

# CITY OF LYNDEN



Mayor  
Scott Korthuis

Council Members  
Gary Bode  
Ron De Valois  
Gerald Kuiken  
Nick H. Laninga  
Brent Lenssen  
Kyle Strengholt  
Mark Wohlrab

City Council - Regular Meeting  
Annex - 205 Fourth Street  
January 17, 2023

## **Call to Order**

## **Pledge of Allegiance**

## **Roll Call**

## **Oath of Office**

## **Summary Reports and Presentations**

## **Approval of Minutes**

- [1.](#) Draft Council Minutes – January 3, 2023

## **Citizen Comment**

## **Consent Agenda**

- [2.](#) Approval of Payroll and Claims
- [3.](#) Res-23-1060 Request to Cancel Checks
- [4.](#) Ord-23-1663 Setting the Final Property Tax Setting the Final Property Tax for 2023
- [5.](#) Letter of Commitment for Maintenance Building

## **Public Hearing - None**

## **Unfinished Business- None**

## **New Business**

- [6.](#) Final Plat Approval – Kamm Creek PRD

## **Other Business**

- [7.](#) Community Development Committee Minutes of 1-4-23
- [8.](#) Calendar

## **Executive Session**

## **Adjournment**

# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	January 17, 2023	
<b>Name of Agenda Item:</b>	Draft Council Minutes – January 3, 2023	
<b>Section of Agenda:</b>	Approval of Minutes	
<b>Department:</b>	Administration	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input checked="" type="checkbox"/> Other: N/A
		<b>Legal Review:</b>
		<input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
<b>Attachments:</b>	Draft Council Minutes – January 3, 2023	
<b>Summary Statement:</b>	Draft Council Minutes for Council review and possible approval.	
<b>Recommended Action:</b>	Review and approve draft minutes.	

# CITY OF LYNDEN

## CITY COUNCIL MINUTES OF REGULAR MEETING



January 3, 2023

### 1. CALL TO ORDER

Mayor Korthuis called to order the January 3, 2023 regular session of the Lynden city council at 7:00 p.m. at the city's council chambers.

### PLEDGE OF ALLEGIANCE

### ROLL CALL

Members present: Councilors Gary Bode, Ron De Valois, Gerald Kuiken, Brent Lenssen, Nick Laninga, and Mark Wohlrab.

Members absent: Councilor Strengholt absent with notice.

Staff present: Parks Director Brent DeRuyter, City Administrator John Williams, and City Clerk Pam Brown.

### OATH OF OFFICE – None

### SUMMARY REPORTS AND PRESENTATIONS - None

### APPROVAL OF MINUTES

*Councilor Wohlrab moved, and Councilor Kuiken seconded to approve the December 19, 2022, regular meeting minutes. Motion approved on 6-0 vote.*

### CITIZEN COMMENT

Chamber Director, Gary Vis, Front Street, Lynden

Mr. Vis provided Council with a brief overview of the 2022 year for Chamber of Commerce outcomes.

# CITY OF LYNDEN



## CITY COUNCIL MINUTES OF REGULAR MEETING

Some items he discussed were:

- Sales tax revenue origination and numbers
- The number of people visiting the Lynden area
- Social media numbers
- Importance of community connection on local business relationships
- The upcoming need to fill the position for an Event Coordinator

### 2. CONSENT AGENDA

#### Payroll Liability to December 18 through December 31, 2022

##### EFT & Other Liabilities

##### Non-L&I Liabilities

Monthly EFT .....	\$565,574.17
Check Liability .....	\$0.00
Total Non-L&I Liabilities .....	\$565,574.17
Quarterly Liabilities .....	\$15,626.67
<b>Total EFT &amp; Other Liabilities</b>	<b>\$581,200.84</b>

#### Approval of Claims – December 31, 2022 (Period 13)

Manual Warrants No.	=	through	=		\$0.00
EFT Payment Pre-Pays					\$2,240.60
				Sub Total Pre-Pays	\$2,240.60
Voucher Warrants No.	26352	through	26409		\$353,083.57
EFT Payments					\$203,417.87
				Sub Total	\$556,501.44
				Total Accts. Payable	\$558,742.04

***Motion made by Councilor De Valois seconded by Councilor Bode to approve the consent agenda as presented. Motion approved 5-0 with Councilor Laninga abstaining.***

# CITY OF LYNDEN

CITY COUNCIL  
MINUTES OF REGULAR MEETING



## 3. PUBLIC HEARING- None

## 4. UNFINISHED BUSINESS - None

## 5. NEW BUSINESS - None

## 6. OTHER BUSINESS

Council De Valois read the following into the official record:

The property the City of Lynden recently acquired from the Lynden School District needs to be officially named. I am proposing this park property be called Schoolyard Park in view of the long history related to this property. For reasons of simplicity, schoolyard should be one word. Several of Lynden's parks are named to reflect the history that lies behind the property. It's a practice Lynden should continue. This is significant community to name this four-acre parcel of land Schoolyard Park.

***Motion made by Councilor De Valois, seconded by Councilor Bode to name the property purchased from the Lynden School District, Schoolyard Park. Motion approved 6-0.***

## 7. EXECUTIVE SESSION

Council did not hold an executive session.

## 8. ADJOURNMENT

The January 3, 2023, regular session of the Lynden City Council adjourned at 7:10 P.M.

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Pamela D. Brown, City Clerk

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Scott Korthuis, Mayor

# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	January 17, 2023	
<b>Name of Agenda Item:</b>	Approval of Payroll and Claims	
<b>Section of Agenda:</b>	Consent	
<b>Department:</b>	Finance	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	<b>Legal Review:</b> <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
<b>Attachments:</b>	None	
<b>Summary Statement:</b>	Approval of Payroll and Claims	
<b>Recommended Action:</b>	Approval of Payroll and Claims	

# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	January 17, 2023	
<b>Name of Agenda Item:</b>	Resolution No. RES-23-1060 Request to Cancel Checks	
<b>Section of Agenda:</b>	Consent	
<b>Department:</b>	Finance	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
		<b>Legal Review:</b> <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
<b>Attachments:</b>		
RES-23-1060 Copy of cancellation memo.		
<b>Summary Statement:</b>		
<p>RCW 39.56.040 states that any registered or interest bearing warrants of any municipal corporation not presented within one year of the date of their call, or other warrants not presented within one year of their issue, shall be canceled by passage of a resolution of the governing body of the municipal corporation, and upon notice of the passage of such resolution the auditor of the municipal corporation and the treasurer of the municipal corporation shall transfer all records of such warrants so as to leave the funds as is such warrants had never been issued; and</p> <p>RCW 35A.40.020 provides code cities with the ability to pay claims via warrant or check and additionally states: "Wherever in this title, reference is made to warrants, such term shall include checks where authorized by this section."</p> <p>Checks Numbering: 23970, 23978, 24881, 25005, 25115, 25346 and 26120 have not and will not be presented for payment; and should be canceled.</p>		
<b>Recommended Action:</b>		
The City Council give consent approval of Resolution No. RES-23-1060 and authorize the Mayor,s signature.		

RESOLUTION NO. RES-23-1060

A RESOLUTION BY THE CITY OF LYNDEN, WASHINGTON  
REQUESTING THE CANCELLATION  
OF WARRANTS OR CHECKS

WHEREAS, RCW 39.56.040 states that any registered or interest bearing warrants of any municipal corporation not presented within one year of the date of their call, or other warrants not presented within one year of their issue, shall be canceled by passage of a resolution of the governing body of the municipal corporation, and upon notice of the passage of such resolution the auditor of the municipal corporation and the treasurer of the municipal corporation shall transfer all records of such warrants so as to leave the funds as is such warrants had never been issued; and

WHEREAS, RCW 35A.40.020 provides code cities with the ability to pay claims via warrant or check and additionally states: "Wherever in this title, reference is made to warrants, such term shall include checks where authorized by this section."

WHEREAS, it has been brought to the attention of the City Council that Checks numbering: 23970, 23978, 24881, 25005, 25115, 25346 and 26120 have not and will not be presented for payment; and

WHEREAS, documentation has been provided that the payment due was paid on an invoice; and

NOW, THEREFORE, BE IT ORDAINED BY the City Council of the City of Lynden as follows:

Section A: That the following checks: #23970 for \$29.04; #23978 for \$47.35; #24881 for \$165.07; #25005 for \$326.40; #25115 for \$224.00; #25346 for \$8,249.37 and #26120 for \$8,786.18 be cancelled.

Section B: If any section, subsection, sentence, clause or phrase of this resolution is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this resolution. The Council hereby declares that it would have passed this code and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact than any one or more sections, subsections, sentences, clauses or phrases has been declared invalid or unconstitutional, and if, for any reason, this resolution should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.

Section C: This resolution shall take effect and be in force from and after its passage by the Council and after its approval by the Mayor, if approved, otherwise, as provided by law and five (5) days after the date of its publication.

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE, \_\_\_\_ IN FAVOR \_\_\_\_ AGAINST AND SIGNED BY THE MAYOR THIS \_\_\_\_ DAY OF JANUARY 2023.

ATTEST:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	January 17, 2023	
<b>Name of Agenda Item:</b>	Ordinance No. ORD-23-1663 Setting the Final Property Tax for 2023	
<b>Section of Agenda:</b>	Consent	
<b>Department:</b>	Finance	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input checked="" type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
<b>Legal Review:</b>	<input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
<b>Attachments:</b>	ORD-23-1663 Real Estate Property Tax Levy 2023	
<b>Summary Statement:</b>	<p>The City of Lynden is required by State regulations to adopt a 2023 property tax levy. On November 21, 2022 the City Council approved Ordinance No. 1659 which was passed relying on the preliminary figures for the assessed valuation of the City's tax base, as provided by the Whatcom County Assessor's Office at that time.</p> <p>The original executive summary presented to Council on November 21, 2022 indicated that an ordinance setting the exact final levy would be forwarded to the Finance Committee and City Council for consideration when the County Assessor's Office provided the final assessed valuation for 2022. The County Assessor's office has provided the final numbers at this time. For Council information, the final calculations result in a total dollar levy amount of \$3,782,210. Per Council's direction this amount incorporated a 1.0% increase in the regular property tax, as allowed per the Revised Code of Washington. This total dollar levy reflects a mil rate of \$1.21239 per \$1,000 of assessed valuation. This is a decrease of approximately 21 cents from the 2022 rate.</p>	
<b>Recommended Action:</b>	Approve Ordinance No. ORD-23-1663 and authorize the Mayor's signature.	

ORDINANCE NO. 23-1663

AN ORDINANCE FOR THE CITY OF LYNDEN, WASHINGTON  
LEVYING TAXES FOR GENERAL MUNICIPAL PURPOSES FOR  
TAXES COLLECTIBLE AND PAYABLE IN 2023  
IN THE CITY OF LYNDEN, WASHINGTON

The City Council of the City of Lynden does ordain as follows:

Section A. The City of Lynden hereby levies, for 2023 taxes, for the purpose of meeting the expenditures of the City of Lynden, Washington, for the year 2023, the following specific sums:

CURRENT EXPENSE FUND	\$3,176,166
BERTHUSEN PARK	\$65,000
2012 LTGO REFUNDING BOND DEBT	<u>\$541,050</u>
TOTAL	\$3,782,210

Section B. In order to raise said specific sums, there is needed a levy of \$1.21239 per thousand dollars of assessed valuation of the property in the City of Lynden as shown by the assessment roll for the year 2022.

Section C. Any ordinance or parts of ordinances in conflict herewith are hereby amended.

Section D. This ordinance amends Ordinance No. 1571 and shall take effect and be in force from and after its passage by the City Council and after its approval by the Mayor, if approved, otherwise, as provided by law and five (5) days after the date of its publication.

PASSED BY THE CITY COUNCIL BY AN AFFIRMATIVE VOTE, \_\_\_\_\_ IN FAVOR,  
\_\_\_\_\_ AGAINST AND SIGNED BY THE MAYOR THIS \_\_\_\_\_ DAY OF JANUARY 2023.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

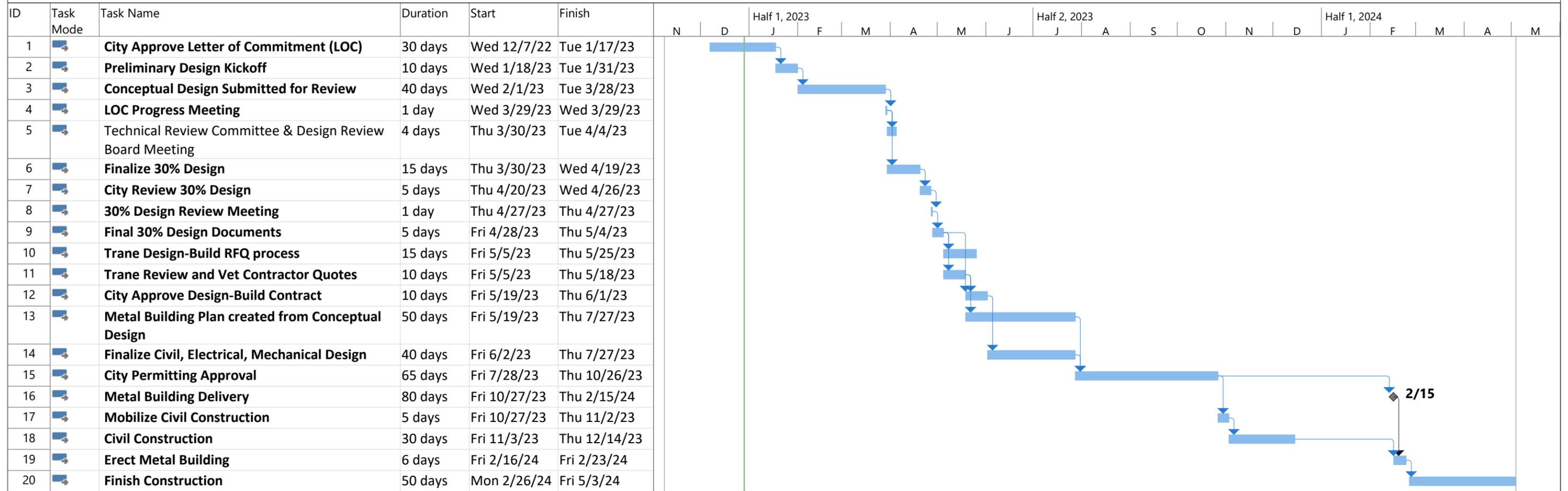
# CITY OF LYNDEN

EXECUTIVE SUMMARY – City Council



<b>Meeting Date:</b>	January 17, 2023	
<b>Name of Agenda Item:</b>	Letter of Commitment for Maintenance Building	
<b>Section of Agenda:</b>	Consent	
<b>Department:</b>	Public Works	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks <input type="checkbox"/> Public Safety <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other: _____	<b>Legal Review:</b> <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required
<b>Attachments:</b>	Letter of Commitment, Maintenance Building Schedule	
<b>Summary Statement:</b>	<p>The City of Lynden is interested in entering into an agreement with Trane for pre-construction services to proceed with the project engineering design necessary to provide the City with a firm fixed price for the scope of work for the following services:</p> <ul style="list-style-type: none"> <li>○ Architecture: Building appearance and layout</li> <li>○ Civil: Designing the parking area, landscaping, runoff management, utilities plan</li> <li>○ Structural: To include seismic and other code requirements</li> <li>○ Mechanical: Heating calculations, plumbing connections, HVAC equipment selections</li> <li>○ Electrical: Connecting building to electric lines, placing power outlets, Lighting, computer networking, other electrical requirements</li> <li>○ Exploring and applying for possible state grants</li> <li>• The drawing set will be to a 30%-40% level (preliminary design)</li> <li>• The design will include load calculations to ensure the equipment can maintain warehouse temperatures in all ambient weather conditions</li> </ul> <p>The Public Works Committee reviewed this letter of commitment at their meeting on January 11 and recommended forwarding to City Council for approval.</p>	
<b>Recommended Action:</b>	That City Council approve the Letter of Commitment with Trane for pre-construction services, not to exceed \$424,129 plus applicable sales tax, for the Maintenance Building and authorize the Mayor’s signature on the letter.	

