

RESOLUTION NO. 2474

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND, AUTHORIZING SETTLEMENT OF CERTAIN LAWSUITS NOW PENDING IN KING COUNTY SUPERIOR COURT IN WHICH THE CITY APPEARS AS DEFENDANT, AND AUTHORIZING AND DIRECTING THE ATTORNEY FOR THE CITY OF KIRKLAND TO SIGN ON BEHALF OF THE CITY THE STIPULATION FOR ENTRY OF ORDER, JUDGMENT AND DECREE.

WHEREAS, Local Improvement District No. 115 provides for a complex series of necessary public improvements, including streets, water facilities for both fire and domestic use requirements, storm drainage facilities, sanitary sewer facilities, and certain improvements in stream bed protections to Forbes Creek; and

WHEREAS, as provided in the ordinance creating Local Improvement District No. 115, the cost of the improvements is to be paid for by a grant from the United States in the approximate amount of one million dollars, with the balance of the estimated cost to be paid by Local Improvement District assessments against the property within the District; and

WHEREAS, a challenge to the validity of the formation of Local Improvement District No. 115 has been raised in King County Superior Court Cause No. 828778 by Kirkland Sand and Gravel, Inc. and others, primarily alleging that the inclusion of their properties within the Local Improvement District boundaries, which included virtually only property zoned light industrial, was arbitrary and capricious in light of the subsequent change in zoning on the plaintiffs' property from light industrial to Planned Area Nine less than a month later; and

WHEREAS, said parties in King County Superior Court Cause No. 828976, and Wallace Litchfield in King County Superior Court Cause No. 830556, have also challenged the adoption of and validity of the new Land Use Policies or Comprehensive Plan and the Zoning Code for the City of Kirkland, as adopted pursuant to Ordinances No. 2346 and 2347; and

WHEREAS, there has been presented to the Kirkland City Council a proposed Stipulation for settlement of all three of said lawsuits; and

WHEREAS, the continued pendency of King County Superior Court Cause No. 828778 impedes the ability of the City to proceed with the improvements provided for by Local Improvement District No. 115; and

WHEREAS, the City Council, having reviewed said proposed Stipulation and considered the same in the light of the Land Use Policies and zoning amendments adopted for Planned Area Nine (all of the properties subject to the three lawsuits constitute Planned Area Nine) under Ordinance No. 2346 and Ordinance No. 2347, concludes that the residential land use and maximum potential developed density of said Planned Area Nine which may be developed pursuant to the proposed Stipulation for settlement, including the conditions imposed therein on development, is in general conformity with the policies and guidelines and land use regulations for Planned Area Nine, and neither substantially nor significantly differs from the land use and maximum potential developed density available for Planned Area Nine under Ordinances No. 2346 and 2347; and

WHEREAS, fair and reasonable resolution of litigation through settlement is, when possible to obtain, within the public interest and a public benefit;


NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Kirkland as follows:

Section 1. The attorney for the City of Kirkland is hereby authorized and directed to sign on behalf of the City of Kirkland, the Stipulation for Entry of Order, Judgment and Decree, a copy of which is attached to the original of this Resolution as Exhibit A, and by this reference is incorporated herein, and to present the same together with appropriate orders, judgments and decrees carrying out said Exhibit A to the court for entry.


Section 2. Upon entry of the Order, Judgment and Decree, the provisions thereof shall, insofar as the City of Kirkland is concerned, be administered as though said Order, Judgment and Decree were an integral part of the Land Use Policies Plan and the Zoning Code Regulations of the City of Kirkland, insofar as they apply to Planned Area Nine.

PASSED BY MAJORITY VOTE of the Kirkland City Council in regular meeting on the 7th day of November, 1977.

SIGNED IN AUTHENTICATION THEREOF on the 7th day of November, 1977.

  
MAYOR pro tem

ATTEST:

  
Director of Administration and Finance  
(ex officio City Clerk)

R-2474

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KIRKLAND SAND AND GRAVEL, INC., a )  
Washington corporation, et al, )

Plaintiffs, )

vs. )

CITY OF KIRKLAND, a municipal )  
corporation, )

Defendant. )

NO. 828 778

KIRKLAND SAND AND GRAVEL, INC., )  
et al, )

Plaintiffs, )

vs. )

CITY OF KIRKLAND, et al, )

Defendants. )

NO. 828 976

WALLACE H. LITCHFIELD, et ux, )

Plaintiffs, )

vs. )

CITY OF KIRKLAND, et al, )

Defendants. )

NO. 830 556

ORDER, JUDGMENT AND  
DECREE

The parties, by and through their respective counsel,  
having entered into a Stipulation for entry of this Order,  
Judgment, and Decree, and the city having reconsidered all  
of the evidence and records before it in adopting Ordinance  
No. 2346 and Ordinance No. 2347, and having adopted Resolution  
No. 2474, a copy of which is attached hereto and incorporated  
herein as Exhibit 7, and which authorizes the city to enter  
into the aforementioned stipulation and to enter this Judgment  
and Decree, and the court being fully advised,  
Order, Judg & Decree - 1

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

2 A. The above three actions be and the same are hereby  
3 consolidated.

4 B. This same Judgment shall be entered in all three  
5 actions.

6 C. The Litchfield ownership, being the subject  
7 property in King County Superior Court Cause No. 830556, as  
8 described in Exhibit 1 attached and incorporated herein, and  
9 as shown in yellow on Exhibit 3 attached, is and hereby  
10 remains zoned Planned Area Nine, with an underlying zoning  
11 of RS-5000, (i.e., residential development shall be allowed  
12 with a density of one dwelling unit per 5,000 square feet of  
13 land and without the requirement of a PUD or CUP). The  
14 owners shall be allowed to develop said area to a density of  
15 one dwelling unit per 3,600 square feet of land pursuant to  
16 RM-3600 standards in ch. 23.10 of Ordinance No. 2183 as  
17 amended by Ordinance No. 2347; provided, that development of  
18 the property at a density of one dwelling unit per 3,600  
19 square feet of land area shall be done pursuant to a planned  
20 unit development (ch. 23.28, Ordinance No. 2183 as amended by  
21 Ordinance No. 2347); provided, that the portion of said  
22 property lying south of N.E. 108th Street is to remain  
23 natural except as otherwise provided by the council under a  
24 PUD or CUP; provided, however, that said area shall be used  
25 in computing the density to determine the number of dwellings  
26 to be located on the property north of 108th. Except for  
27 the north half of Lot 40, Kirkland-Juanita Acre Tracts, where  
28 stacking shall not be permitted unless otherwise approved by  
29 the City Council within the PUD process, the city shall  
30 allow dwelling units to be clustered and/or stacked under  
31 said planned unit development as follows, to wit: two  
32 stories with dwelling units to be stacked on top of one

Order, Judg & Decree - 2

1 than one floor. The density bonus permitted in the PUD ch.  
2 23.28 of Ordinance No. 2183 as amended by Ordinance No. 2347  
3 shall not be utilized in determining the maximum density  
4 permitted by this order, judgment and decree.

