, A; ; ellants haAe not s bmitted a signed and  
notariEed co; # of the +eologicall# HaEardo s Area CoAenantI nor has it  
been recorded Bith the King Co nt# , ecorder-s Office2 )his condition Bas  
im; osed on &78&68%&% <see & 5 37 ?2 A; ; ellants did not file an  
a; ; eal to the Hearing Examiner ntil 3&8%38%&%3, Bhich is more than %3  
da#s after the Cit# im; osed this condition on their ; ermit2 )h s, A; ; ellants  
are barred from a; ; ealing this condition nder the 'OPA as their a; ; eal is  
ntime#2



6 + (2% 1 .%&&+ &1( %'(&0(\*@& &/&. &+(4

- A; ; ellants Bere ; roAided notes from the ; re5s bmittal meeting dated 338&%8%&3H <see & 5 37 ? Bhich identif# that the ; rolect is s blect to K: C 4& standards2
- K: C 4&236&2C9 Protection and " aintenance of FegetatiAe B ffer K Critical areas and b ffers shall be ; laced in recorded critical area easements or tracts ; rs ant to K: C 4&2%3& and shall be maintained in ; er; et it#2 )his is knoBn as the \*at ral +reenbelt ProtectiAe Easement2
- K: C 4&2%3&9 )he a; ; licant shall dedicate deAelo; ment rights, air s; ace, or grant a greenbelt ; rotection or o; en s; ace easement to the Cit# to ; rotect sensitiAe areas and their b ffers2
- K: C 4&2%3&279 " aintenance of Critical Area and B ffer K In critical areas and their b ffers, natiAe Aegetation shall not be remoAed Bitho t ; rior Cit# a; ; roAal2 It is the res; onsibilit# of the ; ro; ert# oBner to maintain critical areas and their b ffers b# remoAing nonnatiAe, inAasiAe, and noxio s ; lants in a manner that Bill not harm critical areas or their b ffers2
- Permit Conditions <see & 5 37 ? ; roAided to the A; ; ellants on &78&68%&& incl de the folloBing Planning De; artment condition9  
=PCD H2 . ( K \*A)O, A' +, EE\*BE') P, O)EC)IFE EA. E''E\*) 5 All  
; re5existing trees designated for ; reserAation shall be maintained folloBing final ins; ection of the residence2 Prior to final of the b ilding ; ermit, the a; ; licant shall s bmit a \*+PE doc ment to the Planning De; artment2
- A; ; ellants Bere ; roAided a co; # of the \*at ral +reenbelt ProtectiAe Easement Aia email b# !ennifer Anderer on &@8%78%&&3 <see & 5 37 ? as a Cit#5a; ; roAed doc ment that reD ires the ; ro; ert# oBners- notariEed signat re for recording Bith King Co nt#2 A; ; ellants Bere also informed that the \*+PE recording doc ment reD ires tBo exhibits ; roAided b# the A; ; ellants- land s rAe#or2
- A; ; ellants Bere also ; roAided a marked5 ; site ; lan Aia email b# !ennifer Anderer on 338%48%3 <see & 5 37 ? shoBing the extent of a code com; liant \*+PE bo ndar# for the A; ; ellants- s rAe#or to se as a starting ; oint in ; re; aring the recording doc ments reD ired nder K: C 4&2
- 0 / 74 )o date, A; ; ellants haAe not s bmitted a signed and notariEed \*+PE doc ment to the Cit# Bith exhibitsI nor has it been recorded Bith the King Co nt# , ecorde-s Office2 )his condition Bas im; osed on &78&68%&& <see & 5 37 ?2 A; ; ellants did not file an a; ; eal to the Hearing Examiner ntil 3&8%38%&&3, Bhich is more than %3 da#s after the Cit# im; osed this condition on their ; ermit2 )h s, A; ; ellants are barred from a; ; ealing this condition nder the 'OPA as their a; ; eal is ntimel#2