Lynden Maintenance Building



Project: Lynden Maintenance B  
Date: Thu 12/29/22

Task		Project Summary		Manual Task		Start-only		Deadline	
Split		Inactive Task		Duration-only		Finish-only		Progress	
Milestone		Inactive Milestone		Manual Summary Rollup		External Tasks		Manual Progress	
Summary		Inactive Summary		Manual Summary		External Milestone			

# CITY OF LYNDEN



## ADMINISTRATION DEPARTMENT

Scott Korthuis, Mayor  
(360) 354 – 1170, Option #5

January 17, 2023

Trane  
Attn: Angie Estey  
2333 158th Ct. NE  
Bellevue, WA 98008

RE: Letter of Commitment (LOC) for Pre-Construction Services - WWTP Maintenance Building

Dear Ms. Estey:

Trane is authorized to proceed with the project engineering design necessary to provide the City of Lynden with a firm fixed price for the scope of work as defined below. Trane and the City of Lynden will enter into a Construction Agreement within ninety (90) days of Trane's delivery of a final proposal. In this event, the cost of the preliminary engineering design will be included as part of the overall design-build construction project. The final proposal will be provided within 180 days of your authorization of this LOC pending the City of Lynden design review approval. Both the Technical Review Committee and Design Review Board will be sent the conceptual design when it is ready so that their feedback can be integrated into the preliminary design.

To enable Trane to perform the preconstruction services, the City of Lynden will provide to Trane:

- Access to the building site and to facility and management personnel as well as key decision makers
- A time and location for a meeting for presentation of Trane's final proposal; all parties that will be involved in the decision-making process to proceed with the new maintenance building construction project will attend this meeting.

The scope of work for this LOC will include but is not limited to the following:

- Engineering design for
  - Architecture: Building appearance and layout
  - Civil: Designing the parking area, landscaping, runoff management, utilities plan
  - Structural: Ensuring the building can survive earthquakes, loading requirements, etc.
  - Mechanical: Heating calculations, plumbing connections, HVAC equipment selections
  - Electrical: Connecting building to electric lines, placing power outlets, lighting, computer networking, solar and battery integration (if applicable), electric vehicle charging (if applicable), etc.
  - Solar and battery storage feasibility analysis and application for state grant
- The drawing set will be to a 30%-40% level (preliminary design)
- The design will include load calculations to ensure the equipment can maintain warehouse temperatures in all ambient weather conditions

Trane will use the preliminary design information to provide a detailed proposal for the final Design-Build Construction Agreement that will build a new maintenance building next to the Water Treatment Plant (south of the reservoir). This proposal will include:

- 1) 30-40% complete design documents

- 2) The design will include specification and installation of
  - a) A 9000 square foot building with 6 bays and fully furnished office space in the first bay and a mezzanine storage overhead
  - b) A parking lot
  - c) Utilities
  - d) All required HVAC equipment and controls
  - e) Additional electrical infrastructure to support this new facility
- 3) Cost proposal will be based on a RFQ process that will solicit quotes from a pre-determined list of qualified contractors of the City and Trane's choice. The RFQ process will include creating
  - a) RFQ documents
  - b) Coordinating subcontractor site visits
  - c) Responding to contractor questions
  - d) Receiving and reviewing proposals
  - e) Determine costing per trade
  - f) Preparing firm, fixed maximum cost
  - g) Ensuring that all construction activities will comply with applicable state and local codes
- 4) Schedule for project completion
- 5) Based on this Proposal, Trane will
  - a) Review project scope, financing options, and pricing with the City
  - b) Develop final firm, fixed project pricing

**THE CITY OF LYNDEN** will pay a fee of **\$464,129** (plus any applicable sales tax) to Trane for the preliminary design and preconstruction services listed above. If a Design-Build Construction Agreement is not executed within the ninety-day period following the delivery of final proposal, the fee (plus any applicable sales tax) will be paid to Trane within ten days of the date of Trane's invoice.

Upon execution of a Design-Build Construction Agreement with Trane or payment for preconstruction services, Trane shall provide a copy of the engineering design (as specified above) in its entirety to the City of Lynden.

Sincerely,  
City of Lynden

Acceptance by Trane

By: \_\_\_\_\_  
Scott Korthuis  
Its: Mayor

By: \_\_\_\_\_  
Robert Colombe  
Its: Trane Area General Manager

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

# CITY OF LYNDEN



## EXECUTIVE SUMMARY

<b>Meeting Date:</b>	January 17, 2023	
<b>Name of Agenda Item:</b>	Final Plat Approval – Kamm Creek PRD	
<b>Section of Agenda:</b>	New Business	
<b>Department:</b>	Planning	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks <input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____	<b>Legal Review:</b> <input checked="" type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input type="checkbox"/> Review Not Required
<b>Attachments:</b>		
Plat maps, Council approved Findings of Fact, Council approved PRD Contract and CCRs		
<b>Summary Statement:</b>		
<p>The Kamm Creek Planned Residential Development (PRD) is a 20-acre subdivision located in the southeast corner of the city along the west side Northwood Road. Property division on this project is constrained by critical areas and floodplain. As a result, a PRD was used to cluster 40 single-family lots into two areas. Private streets, storm water management, and conservation areas in this PRD will be the perpetual responsibility of the Homeowners Association – which is described in the easement documents and the property’s CCRs (Covenants Conditions and Restrictions).</p> <p>City Council granted preliminary plat approval for the Kamm Creek PRD in November of 2020. Subsequently, the Council reviewed and approved the PRD’s development agreement and CCRs on April 4, 2022 (Finding and the Agreement are attached).</p> <p>The Council is being asked to consider final plat approval for the Kamm Creek PRD under the following conditions:</p> <ol style="list-style-type: none"> <li>1. Completion of all punch list items.</li> <li>2. Submittal and acceptance of required maintenance and performance bonds.</li> <li>3. Payment of final inspection fees for plat construction.</li> <li>4. Submittal of final as-built drawings.</li> <li>5. Final development fees paid in full.</li> <li>6. Installation of all streetlights and street trees.</li> <li>7. Recording of necessary utility and access easements.</li> <li>8. Completion of development agreement obligations including provisions to extend pedestrian trail easements to the west per Sec. 3.5 and all required off-site improvements.</li> <li>9. Recording of final development agreement and private stormwater maintenance agreement as approved by City Council on April 4, 2022.</li> <li>10. Submittal and recording of final plat mylars.</li> </ol>		
<b>Recommended Action:</b>		
Motion to grant final plat approval of Kamm Creek Planned Residential Development subject to the conditions 1-10 listed above, and to authorize the Mayor’s signature on the final plat documents.		

# KAMM CREEK PRD

## PORTION OF THE NE 1/4 SW 1/4, SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M. WITHIN THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON

**LAND DESCRIPTIONS:**

PARCEL A:  
THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., EXCEPT THE EAST 5 ACRES THEREOF, EXCEPT AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS AND MINERAL RIGHTS, RESERVED UNDER AUDITOR'S FILE No. 927862.

PARCEL B:

THE EAST 5 ACRES OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., LESS ROAD, EXCEPT AN UNDIVIDED ONE-HALF INTEREST IN ALL OIL, GAS AND MINERAL RIGHTS, RESERVED UNDER AUDITOR'S FILE No. 927862.

ALL SITUATE IN WHATCOM COUNTY, WASHINGTON.

ALL SUBJECT TO: THIS CONVEYANCE IS SUBJECT TO COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS, IF ANY, AFFECTING TITLE, WHICH MAY APPEAR IN THE PUBLIC RECORD, INCLUDING THOSE SHOWN ON ANY RECORDED PLAT OR SURVEY.

**DECLARATION:**

KNOW ALL MEN BY THESE PRESENTS, THAT WE, THE UNDERSIGNED OWNERS HEREBY DECLARE THIS PLAT ENTITLED "KAMM CREEK PRD" IS MADE WITH OUR FREE CONSENT AND IN ACCORDANCE WITH OUR WISHES AND DO HEREBY GRANT AND RESERVE ANY EASEMENTS SHOWN HEREON FOR THE USES INDICATED HEREON.

TIMOTHY KOEJUE, MANAGER  
KAMM CREEK PARTNERS, L.L.C.

JEREMY PERRIERA, MEMBER  
KAMM CREEK PARTNERS, L.L.C.

DEREK DEKOSTER, MEMBER  
KAMM CREEK PARTNERS, L.L.C.

KENT KAMPHOUSE, MEMBER  
KAMM CREEK PARTNERS, L.L.C.

JEROMY DEMETER, MEMBER  
KAMM CREEK PARTNERS, L.L.C.

**ACKNOWLEDGMENT:**

STATE OF WASHINGTON  
COUNTY OF WHATCOM

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT TIMOTHY KOEJUE, JEREMY PERRIERA, DEREK DEKOSTER, KENT KAMPHOUSE AND JEROMY DEMETER ARE THE PERSONS WHO APPEARED BEFORE ME, AND SAID PERSONS ACKNOWLEDGED THAT HE SIGNED THIS INSTRUMENT, ON OATH STATED THAT THEY ARE AUTHORIZED TO EXECUTE THE INSTRUMENT AND ACKNOWLEDGED IT AS AUTHORIZED MEMBERS OF KAMM CREEK PARTNERS, L.L.C., A WASHINGTON LIMITED LIABILITY COMPANY, TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTIES FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON,  
RESIDING AT \_\_\_\_\_ WASHINGTON, MY COMMISSION EXPIRES \_\_\_\_\_

**SURVEYOR'S CERTIFICATE:**

I HEREBY CERTIFY THAT THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON AN ACTUAL SURVEY MADE IN COMPLIANCE WITH STATE LAWS.

JEROMY M. DELETERS CERTIFICATE No. 50982 DATE \_\_\_\_\_  
NORTHWEST SURVEYING & GPS, INC., 407 5TH ST., LYNDEN, WA 98264

**PUBLIC WORKS DEPARTMENT APPROVAL:**

EXAMINED AND APPROVED BY THE LYNDEN PUBLIC WORKS DEPARTMENT AS TO THE LAYOUT OF ROADS AND RIGHTS-OF-WAY AND ACCEPTANCE OF THE DEDICATION AND/OR EASEMENTS ON BEHALF OF THE CITY OF LYNDEN IN ACCORDANCE WITH THE CITY OF LYNDEN DEVELOPMENT STANDARDS.

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.

STEVE BANHAM, P.E. CITY OF LYNDEN PUBLIC WORKS DIRECTOR

**CITY PLANNING APPROVAL:**

I HEREBY CERTIFY THAT I HAVE EXAMINED THIS PLAT FOR CONFORMANCE WITH APPLICABLE STATE STATUTES AND CITY SUBDIVISION AND ZONING ORDINANCES AND HEREBY APPROVE THE SAME.

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.

HEIDI GUDDA, AICP, CITY OF LYNDEN PLANNING DIRECTOR

**CITY PLANNING COMMISSION APPROVAL:**

EXAMINED AND APPROVED BY THE CITY OF LYNDEN PLANNING COMMISSION.

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.

CHAIRMAN, CITY OF LYNDEN PLANNING COMMISSION

**CITY COUNCIL APPROVAL:**

APPROVED BY THE ORDER OF THE CITY OF LYNDEN, WASHINGTON, BY AN ORDER MADE AND ENTERED ON

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.

SCOTT KORTHAUS, MAYOR, CITY OF LYNDEN

ATTEST: CITY CLERK

**AUDITOR'S CERTIFICATE:**

I HEREBY CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE AUDITOR OF WHATCOM COUNTY, WASHINGTON, AT THE REQUEST OF NORTHWEST SURVEYING & GPS, INC.

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023 AT \_\_\_\_\_ AM/PM, AND THAT IT IS RECORDED

UNDER WHATCOM COUNTY AUDITOR'S FILE No.2023-\_\_\_\_\_ RECORDS OF WHATCOM COUNTY, WASHINGTON.

COUNTY AUDITOR \_\_\_\_\_ BY DEPUTY \_\_\_\_\_

**FINANCE DIRECTOR APPROVAL:**

I, ANTHONY BURROWS, FINANCE DIRECTOR OF THE CITY OF LYNDEN, WASHINGTON, DO HEREBY CERTIFY THAT I AM THE OFFICER IN CHARGE OF COLLECTIONS OF SPECIAL ASSESSMENTS LIEVED BY THE CITY OF LYNDEN ON ALL LAND EMBRACED IN THIS PLAT AND THAT ALL CITY ASSESSMENTS FOR WHICH THE PROPERTY EMBRACED IN THIS PLAT MAY BE LIABLE AT THIS DATE AND THAT ALL SPECIAL CITY OF LYNDEN ASSESSMENTS ASSESSED AGAINST THE PROPERTY IN THIS PLAT WHICH UNDER SAID PLAT BECOMES STREETS, ALLEYS AND OTHER PUBLIC PLACES, HAVE BEEN PAID.

ANTHONY BURROWS, CITY OF LYNDEN FINANCE DIRECTOR DATE \_\_\_\_\_

**WHATCOM COUNTY TREASURER'S CERTIFICATE:**

I, \_\_\_\_\_, TREASURER, WHATCOM COUNTY, WASHINGTON, DO HEREBY CERTIFY THAT ALL TAXES REQUIRED BY LAW TO BE PAID UPON THAT PORTION OF REAL ESTATE EMBRACED WITHIN THIS PLAT ENTITLED "KAMM CREEK PRD" AND ALL DELINQUENT ASSESSMENTS HAVE BEEN FULLY PAID, SATISFIED OR DISCHARGED AS SHOWN IN THE RECORDS OF MY OFFICE.  
DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2023.