5 E. The ownership of Kirkland Sand and Gravel and Van  
6 Smith, Carl Wagganer, Gary Stubenrauch, D. Smith, Lyle  
7 Stubenrauch and Al LePierre and their respective wives,  
8 described in Exhibit 4, and shown in blue on Exhibit 3, is  
9 and hereby remains zoned Planned Area Nine with an underlying  
10 zoning of RS-5000, (i.e., residential development shall be  
11 allowed with a density of one dwelling unit per 5,000 square  
12 feet of land and without the requirement of a PUD or CUP)  
13 and will be permitted to be developed to RS-5000 standards;  
14 provided, that that portion of the property not heretofore  
15 zoned light industrial south of Northeast 108th Street may  
16 not be developed to RS-5000 standards unless done through a  
17 PUD or CUP process. The city shall allow dwelling units to  
18 be clustered and stacked under a planned unit development as  
19 follows, to wit: two stories with dwelling units to be  
20 stacked on top of one another; provided, that in the areas  
21 where the topography permits, the owner shall be allowed to  
22 build three stories with dwelling units on each floor so  
23 long as access can be gained to all three floors by walking  
24 up or down no more than one floor. The density bonus permitted  
25 in the PUD ch. 23.28 of Ordinance No. 2183 as amended by  
26 Ordinance No. 2347 shall not be utilized in determining the  
27 maximum density permitted by this order, judgment and decree.

28 F. Lots 6, 7, 16 and 17, of Burke & Farrar's Kirkland  
29 Addition to the City of Seattle, Division No. 9, all of  
30 which lie outside of Planned Area Nine and the zoning for  
31 which was not changed through adoption of Ordinance No.  
32 2347, are excluded from this order, judgment and decree;

Order, Judg & Decree - 4

1 another; provided that in areas where topography permits the  
2 owner shall be allowed to build three stories with dwelling  
3 units on each story so long as access to all three floors  
4 may be gained by walking up or down no more than one floor.  
5 The density bonus permitted in the PUD ch. 23.28 of Ordinance  
6 No. 2183 as amended by Ordinance No. 2347 shall not be  
7 utilized in determining the maximum density permitted by  
8 this order, judgment and decree.

9 D. The ownership of Kirkland Sand and Gravel and  
10 others, as described in Exhibit 2 and as shown in red on  
11 Exhibit 3, is and hereby remains zoned Planned Area Nine,  
12 with an underlying zoning of RS-5000, (i.e., residential  
13 development shall be allowed with a density of one dwelling  
14 unit per 5,000 square feet of land and without the requirement  
15 of a PUD or CUP). The owners shall be allowed to develop  
16 said area to a density of one dwelling unit per 3,600 square  
17 feet of land pursuant to RM-3600 standards in ch. 23.10 of  
18 Ordinance No. 2183 as amended by Ordinance No. 2347; provided,  
19 that development of the property at a density of one dwelling  
20 unit per 3,600 square feet of land area shall be done pursuant  
21 to a planned unit development (ch. 23.28 of Ordinance No. 2183  
22 as amended by Ordinance No. 2347). Except for the south  
23 half of Tract 17, Kirkland-Juanita Acre Tracts, where  
24 stacking shall not be permitted unless otherwise approved by  
25 the City Council within the PUD or CUP process, the city  
26 shall allow dwelling units to be clustered and stacked under  
27 said planned unit development as follows, to wit: two  
28 stories with dwelling units to be stacked on top of one  
29 another; provided, that in the areas where the topography  
30 permits, the owner shall be allowed to build three stories  
31 with dwelling units on each floor so long as access can be  
32 gained to all three floors by walking up or down no more  
Order, Judg & Decree - 3

1 provided, that the owners will be permitted to request that  
2 these lots be made part of Planned Area 9, or to include any  
3 or all said lots in a PUD to develop any of the subject  
4 properties.

5 G. It is acknowledged that there is a need for some  
6 buffering between the property zoned single-family residential  
7 to the north and east of Planned Area Nine and the development  
8 within Planned Area Nine. It is also acknowledged that the  
9 Litchfields do not have any definite development plans for  
10 their property and particularly for Tract 40 of their  
11 ownership. In addition, it is acknowledged that the Litchfields  
12 or their successors may ultimately develop a part of Tract  
13 40 for single-family purposes rather than at a higher  
14 density.

15 Accordingly, that portion of Tract 40 shown in  
16 green on Exhibit 3 is intended to only represent in general  
17 terms the need for a buffer between the single-family  
18 residential area and areas within Planned Area Nine devel-  
19 oped to a higher density. In determining the size and  
20 location of said buffers, it is further ORDERED, ADJUDGED  
21 AND DECREED that the following guidelines shall apply:

22 (1) If the north half of Tract 40 is:

23 (a) Used to compute density for the remaining  
24 development at one unit for every 3,600 square feet of  
25 ground contained therein; or

26 (b) Any portion thereof is developed to a  
27 density of one unit for every 3,600 square feet of ground,  
28 then the north 25 feet of Tract 40 shall be maintained as a  
29 buffer; or

30 (2) If the north half of Tract 40 is developed  
31 primarily for single-family residential, then a buffer of 20  
32 feet will be maintained between the single-family residential

Order, Judg & Decree - 5

1 development and that portion thereof developed at a higher  
2 density.

3 (3) It is further ORDERED, ADJUDGED AND  
4 DECREED that the delineation and size of the buffers as set  
5 forth above shall not be considered to be fixed or inflexible  
6 and that said above-specified buffers may be modified and  
7 adjusted as part of an approved planned unit development  
8 when reasonably required as a buffer between Planned Area  
9 Nine and the adjacent single-family neighborhoods.

10 With the exception of the north half of Tract 40  
11 which is discussed above, the areas shown in green on  
12 Exhibit 3 are intended to designate the general location and  
13 areas to be maintained as buffers and open space which may  
14 not be built upon without approval through a planned unit  
15 development or conditional use permit process.

16 It is further ORDERED, ADJUDGED AND DECREED that  
17 the areas which the property owners are ultimately required  
18 to maintain as buffers and open space may in any event be  
19 used for computing the density of dwelling units allowed on  
20 the remaining property and also for satisfying the obligation  
21 of the owner or owners to provide open space or greenbelts;  
22 provided, that with respect to Tract 40, that any portion  
23 thereof developed for single-family residential purposes may  
24 not be used to compute additional density allowed on the  
25 remaining portion of Tract 40 or on the remaining portions  
26 of the Litchfield ownership, which is outlined in yellow on  
27 Exhibit 3.

