



November 26, 2008

Geordy Rostad  
233 10<sup>th</sup> Avenue  
Kirkland, WA 98033

Dear Mr. Rostad:

Subject: Rostad Reasonable Use - Permit No. ZON08-00003

The Planning Director, on November 18, 2008, entered his decision on your Reasonable User application at 90xx 126<sup>th</sup> Avenue NE. His decision is for approval with conditions.

Enclosed is a copy of the Planning Director's decision. The Notice of Approval for this action will be released after the appeal period has lapsed (after December 10, 2008). No activity based on his decision may commence until after that date. In addition, if your project required public notice signs, they must remain in place until you receive written notice from the Planning Department that the signs can be removed.

If you have any questions, please contact me at (425) 587-3253. More information is available at [www.kirklandpermits.net](http://www.kirklandpermits.net).

Additionally, I would appreciate it if you would take a moment to complete and return the enclosed postage paid "*Development Services Customer Survey*". Your input is important in helping the City improve our permit review procedures.

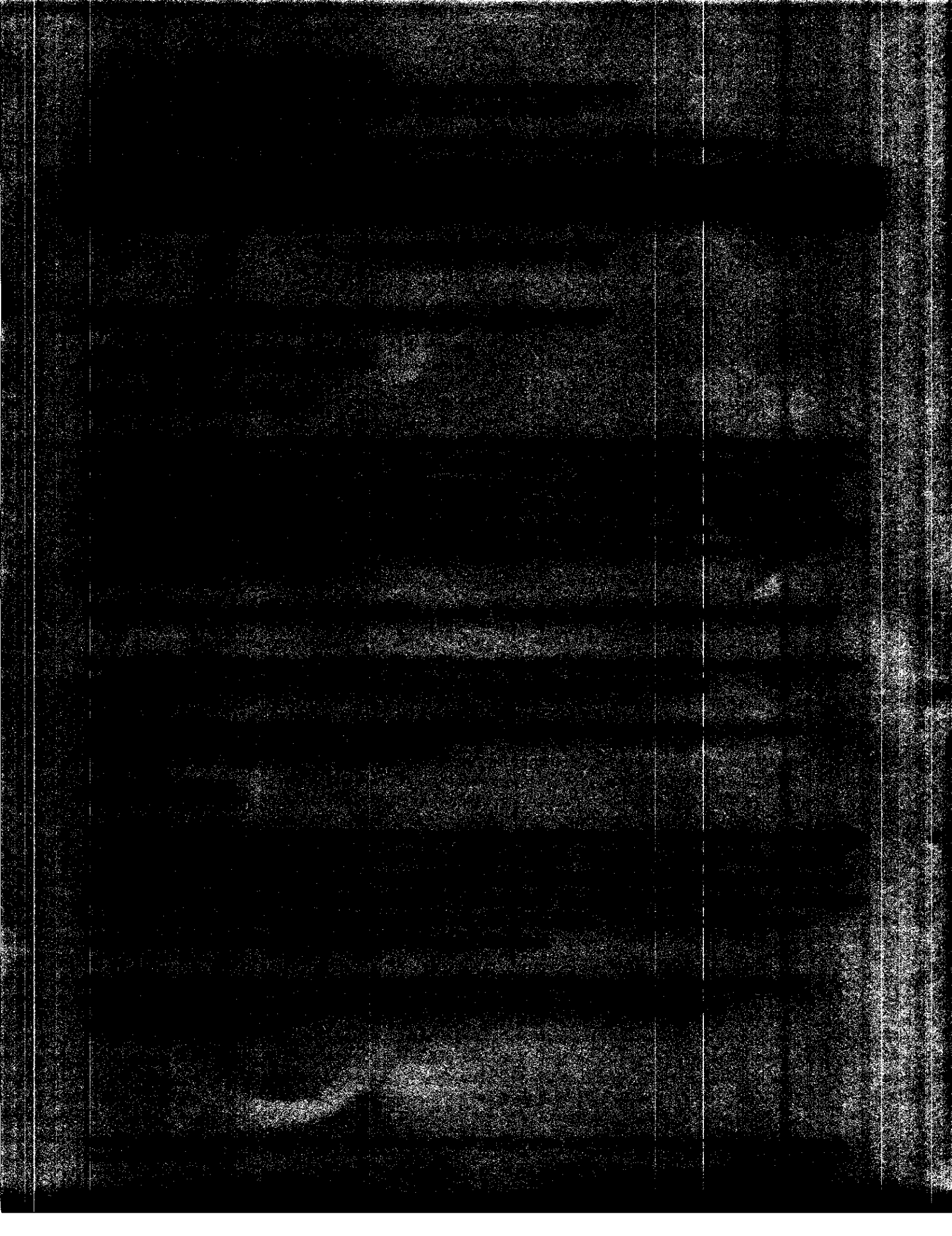
Sincerely,

PLANNING AND COMMUNITY DEVELOPMENT

  
Tony Leavitt,  
Associate Planner

Enclosures: Planning Director Decision  
Customer Survey

cc: Sound Quality Homes, PO Box 1559, Seattle, WA 98115  
Parties of Record (with copy of report/decision)





**CITY OF KIRKLAND**

Planning and Community Development Department  
123 Fifth Avenue, Kirkland, WA 98033 425.587-3225  
www.ci.kirkland.wa.us

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**ADVISORY REPORT  
FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS**

**To:** Eric R. Shields, AICP, Planning Director

**From:** Tony Leavitt, Associate Planner

**Date:** November 18, 2008

**File:** ROSTAD REASONABLE USE PERMIT, ZON08-00003

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## **I. INTRODUCTION**

### **A. APPLICATION**

1. Applicant: Geordy Rostad for Sound Quality Homes Inc, Property Owner
2. Site Location: 90xx 126<sup>th</sup> Avenue NE (see Attachment 1).