&6 &(1 + F/(%& . &+) +0&. &+( + .\*(. (\*'+  
.'+\*('%'+,4

- A; ; ellants Bere ; roAided notes from the ; re5s bmittal meeting dated 338&%8%&3H <see & 5 37 ? Bhich confirm that the ; rolect is s blect to K: C 4& reg lations, incl ding the folloBing9

= "onitoring and "aintenance of . tream B ffer "odifications9 "odification of a stream b ffer Bill reD ire that the a; ; licant s bmit a \$5#ear monitoring and maintenance ; lan consistent Bith K: C section 4\$2\$2 )his ; lan shall be ; re; ared b# a D alified ; rofessional and reAieBed b# the Cit#-s Betland cons ltant2 )he cost of the ; lan and the Cit#-s reAieB shall be borne b# the a; ; licant2>

- )he ; re5s bmittal notes contin e to highlight the ; rofect-s need to com; l# Bith K: C 4& standards b# also confirming the need for stream b ffer fencing9

=. tream B ffer (ence9 Prior to deAelo; ment, the a; ; licant shall install a six5foot high constr ction ; hase fence along the ; land bo ndar# of the entire stream b ffer Bith silt screen fabric installed ; er Cit# standard2 )he fence shall remain ; right in the a; ; roAed location for the d ration of deAelo; ment actiAities2 O; on ; rofect com; letion, the a; ; licant shall install betBeen the ; land bo ndar# of all stream b ffers and the deAelo; ed ; ortion of the site, either 3? a ; ermanent 6 to 7 foot tall s; lit rail fence, or %? ; ermanent ; lanting of eD al barrier Aal e2>

- Pertinent K: C 4& Code . ections9

3? K: C 4&23@&9 "onitoring and "aintenance

%? K: C 4&23@\$9 (inancial . ec rit# for Performance, "aintenance, and "onitoring

- Permit Conditions <see & 5 37 ? ; roAided to the A; ; ellant on &78&68%&%& incl de the folloBing Planning De; artment condition9

=PCD 3& K WE)'A\*D8.), EA" E\*HA\*CE"E\*) A\*D "I)I+A)IO\* "O\*I)O, I\*+ 5 Prior to final of the b ilding ; ermit, the a; ; licant shall com; lete the reD irements for the Wetland8. tream Enhancement and "itigation Planning Performance, "aintenance, and "onitoring . ec rit#2>

- K: C 4&23@&2@ notes that an a; ; licant ma# choose one of the folloBing methods for Bho ; erforms the monitoring Bork9

3? Cit# Does Work K If the Cit# Bill oAersee the maintenance and monitoring thro gh the Cit#-s cons ltant, the monitoring fee Bill be based on an act al cost estimate of the Bork2 )he a; ; licant shall s bmit a cash ; re; a#ment for all Bork to the Cit# ; rior to iss ance of the deAelo; ment ; ermit2

%? A; ; licant-s Cons ltant Does Work2 If the Cit# Bill not ; erform the monitoring, the a; ; licant shall s bmit a signed contract to f nd a D alified critical area ; rofessional, a; ; roAed b# the Cit#, to monitor the maintenance and ; erform the monitoring oAer the life of the ; rogram2 )he cost of the Bork m st be incl ded in the ; erformance sec rit# nder K: C 4&23@\$2 In addition, the a; ; licant shall s bmit a cash ; re; a#ment ; rior to final ins; ection of the deAelo; ment ; ermit for the cost of the Cit# to do ; eer reAieB of the monitoring re; orts2

- A; ; ellants Bere asked Aia email b# !ennifer Anderer on &@8%78%&%3 <see & 5 37 ? Bhich method of ; erforming the monitoring Bork the# Bo ld ; refer s blect to K: C 4&23@&2@2 )his email also reD ested the# ; roAide a final landsca; e ; lan and c rrent bond D antit# Borksheets so that

staff can ; re; are the sec rit# ; acket to satisf# K: C 4&23@& and K: C 4&23@\$  
sec rit# standards2