28 It is further ORDERED, ADJUDGED AND DECREED that  
29 predesignation of any buffer and open space area will not in  
30 any way be construed to require the owner or owners of the  
31 subject property to provide more open space or greenbelts  
32 than would otherwise be required in the normal planned unit

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Revised 11/7/77

POWELL, LIVENGOOD, SILVERNALE, CARTER & TJSBEM  
P.O. BOX L  
1515 MARKET STREET  
KIRKLAND, WASHINGTON 98033  
(206) 822-9281



1 development or conditional use process; and it is further  
2 agreed that setback requirements shall be based upon ownership  
3 boundaries.

4 H. The owner or owners of any of the subject property  
5 may develop any portion of the property described in Exhibits  
6 1, 2, and 4 as authorized by Ordinance No. 2183 as amended by  
7 Ordinance No. 2347 independent of the remaining ownerships  
8 and will be subject only to the area requirements for a  
9 normal planned unit development or conditional use permit as  
10 provided for in ch. 23.28 or ch. 23.56 of Ordinance No. 2183  
11 as amended by Ordinance No. 2347. Any development proposed  
12 under the terms of this Order, Judgment and Decree will be  
13 done in accordance with the applicable provisions of Ordinance  
14 No. 2183 as amended by Ordinance No. 2183 and if done under  
15 a PUD, will be done in accordance with ch. 23.28 or if done  
16 under a CUP, will be done under ch. 23.56 of Ordinance No.  
17 2183 as amended by Ordinance No. 2347 as presently enacted.

18 I. The city or its agents may come upon and may work  
19 on the property described in Exhibits 1, 2 and 4 within 100  
20 feet on each side of the centerline of Forbes Creek in order  
21 to accomplish the Forbes Creek improvement work heretofore  
22 authorized and ordered by the city in connection with the  
23 LID 115 storm drainage and stream improvements, provided  
24 that said work will not in any way interfere with the normal  
25 business operation presently being conducted upon said  
26 property, and provided further that this authority will  
27 terminate in two years from date hereof.

28 J. For the purposes of ch. 23.10.110(5) or 23.08.130  
29 or 23.28.131 of Ordinance No. 2183 as amended by Ordinance  
30 No. 2347 or any other provision of the Subdivision Ordinance  
31 or the new Zoning Code for the City of Kirkland, the "assessed  
32 valuation" as to any of the property described in Exhibits

Order, Judg & Decree - 7  
Revised 11/7/77

POWELL, LIVENGOOD, SILVERNALE, CARTER & TJOBBEN  
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KIRKLAND, WASHINGTON 98033  
(206) 828-9281

1, 2 or 4 shall not exceed the "true and fair value" as determined by the King County Assessor for said property as residential property as distinguished from industrial property.

K. All of the property described in Exhibits 1, 2 and 4 shall be entitled to utilize the utilities provided by Local Improvement District 115. The amount of the preliminary assessment for Kirkland Sand and Gravel and the other plaintiffs named in King County Superior Court Cause No. 828778 is hereby reduced to \$ 130,323 based upon the change in design (Exhibit No. 5), and/or the computation or method of payment as shown in Exhibit No. 6. The statutory right of the owners of the property described in Exhibits 1, 2 and 4 to challenge the amount of the final LID assessment based upon the extent of special benefits, if any, to any or all of their property, shall not in any way be prejudiced or limited by the entry of this Order, Judgment and Decree.

L. The city shall proceed in good faith to process any and all applications for developments proposed for the property described in Exhibits 1, 2 and 4 in the manner prescribed in this Order, Judgment and Decree, it being the intent hereof that the plaintiffs or their successors or assigns may develop the properties described in Exhibits 1, 2, and 4 as envisioned herein; provided, that this Order, Judgment and Decree judgment shall not be effective as to any application for planned unit development filed with the city more than twelve (12) years after the date of entry hereof.

M. In the event it becomes necessary for either party to bring or institute any judicial proceeding to enforce any of the provisions of this Order, Judgment and Decree, the prevailing party shall be entitled to reasonable attorneys' fees, expert witness fees, and costs.

Order, Judg & Decree - 8  
Revised 11/7/77

POWELL, LIVENGOOD, SILVERNALE, CARTER & TJOEBEK  
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1 N. Except as provided in the prior paragraph, each  
2 party hereto shall bear their own attorneys' fees and costs  
3 incurred herein.


4 O. This Order, Judgment and Decree shall be for the  
5 benefit of, and shall be binding upon, all successors and  
6 assigns of each party hereto.

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each of  
8 the above-entitled causes of action, being Cause No. 828778,  
9 Cause No. 828976, and Cause No. 830556, are hereby dismissed  
10 with prejudice and without costs and attorneys' fees to any  
11 party herein.

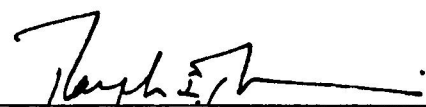
12 DATED this 8 day of November, 1977.

13   
14 HERBERT BERGER  
15 JUDGE

16 Presented by:

17   
18 ROBERT P. TJSSEM  
19 OF POWELL, LIVENGOOD, SILVERNALE,  
20 CARTER & TJSSEM  
21 Attorneys for Plaintiffs-Petitioners

22 APPROVED FOR ENTRY AND NOTICE  
23 OF PRESENTATION WAIVED:

24   
25 RALPH I. THOMAS  
26 OF OSTRANDER, VAN EATON, THOMAS  
27 & FERRELL  
28 Attorneys for Defendants  
29  
30  
31  
32