Request: A request for approval of a reasonable use permit to allow construction of a single-family residence within a Type I wetland buffer. The subject property is entirely encumbered by the wetland and its associated 100 foot buffer. The proposal includes construction of a new residence (approximately 3,669 square feet in size) that would be setback 10 feet from the front property line (along 126th Avenue NE) and constructed at a maximum height of 34.81 feet above the average building elevation. No portion of the new residence will extend into the wetland and the disturbance area (as conditioned) will be limited to 3,000 square feet (see Attachment 2). The proposal also includes the construction of required public improvements within the 126<sup>th</sup> Avenue right-of-way.

3. Review Process: Process I, Planning Director decision.
4. Summary of Key Issues and Conclusions: Compliance with the Reasonable Use Decisional Criteria and General Process I Decisional Criteria (see Sections II.D and II.E).

### **B. RECOMMENDATIONS**

Based on Statements of Fact and Conclusions (Section II), and Attachments in this report, I recommend approval of this application subject to the following conditions:

1. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the applicant to ensure compliance with the various provisions contained in these ordinances. Attachment 3, Development Standards, is provided in this report to familiarize the applicant with some of the additional development regulations. This attachment does not include all of the additional regulations. When a condition of approval conflicts with a development regulation in Attachment 3, the condition of approval shall be followed.
2. The proposed modifications, as allowed by KZC Section 90.140.6, are approved. Any changes to the approved site plan must be reviewed and approved by the Planning Department (see Conclusion II.D.11)
3. In order to comply with Kirkland Zoning Code Section 90.140.7, the residence shall be shifted 5 feet to the south and the north side buffer setback should be reduced to 9.92 feet to reduce the disturbance area to less than 3,000 square feet (see Conclusion II.D.4). Additionally the proposed storm water dispersion trench shall be relocated to the disturbance area, so the disturbance area does not exceed 3,000 square feet.
4. All paved surfaces, including the sidewalk within the 126<sup>th</sup> Avenue right-of-way, shall be constructed of pervious materials (see Conclusion II.D.6).