TREASURER, WHATCOM COUNTY, WASHINGTON

**MAINTENANCE OF PRIVATE STORMWATER FACILITIES:**

THE PROPERTY OWNER(S) OR COMMUNITY ASSOCIATION HAS THE RESPONSIBILITY TO PROPERLY MAINTAIN ALL STORMWATER FACILITIES NOT WITHIN CITY RIGHTS-OF-WAY. THE CITY MAY ACCESS AND INSPECT ALL STORMWATER FACILITIES AND COMMUNITY ASSOCIATION INSPECTION RECORDS, IF THE PROPERTY OWNER(S) OR COMMUNITY ASSOCIATION HAS FAILED TO MAINTAIN THE STORMWATER FACILITIES. THE CITY CAN ISSUE WRITTEN NOTICE SPECIFYING THE REQUIRED ACTIONS, IF THE ACTIONS ARE NOT CORRECTED IN A TIMELY MANNER OR IN THE EVENT OF A PUBLIC HAZARD, THE CITY MAY ENTER THE PROPERTY TO PERFORM THE ACTIONS NEEDED AND BILL THE PROPERTY OWNER(S) OR COMMUNITY ASSOCIATION. ANY ACTION TAKEN BY THE CITY OF LYNDEN SHALL NOT RELIEVE THE PROPERTY OWNER(S) OR COMMUNITY ASSOCIATION FROM ITS RESPONSIBILITY TO MAINTAIN THE STORMWATER FACILITIES.

**RIGHT TO FARM DISCLOSURE STATEMENT:**

THE SUBJECT PROPERTY IS WITHIN OR NEAR DESIGNATED AGRICULTURE LANDS ON WHICH A VARIETY OF COMMERCIAL ACTIVITIES MAY OCCUR THAT ARE NOT COMPATIBLE WITH RESIDENTIAL DEVELOPMENT FOR CERTAIN PERIODS OF LIMITED DURATION. YOU MAY BE SUBJECT TO INCONVENIENCES OR DISCOMFORTS ARISING FROM SUCH OPERATIONS, INCLUDING BUT NOT LIMITED TO NOISE, ODORS, INSECTS, PLUMES, DUST, SMOKE, THE OPERATION OF MACHINERY OF ANY KIND DURING ANY 24-HOUR PERIOD (INCLUDING AIRCRAFT), AND THE STORAGE AND APPLICATION OF MANURE, AND THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL FERTILIZERS, SOIL AMENDMENTS, HERBICIDES AND PESTICIDES. THE CITY OF LYNDEN AND WHATCOM COUNTY HAS DETERMINED THAT THE USE OF REAL PROPERTY FOR AGRICULTURAL OPERATIONS IS A HIGH PRIORITY AND FAVORED USE AND WILL NOT CONSIDER TO BE A NUISANCE THOSE INCONVENIENCES OR DISCOMFORTS ARISING FROM SUCH OPERATIONS. THE CITY OF LYNDEN AND WHATCOM COUNTY HAS A HIGH PRIORITY AND FAVORED USE AND WILL NOT CONSIDER TO BE A NUISANCE THOSE INCONVENIENCES OR DISCOMFORTS WHICH FROM SUCH OPERATIONS ARE CONSISTENT WITH COMMONLY ACCEPTED GOOD MANAGEMENT PRACTICES AND OTHERWISE COMPLY WITH LOCAL, STATE, AND FEDERAL LAWS.

**SEWER ASSESSMENT AREA NOTE:**

THIS PROPERTY IS LOCATED IN THE LATECOMER AREA PER AF No.2023-\_\_\_\_\_.

**PLAT NOTES AND CONDITIONS:**

- FOR ADDITIONAL PLAT RESTRICTIONS SEE THAT CERTAIN DECLARATION OF COVENANTS, RESTRICTIONS AND ARCHITECTURAL STANDARDS RECORDED UNDER WHATCOM COUNTY AUDITOR'S FILE No. 2023-\_\_\_\_\_.
- ALL LOTS SHALL HAVE ONSITE DOWNSPOUT INFILTRATION PER APPROVED PLAT DRAINAGE PLAN.

**STORM INFILTRATION NOTE:**

ALL LOTS SHALL HAVE ONSITE DOWNSPOUT INFILTRATION PER APPROVED PLAT DRAINAGE PLAN AS PREPARED BY FREELAND AND ASSOCIATES, INC. AND APPROVED BY THE CITY OF LYNDEN ON APRIL 4, 2022.

**SPECIAL FLOOD PLAIN HAZARD NOTE:**

ANY STRUCTURE OR FILL INSIDE THE SPECIAL FLOOD PLAIN HAZARD AREA WILL REQUIRE MEETING THE LYNDEN MUNICIPAL CODE 16.12. THE FLOOD PLAIN ELEVATIONS WERE INTERPOLATED USING A FEMA NATIONAL FLOOD HAZARD LATER VIEWER MAP AND MEASURED TO AN ELEVATION OF 63.0 FEET FOR THE WESTERLY PORTION OF THE PROPERTY AND 63.5 FOR THE EASTERLY PORTION OF THE PROPERTY AND WAS COMPUTER GENERATED FROM GROUND SPOT ELEVATIONS IN MAY OF 2022.

**WETLAND NOTE:**

EXISTING WETLANDS AND BUFFERS PER MILLER ENVIRONMENTAL SERVICES, L.L.C. IN FEBRUARY AND MARCH OF 2020.

**PRIVATE STREET NOTE:**

SEE AF No.2023-\_\_\_\_\_ (P.R.D. DEVELOPMENT AGREEMENT) AND AF No.2023-\_\_\_\_\_ (DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS AND EASEMENTS) FOR MAINTENANCE AGREEMENTS FOR PRIVATE STREETS AND UTILITIES IN TRACT A, OPEN SPACES A, B, C AND D.

**SURVEYOR'S NOTES:**

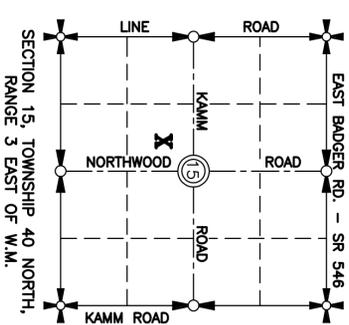
- "O" DENOTES 5/8 INCH REBAR WITH 1 INCH PLASTIC CAP MARKED "WS & GPS 49276 & 50982" SET BY THIS SURVEY.
  - "@" DENOTES COTTON OIL SPIKE MARKED "WS & GPS LS 49276 & 50982" SET IN PAVEMENT BY THIS SURVEY.
  - "⊙" DENOTES BRASS DISC SET IN CONCRETE BY THIS SURVEY.
  - "\* " DENOTES CALCULATED POINT ONLY.
  - THIS SURVEY WAS PERFORMED BY STANDARD FIELD TRAVERSE USING A GEOMAX ZOOM90 TOTAL STATION WITH A CARLSON SURVEYOR 2 COLLECTOR/FIELD COMPUTER IN NOVEMBER OF 2022. ACCURACY EXCEEDS 1:10000.
  - THIS SURVEY TIED INTO THE NORTH QUARTER CORNER AND CENTER OF SECTION 15 AND CONTROL POINTS FROM OUR PREVIOUS SURVEYS WITHIN THE AREA AND RELIED UPON THE CITY OF LYNDEN SURVEY MONUMENT NETWORK FOR BASIS OF BEARINGS.
  - THIS SURVEY WAS COMPLETED WITH THE BENEFIT OF A SUBDIVISION GUARANTEE (OG PLAT CERTIFICATED) FROM WHATCOM LAND TITLE ORDER #W-203425 DATED JANUARY 3, 2023. SEE ALSO PUGET SOUND ENERGY EASEMENT AS PER AF No. 2021-1203441 AS CONSTRUCTED, TO BE CONSTRUCTED, EXTENDED OR RELOCATED.
- //////// DENOTES VEHICULAR ACCESS PROHIBITION AREA.

**IMPERVIOUS SURFACE CALCULATIONS NOTE:**

LOT NUMBER	TRACT A
TOTAL AREA	2.33 ACRES
TOTAL IMPERVIOUS SURFACE AREA	0.39 ACRES
TOTAL PERVIOUS SURFACE AREA	1.94 ACRES

**LONG PLAT AREA BREAKDOWN:**

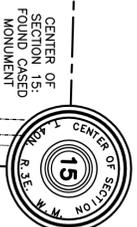
GROSS PLAT AREA	1,297,779 SF
OPEN SPACE	16,108 SF
CRITICAL AREAS	233,328 SF
RIGHT-OF-WAYS	180,958 SF
OTHER INFRASTRUCTURE	0 SF
NET DEVELOPABLE	867,385 SF
PERCENT R-O-W & INFRASTRUCTURE	14%



# KAMM CREEK PRD

PORTION OF THE NE 1/4 SW 1/4, SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.  
WITHIN THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON

## KAMM ROAD



CENTER OF SECTION 15:  
FOUND CASED MONUMENT

WEST QUARTER CORNER:  
FOUND CASED MONUMENT

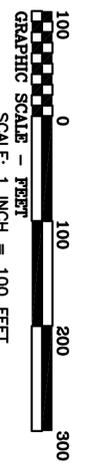
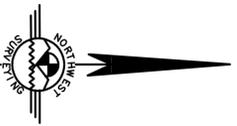
LINE ROAD  
1317.84'

NORTHWOOD ROAD  
660.89'



SW 1/4, SW 1/4...

SE 1/4, SW 1/4...



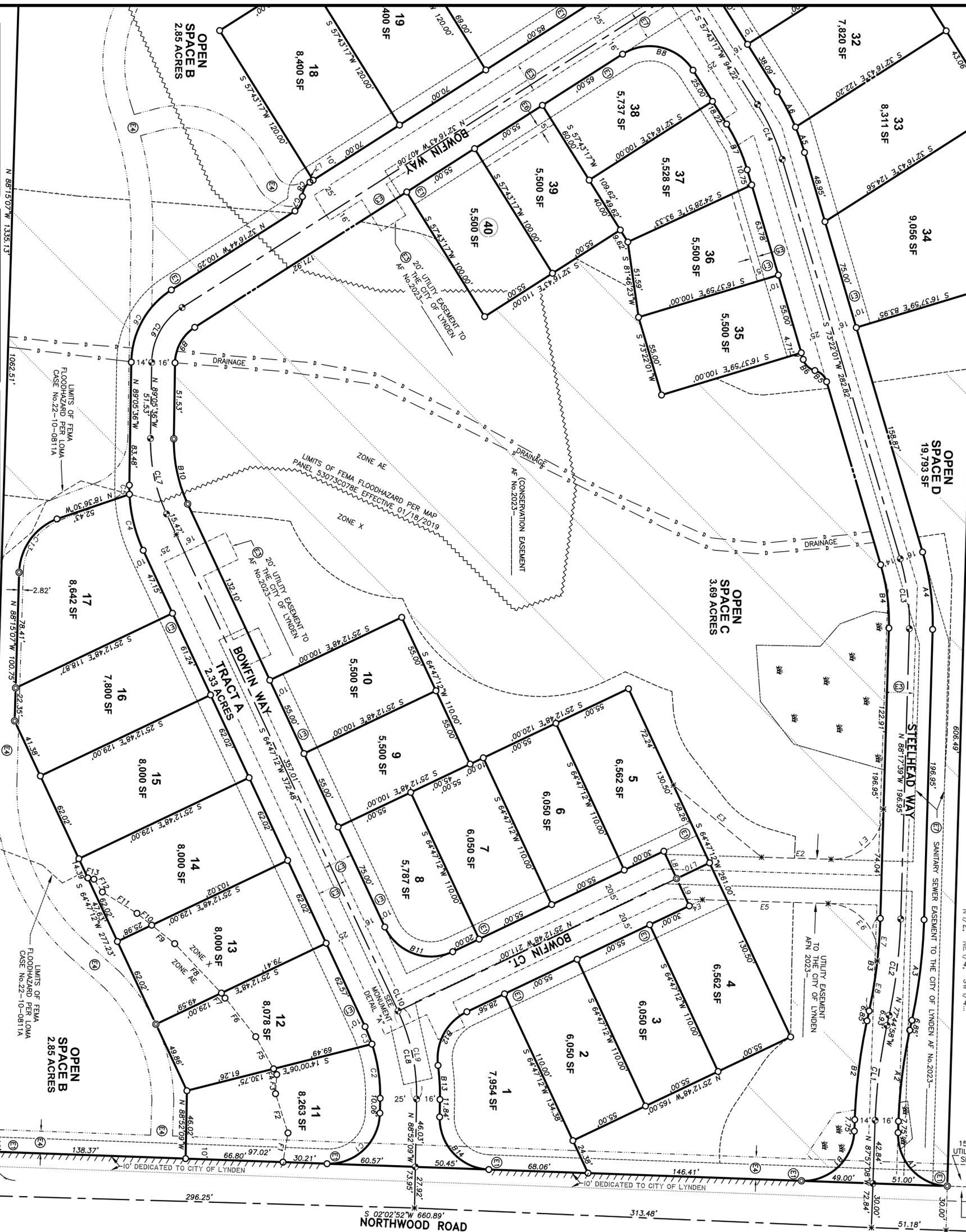
GRAPHIC SCALE - FEET  
SCALE: 1 INCH = 100 FEET

BASIS OF BEARINGS =  
CITY OF LYNDEN SURVEY  
MONUMENT NETWORK  
(NORTH LINE SW 1/4 = S 88°20'10" E)

SEE SHEET 1 FOR EASEMENT INFORMATION  
SEE SHEETS 3-4 FOR EASEMENT NOTES

PREPARED BY NORTHWEST SURVEYING & GPS, INC., 407 5TH STREET, LYNDEN, WA, 98264

**KAMM CREEK PRD**  
 PORTION OF THE NE 1/4 SW 1/4, SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.  
 WITHIN THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON



Curve	Radius	Length	Delta
A1	35.00'	54.98'	90°00'00"
A2	350.00'	62.33'	10°12'11"
A3	374.00'	68.83'	10°32'41"
A4	166.00'	33.13'	18°20'20"
A5	166.00'	28.30'	6°19'04"
A6	166.00'	72.00'	21°51'40"
A7	35.00'	39.48'	64°43'23"
A8	35.00'	54.98'	90°00'00"
A9	280.00'	263.13'	4°50'34"
A10	280.00'	23.67'	5°35'40"
A11	280.00'	23.67'	6°47'12"
A12	280.00'	145.49'	29°46'14"
A13	280.00'	50.57'	10°20'54"
A14	280.00'	10.24'	2°05'47"
A15	280.00'	10.24'	2°05'47"

Curve	Radius	Length	Delta
B1	35.00'	54.98'	90°00'00"
B2	360.00'	67.67'	10°12'11"
B3	344.00'	63.31'	10°32'41"
B4	136.00'	43.53'	18°20'20"
B5	11.00'	11.52'	60°00'00"
B6	124.00'	31.73'	60°00'00"
B7	35.00'	28.76'	56°48'53"
B8	35.00'	28.76'	90°00'00"
B9	100.00'	45.59'	26°07'12"
B10	100.00'	54.98'	90°00'00"
B11	35.00'	54.98'	72°50'18"
B12	35.00'	44.99'	6°50'58"
B13	150.00'	23.17'	8°50'58"
B14	35.00'	54.42'	89°04'59"

Curve	Radius	Length	Delta
C1	356.00'	65.00'	10°10'30"
C2	356.00'	65.89'	10°32'41"
C3	150.00'	48.01'	18°20'20"
C4	150.00'	40.95'	15°38'44"
C5	284.00'	248.10'	3°35'04"
C6	453.00'	44.48'	56°35'01"
C7	134.00'	67.81'	26°20'40"
C8	134.00'	61.50'	26°17'42"
C9	134.00'	0.12'	0°02'57"

Course	Bearing	Distance
E1	R=35.00'	L=54.98'
E2	S 01°42'21" W	71.70'
E3	S 39°00'16" W	4.39'
E4	N 25°12'48" W	13.02'
E5	S 60°42'58" W	25.03'
E6	S 21°12'48" W	31.62'
E7	S 46°19'07" W	46.30'
E8	S 46°19'07" W	20.19'
E9	S 38°30'20" W	12.86'
E10	S 31°22'12" W	27.82'
E11	S 56°28'19" W	10.40'
E12	S 11°33'23" W	4.33'



**SEE SHEET 1 FOR SURVEYOR'S NOTES**

**EASEMENT INFORMATION:**

A 5' UTILITY EASEMENT TO THE CITY OF LYNDEN ADJACENT TO ALL INTERIOR LOT LINES SHALL BE ESTABLISHED HEREON.