Order, Judg & Decree - 9  
Revised 11/7/77

POWELL, LIVENGOOD, SILVERNALE, CARTER & TJSSEM  
P.O. BOX 1  
1212 MARKET STREET  
KIRKLAND, WASHINGTON 98033

EXHIBIT NO. 1

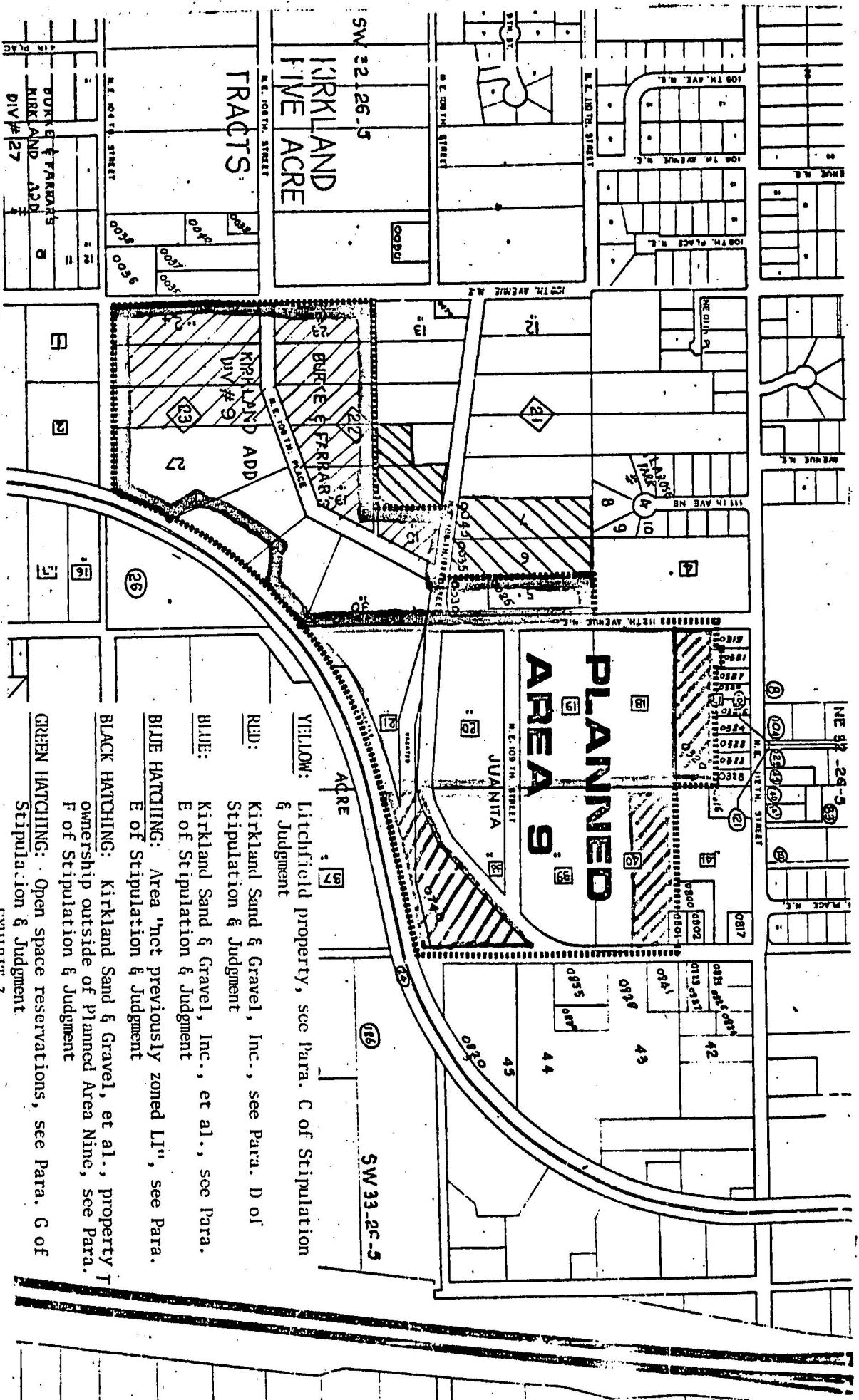
All that portion of the Kirkland-Juanita Acre Tracts more particularly described as follows:

Tract 38, together with the vacated street and/or right-of-way adjacent thereto, Tract 39 and Tract 40, less the North 25 feet of the East 250 feet of Tract 40, as per the Plat recorded in Volume 16 of Plats, page 63, records of King County, Washington, less all county roads.

EXHIBIT NO. 2

All that portion of the Kirkland-Juanita Acre Tracts more particularly described as follows:

The South one-half of Tract 17, together with Tracts 18, 19, 20 and 21, together with the vacated street and/or right-of-way adjacent to Tract 21, less that portion of Tract 21 acquired in fee by the Municipality of Metropolitan Seattle (METRO), as per the plat recorded in Volume 16 of Plats, page 63, records of King County, Washington, less all county roads.



**PLANNED AREA 9**

KIRKLAND FIVE ACRE TRACTS

BURKE & FRARRA'S

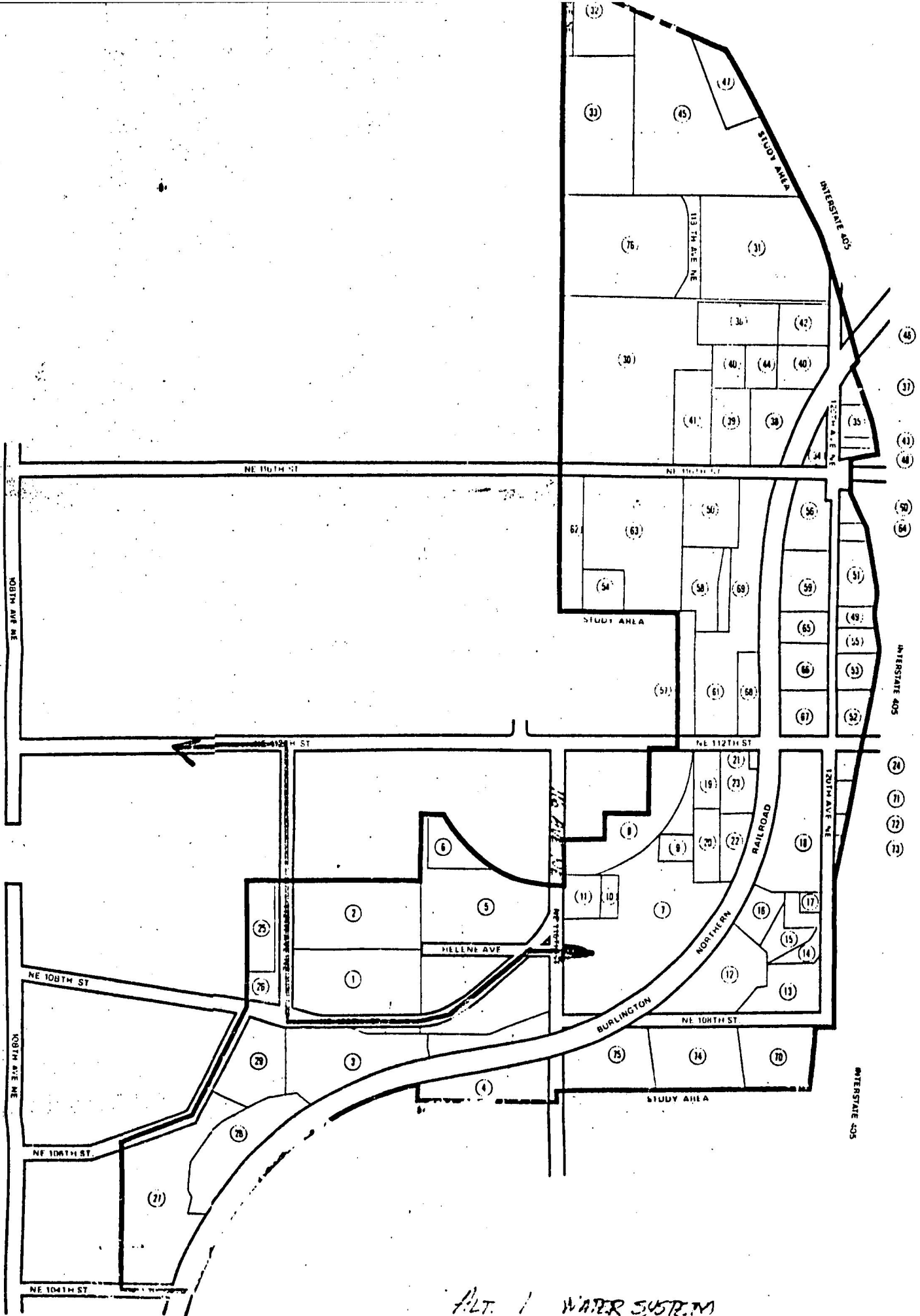
JUANITA

- RED: Kirkland Sand & Gravel, Inc., see Para. D of Stipulation & Judgment
- BLUE: Kirkland Sand & Gravel, Inc., et al., see Para. E of Stipulation & Judgment
- BLUE HATCHING: Area "not previously zoned LI", see Para. E of Stipulation & Judgment
- BLACK HATCHING: Kirkland Sand & Gravel, et al., property T ownership outside of Planned Area Nine, see Para. F of Stipulation & Judgment
- GREEN HATCHING: Open space reservations, see Para. G of Stipulation & Judgment