5. As part of the building permit application, the applicant shall submit:
  - a. Development plans that incorporate the approved wetland buffer enhancement, monitoring, and maintenance plans (see Conclusion II.D.8).
  - b. Erosion control plans, which shall depict the location of a six-foot high construction phase fence along the boundary of the entire wetland buffer with silt screen fabric installed per City standard. The fencing shall be installed prior to issuance of any permits. The fence shall remain upright in the approved location for the duration of development activities (see Conclusion II.D.8).
  - c. A financial security device to cover the cost of completing the buffer enhancement improvements. The security shall be consistent with the standards outlined in Zoning Code section 90.145 (see Conclusion II.D.8).
  - d. A signed and notarized covenant that holds the City harmless against any future claims that may arise as a result of the development of the property (see Conclusion II.D.8).
  - e. Submit a signed and notarized "Notice of Reasonable Use Permit" document, prepared by the City, for recording that includes the following elements (see Conclusion II.D.4):
    - The footprint of the approved residence shall not be enlarged.
    - The total approved site disturbance area shall not be increased.
    - The conditions and restrictions of this permit shall run with the property.
    - A copy of the approved site plan with a reference to the required NGPE.
6. Prior to final inspection of the building permit, the applicant shall:
  - a. Complete installation of the buffer enhancement plan, subject to inspection by the City's wetland consultant at the applicant's expense (see Conclusion II.D.8).
  - b. Provide proof of a written contract with a qualified professional who will perform the monitoring program, together with a completed contract and fees to fund review of the monitoring and maintenance activities, (i.e. inspection of plant materials, annual monitoring reports or revegetation activities) by the City's wetland consultant. Alternatively, the applicant shall provide a copy of a completed contract and fees to fund completion of the monitoring program by the City's wetland consultant (see Conclusion II.D.8).
  - c. Provide proof of a written contract to cover maintenance activities outlined in the buffer report (see Conclusion II.D.8).
  - d. Dedicate a Natural Greenbelt Protective Easement (NGPE) over all wetland and wetland buffer areas not impacted by the proposed development (see Attachment 14). All surveys shall be located on KCAS or plat bearing system and tied to known monuments (see Conclusion II.D.8).
  - e. Install a permanent 3 to 4 foot tall split rail fence between the boundary of the wetland buffer and the developed portion of the site (see Conclusion II.D.8).

- f. Submit to the Planning Department a financial security device to cover all monitoring and maintenance activities that will need to be done including wetland consultant site visits, reports to the Planning Department, and any vegetation that needs to be replaced. The security shall be consistent with the standards outlined in Zoning Code section 90.145 (see Conclusion II.D.8).

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

### **A. SITE DESCRIPTION**

#### 1. Site Development and Zoning

##### a. Facts:

- (1) Size: 14,159 square feet (0.32 acres)
- (2) Land Use: The subject property is currently vacant
- (3) Zoning: RSX 7.2, a single-family, low density residential zone with a minimum lot size of 7,200 square feet.
- (4) Terrain: The subject property slopes down from the 126<sup>th</sup> Avenue right-of-way to the wetland. The subject property is designated on the City's Seismic Hazard Map as a potential seismic hazard area. See the Development Standards in Attachment 3 for regulations pertaining to these site conditions.
- (5) Vegetation: The subject property contains a total of 33 viable significant trees (see Attachment 11). 6 trees located within the disturbance area are proposed to be removed. The rest of the vegetation on the site and within the wetland buffer consists mostly of invasive plant species including Himalayan blackberry and reed canarygrass.
- (6) Hydrology: The entire site is encumbered by a Type I wetland and associated buffer within a primary drainage basin.

- b. Conclusion: The combination of the hydrology and vegetation on the subject property are relevant factors in this reasonable use permit application. Due to the fact that the wetland and associated buffer cover 100 percent of the subject property, no buildable area exists on the subject property without allowing disturbance within a portion of the Type I wetland buffer.

#### 2. Neighboring Development and Zoning

- a. Facts: All surrounding properties are zoned RSX 7.2 and contain single family residences. Two properties to the north of the subject property, at 9118 and 9206 126<sup>th</sup> Avenue NE, have received Reasonable Use Zoning permit approvals to construct new single family residences. These approvals are discussed further in Section II.D.5.
- b. Conclusion: The proposed single-family residence is compatible with neighboring developments.

**B. PUBLIC COMMENT**

The public comment period ran from March 6, 2008 to March 28, 2008. The Planning Department received no comments during this comment period.

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

1. Facts: A Determination of Nonsignificance (DNS) was issued on April 24, 2008. The SEPA Determination is included as Attachment 4.
2. Conclusion: The applicant and the City have satisfied the requirements of SEPA.