E1 = 10' UTILITY EASEMENT TO THE CITY OF LYNDEN ESTABLISHED HEREON (TYPICAL).

E2 = 20' STORM DRAIN EASEMENT TO THE CITY OF LYNDEN PER AF No. 2023-1-1203441

E3 = UTILITY EASEMENT TO THE CITY OF LYNDEN PER AF No. 2023-1-1203441

E4 = 15' TRAIL EASEMENT TO THE CITY OF LYNDEN PER AF No. 2023-1-1203441

E5 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 37 ESTABLISHED HEREON.

E6 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.

SEE ALSO PUGET SOUND ENERGY EASEMENT AF No. 2021-1203441 AND AMENDED PER AF No. 2022-0801435.

**MONUMENT DETAIL A**  
 (NITS)

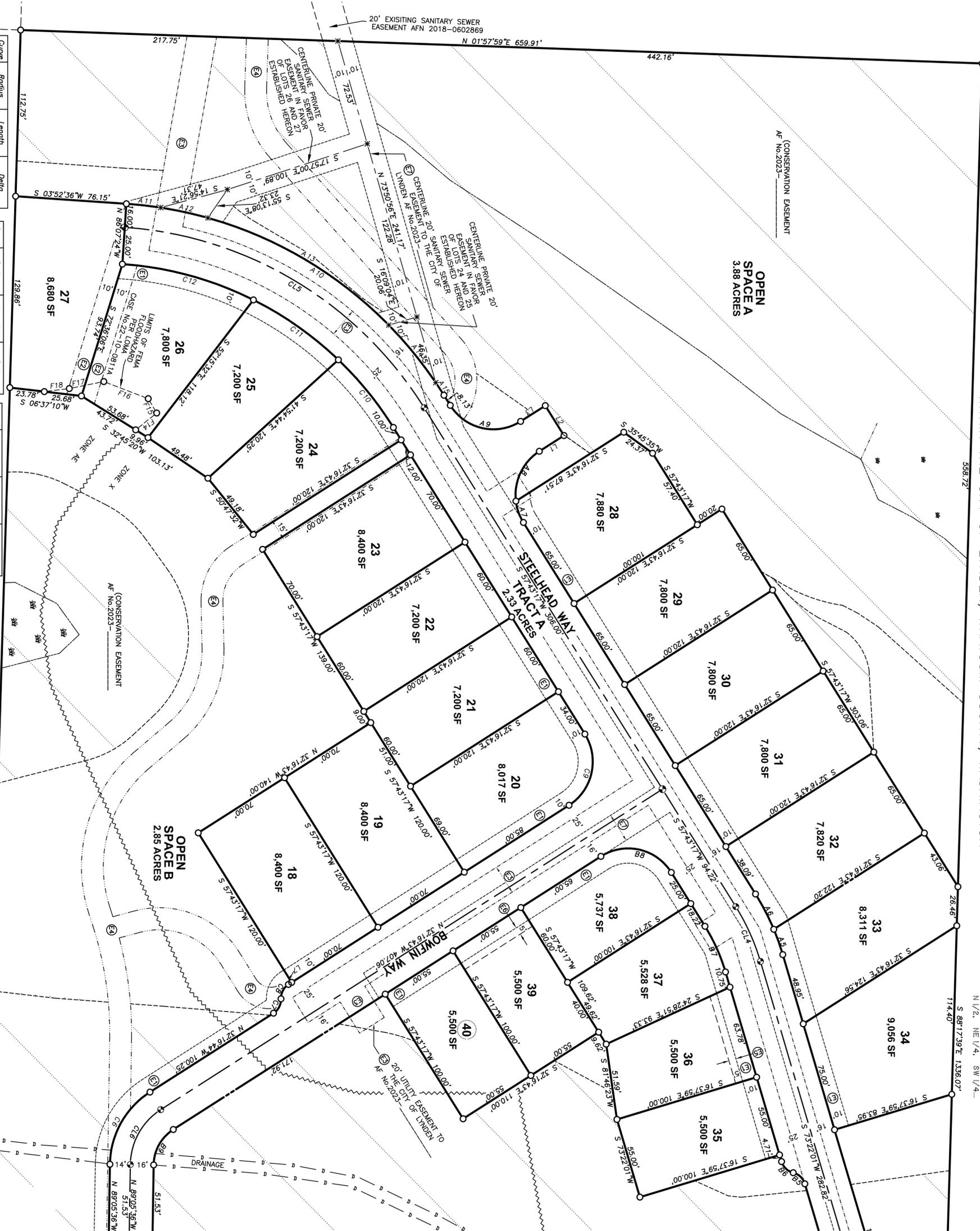
SEE COOTIN. C&I SPIKE 1.0' EAST AND 1.0' SOUTH OF NW CORNER OF PAVED APRON

**SCALE: 1 INCH = 40 FEET**

**BASIS OF BEARINGS = CITY OF LYNDEN SURVEY MONUMENT NETWORK**

(NORTH LINE SW 1/4 = S 88°20'10" E)

**KAMM CREEK PRD**  
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A4	168.00'	53.13'	18°20'20"
A5	168.00'	19.30'	61°05'00"
A6	35.00'	12.50'	25°22'37"
A7	35.00'	19.48'	64°37'23"
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B8	35.00'	34.98'	90°00'00"
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B11	35.00'	44.96'	90°00'00"
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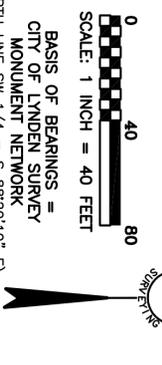
Curve	Radius	Length	Delta
C1	35.00'	35.54'	90°55'00"
C2	109.00'	37.38'	19°38'48"
C3	109.00'	32.74'	16°11'52"
C4	100.00'	61.81'	34°29'28"
C5	100.00'	61.81'	34°29'28"
C6	59.00'	58.50'	56°48'53"
C7	11.00'	11.52'	60°00'00"
C8	11.00'	11.52'	60°00'00"
C9	35.00'	54.98'	90°00'00"
C10	239.00'	59.55'	14°16'37"
C11	239.00'	71.31'	17°05'42"
C12	239.00'	93.74'	22°28'21"
C13	40.00'	47.24'	87°39'40"

Course	Bearing	Distance
E1	R=35.00'	L=54.98'
E2	101°22'21" W	CA: 49°00'00"
E3	S 39°00'16" W	77.70'
E4	N 01°42'21" E	9.86'
E5	N 25°12'48" W	86.27'
E6	R=35.00'	L=57.92'
E7	101°14'48"	CA: 94°49'09"
E8	R=344.00'	L=288.93'
E9	101°14'48"	CA: 4°49'09"
E10	R=34.33'	L=54.33'
E11	101°14'48"	CA: 3°43'52"
E12	N 21°47'38" W	24.14'
E13	N 21°47'38" W	17.29'



SE 1/4, SW 1/4.

**EASEMENT INFORMATION:**  
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 E68 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E69 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E70 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E71 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E72 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E73 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E74 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E75 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E76 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E77 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E78 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E79 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E80 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E81 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E82 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E83 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E84 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E85 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E86 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E87 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E88 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E89 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E90 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E91 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E92 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E93 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E94 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E95 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E96 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E97 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E98 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E99 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.  
 E100 = 5' SANITARY SEWER EASEMENT IN FAVOR OF LOT 38 ESTABLISHED HEREON.



PREPARED BY NORTHWEST SURVEYING & GPS, INC., 407 5TH STREET, LYNDEN, WA, 98264

BASIS OF BEARINGS = CITY OF LYNDEN SURVEY MONUMENT NETWORK

(NORTH LINE SW 1/4 = S 88°20'10" E)

CITY OF LYNDEN  
FINDINGS OF FACT AND CONCLUSIONS OF LAW

REGARDING THE APPLICATION OF Bob Libolt on behalf of Kamm Creek Investments, LLC, TO SUBDIVIDE PROPERTY  Petitioner	MPRD #20-02  FINDINGS OF FACT, CONCLUSIONS OF LAW, CONDITIONS and DECISION on Master Planned Residential Development #20-02
--	--

Kamm Creek Investments, LLC, owners of the premises known as:

**PARCEL A:**

THE EAST 5 ACRES OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., EXCEPT NORTHWOOD ROAD ALONG THE EASTERLY BOUNDARY THEREOF.

**PARCEL B:**

THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., EXCEPT THE EAST 5 ACRES THEREOF. SITUATE IN WHATCOM COUNTY, WASHINGTON.

**COMMONLY DESCRIBED AS:** 8585 Northwood Road, Lynden

Has applied for a Master Planned Residential Development requesting to develop approximately 20 acres into 40 residential lots within the RS-100 zone. The Lynden Planning Commission held a public hearing on October 8, 2020, and recommended approval to the City Council. Said request having come before the Lynden City Council on November 16, 2020, and the Lynden City Council having fully and duly considered the request, hereby makes the following:

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

1.01 Application. Kamm Creek Investments, LLC, (“Agent”) filed an application for a Master Planned Residential Development which was accepted by the City as complete and containing all information required by LMC 17.19.010 on August 28, 2020.

1.02 Location. The property is located at 8585 Northwood Road, Lynden.

1.03 Ownership. Kamm Creek Investments, LLC is the Property Owner.

1.04 Request. To allow the MPRD / subdivision of property into 40 residential lots within the RS-100 zone.

1.05 Reason for Request. To make effective use of land within the existing city limits where all urban services are available.

1.06 Planning Commission Recommendation. As outlined in Planning Commission Resolution #20-08, the Lynden Planning Commission recommended approval of the Master Planned Residential Development Concept application.

1.07 Conformance with Zoning and Comprehensive Plans. The subdivision of the Property proposed in the application is in conformity with City zoning ordinances, comprehensive plans, and all other applicable City development regulations including Chapter 17.15 LMC.

1.08 Compliance with General Requirements for Subdivision Approval. The application complies with Chapter 18.06 LMC, General Requirements for Subdivision Approval, as applicable.

1.09 Compliance with Lot and Plat Design Standards. The application complies with lot and plat design standards as required under Chapter 18.14 LMC, as applicable.

1.10 Compliance with Project Manual for Engineering Design and Development Standards. The application complies with the development standards and requirements set forth in Title 18 LMC and with the Project Manual for Engineering Design and Development Standards.

1.11 Appropriate Provisions for Promoting Health, Safety and General Welfare. The application makes appropriate provisions for public health, safety and general welfare.

1.12 Open Spaces, Streets, Roads, Sidewalks and Alleys. The application makes appropriate provisions for public open spaces, roads, streets, sidewalks and alleys.

1.13 Potable Water Supplies, Sanitary Wastes and Drainage Ways. The application makes appropriate provisions for public drainage ways, potable water supplies and sanitary wastes.

1.14 Public Interest. The application results in additional infilling within the City consistent with the City's Comprehensive Plan and the Growth Management Act. The public interest will be served by the approval of the application.

1.15 Critical Area Review. The applicant has submitted a Critical Areas Detailed Study that analyzes proposed impacts to the wetlands and regulated streams and their buffers. The Critical Areas Report dated June 29, 2020 is considered preliminary and subject to necessary revisions based on subsequent Army Corps and WDFW permits.

1.16 SEPA Determination. Environmental review of the proposal has been made under the requirements of WAC 197-11 and a mitigated determination of non-significance has been made.

The foregoing Findings of Fact and Conclusions of Law are not labeled. Those sections which are most properly considered Findings of Fact are hereby designated as such. Those sections which are most properly considered Conclusions of Law are also designated as such. From the foregoing Findings of Fact and Conclusions of Law, the Council establishes the following conditions:

**CONDITIONS**

Any approval of the Petitioner’s application shall be subject to the conditions as listed below:

Lynden Municipal Code (LMC) 19.29 guides the development standards and criteria for approval for Master Planned Residential Developments (MPRDs). The Kamm Creek proposal appears to meet the following requirements consistent with the LMC:

*Intent:* The primary purpose of a Master Planned Residential Development (MPRD) is to promote creativity in site layout and design by allowing flexibility in the application of the standard zoning requirements and development standards.

The overall intent of the Kamm Creek MPRD appears mostly consistent with the purpose of Planned Residential Developments as outlined in LMC 19.29.010.

*Minimum Lot Size:* Per LMC 19.29.060(I) the minimum lot size for single family homes within a PRD is 5,000 square feet. The lots proposed in this PRD exceed this minimum. As proposed, the residential parcels range from 5,237 square feet to 10,228 square feet with ten parcels exceeding 9,000 square feet. In addition, the PRD provides common open space. Due to critical areas on the subject property the average area per residence, when divided equally is over 21,000 square feet per home.

**Specific Project Comments from the Technical Review Committee:**

The application was reviewed against the applicable chapters of the LMC and the Engineering Design and Development Standards and the comments generated have been included below.