- A; ; ellants s bmitted an as5b ilt landsca; e ; lan B hich Bas reAieBed b#  
)he Watershed Com; an# <=)WC>?, the Cit#-s cons ltant ; eer5reAieB  
engineering com; an#, to ens re that it ; roAided eno gh detail to be sed  
in establishing com; liance Bith AegetatiAe b ffer standards and contin al  
monitoring and maintenance2 On &483H8%&%3, )WC ; roAided reAision  
comments looking for additional details from the landsca; e ; lan <see  
& 5 37 \$ ??
- HaAing not heard back from A; ; ellants on their ; referred monitoring  
a; ; roach, Cit# staff reached o t to the Cit#-s cons ltant )he Watershed  
Com; an# on &483H8%&%3 <see & 5 37 # ? to ; roAide a D ote for  
monitoring and maintenance nder both scenarios2
- )he Cit#-s cons ltant ; re; are tBo D otes for Bork B hich Bere ; roAided  
to the A; ; ellants Aia email on &48%3H8%&%& <see & 5 37 ?? One  
D ote ass med the A; ; ellants Bo ld o; t to haAe the Cit#-s cons ltant  
com; lete the monitoring Bork <; er K: C 4&23@&2@a? and one D ote  
ass med the A; ; ellants Bo ld o; t to haAe their oBn D alified critical area  
cons ltant com; lete the monitoring Bork <; er K: C 4&23@&2@b??
- 0 / 74 )o date, A; ; ellants haAe s bmitted a reAised landsca; e  
; lan on &%8368%&%%, b t haAe not indicated Bho Bill cond ct the  
monitoring and maintenance, B hich is necessar# to contin e Borking  
thro gh the remaining ste;s of this reD irement2 )his condition Bas  
im; osed on &78&68%&% <see & 5 37 ?? A; ; ellants did not file an  
a; ; eal to the Hearing Examiner ntil 3&8%38%&%3, B hich is more than %3  
da#s after the Cit# im; osed this condition on their ; ermit2 )h s, A; ; ellants  
are barred from a; ; ealing this condition nder the 'OPA as their a; ; eal is  
ntimel#2

6 3 3 A3 %: 7

A; ; ellants haAe demanded that the Cit# iss e a certificate of occ ; anc# b# deferring the  
folloBing a; ; licable : oning Code reD irements indefinitel#9

- )ree " aintenance Agreement
- +eologicall# HaEardo s CoAenant
- \*otice of +eologic HaEard
- \*at ral +reenbelt ProtectiAe Easement
- Wetland8. tream Enhancement and " itigation " onitoring

Deferrals of : oning Code reD irements are reserAed for onl# one sit ation, the ; lanting  
of seasonall# de; endent items s ch as trees or other landsca; ing2 (or exam; le, Bhen a  
; rofect that reD ires s ; ; lemental tree ; lantings to be code com; liant com; letes  
constr ction d ring the s mmer months, the Cit# Bill ; ermit a deferral of the act al tree  
installation to a cooler8Better season2 )his is done ; r; osef ll# beca se s ccessf l  
installation of trees is heaAil# de; endent ; on the ; lanting season2

6      &D      3C 5 7 (      )      8 03      /      A3      03  
%:      7      7 '<C 5 3 )

)he Eoning code reD irements s bfect to this a; ; eal are *ro time* for ; rofects located on ; ro; erties containing seismic haEards, landslide haEards, streams, and Betlands2 On December 3, %&%3, Adam Weinstein emailed A; ; ellants an attachment ; re; ared b# staff highlighting similar ; rofects that also reD ired recording doc ments s ch as a geotechnical coAenant, notice of geological haEard, nat ral greenbelt ; rotectiAe easement, and com; letion of the stream8Betland enhancement and mitigation monitoring <see & 5 37 ?2 A; ; ellants are Bell aBare of the fact that these reD irements are a; ; licable not 6 st to them, b t to all ; rofects in Kirkland2 )hese code reD irements are standard ; ractice and not niD e to A; ; ellants- ; rofect2