**D. REASONABLE USE DECISIONAL CRITERIA**

1. Decisional Criteria of a Reasonable Use Application
  - a. Facts:
    - (1) KZC 90.60 establishes a process to modify a wetland buffer by no more than one-third of the standard buffer width. The site contains a Type I wetland that requires a 100 foot wetland buffer. The entire site is encumbered by the wetland and associated buffer.
    - (2) KZC 90.140.3 establishes a reasonable use application to modify a wetland buffer by more than one-third of the standard buffer width if strict application of Chapter 90 KZC would preclude reasonable use of a site. A reasonable use application for a single family use may be considered under a Process I if the proposal does not exceed 3,000 square feet of total site disturbance area and does not encroach into the wetland area.
    - (3) KZC 90.140.4 establishes submittal requirements for a reasonable use application. The applicant has submitted a report, prepared by a qualified professional, meeting KZC.90.140.4.a through i. The wetland mitigation report has been reviewed by The Watershed Company, the City's consultant, and revised to respond to comments from the consultant (see Attachments 5 through 10).
    - (4) KZC 90.140.5 establishes nine decisional criteria by which the decision maker shall determine whether or not application of Chapter 90 KZC will deny reasonable use of the property, and whether the proposed use and activities are a reasonable use of the property. Sections 2 through 10 below contain the staff's findings of fact and conclusions based on these nine criteria.
    - (5) KZC Section 90.140.6 allows the City to approve reduction in required yards or buffer setbacks and may allow the maximum height of structures to be increased up to five feet to reduce the impact on the sensitive area and sensitive area buffer. The City shall include in the written decision any conditions and restrictions that the City determines are necessary to eliminate or minimize any undesirable effects of approving the exception. Section 11 contains staff's findings of fact and conclusions regarding proposed modifications.

- (6) KZC 90.140.7 authorizes the Planning Director to approve a reasonable use exception under a Process I of Chapter 145 KZC, provided that the proposed improvements do not exceed 3,000 square feet (includes all structures, paved areas, landscaping, decks, driveways, utility installation and grading) and that the requirements of KZC 90.140.4 and 5 are met. Sections 12 and 13 below contain the staff's findings of fact and conclusions for the Process I approval of the reasonable use application.

b. Conclusion:

- (1) Due to the extent of sensitive area on the property, the wetland buffer modification provisions under KZC 90.60 are not adequate to provide for reasonable use of the property.
- (2) Based on the following analysis in Sections 2 through 13, and with the recommended conditions of approval, the application meets the established criteria for approving a reasonable use application under a Process I.

2. Decisional Criterion 1: There is no permitted type of land use for the property with less impact on the sensitive area and the buffer that is feasible and reasonable.

a. Facts:

- (1) The subject property is located within the RSX 7.2 zone. This is a low density residential zone that allows the following land uses to be considered on the subject property, providing that all criteria (process, setbacks, special and general regulations, etc.) are met: detached dwelling unit, church, school or daycare center, mini school or day care center, golf course, public utility, government or community facility, or public park (see Attachment 12).
- (2) The applicant proposes construction of one single-family residence with an attached garage.

- b. Conclusion: The proposed single family residence is the least intensive use. There is no other permitted land use for the subject property that would have a lesser impact on the wetland and associated buffer than a single family residence.

3. Decisional Criterion 2: There is no feasible on-site alternative to the proposed activities, including a reduction in the site, density or intensity, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations that would allow a reasonable economic use with less adverse impacts to the sensitive area and buffer.

a. Facts:

- (1) A Type I wetland is located on eastern portion of the subject property. The required 100 foot wetland buffer occupies the remaining portion of the subject property. The existing wetland buffer is in relatively poor condition due to the existence of invasive plant species.

- (2) The proposed residence will have a footprint of 1,286 square feet. The total disturbed area would cover 3,001.5 square feet, including the residence, driveway, entry porch, back stairs and yard area. The proposed floor area ratio for the subject property would be 25.9%. Total lot coverage is approximately 13.8% (see Attachment 2).
  - (3) KZC 15.10 requires a 20 foot yard setback in the RS zone and a maximum height of 30 feet above average building elevation (see Attachment 12). The applicant requests a modification to these requirements and proposes a 10 foot front yard setback along the east property line adjacent to 126<sup>th</sup> Avenue NE and a height of 35 feet above average building elevation. The proposed modifications are discussed further in Section II.E.11 below.
- b. Conclusion: There is no feasible on-site alternative to the proposed development since the sensitive area covers almost the entire site. Construction of one single family homes allows for reasonable economic use of the site with the minimum amount of impact to the sensitive area. The proposal is well below the maximum allowable lot coverage and floor area ratio. The proposed site plan minimizes the adverse impact on the sensitive area by locating the residence as far to the east as possible and away from the sensitive area, keeping the total site disturbance area to less than 3,000 square feet and enhancing the sensitive area.
4. Decisional Criterion 90.140.5.c: Unless the applicant can demonstrate unique circumstances related to the subject property, the amount of site area that will be disturbed by structure placement or other land alteration, including but not limited to grading, utility installation, decks, driveways, paving and landscaping, shall not exceed 3,000 square feet. In addition, the amount of allowable disturbance shall be that which will have the least practicable impact on the sensitive area and buffer given the characteristics and the context of the subject property, sensitive area and buffer.
- a. Facts:
- (1) The proposal shows a total site disturbance of 3,001.5 square feet (see Attachment 2). The applicant is proposing a 5 foot buffer setback on the north side of the residence, a 10 foot buffer setback on the east side of the residence and a 10 foot setback yard on the south side.
  - (2) The wetland and required wetland buffer cover the entire site.
  - (3) The wetland buffer consists mostly of invasive plant species including Himalayan blackberry and reed canarygrass. As part of the wetland mitigation plan, the invasive plant species will be removed and replaced with appropriate sensitive area plantings.
  - (4) The applicant proposes placement of a storm water dispersion trench in the wetland and associated wetland buffer.