**Planning Department**

1. *Approval Process:* Applicant has acknowledged that the process for this approval includes staff review, a public hearing before the Planning Commission and a decision by the City Council. Please note that a decision by the City Council is equivalent to the preliminary approval of a long plat. When given, this initial approval would authorize the applicant to move forward with infrastructure improvements but return to the Council for final approval. Per LMC 19.29.100 the final development contract, with all exhibits including the final Covenants,

Conditions and Restrictions for the Kamm Creek development must be presented to the Planning Commission for review and the City Council for approval. Final approval by the City Council and completion of any associated punch lists and as-built drawings would then authorize the property to be officially divided, recorded and lot numbers assigned.

2. Density: LMC 19.29.060(1) states that floodplain shall not be included in the gross land area for the calculation of density in a PRD. The project narrative indicates that of the 20 acres on the subject property, 5.2 are within the floodplain. This means that the final density of the PRD is 2.7 units per acre when up to 4 units per acre are permitted (consistent with the underlying RS-100 zoning). Applicant has provided a break-down of density calculations. These must appear in table form on the final drawings.
  
3. Setbacks: The applicant has indicated that the standard PRD front setback of 15 feet will be met. Staff recommends that the final development agreement also include rear setbacks and side setbacks although. LMC 19.29 does not require specific side and rear setbacks other than the required 25 foot PRD boundary. Lot 11 would require a site-specific standard as the less than the 25 foot perimeter in order to maintain an adequate buildable area. Staff recommends the following:
  - a. PRD perimeter of 25 feet.
  - b. Rear setback of 20 feet on lots less than 7,000 sf. Rear setback of 30 feet on lots greater than 7,000. Open sided patio / deck roofs allowed to encroach up to 12 feet into the rear setbacks.
  - c. Side setbacks of 7 feet. Except, lot 11 – Site specific standard of a reduced PRD perimeter on the eastern property line. Minimum setback of 7 feet consistent with underlying zoning.
  - d. Front setbacks of 15 feet.
  - e. Garage door setback of 24 feet.
  
4. Lot Coverage: Applicant has indicated that lot coverage is “not expected to exceed 40%”. Staff recommends that language be modified so that a specific maximum lot coverage of 40% be indicated in the final development agreement. Given the amount of common open space, staff is supportive of a 40% lot coverage.
  
5. Critical Areas: The applicant has submitted a Critical Areas Detailed Study that analyzes proposed impacts to the wetlands and regulated streams and their buffers. The Critical Areas Report dated June 29, 2020 is considered preliminary and subject to necessary revisions based on requested information, subsequent plat design alterations, and Army Corps and WDFW permits.

Proposed wetland fill will require Army Corps permits. Stream crossing work will require a WDFW HPA permit. Staff expects that details of the proposed

mitigation plan will require revisions subject to these permits prior to final plat approval.

- 6. Floodplain: The FEMA designated floodplain and elevation for the Nooksack River shall be indicated on the final plat. Applicant shall confirm the BFE for the subject property and locate and adequately delineate that elevation on the ground. Any approved alterations that would change the on-site location of the BFE will require a LOMA and/or a LOMR-F prior to final plat approval.

Proposed development of the floodplain shall comply with FEMA regulations and LMC 16.12 Floodplain Management. Approval of floodplain development is subject to cut and fill analysis, compensatory storage, and a biological assessment. All of the analysis must occur prior to commencement of work / fill within the flood plain.

Future parcels that contact the floodplain or that are directly adjacent to the floodplain will require an elevation certificate at final occupancy to ensure 2 feet of freeboard above BFE.

- 7. Open Space Standards: An MPRD shall set aside a minimum of seven and one-half percent (7.5%) of the gross land area or 4,000 square feet, whichever is greater, for active recreational uses. The percentage of area set aside for active uses may be reduced per LMC 19.29.080(D)(2) in association with environmentally sensitive areas. The proposal includes 64% open space. Active open space is included in the form of trails.
- 8. Open Space Covenant: Consistent with LMC 19.29 the applicant has agreed to provide LMC 19.29 open a recorded deed restriction or restrictive covenant which runs with the land and assures that said property will remain in open space in perpetuity, consistent with the terms of this chapter, and which shall be held and maintained for such purposes for the common benefit of residents of the development by a homeowner’s association.
- 9. Pedestrian Connections: As noted in LMC 19.29.060(6), in addition to sidewalks fronting residential lots, there must be logical pedestrian connections throughout the project including paved pathways to front doors, and trails within or adjacent to open space areas.

- a. Per staff’s recommendation the applicant has also included an asphalt pedestrian path and public access easement parallel to Northwood Road, west of the existing ditch. A path of this nature is preferred as it will be some time before full roadway improvements will occur on Northwood Road – especially since the property to the east is not within the City’s Urban Growth Area.

- b. Additionally, this development will accommodate the construction of and/or dedication of property for future public use connections to the East Lynden Loop Trail with access provided to the west.

- 10. Mineral Rights: A 1962 real estate contract on the property appears to show that CV Wilder and Ella Wilder maintained ½ of all oil, gas and mineral rights on the subject property. Applicant has been advised that prior to commencement of construction the developer must demonstrate that the title has been cleaned of this claim or verified through the City attorney that work can begin through alternate means.
  
- 11. Residential Design Standards: Applicant has been advised that homes proposed within the MPRD will be subject to the design standards of LMC 19.22. These also include articulations on building elevations that face toward public streets or shared green spaces, exterior finish details, porches and stoops, and the screening of mechanical equipment.
  
- 12. Traffic Study: A traffic study has been submitted with the PRD application. However, the study was conducted with the assumption of 35 homes rather than the 40 proposed in the application. The applicant will be required to provide an updated traffic study that is consistent with the final lot count prior to preliminary approval by the City Council. The applicant will be required to present the findings to the City Council at the time of preliminary approval. It is important to note that the private street standard proposed by the applicant is typically reserved for developments that do not exceed 150 average daily trips (ADT). The traffic study, although only analyzing 35 lots, already reaches 330 average daily trips. Per Division 4.3(B) of the City’s Engineering Design Standards, the private street standard for developments exceeding 150 ADTs calls for parking on both sides of the street and sidewalks on both sides of the street.

Although staff recognizes that development near critical areas may warrant a reduction in paved areas and a de-emphasis of auto dependency, the applicant should be aware that the Council may not support the reduced street standard on this scale of a development given that the Kamm Creek PRD is disconnected from other pedestrian networks and bus lines within the City and clearly will require daily use of automobiles.

- 13. Street Design: City of Lynden Engineering Design Standards describe a private street standard in Division 4.3(B) that can be used in PRDs that generate less than 150 average daily vehicle trips. This includes a minimum roadway width of 30 feet that allows for parking on one side and a 5 foot sidewalk on one side. The standard also requires that the roadway be constructed with a vertical curb and gutter.

The applicant has requested that this private street standard be used although the development will generate more than 330 average daily trips.

The applicant has also proposed an alternate design that includes a concrete walkway that is flush with the surface of the street.

Given that many lots exceed 7,000 square feet and can provide on-site parking. And, given that much of the property is constrained by critical areas and flood plain. And, given that the applicant has designed a pedestrian trail system that can take the place of some sidewalk amenities, staff will support the private street standard that calls for parking on one side and sidewalk on one side. However, given the scale of the community and amount of traffic generated, staff cannot support a pedestrian walkway that is not separated from the street. Separated walkways provide a safer environment for pedestrians, especially small children. Staff recommends that vertical curb on the sidewalk side be required. Staff also recommends that a 3-4 foot vegetated parking strip be required to avoid abrupt vertical changes in the sidewalk at each driveway cut. As a result, lots 35-38 may need to be enlarged to accommodate this separated walkway and planting strip and lot 40 may possibly need to be eliminated.

Staff is supportive of the proposed reduced roadway width of 24 feet only in areas within the critical areas and their associated buffers.

14. Posting of Private Streets: Streets within the Kamm Creek PRD must be posted as private. The CC&Rs must address methods of parking enforcement and street maintenance, cleaning, snow clearing, and repair.
15. Driveways: City of Lynden code requires that driveways measure a minimum of 25 feet in depth to accommodate parked vehicles without blocking sidewalks. The PRD originally proposed 20 foot driveways but later, given staff concerns regarding parking, revised the proposal to 24 feet. The applicant has indicated that the proposal will meet the parking standard typical of single family development. Staff is supportive of the 1 foot reduction of driveway length if on-street parking is provided as per the private street standard.
16. Street Design – Pervious Pavement: The communities CC&Rs must specifically address the use of pervious pavement, the need for maintenance, and the responsibility of the HOA of this infrastructure.
17. Street Design – Hydrant Access: If a hydrant is located in an area of the development where streets measure 24 feet in width. It is important to note that it must be expanded to a minimum of 26 feet in width for a minimum distance of 20 feet at the hydrant location. Specifically, for 10 feet on each side of the hydrant. No parking is permitted adjacent to fire hydrants. This restriction must be adequately signed and/or painted on the pavement.
18. Area Break-down: Whatcom County and the City of Lynden have been mandated to participate in an annual report provided to the State which tracks achieved housing density. In an effort to track accurate data for this program all plats and lot line adjustments will be required to provide supporting data. Please provide on the face of the drawing a table which breaks down the total area of the plat drawing after the lot line adjustment into the categories shown below.

Note that in some instances the area may be zero and that “other infrastructure” could refer to area used for sewer pump station, stormwater ponds, etc.

	Plat Area (in sq ft)
Gross plat area	
Reserve tracts	
Critical areas (including buffers)	
Right of ways (ROWs)	
Other infrastructure	
Net developable	
Percent ROW and Infrastructure	%

- 19. Utility Easements: Per 18.14.075, of the LMC requires 5-foot utility easements around the interior property line of all residential lots. If a deviation to this requirement is requested, it must be included in the future development agreement.
- 20. Street Trees: The applicant has been advised that, per Sec. 18.14.120, the developer will be required to provide street trees within the dedicated public utility easement adjacent to the street. Without blocking view triangles, there shall be a minimum of one tree per lot with a maximum of fifty feet between trees. Vegetated parking strips are not an adequate location for street trees unless they are 4 feet in width or greater. Maintenance of street trees shall be the responsibility of the adjoining property owner or, if indicated in the CC&Rs, the homeowners association. Please address in CC&R's.
- 21. Homeowners Association Required: Be advised, per LMC 19.29.130 the MPRD shall have a homeowner's association and enforceable covenant to fund and effectively collect fund for such and organization. Associated agreements and covenants shall apply to all the property with the PRD, shall be recorded and shall run with land. Within one year of preliminary approval the final development contract and the community's covenants, conditions and restrictions (CC&R's) must be presented to the Planning Commission for review and City council for approval. CC&R's must include a management plan for common open space, trails, alleys, mitigated areas, and conservations easements if utilized.

**Public Works**

22. Public Improvements: Be advised, all public improvements must be constructed to the current standards as noted in the City of Lynden Manual for Engineering Design and Development Standards or an equivalent approved through the Planned Residential Development process. A Development Contract to construct will be required prior to any construction. This may be combined with the PRD Contract. Both contracts require Council approval.
23. Plat/Interior Street Improvements: If the applicant proposes an alternate frontage improvement plan different than City standard for approval it must provide adequate turn-around within public right-of-way and address the needs of the proposed development (ex. parking, life safety, delivery, waste collection etc.) Any proposed alley shall be private with a minimum clear width of 24-feet. The City's PRD code standard is a street width of 30 feet curb-to-curb with sidewalks on both sides. Staff is concerned that proposed street layout indicates access will be limited to one access during flood events. Maintaining the private street standard is recommended.
24. Off-site Street Improvements: Proponents traffic study must address all phases/impacts of the proposed project. Traffic study must meet requirements of City standards. Additional right-of-way may be needed to address west bound right turn movements. The applicant has agreed to dedicate 10 feet of right-of-way to the City along the full frontage of Northwood Road as required by Public Works consistent with the City's transportation plan. A 10-foot utility easement behind the right-of-way shall be dedicated. Northwood frontage improvements are required to the extent they provide for safe ingress and egress from the project. This will also include street lighting and pedestrian connections (see pedestrian connection comment above).
25. Stormwater
- a. A stormwater management plan prepared by a professional engineer will be required for this development and must be approved by the City of Lynden prior to approval of construction plans. This must also address any impacts from seasonal high groundwater and flooding. Prior to site plan and/or preliminary plat approval, a Stormwater Site Plan Narrative per the City's Manual for Engineering Design and Development Standards. addressing all Stormwater minimum requirements shall be submitted. An erosion control plan must be included in the drainage plan and construction plans as necessary.
  - b. All plans must be designed and constructed in compliance with the Department of Ecology's Best Management Practices and the standards approved in the Manual for Engineering Design and Development Standards.
  - c. Stormwater from public streets may be infiltrated within the dedicated right-of-way, or within a separate dedicated tract, if approved/accepted by

the City, but may not be within the street prism. Infiltration areas and street trees should have adequate separation to insure the proper functioning of the drainage system and survival of the tree.

- d. A Construction National Pollutant Discharge Elimination System (NPDES) permit may be needed.
- e. Be advised, proposed lot sizes may make it difficult for any form of onsite facilities to be installed on the lots unless rear setbacks are required.

26. Water

- a. As per 6.2 (M) of the City of Lynden Project Manual for Engineering Design and Development Standards.
- b. As per LMC 18.14.150, the main water line shall be extended to the furthest extent of all properties of this PRD unless it is determined that services, including life-safety are adequately provided elsewhere. Applicant has requested, and staff recommends that water extension beyond the south entrance to Kamm Creek PRD is unnecessary as property beyond the development drops into the floodplain and is not part of the City's Urban Growth Area.
- c. A 20-foot utility easement is required if only water is located within it. If two public utilities are in an easement the minimum width is 30 feet equally spaced.
- d. Each house and/or unit within this plat must be individually metered. Water meters must be located within the City right-of-way or unit / access easement.
- e. If located within the Nooksack Floodplain, water services shall have backflow prevention to protect the City system.
- f. Twelve (12) inch water shall be extended from the current dead end location on Kamm Road east to Northwood and then south on North to the edge of the plat. Water line looping may be necessary to meet fire flow requirements (1500 gpm).

27. Sanitary Sewer

- a. Sanitary sewer and water system design and construction must meet the requirements of the City of Lynden Engineering Design and Development Standards.
- b. The sewer line must be extended to the furthest extend of all properties per City development standards of the proposed development unless it is determined that services are adequately provided elsewhere.

- c. A sewer easement of 20 feet is required for all public systems. If more than one public utility is within the easement the easement shall be 30 feet.
- d. The existing sewer easement shall not be impacted. Any changes to the current sewer access road shall provide an equal or greater access.
- e. Proposal has more units that was anticipated per sewer comprehensive plan and will need to be reviewed for impacts that may require offsite improvements.