@\*6      / (      %&0'..&+      (\*'+/

)he Cit# recommends the Hearing Examiner affirm the Planning Director-s denial to iss e a Certificate of Occ ; anc# ntil the o tstanding ; ermit conditions are com; leted2

@\*\*6      &+01'/2%&/

6      , eD est for certificate of occ ; anc# iss ance, ; re; ared b# A; ; ellants, dated . e; tember 3&, %&%3

6      Denial of A; ; ellants- , eD est of Certificate of Occ ; anc#, ; re; ared b# Adam Weinstein, Director of Planning and B ilding, dated . e; tember %7, %&%3

6      B. (345&3673 . ; ecific Permit Conditions

6      Hearing Examiner-s Order Den#ing " otions for . mmar# ! dgment and Dismissal, dated " arch 4, %&%%

!6      Ficinit# " a;

\$6      A; ; eal of Decision and or Determination of B ilding Official, ; re; ared b# the A; ; ellants, dated October %3, %&%3

#6      Cit#-s " otion to Dismiss, dated (ebr ar# H, %&%%

6      A; ; ellant-s " otion for . mmar# ! dgment, dated (ebr ar# H, %&%%

6      Declaration of Adam Weinstein Bith attachments, dated (ebr ar# 3H, %&%%

6      Cit#-s , es; onse to 'ang-s " otion for . mmar# ! dgment, dated (ebr ar# 3H, %&%%

6      A; ; ellant-s , es; onse to " otion to Dismiss for Want of ! risdiction, dated (ebr ar# %3, %&%%

6      A; ; ellant-s , e; l# to Cit#-s , es; onse to . mmar# ! dgment Bith attachments, dated (ebr ar# %6, %&%%

6      Cit#-s , e; l# to its " otion to Dismiss, dated (ebr ar# %7, %&%%

6      Hearing Examiner-s Order Den#ing " otions for . mmar# ! dgment and Dismissal, dated " arch 4, %&%%

!6      Cit#-s res; onse to the Hearing Examiner-s Order Den#ing " otions for . mmar# ! dgment and Dismissal, dated " arch 3\$, %&%%

\$6      A; ; ellant-s res; onse to , ling on . mmar# ! dgment and Dismissal " otions, dated " arch 3@, %&%%

- #6 P, E3H5&&@\$ a; ; lication materials
- 6 P, E3H5&&@\$ Pre5. bmittal " eeting . taff \*otes, dated \*oAember %, %&3H
- 6 B. (345&3673 A; ; lication dated (ebr ar# %\$, %&34
- 6 B. (345&3673 Iss ed B ilding Permit, dated A; ril 6, %&%&
- 6 B. (345&3673 A; ; roAed Plan . et
- 6 Email from !ennifer Anderer Bith attachments, Associate Planner, to , ita 'ang, dated ! ne %7, %&%3
- 6 Cit# +eological# HaEardo s " a; for @6&7 'akeAieB DriAe
- 6 +eotechnical , e; ort, ; re; ared b# AE. I, dated ! l# 3%, %&3C
- !6 Email from !ennifer Anderer, Associate Planner, to , ita 'ang, dated \*oAember %4, %&%3
- \$6 Email from H gh " ortensen to !ennifer Anderer, dated . e; tember 3H, %&%3
- #6 Email from !ennifer Anderer, Associate Planner, to H gh " ortensen, dated . e; tember 3H, %&%3
- 6 Email from H gh " ortensen to !ennifer Anderer Bith D ote for monitoring and maintenance, dated . e; tember 3H, %&%3
- 6 Email from Adam Weinstein to Peter Oala K Bith attachments, dated December &3, %&%3

@\*\*\*6 77 1 7 3 )

6 Adam Weinstein  
Director of Planning and B ilding  
Cit# of Kirkland

" r2 Weinstein Bill testif# Bith regard to all of the facts listed aboAe and Bith  
regard to the Cit#-s inter; retation of the releAant Cit# Codes2

\*-6 &D < 1 7 3 )

6 All of the doc ments listed as 35%4 in / 5 3 @\*\* aboAe, attached hereto2