b. Conclusions:

- (1) In order to comply with Kirkland Zoning Code Section 90.140.5c, the residence should be shifted 5 feet to the south and the north side buffer setback should be reduced to 9.92 feet to reduce the disturbance area to less than 3,000 square feet.
- (2) In order to comply with Kirkland Zoning Code Section 90.140.5c, the proposed storm water dispersion trench should be relocated to the disturbance area, so the disturbance area does not exceed 3,000 square feet.
- (3) The proposed disturbance area, as conditioned, meets the limitations established in the criteria and is the minimum practical intrusion given the size and shape of the wetland, wetland buffer and buffer setback. The proposed wetland mitigation plan will result in a significantly improved sensitive area and buffer.
- (4) To make future buyers aware of the development limitations placed on the subject property, a "Notice of Reasonable Use Permit" document, prepared by the City, should be recorded that outlines the restrictions within the approved site disturbance area along with a copy of the approved site plan and a reference to the separately recorded Natural Greenbelt Easement document.

5. Decisional Criterion 90.140.5.d: The proposal is compatible in design, scale and use with other legally established development in the immediate vicinity of the subject property in the same zone and with similar constraints.

a. Facts:

- (1) A three story, 3,669 square foot residence with a flat roof is proposed on the site. The total lot coverage will be 1,899 square feet with a total disturbance area of less than 3,000 square feet.
- (2) Two properties to the north of the subject property, at 9118 and 9206 126<sup>th</sup> Avenue NE, have received Reasonable Use Zoning permit approvals to construct new single family residences. Both properties were severely encumbered severely by wetlands and associated buffers.
- (3) The residence at 9118 126<sup>th</sup> Avenue NE was approved as a 3,927 square foot residence with a lot coverage total of 3,090 square feet and a disturbance area of approximately 5,623 square feet.
- (4) The residence at 9206 126<sup>th</sup> Avenue NE was approved as a 3,180 square foot residence with a lot coverage total of 3,075 square feet and a disturbance area of approximately 5,000 square feet.

- b. Conclusion: The proposed single family residence is compatible in design, scale and use with the existing single family homes in the neighborhood, including those with similar sensitive area constraints.

6. Decisional Criterion 90.140.5.e: The proposal utilizes to the maximum extent possible innovative construction, design, and development techniques, including pervious surfaces, which minimize to the greatest extent possible net loss of sensitive area functions and values.
  - a. Facts:
    - (1) The only paved surface proposed on the subject property is the driveway.
    - (2) The proposed sidewalk within the 126<sup>th</sup> Avenue right-of-way is located within the required wetland buffer.
  - b. Conclusion: To utilize innovative construction, design, and development techniques all paved surfaces, including the sidewalk within the 126<sup>th</sup> Avenue right-of-way, shall be constructed of pervious materials.
7. Decisional Criterion 90.140.5.f: The proposed development does not pose an unacceptable threat to the public health, safety or welfare on or off the property.
  - a. Facts: The proposal is to construct a residence in the wetland buffer, but not in the wetland. A wetland mitigation plan is proposed that will improve the quality and function of the wetland and wetland buffer (see Attachments 9).
  - b. Conclusion: The proposed development does not pose an unacceptable threat to the public health, safety or welfare on or off the property. The development will improve the function and quality of the sensitive area buffer.
8. Decisional Criterion 90.140.5.g: The proposal meets the mitigation, maintenance and monitoring requirements of KZC Chapter 90.
  - a. Facts:
    - (1) KZC Section 90.50 establishes the requirements for construction phase fencing and a permanent barrier along wetland buffers.
    - (2) KZC Chapter 90 requires an enhancement plan that meets certain standards and a 5-year monitoring and maintenance program with at least two yearly visits and a yearly report completed by a qualified professional.
    - (3) The applicant submitted a final wetland mitigation plan (see Attachments 8 and 9) that was reviewed by the The Watershed Company (see Attachment 10).
    - (4) KZC Section 90.145 establishes the performance and maintenance security requirements for projects involving sensitive areas.
    - (5) KZC Section 90.150 requires that Consistent with law, the applicant shall dedicate development rights, air space, or grant a greenbelt protection or open space easement to the City to protect sensitive areas and their buffers.