### **Fire and Life Safety**

- 28. Minimum Street Width: The private roadway must be expanded to a minimum of 26 feet in width for a minimum distance of 20 feet at the hydrant location. Specifically, for 10 feet on each side of the hydrant.
- 29. Hydrant Requirements: The installation of fire hydrants will be required. Code requires that fire hydrants be installed at intervals not to exceed 500-feet in single family areas and 300-feet in multi-family areas. The final hydrant location will be determined upon review of civil plans and must be approved by the Fire Department.
- 30. Street Addressing: Addresses that cannot be seen from the city street must be posted at both the access easement and on the house.
- 31. Fire Code: Future Development will require full compliance with the Fire Code.
- 32. Fire Impact Fees: Be advised, half of fire impact fees will be due at the time of final development approval (subdivision and half of the fire impact fee will be due at the time of building permit. The current rate of this fee is \$389.00 per multi-family unit and \$517.00 per single family home.

### **Parks and Recreation**

- 33. Trail Dedication: Be advised, dedication of a public trail easement or the granting of public access on trails through an associated restrictive covenant will be required as a condition of the final Master Planned Residential Development approval.
- 34. Park Impact Fees: Be advised, park impact fees will be due at the time of permit. The current rate of this fee is \$546.00 per multi-family unit and \$936.00 for single family home.

**Advisory Requirements**

- 35. Civil Drawings: The construction drawings for any civil and utility improvements must be submitted for review and approval prior to construction. These drawing must illustrate that the utility improvements and extensions meet the standards listed within the Project Manual for Engineering Design and Development Standards, unless they have been specifically varied by the approval of the plat. It is the project engineer’s responsibility to be aware of these standards.
- 36. Civil Review Deposit Required: Be advised, a review deposit of \$200 per lot, \$2,000 minimum, to review the construction plans and a plat / PRD construction inspection deposit of \$350 per lot, \$5,000 minimum, is due prior to review and construction respectively.
- 37. Bonding Requirements: A post construction maintenance bond in the amount of 10% of the construction costs for public facilities will be required prior to final plat approval. A Performance Bond is required for all work within City right of way. This bond shall be for 150 % of the approved engineer’s estimate for the work.
- 38. Surveying: All surveying work and engineering design must be based on the City of Lynden survey control monuments. AutoCAD files for all improvements must be provided to the City in digital format approved by the City. A copy of the City’s control monuments is available to the project consultant for their use.
- 39. Expiration of Preliminary Approval: Petitioner shall record the final subdivision, PRD and Development Agreement with the County in conformance with LMC 18.06.010.2, 18.06.020 and 18.06.030 within five (5) years of the date this preliminary approval becomes final, after which City approval of this application shall become void; provided that, this one year deadline may be extended for up to one (1) additional year upon application to and approval by the City Council.
- 40. Property Addressing: Be advised, all street addressing must follow the requirements of the Lynden Municipal Code. Addresses will be assigned by the Public Works Department prior to final PRD approval.

**II. DECISION**

Petitioner’s application to subdivide the parcel described herein into 40 lots known as the “Kamm Creek MPRD”, for future development is hereby **Preliminarily Approved** subject to the conditions set forth in this document.

DATED: December 8, 2020

  
 \_\_\_\_\_  
 Scott Korthuis  
 Mayor

WHEN RECORDED RETURN TO:

Kamm Creek Partners, LLC  
1841 Front Street  
Lynden, WA 98264

DOCUMENT TITLE: Development Agreement

REFERENCE NO. OF  
RELATED DOCUMENT: Not Applicable

GRANTOR(S): City of Lynden, a Washington Municipal Corporation

GRANTEE(S): Kamm Creek Partners, LLC, a Washington limited liability company

LEGAL DESCRIPTION/ASSESSOR'S TAX/PARCEL NUMBER(S):

400315 248165 0000/128322:

The East 5 acres of the South half of the Northeast quarter of the Southwest quarter of Section 15, Township 40 North, Range 3 East of W.M., less road, except undivided one half (1/2) interest in oil, gas and mineral rights as reserved under Whatcom County Auditor File No. 927862.

400315 183163 0000/128292:

The South half of the Northeast quarter of the Southwest quarter of Section 15, Township 40 North, Range 3 East of W.M., except the East 5 acres thereof, and except undivided one half (1/2) interest in oil, gas and mineral rights as reserved under Whatcom County Auditor File No. 927862.

# DEVELOPMENT AGREEMENT

## *Kamm Creek Planned Residential Development*

This Development Agreement, hereinafter referred to as "Agreement," is entered into by and between the City of Lynden, a Washington municipal corporation (hereinafter the "City"), and Kamm Creek Partners, LLC, a Washington limited liability company (hereinafter "Developer") whose address is 1841 Front Street, Lynden, WA 98264, and who is the owner of the property commonly known as the "Kamm Creek PRD," and which is legally described on Page 1 above (hereafter "Kamm Creek PRD" or "Property") and depicted on Exhibit C.

This Agreement is entered pursuant to the following recitals of fact, which are a material part of this Agreement:

A. Lynden Municipal Code (LMC) 19.29 guides the development standards and criteria for approval for Master Planned Residential Developments (MPRDs), and the primary purpose of MPRDs is to promote creativity in site layout and design by allowing flexibility in the application of the standard zoning requirements and development standards.

B. An application for a Planned Residential Development Permit was filed with the City for the development of the real property described above under PRD No. 20-02 ("Permit No. 20-02"). The process for approval of the PRD included staff review, a public hearing before the Planning Commission, and a decision by the City Council.

C. The City issued a Mitigated Determination of Non-Significance under WAC 197-11, and that document is attached and incorporated by reference herein, as Exhibit B.

D. The minimum lot size for single family homes within a PRD is 5,000 square feet, pursuant to LMC 19.29.060(1). The size of the forty (40) residential parcels proposed under Permit No. 20-02 range from 5,237 square feet to 10,228 square feet, with ten parcels exceeding 9,000 square feet. Factoring in common open space within the PRD's proposed boundary, the average area per residence is over 21,000 square feet per home when divided equally. Accordingly, the lots proposed by the PRD meet and exceed the 5,000 square foot minimum.

E. The property described above is located within the Residential Single-Family ("RS-100") zone, which allows a residential density of up to four dwelling units per acre. While approximately 5.2 acres of the subject property are located within the floodplain (and LMC 19.29.060(1) states that area within a floodplain shall not be included in the gross land area for the calculation of density in a PRD), even with the floodplain area excluded from density calculations, the final density of the proposed PRD is 2.7 units per acre, which is well within the permitted density.

F. The application was reviewed against the applicable chapters of the LMC and the Engineering Design and Development Standards, and the City determined that the overall intent of the application was mostly consistent with the purpose of PRDs as outlined in LMC 19.29.010, and that the proposal appeared to meet the minimum lot size and other PRD requirements consistent with City Code.

G. The City granted preliminary approval of Permit No. 20-02 on December 8, 2020, adopting Findings of Fact and Conclusions of Law for the Kamm Creek PRD. A revised/updated approval decision was issued on September 7, 2021, reflecting that Condition No. 10, regarding mineral rights, was advisory rather than requiring clearance of mineral rights from title.

H. The decision by the City Council approving the PRD with conditions is equivalent to the preliminary approval of a long plat. When given, this initial approval authorized the applicant to move forward with infrastructure improvements, but required applicant to return to the Council for final approval.

I. Section 19.29.100(C) of the Lynden Municipal Code (“LMC”) requires a development contract be presented to the Planning Commission and City Council for review and approval within one year of the preliminary PRD approval, thereby memorializing the conditions of the Permit No. 20-02. The one-year deadline after preliminary PRD approval was December 8, 2021, and the deadline for presentation of the development contract was extended for a period of sixty (60) days.

J. LMC Section 19.29.130 required that the Developer submit the final Covenants, Conditions and Restrictions (CCRs) for the City’s Attorney review, and that section of the Code as well as the Council’s decision also required that the development contract and the CCRs be presented to the Planning Commission for review and the City Council for approval. A copy of the CCRs is attached as Exhibit A and incorporated by this reference as if fully set forth.

K. LMC Section 19.29.130 requires that a homeowners association (HOA) be formed. This group is intended to manage and maintain all common areas, critical areas, stormwater facilities, and private streets. The HOA must be incorporated and subject to the protections and requirements under the Washington Common Interest Ownership Act (WUCIOA).

L. This Agreement is prepared according to RCW 36.70B.170-200.

WHEREFORE, the City of Lynden and Kamm Creek Partners, LLC do enter into this Agreement and for and in consideration of the mutual covenants, duties and obligations herein set forth, do agree as follows:

ARTICLE I

LAND USE AND SETBACK REQUIREMENTS

1.1 Kamm Creek PRD is located within the RS-100 zone. Any development or design requirement not specifically listed below shall be imposed as required by Chapters 19.15, 19.17 and 19.29 of the Lynden Municipal Code (LMC).

1.2 The total number of units to be developed within the Kamm Creek PRD may not be more than 40 single family homes in addition to the existing residential structure.

1.3 All structures shall be set back a minimum of 25 feet from the PRD perimeter, except a setback of 7 feet will be allowed on the eastern boundary of Lot 11 along Northwood Road.

1.4 Exhibit C provides the location of the various lots to be developed under this PRD. Residential uses within the Kamm Creek PRD shall be single family detached.

The following are the setback and development regulations specific to the single-family lots.

- i. The minimum lot size shall not be less than 5,000 square feet.
- ii. The setback to garage doors shall be at least 24 feet for all units accessing from a public or private street as measured from the property line.
- iii. The minimum setbacks shall be measured to the dwelling foundation and property line, and shall be as follows:

- Front Yard: 15 (fifteen) feet
- Side Yard 7 (seven) feet
- Rear Yard 30 (thirty) feet; except lots under 7,000 square feet shall be allowed a rear yard setback of 20 (twenty) feet. Open sided decks and patios (three sides open) may encroach up to 12 (twelve) feet into the rear yard setback.

- iv. The maximum building lot coverage shall be 40% of the lot.

1.5 Vesting. Existing City ordinances and regulations, and other existing laws and regulations administered by City as of the date of execution of this Agreement, will apply to govern development the Kamm Creek PRD for the duration of this Agreement; except that, this provision shall not apply to, and there shall be no vesting of rights for, including without limitation, the following: City Health Code, Title 8 LMC; City Building Code, Title 15 LMC; Title 13, City of Lynden’s concurrency requirements and service levels associated with off-site roads and traffic impacts; and any and all City and state regulations relating to stormwater. Further, Lynden reserves the authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

1.6 MDNS. The City’s State Environmental Policy Act threshold determination for the Kamm Creek PRD, a mitigated determination of non-significance issued August 28, 2020, contains conditions which are required for the Kamm Creek PRD (“MDNS”). Developer agrees to comply with all the conditions stated within the MDNS.

1.7 The area break-down table noting gross plat area, and the areas of reserve tracts, critical areas/buffers, rights-of-way, and other infrastructure, will be included on the final Plat map as provided under Condition 18 of the preliminary PRD approval.

ARTICLE II

DESIGN GUIDELINES AND STANDARDS

Homes within the PRD will be subject to the design standards of LMC 19.22. These also include articulations on building elevations that face toward public streets or shared green spaces, exterior finish details, porches and stoops, and the screening of mechanical equipment.

ARTICLE III

INFRASTRUCTURE DEVELOPMENT REQUIREMENTS

3.1 STREET CONSTRUCTION:

- a. Streets within the PRD shall be private and constructed with the following requirements:

	<u>Right of Way</u>	<u>Paved Width</u>	<u>Sidewalk (one side)</u>	<u>Planting Strip</u>	<u>Material</u>
Streets fronting lots	41 feet	30 feet	5 feet	3-4 feet	Asphalt <sup>1</sup>
Other streets (i.e., within critical areas and associated buffers)	30 feet	24 feet	N/A	N/A	Asphalt <sup>1</sup>

In the event hydrants are located in an area with 24-foot wide streets, the width of the street must be expanded to a minimum of 26 feet for a distance of 10 feet on each side of any hydrant. No parking is permitted adjacent to fire hydrants, and this restriction must be clearly marked with signs or pavement marking.

- b. A 6 inch vertical cement concrete curb is required along road frontages where sidewalks are present to provide pedestrian protection from vehicle traffic. Rolled curb is not permitted as a substitute for this requirement.
- c. Street trees will be required within the dedicated public utility easement adjacent to the street, pursuant to Section 18.14.120 LMC. A minimum of one street tree is required per

<sup>1</sup> As provided in Condition 16 of the preliminary PRD approval, the asphalt pavement is to be pervious/permeable, and the CC&Rs will address such use and the Association’s responsibility to maintain the same.

lot, and there shall be a maximum of 50 feet between each tree; provided, however, trees shall not be placed so as to block view triangles. The CCRs clearly address the responsibility of adjoining property owners to maintain the street trees.

- d. All streets within the PRD shall be posted as private.
- e. Condition Number 12 of the preliminary PRD approval erroneously stated that the traffic study submitted in connection with the application was conducted with the assumption of 35 homes rather than 40, and provided that the Developer would be required to provide an updated traffic study consistent with the final lot. However, it is acknowledged that the Traffic Study by Gibson Traffic Consultants dated April 2020 was specifically premised on forty (40) lots, and accordingly that condition is deemed satisfied.
- f. If Developer proposes a frontage improvement plan different from City standards, it must provide adequate turn-around within public right-of-way and address the parking, life safety, delivery, waste collection, and other needs of the proposed development. Any proposed alley shall be private, with a minimum clear width of 24-feet.
- g. Additional right-of-way may be needed to address west bound right turn movements. The applicant has agreed to dedicate 10 feet of right-of-way to the City along the full frontage of Northwood Road as required by Public Works consistent with the City's transportation plan. A 10-foot utility easement behind the right-of-way shall be dedicated. Northwood frontage improvements are required to the extent they provide for safe ingress and egress from the project. This will also include street lighting and pedestrian connections.

### 3.2 SANITARY SEWER

a. Sanitary sewer system design and construction must meet the requirements of the City of Lynden Engineering Design and Development Standards.

d. The sewer line must be extended to the furthest extend of all properties per City development standards of the proposed development unless it is determined that services are adequately provided elsewhere. A 20-foot utility easement is required for public sewer systems. If two public utilities are in an easement the minimum width is 30 feet.

e. existing sewer easement shall not be impacted. Any changes to the current sewer access road shall provide an equal or greater access.

### 3.3 WATER

- a. The project shall be served by extending a City of Lynden 12” water main within Northwood Road, from the current dead-end location on Kamm Road east to Northwood and then south on Northwood to the edge of the plat, unless, modelling indicates this is not needed to meet fire flow requirements as identified in City code. A 20-foot utility

easement is required if only water is located within it. If two public utilities are in an easement the minimum width is 30 feet equally spaced. Work will be done per 6.2 (M) of the City of Lynden Project Manual for Engineering Design and Development Standards.