EXHIBIT NO. 4

All that portion of Burke & Farrar's Kirkland Addition to the City of Seattle, Division No. 9, more particularly described as follows:

Lot 5, Block 21, together with Lots 18, 19, 20, 21, 22 and 23, Block 22, together with Lots 24, 25, 26, 27, 28, 29 and 30, Block 23, less that portion of Lots 28, 29 and 30, Block 23, acquired in fee by the Municipality of Metropolitan Seattle (METRO), as per the Plat recorded in Volume 19 of Plats, page 69, records of King County, Washington, less all county roads.



ALT. 1 WATER SYSTEM

WEST OF 116TH AVE NE



EXHIBIT 6

L.I.D. ASSESSMENTS - ALTERNATE IC

<u>Parcel</u>	<u>Sewer</u>	<u>Water</u>	<u>Roads</u>	<u>Drainage</u>	<u>TOTAL</u>
1	\$ 8,796	\$ 18,742	\$ 7,740	\$ 2,940	\$ 38,218
2	4,166	4,166	7,499	2,916	18,747
3	7,200	17,320	6,212	2,428	33,160
5	15,648	21,270	14,472	5,628	57,018
6	956	955	1,720	669	4,300
25	1,100	1,100	1,980	770	4,950
26	1,228	4,082	1,190	463	6,963
27	0	0	9,324	3,626	12,950
29	3,446	6,695	3,740	1,454	15,335
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	\$42,540	\$ 74,330	\$53,877	\$20,894	\$191,641

Kirkland Sand & Gravel (1,2,3, & 26)	\$97,088
Litchfield (5 & 6)	61,318
Wegener (25)	4,950
Stubenrauch (27 & 29)	28,285
	<hr/>
TOTAL	\$191,641

RESOLUTION NO. 22474

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND, AUTHORIZING SETTLEMENT OF CERTAIN LAWSUITS NOW PENDING IN KING COUNTY SUPERIOR COURT IN WHICH THE CITY APPEARS AS DEFENDANT, AND AUTHORIZING AND DIRECTING THE ATTORNEY FOR THE CITY OF KIRKLAND TO SIGN ON BEHALF OF THE CITY THE STIPULATION FOR ENTRY OF ORDER, JUDGMENT AND DECREE.

WHEREAS, Local Improvement District No. 115 provides for a complex series of necessary public improvements, including streets, water facilities for both fire and domestic use requirements, storm drainage facilities, sanitary sewer facilities, and certain improvements in stream bed protections to Forbes Creek; and

WHEREAS, as provided in the ordinance creating Local Improvement District No. 115, the cost of the improvements is to be paid for by a grant from the United States in the approximate amount of one million dollars, with the balance of the estimated cost to be paid by Local Improvement District assessments against the property within the District; and

WHEREAS, a challenge to the validity of the formation of Local Improvement District No. 115 has been raised in King County Superior Court Cause No. 828778 by Kirkland Sand and Gravel, Inc. and others, primarily alleging that the inclusion of their properties within the Local Improvement District boundaries, which included virtually only property zoned light industrial, was arbitrary and capricious in light of the subsequent change in zoning on the plaintiffs' property from light industrial to Planned Area Nine less than a month later; and

WHEREAS, said parties in King County Superior Court Cause No. 828976, and Wallace Litchfield in King County Superior Court Cause No. 830556, have also challenged the adoption of and validity of the new Land Use Policies or Comprehensive Plan and the Zoning Code for the City of Kirkland, as adopted pursuant to Ordinances No. 2346 and 2347; and

WHEREAS, there has been presented to the Kirkland City Council a proposed Stipulation for settlement of all three of said lawsuits; and

WHEREAS, the continued pendency of King County Superior Court Cause No. 828778 impedes the ability of the City to proceed with the improvements provided for by Local Improvement District No. 115; and

Exhibit 7

WHEREAS, the City Council, having reviewed said proposed Stipulation and considered the same in the light of the Land Use Policies and zoning amendments adopted for Planned Area Nine (all of the properties subject to the three lawsuits constitute Planned Area Nine) under Ordinance No. 2346 and Ordinance No. 2347, concludes that the residential land use and maximum potential developed density of said Planned Area Nine which may be developed pursuant to the proposed Stipulation for settlement, including the conditions imposed therein on development, is in general conformity with the policies and guidelines and land use regulations for Planned Area Nine, and neither substantially nor significantly differs from the land use and maximum potential developed density available for Planned Area Nine under Ordinances No. 2346 and 2347; and

WHEREAS, fair and reasonable resolution of litigation through settlement is, when possible to obtain, within the public interest and a public benefit;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Kirkland as follows:

Section 1. The attorney for the City of Kirkland is hereby authorized and directed to sign on behalf of the City of Kirkland, the Stipulation for Entry of Order, Judgment and Decree, a copy of which is attached to the original of this Resolution as Exhibit A, and by this reference is incorporated herein, and to present the same together with appropriate orders, judgments and decrees carrying out said Exhibit A to the court for entry.

Section 2. Upon entry of the Order, Judgment and Decree, the provisions thereof shall, insofar as the City of Kirkland is concerned, be administered as though said Order, Judgment and Decree were an integral part of the Land Use Policies Plan and the Zoning Code Regulations of the City of Kirkland, insofar as they apply to Planned Area Nine.

PASSED BY MAJORITY VOTE of the Kirkland City Council in regular meeting on the 7 day of November, 1977.

SIGNED IN AUTHENTICATION THEREOF on the 7 day of November, 1977.