- (6) KZC Section 90.155 states that prior to issuance of a building permit, the applicant shall enter into an agreement with the City that runs with the property, in a form acceptable to the City Attorney, indemnifying the City from any claims, actions, liability and damages to sensitive areas arising out of development activity on the subject property (see Attachment 16).

b. Conclusions:

- (1) The proposed wetland mitigation plan meets the minimum standards of Chapter 90 KZC for mitigation, maintenance and monitoring.
- (2) As part of the building permit application, the applicant should submit:
  - (a) Development plans that incorporate the approved wetland buffer enhancement, monitoring, and maintenance plans.
  - (b) Erosion control plans, which should depict the location of a six-foot high construction phase fence along the boundary of the entire wetland buffer with silt screen fabric installed per City standard. The fencing should be installed prior to issuance of any permits. The fence should remain upright in the approved location for the duration of development activities.
  - (c) A financial security device to cover the cost of completing the buffer enhancement improvements. The security should be consistent with the standards outlined in Zoning Code section 90.145.
  - (d) Signed and notarized covenant that hold the City harmless against any future claims that may arise as a result of the development of the property (see Attachment 16).
- (3) Prior to final inspection of the building permit, the applicant should:
  - (a) Complete installation of the buffer enhancement plan, subject to inspection by the City's wetland consultant at the applicant's expense.
  - (b) Provide proof of a written contract with a qualified professional who will perform the monitoring program, together with a completed contract and fees to fund review of the monitoring and maintenance activities, (i.e. inspection of plant materials, annual monitoring reports or revegetation activities) by the City's wetland consultant. Alternatively, the applicant should provide a copy of a completed contract and fees to fund completion of the monitoring program by the City's wetland consultant.
  - (c) Provide proof of a written contract to cover maintenance activities outlined in the buffer report.

- (d) Dedicate a Natural Greenbelt Protective Easement (NGPE) over all wetland and wetland buffer areas not impacted by the proposed development (see Attachment 14). All surveys should be located on KCAS or plat bearing system and tied to known monuments.
  - (e) Install either 1) a permanent 3 to 4 foot tall split rail fence, or 2) permanent planting of equal barrier value between the boundary of the wetland buffer and the developed portion of the site.
  - (f) Submit to the Planning Department a financial security device to cover all monitoring and maintenance activities that will need to be done including wetland consultant site visits, reports to the Planning Department, and any vegetation that needs to be replaced. The security should be consistent with the standards outlined in Zoning Code section 90.145.
9. Decisional Criterion 90.140.5.h: The inability to derive reasonable use is not the result of actions by the applicant after the effective date of the ordinance codified in Chapter 90 KZC or its predecessor.
- a. Facts:
    - (1) The subject property was platted as part of Burke and Farrar's Kirkland Addition to the City of Seattle Division No. 14 in 1911.
    - (2) The site contains a Type I wetland and associated required buffer.
  - b. Conclusion: The inability to derive reasonable use is not the result of actions by the applicant after the effective date of the ordinance codified in Chapter 90 KZC or its predecessor. It results from the fact that the entire site is impacted by the Type I wetland and associated required buffer.
10. Decisional Criterion 90.140.5.i: The granting of the exception will not confer on the applicant any special privilege that is denied by Chapter 90 KZC to other lands, buildings, or structures under similar circumstances.
- a. Facts:
    - (1) The applicant requests construction of a single family home with a footprint of 1,286 square feet, a floor area ratio of 25.9% and lot coverage of approximately 13.8% (see Attachment 2).
    - (2) Two property owners to the north of subject property have received approval of reasonable use exceptions to allow the construction of similar sized single family residences.
  - b. Conclusion: The granting of the exception will not confer on the applicant any special privilege that is denied by Chapter 90 KZC to other lands, buildings, or structures under similar circumstances.