- b. Fire hydrant installation is required and spacing within this development shall be every 500 feet for single family at a minimum, with final locations to be approved by the Fire Chief.
- c. Each house and/or unit within the Kamm Creek PRD must be individually metered and said meters shall be located within the private street right of way.
- d. Per LMC 18.14.075, there shall be a five-foot utility easement around the interior property line of all residential lots within the Kamm Creek PRD.
- e. LMC 18.14.160 provides for utility extensions to be made to the furthest extent of the property or edge of the subdivision except where there is no expectation of extension of utilities to other lots. It has been determined that water extension beyond the south entrance to Kamm Creek PRD is unnecessary as property beyond the development drops into the floodplain and is not part of the City's Urban Growth Area.
- f. If located within the Nooksack Floodplain, water services shall have backflow prevention to protect the City system.

### 3.4 STORMWATER REQUIREMENTS

- a. Condition Number 25 of the preliminary PRD approval noted the need for a stormwater management plan prepared by a professional engineer, addressing any impacts from seasonal high groundwater and flooding, and a Stormwater Site Plan Narrative addressing all Stormwater minimum requirements shall be submitted, as well as an erosion control plan included in the drainage plan and construction plans as necessary. The final civil engineering design including stormwater report was subsequently submitted to the City, and accordingly that condition is deemed satisfied.
- b. Stormwater from streets may be infiltrated within the -street easement right-of- way, or within a separate dedicated common area tract, but may not be within the street prism. The project may incorporate porous pavements as part of the Stormwater Plan. Infiltration areas and street trees should have adequate separation to insure the proper functioning of the drainage system and survival of the tree.
- c. Developer has applied for a National Pollutant Discharge Elimination System (NPDES) permit as noted under Condition 25(d),
- d. The City and the Developer shall execute a Stormwater Facilities Inspection and Maintenance Agreement, which shall apply to the entire Property. Stormwater operation and maintenance shall be completed per approved stormwater report and the Stormwater Agreement. Maintenance of the stormwater facilities shall be the responsibility of the Developer until control of the Property is turned over to the HOA, at which time the

HOA shall assume maintenance responsibilities. All stormwater systems shall be inspected at least yearly and report submitted to the. Any repairs identified shall be completed/corrected and reinspected within 30 days.

3.5 VEHICULAR ACCESS AND PEDESTRIAN CONNECTIVITY

- a. All vehicular access to the Kamm Creek PRD plat shall be via private streets from Northwood Road.
- b. A minimum five-foot sidewalk on one side of the street in areas with fronting residences including a 4-foot buffer or planting strip between the raised concrete curb and sidewalk is required.
- c. LMC 19.29.060(6) requires (in addition to sidewalks fronting residential lots) logical pedestrian connections throughout the project including paved pathways to front doors, and trails within or adjacent to open space areas. Accordingly, Developer will include an asphalt pedestrian path and public access easement parallel to Northwood Road, west of the existing ditch, and additional pedestrian trail/path as shown on Exhibit C. Granting of a public trail easement, through an easement or associated restrictive covenant, will be required.
- d. Additionally, this development will accommodate the construction of and/or dedication of property for future public use connections to the East Lynden Loop Trail with access provided to the west.

3.6 ADDITIONAL REQUIREMENTS

- a. Construction drawings for civil and utility improvements must be submitted for review and approval prior to construction. These drawing must illustrate that the utility improvements and extensions meet the standards listed within the Project Manual for Engineering Design and Development Standards, unless they have been specifically varied by the approval of the plat. It is the project engineer's responsibility to be aware of these standards.
- b. Review and inspection fees shall be as set forth in section 7.3, herein.
- c. A post construction maintenance bond in the amount of 10% of the construction costs for public facilities will be required prior to final plat approval. A Performance Bond is required for all work within City right of way. This bond shall be for 150 % of the approved engineer's estimate for the work.
- d. All surveying work and engineering design must be based on the City of Lynden survey control monuments. AutoCAD files for all improvements must be provided to the City in digital format approved by the City. A copy of the City's control monuments is available to the project consultant for their use.

ARTICLE IV

CRITICAL AREAS, FLOODPLAIN, AND OPEN SPACE STANDARDS

4.1 CRITICAL AREAS

A Critical Areas Detailed Study analyzing proposed impacts to the wetlands and regulated streams and their buffers was presented. At the time of preliminary approval, the Critical Areas Report dated June 29, 2020, was considered preliminary and subject to necessary revisions based on requested information, subsequent, plat design alterations, and Army Corps and WDFW permits. It was noted that proposed wetland fill would require Army Corps permits, that stream crossing work would require a WDFW HPA permit, and that staff expected that details of the proposed mitigation plan would require revisions subject to these permits prior to final plat approval. Both the WDFW and Army Corps permits have since been issued. Further, the State of Washington Department of Ecology has granted a water quality certification for the PRD, under Order No. 20894, referencing Corps No. NWP-2021-476.

4.2 FLOODPLAIN

FEMA designated floodplain and elevation for the Nooksack River shall be indicated on the final plat. Developer will confirm the base flood elevation (BFE) for the property, and locate and adequately delineate that elevation on the ground. Any approved alterations that would change the on-site location of the BFE will require a LOMA and/or a LOMR-F prior to final plat approval.

Proposed development of the floodplain must comply with FEMA regulations, as well as LMC 16.12 regarding Floodplain Management. Approval of floodplain development is subject to cut and fill analysis, compensatory storage, and a biological assessment, which must occur prior to commencement of work / fill within the flood plain. A portion of the access road is proposed within the floodplain. Approval for floodplain impacts associated with this work (including cuts / fills, excavations and ground disturbance) is required prior to any work commencing in this or any other floodplain location.

Future parcels that contact the floodplain or that are directly adjacent to the floodplain will require an elevation certificate at final occupancy to ensure two (2) feet of freeboard above BFE.

4.3 OPEN SPACE

The Kamm Creek PRD meets the requirement of Section 19.29.080 by providing more than 7.5% of the land area in the PRD for active recreation and community use. The PRD site plan provides for total open of 64%, including areas for trails. Use restrictions and maintenance shall be the responsibility of the Kamm Creek PRD Homeowners Association.

A recorded deed restriction or restrictive covenant running with the land will be to assure that said property will remain in open space in perpetuity, consistent with the terms of LMC 19.29, and shall be held and maintained for such purposes for the common benefit of residents of the development by the homeowner's association.

ARTICLE V ASSIGNMENT AND TRANSFER

After its execution, this Agreement shall be recorded in the office of the Whatcom County Auditor according to RCW 36.70B.190. According to RCW 36.70B.180, each commitment and restriction on the development subject to this Agreement, shall be a burden on the Property, shall be appurtenant to and for the benefit of the Property, and shall run with the land. This Development Agreement shall be

binding on the City and owners of the Property, Kamm Creek Partners, LLC, and their respective heirs, administrators, executors, agents, legal representatives, successors and assigns. Upon any sale or conveyance of the Property by an owner, such owner shall be released from the obligations of this Agreement and the obligations stated herein shall be enforceable solely against the successor owner of the Property.

ARTICLE VI

DEVELOPMENT AND ADOPTION OF CCRS; HOMEOWNERS' ASSOCIATION

6.1 The Covenants, Conditions and Restrictions ("CCRs") prepared by Kamm Creek Partners, LLC in conformance with this Agreement and Chapter 19.29 of the Lynden Municipal Code are attached as Exhibit A.

6.2 Kamm Creek Partners, LLC and its successors shall consistently and uniformly apply and enforce the CCRs incorporated therein, in a non-arbitrary and nondiscriminatory manner, consistent with state and federal law. Kamm Creek Partners, LLC and its successors shall not waive or abandon enforcement of any particular provision of the CCRs without the written agreement of the City of Lynden.

6.3 As set forth in the CCRs, a homeowners' association will be formed which will hold, manage and maintain common areas including the open space, trails, alleys, mitigated areas, and conservation easements if utilized.

ARTICLE VII MISCELLANEOUS

7.1 Prior to final Kamm Creek PRD plat approval, the Developer will be required to pay transportation mitigation fees, plus the first half of park and fire mitigation fees.

7.2 All public improvements must be constructed to the current standards as noted in the City of Lynden Manual for Engineering Design and Development Standards or an equivalent approved through the Planned Residential Development process.

7.2 The construction drawings for any improvements will be submitted for review and approval prior to construction. These drawing must illustrate that the utility improvements and extensions meet the standards listed within the Project Manual for Engineering Design and Development Standards, unless they have been specifically varied by the approval of the Kamm Creek PRD plat. It is the project engineer's responsibility to be aware of these standards.

7.3 There is a review deposit of \$400 per lot, \$4,000 minimum, to review the construction plans and a plat construction inspection deposit of \$500 per lot, \$10,000 minimum, due prior to review and construction respectively.

7.4 A post construction maintenance bond in the amount of 10% of the construction costs will be required prior to final plat approval.

7.5 All surveying work and engineering design must be based on the City of Lynden survey control monuments. AutoCAD files for all improvements must be provided to the City in digital format approved by the City. A copy of the City's control monuments is available to the project consultant for their use.

7.6 All addressing must follow the requirements of the Lynden Municipal Code. This may require changes to existing addressing, and addresses will be assigned by the Public Works Department. Addresses that cannot be seen from the City street must be posted at both the access easement and on the residence.

7.7 This writing including the exhibits hereto constitute the full and only agreement between the parties, there being no promises, agreements or understandings, written or oral, except as herein set forth, or as hereinafter may be amended in an acknowledged writing and in accordance with LMC Section 19.29.120.

7.8 In the event Kamm Creek Partners LLC fails to comply with the commitments set forth herein, within one hundred twenty (120) days of written notice of such failure from the City, in addition to any other remedies which the City may have available to it in law and equity, the City shall have the right, without prejudice to any other rights or remedies, to cure such default or enjoin such violation and otherwise enforce the requirements contained in this Development Agreement, and to collect the direct costs associated with such action from Kamm Creek Partners, LLC. In the event that a judicial dispute arises regarding the enforcement or breach of this Agreement, then the prevailing party in such dispute shall be entitled to recover its attorney's fees and costs reasonably incurred, including fees and costs incurred on appeal

7.9 This Agreement, and the rights of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Washington and the parties agree that in any such action venue shall lie exclusively in Whatcom County, Washington.

7.10 Nonwaiver of Breach. Failure of either party to require performance of any provision of this Agreement shall not limit such party's right to enforce such provision, nor shall a waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of such provision itself.

7.11 Duration. This Agreement shall expire and /or terminate upon the earliest of the following: (a) ten (10) years from the date of this Agreement; (b) the date upon which Kamm Creek PRD has been fully developed as described herein and all of Developer's obligations in connection therewith are satisfied as determined by City; or (c) upon mutual agreement of the Parties. Notwithstanding the foregoing, the preliminary approval of the PRD will expire if the final PRD Plat is not recorded within five (5) years of the date the preliminary approval became final, in conformance with LMC 18.06.010.2, 18.06.020 and 18.06.030, after which City approval of this application shall become void; provided that, this deadline may be extended for up to one (1) additional year upon application to and approval by the City Council.

7.12 Any notice which a party may desire to give to another party must be in writing and may be given by personal delivery, by mailing the same by registered or certified mail, return receipt requested postage prepaid, or by Federal Express or other reputable overnight delivery service, to the party to whom the notice is directed at the address of such party set forth below:

City of Lynden: Heidi Gudde, Planning Director  
City of Lynden Scott Korthuis, Mayor  
300 Fourth Street  
Lynden, WA 98264

Kamm Creek Partners, LLC: Jeff Palmer, Managing Member  
1841 Front Street  
Lynden, WA 98264

or such other addresses and to such other persons as the parties may hereafter designate in writing to the other parties. Any such notice shall be deemed given upon delivery if by personal delivery, upon deposit in the United States mail, if sent by mail pursuant to the foregoing.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed, and shall be effective on the date of its recording with the Whatcom County Auditor.

Halo Holdings, LLC  
Managing Member of  
Kamm Creek Partners, LLC

By:   
Jeremy Parriera

Its: Member

By:   
Tim Koetje

Its: Member

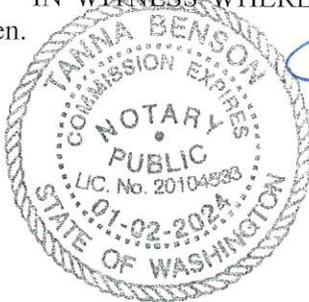
City of Lynden

  
By: Scott Korthuis, Mayor

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

On this 9<sup>th</sup> day of May, 2022, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jeremy Parriera, to me known to be an authorized member of KAMM CREEK PARTNERS, LLC, and acknowledged the foregoing instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the foregoing instrument on behalf of such limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

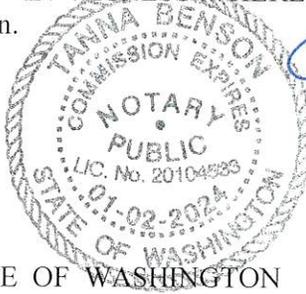


[Signature]  
Notary Public in and for the State of Washington  
My commission expires: 01/02/2024

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

On this 9<sup>th</sup> day of May, 2022, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Tim Koetje, to me known to be an authorized member of KAMM CREEK PARTNERS, LLC, and acknowledged the foregoing instrument to be the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the foregoing instrument on behalf of such limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.



[Signature]  
Notary Public in and for the State of Washington  
My commission expires: 01/02/2024

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF WHATCOM )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Scott Korthuis, to me known to be Mayor of the City of Lynden, Washington, and acknowledged the foregoing instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the foregoing instrument on behalf of the municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of Washington

My commission expires: \_\_\_\_\_

EXHIBIT A = Covenants, Conditions and Restrictions

EXHIBIT B = MDNS

EXHIBIT C = Plat Map

Filed for and Recorded at Request of:

**Exhibit A**

Kamm Creek Partners, LLC  
1841 Front Street, Suite A  
Lynden WA 98264

Grantor: Kamm Creek Partners, LLC  
Grantee: The Public  
Abbreviated Legal: Lots 1 - 40, Kamm Creek Planned Residential Development  
Full legal descriptions on Exhibit A, page 15.  
Tax Parcel Number: 4003152481650000/128322 and 4003151831630000/128292

**DECLARATION OF COVENANTS, CONDITIONS,  
RESERVATIONS AND RESTRICTIONS OF  
KAMM CREEK PLANNED RESIDENTIAL DEVELOPMENT**

This Declaration is made by Kamm Creek Partners, LLC (the Declarant), with reference to the following facts and conditions:

**RECITALS**

- A. The Declarant is the owner in fee simple of the real property located in Whatcom County, Washington, described on Exhibit A, which is attached and fully incorporated by reference.
- B. The Declarant has received preliminary approval to develop the real property described on Exhibit A as a forty (40) lot planned residential development (PRD). The real property described on Exhibit A and subject to these covenants shall be referred to in this Declaration as the "Kamm Creek PRD" and/or as the "PRD." The recorded final plat maps depicting and dedicating the PRD and all rights-of-way will be referred to herein as the "Plat."
- C. The Declarant intends for all lots located within the PRD to be subject to the benefits and burdens of this Declaration, and wishes to provide the means to enforce the rights, reservations, easements, liens and charges provided in this Declaration to provide for necessary maintenance and enhancement of the PRD and to provide for the formation of a Homeowner Association in the form of a non-profit corporation which includes as its members those persons who purchase any Lot within the PRD.