(S) \_\_\_\_\_  
MAYOR

ATTEST:

(S) \_\_\_\_\_  
Director of Administration and Finance  
(ex officio City Clerk)

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KIRKLAND SAND AND GRAVEL, INC., a )  
Washington corporation, et al, )

Plaintiffs, )

vs. )

NO. 828 778

CITY OF KIRKLAND, a municipal )  
corporation, )

Defendant. )

\_\_\_\_\_  
KIRKLAND SAND AND GRAVEL, INC., )  
et al, )

Plaintiffs, )

vs. )

NO. 828 976

CITY OF KIRKLAND, et al, )

Defendants. )

\_\_\_\_\_  
WALLACE H. LITCHFIELD, et ux, )

Plaintiffs, )

vs. )

NO. 830 556

CITY OF KIRKLAND, et al, )

Defendants. )

STIPULATION FOR ENTRY  
OF ORDER, JUDGMENT AND  
DECREE

The City Council of the City of Kirkland having auth-  
orized by resolution its City Attorney to execute the  
following stipulation,

NOW, THEREFORE, the parties hereto, by and through  
their attorneys of record, hereby stipulate to the entry of  
an order, judgment and decree in the above-entitled (con-  
solidated) cases as follows:

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DECLARATIONS

1  
2           1. Over the past several years the City of Kirkland  
3 has carried on and completed an extensive review of land use  
4 and development issues and policies as they pertain to the  
5 Consolidated City of Kirkland (Being the successor to the  
6 former cities of Kirkland and Houghton).

7           2. As a result thereof, the Kirkland City Council on  
8 May 15, 1977, adopted a new Land Use Policies or Comprehensive  
9 Plan as Ordinance No. 2346, entitled:

10           An ordinance of the Consolidated City of Kirkland  
11 adopting a comprehensive policies plan including  
12 goals, policies and guidelines for the present and  
13 future development and land use for the entire  
14 Consolidated City of Kirkland and its neighborhood  
and certain amendments to the Zoning Code and Zoning Map  
as Ordinance No. 2347, entitled:

15           An ordinance of the City of Kirkland relating to  
16 planning and zoning, amending Ordinance No. 2183  
17 and comprehensive zoning regulations for the City  
18 of Kirkland to be consistent with the Land Use  
Policies Plan adopted for the Consolidated City of  
Kirkland by Ordinance No. 2346.

19           3. Prior to the adoption of Ordinance No. 2347,  
20 approximately 30 acres of the properties of Kirkland Sand  
21 and Gravel and/or the Smith-Stubenrauch and/or LePierre  
22 families were zoned light industrial and approximately 14  
23 acres of the property owned by the Litchfields was zoned  
24 light industrial. These properties have over the past years  
25 been used for industrial purposes and quarrying. The remainder  
26 of the properties owned by the parties were zoned single-  
27 family residential.

28           4. During the same period of time, the city, upon the  
29 petition of owners of property lying to the east and north  
30 and northeast of plaintiffs' properties commenced proceedings  
31 to create a Local Improvement District, and by Ordinance No.  
32 2345, adopted April 18, 1977, created Local Improvement  
Stipulation - 2

1 District No. 115, for the construction of certain public  
2 improvements within the area of the petitioning property  
3 owners and Planned Area Nine. Substantially all of the area  
4 included within the Local Improvement District at the time  
5 of its creation was either zoned or actually used for  
6 industrial purposes.

7 5. Local Improvement District No. 115 provides for a  
8 complex series of public improvements including streets,  
9 water facilities for both fire and domestic use requirements,  
10 storm drainage facilities, sanitary sewer facilities, and  
11 certain improvements and stream bed protections to Forbes  
12 Creek which extends through a portion of plaintiffs' properties.  
13 As provided in the ordinance creating Local Improvement  
14 District 115, the cost of the improvements is to be paid for  
15 by a grant from the United States in the approximate amount  
16 of \$1 million, with the balance of the estimated cost to  
17 be paid by Local Improvement District assessments against  
18 the property within the district.

19 6. The plaintiff Litchfield in King County Superior  
20 Court Cause No. 830556 has challenged the adoption of, and  
21 validity of, the new Land Use Policies or Comprehensive Plan  
22 and Zoning Code for the City of Kirkland, and the plaintiffs  
23 Kirkland Sand and Gravel, Inc., et al, have also challenged  
24 the adoption of, and the validity of the new Comprehensive  
25 Plan and Zoning Code for the City of Kirkland in King County  
26 Superior Court Cause No. 828976. Additionally, Kirkland  
27 Sand and Gravel, Inc., et al, have in King County Superior  
28 Court Cause No. 828778, challenged the formation of Local  
29 Improvement District 115 primarily alleging that the inclusion  
30 of their property within the Local Improvement District  
31 boundaries, which included virtually only properties zoned  
32 light industrial, was arbitrary and capricious in light of  
Stipulation - 3

1 the subsequent change in zoning on the plaintiffs' properties  
2 from light industrial to Planned Area Nine, less than a  
3 month later.

4 7. That the plaintiffs herein timely filed an appeal  
5 with respect to the adoption of Ordinance No. 2346 and  
6 Ordinance No. 2347 and accordingly said actions by the City  
7 of Kirkland are not final.

8 8. That the city recognizes that an increase in  
9 residential density is consistent with the general policies,  
10 goals, and guidelines of the comprehensive plan and with the  
11 evidence and the record submitted at the time of the hearings  
12 thereon, which was before the city when adopting said  
13 Comprehensive Plan, Ordinance No. 2346, and the zoning code,  
14 Ordinance No. 2183 as amended by Ordinance No. 2347. The  
15 city further recognizes and acknowledges that the Comprehensive  
16 Plan and the evidence and the record submitted in support  
17 thereof recognizes the need and justification for clustered  
18 and stacked housing on the property owned by the above-  
19 identified plaintiffs in the areas designated in the recent  
20 comprehensive plan and zoning code as Planned Area Nine; and  
21 further, that clustered and stacked housing in Planned Area  
22 Nine will better insure the goals of the comprehensive plan  
23 by providing for more open space, fewer roads and asphalt,  
24 and better views for the dwelling units to be located therein.

25 9. Planned Area Nine is recognized by the city to be  
26 a unique area and buffer between the adjacent industrial  
27 areas to the east sometimes known as Parmac Industrial Park  
28 and the Juanita Bay Valley to the west of Planned Area Nine.

29 10. Each party hereto wishes to settle and resolve all  
30 of the differences between the parties and in a manner  
31 entirely consistent with the Comprehensive Plan as finally  
32 adopted.