11. Modification and Conditions 90.140.6: The City may approve reduction in required yards or buffer setbacks and may allow the maximum height of structures to be increased up to five feet to reduce the impact on the sensitive area and sensitive area buffer. The City shall include in the written decision any conditions and restrictions that the City determines are necessary to eliminate or minimize any undesirable effects of approving the exception.

a. Facts:

- (1) In order to reduce the impacts on the wetland buffer, the applicant is requesting the following modifications as part of this application:
  - Reduction of the front required yard from 10 feet to 20 feet (addressed in Section II.D.12)
  - Allowing rear stairs to be extend approximately 4 feet into the rear buffer setback.
  - Increasing the maximum allowable height from 30 feet to 34.82 feet.
- (2) As discussed in section II.D.4, Staff is requiring that the north side buffer setback be reduced to 9.92 feet in order to reduce the disturbance area to less than 3,000 square feet.
- (3) One potential impact of the proposed buffer setback modifications is the impacts to the wetland buffer during construction and during post construction maintenance activities.
- (4) The Watershed Company considers a 5 foot setback from the wetland buffer the minimum necessary to allow for maintenance of structures.
- (5) The applicant is proposing to increase the height of the proposed residence to allow construction of a reasonable sized residence and lessen the impacts to the wetland buffer.

b. Conclusion:

- (1) The proposed modifications, as allowed by KZC Section 90.140.6, are approved. Any changes to the site plan must be reviewed and approved by the Planning Department.
- (2) As mentioned previously in Section II.D.5, the proposed residence is comparable in size to neighboring properties that had the similar constraints, but will have a lesser impact to the wetland buffer. The wetland buffer impacts have been reduced by increasing the height of the proposed residence, which allowed for a decrease in the residence's footprint and lot coverage.

12. Decisional Criterion 90.140.7.a: Under an administrative review through a Process I, the required front yard setback may be reduced by up to 50% where the applicant demonstrates that the development cannot meet the City's code requirements without encroaching into the sensitive area buffer.
  - a. Facts:
    - (1) The entire site contains a Type I wetland and associated required buffer (see Attachment 9).
    - (2) The applicant proposes a 50% reduction in the front yard setback from 20 feet to 10 feet to reduce the encroachment into the sensitive area buffer.
  - b. Conclusion: The applicant has demonstrated that the development cannot meet the City's code requirements without encroaching into the sensitive area buffer. A 50% reduction in the front yard setback should be approved.
13. Decisional Criterion 90.140.7.b: Under an administrative review through a Process I, the encroachment of the proposed development shall only be into the sensitive area buffer and not the sensitive area.
  - a. Facts: The proposal encroaches into the wetland buffer, but will not impact the Type I wetland (see Attachment 2).
  - b. Conclusion: The proposal meets the administrative approval limitation of not encroaching into the wetland.

#### **E. GENERAL PROCESS I APPROVAL CRITERIA**

1. Fact: KZC 145.45.2 states that a Process I application may be approved if it is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and it is consistent with the public health, safety, and welfare.
2. Conclusion: With the recommended conditions of approval, the proposal complies with the criteria in KZC 145.45. It is consistent with all applicable development regulations (see Section II.E) and the Comprehensive Plan (see Section II.F). In addition, it is consistent with the public health, safety, and welfare because it will allow reasonable use of a property while improving the quality and function of the sensitive area buffer.

#### **F. COMPREHENSIVE PLAN**

1. Facts:
  - a. The subject property is located within the North Rose Hill neighborhood. Figure NRH-4 on page XV.F-11 designates the subject property for low density residential; with a density of 6 dwelling units per acre (see Attachment 13).
  - b. The Natural Environment policy in the Everest Neighborhood Plan (page XV.E-1) states that structures should be sited away from wetland, lake, or stream areas, consistent with the natural environment policies and regulations. Building should be set back and sensitive area buffers should be maintained when development adjoins sensitive areas.

- c. The following policies listed in the Natural Environment Element of the Comprehensive Plan are applicable to the proposal:
- (1) Policy NE-1.6: Strive to minimize human impacts on habitat areas.
    - (a) This policy is addressed by KZC 90.50 requiring that the applicant install a barrier (split rail fence or vegetative barrier) at the edge of the wetland buffer.
    - (b) KZC 90.150 further addresses Policy NE 1.6 by requiring dedication of development rights, air space, or granting a greenbelt protection or open space easement to the City to protect sensitive areas and their buffers. The City will require a NGPE to restrict activities that may occur within the wetland and wetland buffer (see Attachment 13).
  - (2) Policy NE-2.2: Protect surface water functions by preserving and enhancing natural drainage systems wherever possible.
    - (a) Steps to limit damage include minimizing creation of new impervious surfaces, maximizing use of soils and vegetation in slowing and filtering runoff, and installing structural slow control facilities at redeveloping sites where appropriate to mimic predevelopment hydrologic regime.

2. Conclusions:

- a. The proposed use is consistent the North Rose Hill Neighborhood Plan.
- b. The proposal preserves the existing wetland on site in its natural state. The proposal will result in the removal of invasive plants covering the wetland buffer and the installation of appropriate wetland buffer plantings.
- c. With the inclusion of a split rail fence at the edge of the disturbance area, recording of a NGPE over all non-impacted areas, limiting encroachment of structures and improvements within the buffer setback from the sensitive area, requiring the use of pervious paving materials, and requiring all roof and driveway drainage to be collected and conveyed to an approved on-site dispersal system, the proposal would be consistent with the Natural Environment Element of the Comprehensive Plan.

**G. DEVELOPMENT REVIEW COMMITTEE**

1. Fact: Additional comments and requirements placed on the project are found on the Development Standards Sheet, Attachment 3.
2. Conclusion: The applicant should follow the requirements set forth in Attachment 3.

**II. SUBSEQUENT MODIFICATIONS**

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

### **III. APPEALS AND JUDICIAL REVIEW**

The following is a summary of the deadlines and procedures for an appeal and judicial review. Any person wishing to file or respond to an appeal should contact the Planning Department for further procedural information.

#### **A. APPEALS**

KZC 145.60 allows the Planning Director's decision to be appealed to the Hearing Examiner by the applicant or any person who submitted written comments or information to the Planning Director. A party who signed a petition may not appeal unless such party also submitted independent written comments or information. The appeal must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5:00p.m., *December 10, 2008* fourteen (14) calendar days following the postmarked date of distribution of the Director's decision.

#### **B. JUDICIAL REVIEW**

KZC 145.110 allows the action of the City in granting or denying this zoning permit to be reviewed in King County Superior Court. The petition for review must be filed within 21 calendar days of the issuance of the final land use decision by the City.

### **IV. LAPSE OF APPROVAL**

**A.** Under KZC 145.115, the applicant must begin the use of land, approved under Chapter 145, within four (4) years after the final approval on the matter, or the decision becomes void. Provided, however, that in the event judicial review is initiated per KZC 145.110, the running of the four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the required development activity, use of land, or other actions.

### **V. APPENDICES**

1. Vicinity Map
2. Development Plans dated September 4, 2008
3. Development Standards
4. SEPA Determination
5. Reasonable Use Analysis prepared by Altmann Oliver Associates dated January 29, 2008
6. Reasonable Use Mitigation Plan dated January 28, 2008
7. The Watershed Company's First Review Letter dated April 11, 2008
8. Revised Reasonable Use Analysis prepared by Altmann Oliver Associates dated May 16, 2008
9. Revised Reasonable Use Mitigation Plan dated May 16, 2008
10. The Watershed Company's Final Review Letter dated June 4, 2008
11. Arborist Report prepared by Gilles Consulting dated January 24, 2008
12. RS Use Zone Chart
13. North Rose Hill Neighborhood Land Use Map
14. Natural Greenbelt Protection Easement
15. Geologically Hazardous Areas Covenant
16. Save Harmless Agreement – Wetland

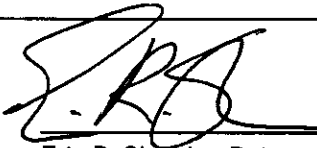
**VI. PARTIES OF RECORD**

Applicant: Geordy Rostad, 233 10<sup>th</sup> Avenue NE, Kirkland, WA 98033  
Department of Planning and Community Development  
Department of Public Works  
Department of Building and Fire Services

Review by Planning Director:

I concur  I do not concur

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

 11/19/08  
Eric R. Shields Date