Stipulation - 4  
Rev. 10/24/77

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STIPULATION

NOW, THEREFORE, it is stipulated as follows:

It is agreed and stipulated that an order, judgment, and decree shall be entered as follows in the above-entitled causes:

A. That the above actions be and the same are hereby consolidated.

B. That the same Judgment shall be entered in all three actions consistent with the terms hereof.

C. That the Litchfield ownership, being the subject property in King County Superior Court Cause No. 830556, as described in Exhibit 1 attached and incorporated herein, and as shown in yellow on Exhibit 3 attached, is and hereby remains zoned Planned Area Nine, with an underlying zoning of RS-5000, (i.e., residential development shall be allowed with a density of one dwelling unit per 5,000 square feet of land and without the requirement of a PUD or CUP). The owners shall be allowed to develop said area to a density of one dwelling unit per 3,600 square feet of land pursuant to RM-3500 standards in ch. 23.10 of Ordinance No. 2183 as amended by Ordinance No. 2347; provided, that development of the property at a density of one dwelling unit per 3,600 square feet of land area shall be done pursuant to a planned unit development (ch. 23.28, Ordinance No. 2183 as amended by Ordinance No. 2347); provided, that the portion of said property lying south of N.E. 108th Street is to remain natural except as otherwise provided by the council under a PUD or CUP; provided, however, that said area shall be used in computing the density to determine the number of dwellings to be located on the property north of 108th. Except for the north half of Lot 40, Kirkland-Juanita Acre Tracts, where



1 stacking shall not be permitted unless otherwise approved by  
2 the City Council within the PUD process, the city shall  
3 allow dwelling units to be clustered and/or stacked under  
4 said planned unit development as follows, to wit: two  
5 stories with dwelling units to be stacked on top of one  
6 another; provided that in areas where topography permits the  
7 owner shall be allowed to build three stories with dwelling  
8 units on each story so long as access to all three floors  
9 may be gained by walking up or down no more than one floor.  
10 The density bonus permitted in the PUD ch. 23.28 of Ordinance  
11 No. 2183 as amended by Ordinance No. 2347 shall not be  
12 utilized in determining the maximum density permitted by  
13 this order, judgment and decree.

14 D. The ownership of Kirkland Sand and Gravel and  
15 others, as described in Exhibit 2 and as shown in red on  
16 Exhibit 3, is and hereby remains zoned Planned Area Nine,  
17 with an underlying zoning of RS-5000, (i.e., residential  
18 development shall be allowed with a density of one dwelling  
19 unit per 5,000 square feet of land and without the requirement  
20 of a PUD or CUP). The owners shall be allowed to develop  
21 said area to a density of one dwelling unit per 3,600 square  
22 feet of land pursuant to RM-3600 standards in ch. 23.10 of  
23 Ordinance No. 2183 as amended by Ordinance No. 2347; provided,  
24 that development of the property at a density of one dwelling  
25 unit per 3,600 square feet of land area shall be done pursuant  
26 to a planned unit development (ch. 23.28 of Ordinance No. 2183  
27 as amended by Ordinance No. 2347). Except for the south  
28 half of Tract 17, Kirkland-Juanita Acre Tracts, where  
29 stacking shall not be permitted unless otherwise approved by  
30 the City Council within the PUD or CUP process, the city  
31 shall allow dwelling units to be clustered and stacked under  
32

1 said planned unit development as follows, to wit: two  
2 stories with dwelling units to be stacked on top of one  
3 another; provided, that in the areas where the topography  
4 permits, the owner shall be allowed to build three stories  
5 with dwelling units on each floor so long as access can be  
6 gained to all three floors by walking up or down no more  
7 than one floor. The density bonus permitted in the PUD ch.  
8 23.28 of Ordinance No. 2183 as amended by Ordinance No. 2347  
9 shall not be utilized in determining the maximum density  
10 permitted by this order, judgment and decree.

11 E. The ownership of Kirkland Sand and Gravel and Van  
12 Smith, Carl Wagganer, Gary Stubenrauch, D. Smith, Lyle  
13 Stubenrauch and Al LePierre and their respective wives,  
14 described in Exhibit 4, and shown in blue on Exhibit 3, is  
15 and hereby remains zoned Planned Area Nine with an underlying  
16 zoning of RS-5000, (i.e., residential development shall be  
17 allowed with a density of one dwelling unit per 5,000 square  
18 feet of land and without the requirement of a PUD or CUP)  
19 and will be permitted to be developed to RS-5000 standards;  
20 provided, that that portion of the property not heretofore  
21 zoned light industrial south of Northeast 108th Street may  
22 not be developed to RS-5000 standards unless done through a  
23 PUD or CUP process. The city shall allow dwelling units to  
24 be clustered and stacked under a planned unit development as  
25 follows, to wit: two stories with dwelling units to be  
26 stacked on top of one another; provided, that in the areas  
27 where the topography permits, the owner shall be allowed to  
28 build three stories with dwelling units on each floor so  
29 long as access can be gained to all three floors by walking  
30 up or down no more than one floor. The density bonus permitted  
31 in the PUD ch. 23.28 of Ordinance No. 2183 as amended by  
32

1 Ordinance No. 2347 shall not be utilized in determining the  
2 maximum density permitted by this order, judgment and decree.

3 F. Lots 6, 7, 16 and 17, of Burke & Farrar's Kirkland  
4 Addition to the City of Seattle, Division No. 9, all of  
5 which lie outside of Planned Area Nine and the zoning for  
6 which was not changed through adoption of Ordinance No.  
7 2347, are excluded from this order, judgment and decree;  
8 provided, that the owners will be permitted to request that  
9 these lots be made part of Planned Area 9, or to include any  
10 or all said lots in a PUD to develop any of the subject  
11 properties.

12 G. It is acknowledged by both parties that there is  
13 a need for some buffering between the property zoned single-  
14 family residential to the north and east of Planned Area  
15 Nine and the development within Planned Area Nine. It is  
16 also acknowledged that the Litchfields do not have any  
17 definite development plans for their property and part-  
18 icularly for Tract 40 of their ownership. In addition, it  
19 is acknowledged that the Litchfields or their successors may  
20 ultimately develop a part of Tract 40 for single-family  
21 purposes rather than at a higher density.

22 Accordingly, it is agreed that that portion of  
23 Tract 40 shown in green on Exhibit 3 is intended to only  
24 represent in general terms the need for a buffer between the  
25 single-family residential area and areas within Planned Area  
26 Nine developed to a higher density. In determining the size  
27 and location of said buffers, it is also agreed that the  
28 following guidelines shall apply:

29 (1) If the north half of Tract 40 is:

30 (a) Used to compute density for the remaining  
31 development at one unit for every 3,600 square feet of  
32 ground contained therein; or

Stipulation - 8  
Revised 11/7/77

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1 (b) Any portion thereof is developed to a  
2 density of one unit for every 3,600 square feet of ground,  
3 then the north 25 feet of Tract 40 shall be maintained as a  
4 buffer; or

5 (2) If the north half of Tract 40 is developed  
6 primarily for single-family residential, then a buffer of 20  
7 feet will be maintained between the single-family residential  
8 development and that portion thereof developed at a higher  
9 density.

10 (3) It is also agreed that the delineation and  
11 size of the buffers as set forth above shall not be considered  
12 to be fixed or inflexible and that said above-specified  
13 buffers may be modified and adjusted as part of an approved  
14 planned unit development when reasonably required as a  
15 buffer between Planned Area Nine and the adjacent single-  
16 family neighborhoods.

17 With the exception of the north half of Tract 40,  
18 which is discussed above, the areas shown in green on  
19 Exhibit 3 are intended to designate the general location and  
20 areas to be maintained as buffers and open space which may  
21 not be built upon without approval through a planned unit  
22 development or conditional use permit process.

23 It is further agreed that the areas which the  
24 property owners are ultimately required to maintain as  
25 buffers and open space may in any event be used for computing  
26 the density of dwelling units allowed on the remaining  
27 property and also for satisfying the obligation of the owner  
28 or owners to provide open space or greenbelts; provided,  
29 that with respect to Tract 40, that any portion thereof  
30 developed for single-family residential purposes may not be  
31 used to compute additional density allowed on the remaining  
32 portion of Tract 40 or on the remaining portions of the

Stipulation - 9  
Revised 11/7/77

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1 Litchfield ownership, which is outlined in yellow on Exhibit  
2 3.

3 It is further agreed that the predesignation of  
4 any buffer and open space area will not in any way be  
5 construed to require the owner or owners of the subject  
6 property to provide more open space or greenbelts than would  
7 otherwise be required in the normal planned unit development  
8 or conditional use permit process; and it is further agreed  
9 that setback requirements shall be based upon ownership  
10 boundaries.

11 H. The owner or owners of any of the subject property  
12 may develop any portion of the property described in Exhibits  
13 1, 2, and 4 as authorized by Ordinance No. 2183 as amended  
14 by Ordinance No. 2347 independent of the remaining ownerships  
15 and will be subject only to the area requirements for a  
16 normal planned unit development or conditional use permit as  
17 provided for in ch. 23.28 or ch. 23.56 of Ordinance No. 2183  
18 as amended by Ordinance No. 2347. It is further agreed that  
19 any development proposed under the terms of this stipulation  
20 will be done in accordance with the applicable provisions of  
21 Ordinance No. 2183 as amended by Ordinance No. 2347 and if  
22 done under a PUD, will be done in accordance with ch. 23.28  
23 or if done under a CUP, will be done under ch. 23.56 of  
24 Ordinance No. 2183 as amended by Ordinance No. 2347 as  
25 presently enacted.

26 I. It is agreed that the city or its agents may come  
27 upon and may work on the property described in Exhibits 1, 2  
28 and 4 within 100 feet on each side of the centerline of  
29 Forbes Creek in order to accomplish the Forbes Creek improve-  
30 ment work heretofore authorized and ordered by the city in  
31 connection with the LID 115 storm drainage and stream  
32 improvements, provided that said work will not in any way

Stipulation - 10  
Revised 11/7/77

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1 interfere with the normal business operation presently being  
2 conducted upon said property, and provided further that this  
3 authority will terminate in two years from date hereof.

4 J. For the purposes of ch. 23.10.110(5) or 23.08.130  
5 or 23.28.131 of Ordinance No. 2183 as amended by Ordinance  
6 No. 2347 or any other provision of the Subdivision Ordinance  
7 or the new Zoning Code for the City of Kirkland, the "assessed  
8 valuation" as to any of the property described in Exhibits  
9 1, 2 or 4 shall not exceed the "true and fair value" as  
10 determined by the King County Assessor for said property as  
11 residential property as distinguished from industrial property.

12 K. All of the property described in Exhibits 1, 2 and  
13 4 will be entitled to utilize the utilities provided by  
14 Local Improvement District 115. The amount of the preliminary  
15 assessment for Kirkland Sand and Gravel and the other plaintiffs  
16 named in King County Superior Court Cause No. 828778 is  
17 hereby reduced to \$130,323 based upon the change in design  
18 (Exhibit No. 5), and/or the computation or method of payment  
19 as shown in Exhibit No. 6. The statutory right of the  
20 owners of the property described in Exhibits 1, 2 and 4 to  
21 challenge the amount of the final LID assessment based upon  
22 the extent of special benefits, if any, to any or all of  
23 their property, shall not in any way be prejudiced or  
24 limited by this stipulation.

25 L. The city will proceed in good faith to process any  
26 and all applications for developments proposed for the  
27 property described in Exhibits 1, 2 and 4 in the manner  
28 prescribed in this stipulation and the order, judgment and  
29 decree to be entered as a result hereof, it being the  
30 intent hereof that the plaintiffs or their successors or  
31 assigns may develop the properties described in Exhibits 1,  
32 2, and 4 as envisioned herein; provided, that this order and

Stipulation - 11  
Revised 10/26/77

SPIRITVIEW

LEGAL DESCRIPTION

That portion of Government Lot No. 4 in Section 8, T25N, R5E, W.M., in King County, Washington described as follows:

BEGINNING at the intersection of the east line of 102nd Avenue N.E. (formerly 2nd Street) as platted in French's Homestead Villa Division No. 1, as recorded in Vol. 20 of plats, Page 74, records of King County, Washington with the intersection of the north line of N.E. 62nd Street (formerly Pine Street) as platted in Burke & Farrar's Kirkland Addition to the City of Seattle, Division No. 30, as recorded in Vol. 25 of plats, Page 24, records of King County, Washington; thence N 89°24'50" E along said north line of N.E. 62nd Street, 310.40 feet to the true point of beginning; thence N 0°14'50" W, parallel to said east line of 102nd Avenue N.E., 359.52 feet to the south line of Block 3, French's Homestead Villa as recorded in Vol. 20 of plats, Page 24, records of King County, Washington; thence N 89°45'10" E along said south line, 477.21 feet to the west line of the Burlington Northern Railroad Company right-of-way; thence S 15°53'50" W along said west line, 73.26 feet; thence N 74°06'10" W, 30.00 feet; thence S 15°53'50" W, 130.00 feet; thence S 74°06'10" E, 30.00 feet; thence S 15°53'50" W, along said west line, 168.72 feet to the north line of the aforesaid N.E. 62nd Street; thence S 89°24'50" W along said north line 373.79 feet to the true point of beginning.

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Judgment shall not be effective as to any application for planned unit development filed with the city more than twelve (12) years after the date of entry hereof.

M. In the event it becomes necessary for either party to bring or institute any judicial proceeding to enforce any of the provisions of this stipulation, judgment, order and decree, the prevailing party shall be entitled to reasonable attorneys' fees, expert witness fees, and costs.

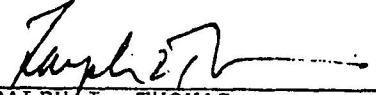
N. Except as provided in the prior paragraph, each party hereto shall bear their own attorneys' fees and costs incurred herein.

O. This agreement shall be for the benefit of, and shall be binding upon, all successors and assigns of each party hereto.

P. Each party agrees to approve and support for entry a judgment in all three actions incorporating the provisions of this stipulation and dismissing the actions with prejudice and which shall be a final and binding judgment on all of the parties.

DATED at Kirkland, Washington, this 7 day of ~~October~~ <sup>November</sup> 1977.

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CARTER & TJSSEM  
Attorneys for Plaintiffs-Petitioners.

  
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& FERRELL  
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Stipulation - 12  
Revised 10/26/77

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