**DECLARATION**

The Declarant hereby certifies and declares that the following covenants, conditions, reservations and restrictions shall inure and be binding upon the respective Owners of each lot or parcel within the PRD, and the Declarant further declares that all of the real property within the legal described on Exhibit A is held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, reservations and restrictions for the purpose of enhancing and protecting the value, desirability and attractiveness of the PRD and every part thereof. All of the following covenants, conditions, reservations and restrictions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the PRD or any part thereof.

**1. LAND CLASSIFICATION AND DEFINITIONS**

The following words and classifications of land shall have the following meanings under this Declaration:

- 1.1 **Lot or Lots.** All lots within the PRD, individually or collectively, as set forth on the face of the Plat, that are designated for the location and construction of a single-family residence.
- 1.2 **Parcel.** Any parcel of real property within the boundaries of the PRD and real property dedicated to the City of Lynden, Washington.
- 1.3 **Person.** Any individual, firm, corporation, partnership, association, unincorporated association, or other legal entity.
- 1.4 **Owner.** Any person holding either fee title or a vendee’s interest under a Deed and/or Real Estate Contract for a Lot as shown by the records of the Auditor of Whatcom County, Washington, or otherwise holding a beneficial ownership interest in a Lot.
- 1.5 **Declarant.** Declarant is Kamm Creek Partners, LLC, a Washington limited liability company.
- 1.6 **Common Properties.** Common properties are the following:
  - (a) **All Roadways/Streets** within the boundaries of the PRD, which are private streets, are delineated on the face of the Plat, and which will be known as Steelhead Way, Trout Way, and Street C.
  - (b) **The Pedestrian Paths/Trails,** including the portion running along the easterly boundary of the PRD parallel to Northwood Road, as well as the portions located south of Lots 11 through 17, and extending westward south of Lots 18 through 23, and separating Lot 23 from Lot 24, as shown

on the face of the Plat. Future trails/paths may be created as provided in Section 2.1(d) below.

- (c) **Open Space Tract(s)** in the westerly and southerly portions of the PRD as well as the northeast and southeast corners of the PUD, as identified on the face of the Plat.
- (d) **Stormwater Facilities** located within the street rights-of-way and other portions and areas of the Common Properties, as identified on the face of the Plat.

1.7 **Plat.** The final recorded plat maps for the Kamm Creek PRD, as filed under Whatcom County Auditor's File No. \_\_\_\_\_.

1.8 **Assessable Property.** Each of the individual Lots as defined in Section 1.1 above.

1.9 **Improvements.** Improvements shall mean and include, without limitation, any buildings, out-buildings, private streets and roads, driveways, parking areas, fencing, retaining walls, swimming pools, screening, walls, ornamentation, signs, stairs, decks, hedges, pedestrian trails, wind breaks, plantings, planted trees, shrubs, poles, lighting, utilities, hot tubs and any other structure or landscaping.

1.10 **Resident.**

- (a) Each person lawfully residing on or in any part of any Lot; and
- (b) Members of the immediate family of each such person actually living in the same household with such person.

1.11 **Board.** The Board of Directors of the Association.

1.12 **Association.** The community association of all Lot Owners, as more fully described in Section 6 hereof, which is being created concurrent with the execution hereof in the form of a Washington nonprofit corporation and which will be known as "Kamm Creek Homeowner Association."

1.13 **PRD.** The "PRD" shall refer to the real property referenced in the Recitals of this Declaration and legally described on Exhibit A, as well as the residential development being developed on said real property.

1.14 **Declaration.** This Declaration of Covenants, Conditions, Reservations, and Restrictions for the Kamm Creek PRD.

2. **RESERVATIONS AND EASEMENTS**

2.1 **Creation of Easements.** Separate easements for access, drainage, sewers, water pipes and utilities, facilities and services (including, but not limited to, water supply, electricity, gas, telephone and television) are hereby granted, reserved, covenanted and created over, under,

upon, in and through all roadways and walkways, and over, under, upon, in and through those certain portions of Lots or other areas which are necessary for existing facilities and equipment serving the PRD, together with the right to enter upon such easements for their installation and repair, as identified on the face of the Plat. The easements created hereby include, without limitation, the following:

- a. The Steelhead Way Easement, which is that easement for ingress, egress, and utilities \_\_\_\_\_ feet in width as described and delineated on the face of the recorded Plat, and which benefits all Lots and property within the PRD, and which provides for a private street \_\_\_\_\_ feet in width [and sidewalk(s) \_\_\_\_\_]. This easement does not benefit the general public.
- b. The Trout Way Easement, which is that easement for ingress, egress, and utilities \_\_\_\_\_ feet in width as described and delineated on the face of the recorded Plat, and which benefits all Lots and property within the PRD, and which provides for a private street \_\_\_\_\_ feet in width [and sidewalk(s) \_\_\_\_\_].
- c. The Street C Easement, which is that easement for ingress, egress, and utilities \_\_\_\_\_ feet in width as described and delineated on the face of the recorded Plat, and which benefits all Lots and property within the PRD, and which provides for a private street \_\_\_\_\_ feet in width [and sidewalk(s) \_\_\_\_\_].
- d. The Pedestrian Trail/Path Easement, which is that easement for pedestrian-only access \_\_\_\_\_ feet in width as described in Section 1.6(b) above and delineated on the face of the recorded Plat. This easement benefits all the Lots and property within the PRD, but the public shall also have the right of pedestrian-only access over the Pedestrian Trail/Path Easement. This public pedestrian-only easement may be confirmed by a separate easement agreement between Declarant and the City of Lynden, but the public’s right of pedestrian access over the trail/path is hereby confirmed and acknowledged even if no separate easement agreement is created. It is also expected that additional trails/paths may be constructed over and within the Open Space Tract(s) to provide future public use connections, including but not limited to connection to the East Lynden Loop Trail. The Association has ownership and control of Open Space Tract(s)/common areas within the PRD for the purpose of constructing such trails and granting further easements for the same, and for any future dedication/conveyance to the public or City of Lynden, in the event the Association’s Board determines such dedication/conveyance to be in the best interests of the Association.
- e. Utility Easements in favor of the City of Lynden, as follows:
  - i) Utility Easements for water and/or sewer mains, which easements are twenty (20) and/or thirty (30) feet in width (depending on whether there is more than one public utility installed in such easement) within the private street rights-of-way and as otherwise shown on the face of the Plat.
  - ii) Utility Easements five (5) feet in width around the interior property line of all residential Lots, as shown on the face of the Plat, pursuant to LMC 18.14.075.

**2.2 Private Nature of Streets.**

a. While the Pedestrian Trail/Path Easement may be used by the public (for pedestrian-only use), it is understood and acknowledged that all area within the PRD remains private property, and that the streets within the PRD as further described in Sections 2.1(a), (b), and (c) are private streets and will be posted as such. These private streets and the easements therefor benefit all of the Lots and property within the PRD, as well as the Association, and the Declarant during the period of Declarant Control of the Association.

b. Nothing within the Plat or this Declaration shall be considered a public dedication, and the streets within the PRD shall continue their private nature unless or until a formal public dedication is made. Streets must be brought up to City standards prior to any request for City acceptance. The Association has ownership and control of the private streets for the purpose of granting further easements (as may be necessary and desirable for utility service or other purposes) and for any future dedication/conveyance to the public or City of Lynden, in the event the Association’s Board determines such dedication/conveyance to be in the best interests of the Association and upon approval by the City.

c. The easements will be construed to benefit the Owners of the Lots within the PRD, utility providers and contractors performing utility and other work, as well as the Lot Owners’ tenants, guests, invitees, and service providers. Use of the private streets by the Owners’ guests, tenants, service providers (including delivery persons), and other invitees of such Owners constitutes use by the Owners benefitted by the easements and shall NOT be construed as public use or as any other type of non-permissive use which would give rise to prescriptive rights of access.

**2.3 Conveyance of Common Properties.** The Common Properties shall be conveyed by the Declarant to the Association at such time as determined in the sole discretion of the Declarant, but in any event no later than the date upon which Declarant achieves the sale to Owners of at least eighty percent (80%) of the Lots within the PRD.

**2.4 Reservation of Drainage Easement and The Right to Drain.** The Declarant hereby reserves the right to drain all roadways, walkways, easement ways, and areas over and across any Lot or parcel within the PRD as noted on the face of the Plat, identified herein and/or where water might take a natural course after the grading of such Lot or parcel. The Association shall be responsible for the maintenance and upkeep thereof, including regular cleaning to remove sediments, the replanting of grass and the replacement of rock as necessary to insure the effective operation thereof. All work related to the PRD drainage shall meet the approved stormwater plan and all identified operations and maintenance and comply with the Stormwater Facilities Inspection and Maintenance Agreement described in paragraph 2.5 below.

**2.5 Stormwater Facilities Inspection and Maintenance Agreement.** The entire Plat is subject to the Stormwater Facilities Inspection and Maintenance Agreement which is recorded under Auditor’s File No. \_\_\_\_\_. The Declarant shall be responsible for compliance with the Stormwater Agreement during the period of

Declarant control, after which time the Association shall assume responsibility for compliance with the Stormwater Agreement.

2.6 **Easement Restoration.** Any work done within any easement created by this Declaration or by the Plat shall be done in a prompt and workmanlike manner and the property shall be restored as nearly as is reasonably practical to its condition prior to work within the easement.

2.7 **Obligation to Maintain.** The Association shall be obligated to operate, repair, maintain and preserve all of the Common Properties consistent with the purpose of and easement restrictions affecting each parcel. The Association’s maintenance obligations shall include but are not limited to [maintaining stormwater facilities, as well as] maintaining posted signs indicating the private nature of the streets, keeping the streets within the PRD in good repair, removing snow from said private streets and conducting regular cleaning and maintenance of said private streets, using materials and techniques that will not impede the free movement of water through the streets’ pervious/permeable pavement. This includes regularly removing foreign matter from the pavement so as to prevent the void spaces in the pervious/permeable pavement from becoming clogged with dirt, leaves, and other debris. Said shall not be used on the PRD streets to de-ice or provide traction; rather, rock salt or other snow-melt products appropriate for pervious/permeable pavement shall be used to prevent clogging. All operations and maintenance shall be per the approved stormwater report and associated operations and maintenance manual and as outlined in the Stormwater Facilities Inspection and Maintenance Agreement described in paragraph 2.5 above.

3. **GENERAL USE RESTRICTIONS AND REQUIREMENTS**

These general use restrictions and requirements apply to all Lots within the PRD, as defined in Section 1.1 above (without limiting the requirement for all improvements to be pre-approved by the Architectural Review Committee (“ARC”) as provided in Section 5 of this Declaration).

3.1 **Permanent Residential Purposes.** All Lots within the PRD shall be used exclusively for permanent single-family residential purposes. No business or commercial activity (including but not limited to home care facilities, domestic shelters, day care and/or pre-schools) shall be maintained, occur or be allowed on any Lot or Common Properties within the PRD. Only one single-family dwelling is allowed to be constructed and/or maintained on each Lot.

Notwithstanding the foregoing, the PRD also contains Open Space Tract(s) as shown on the face of the Plat and described in Section 1.6 above. The Open Space Tract(s) contain protected wetland and buffer areas which are subject to a Conservation Easement in favor of the Association which is recorded under Auditor’s File No. \_\_\_\_\_ . Use of the wetlands and buffer areas contained within the Open Space Tract(s) is limited to those uses permitted under the Conservation Easement and shall be in accordance with the requirements set forth in the Conservation Easement and the requirements of Lynden Municipal Code 16.16, including but not limited to the requirements for fencing and

signage along the buffer perimeters. Those portions of the Open Space Tract(s) that lie outside the wetland and buffer areas may be used as common/recreational space by the Owners, subject to reasonable rules that may be adopted by the Community Association. The entirety of the Open Space Tract(s) shall be kept in open space in perpetuity, and maintained by the Community Association as provided in Section 6.1(b)(ii) and consistent with the provisions of LMC 19.29 and the provisions of the Conservation Easement.

- 3.2 **Recreational Vehicles.** All boats, utility trailers, trucks of more than one-ton rating, campers, recreational vehicles, travel trailers, motor homes and similar items or vehicles maintained or kept upon any Lot within the PRD shall at all times be enclosed within a garage or otherwise neatly stored behind the front wall line of the residence and reasonably screened from view from the street, and any such items or vehicles shall not be parked on any street within the PRD overnight. Out-of-town guests of an Owner may, with such Owner's permission, park a recreational vehicle or travel trailer on Lots for up to a maximum of two (2) weeks per guest visit within any calendar year without being in violation of this section.
- 3.3 **Explosives.** No firearms or explosives shall be discharged within the boundaries of the PRD.
- 3.4 **Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes. No animal shall be allowed to roam freely within the PRD. No animal shall be allowed to bark or make other noise for excessive periods. No pit bulls, rottweilers or any combination of these breeds of dog shall be allowed within the PRD.
- 3.5 **Signs.** No signs or billboards shall be placed on any Lot, except one identification sign bearing the Owner's name and address may be placed upon the Owner's Lot. In addition, the Declarant and any Owner or such Owner's agent, may subsequently advertise any Lot for sale; and furthermore, an Owner may display signs of a political nature, promoting a candidate or a political proposition, during periods of political campaigns.
- 3.6 **Garbage/Refuse.** No Owner shall deposit or permit the accumulation of any trash, ashes, garbage, or other refuse or debris on or about such Owner's Lot or any other property within the PRD, except in appropriate covered trash receptacles. Each Owner shall keep such Owner's Lot neat and orderly in appearance and shall not cause or permit any noxious or odorous conditions to exist, nor maintain any tangible objects, which are unsightly in appearance to exist, on any Lot within the PRD.
- 3.7 **Vehicles and Parking.**
  - a. All automobiles and all other permitted vehicles, if kept or parked on any Lot or otherwise within the PRD, shall be in good order and in working condition. Partially wrecked vehicles, discarded vehicles, unlicensed vehicles or vehicles which are in a state of disrepair shall not be kept on any Lot or street in the PRD, unless enclosed in a garage or otherwise completely screened from view from

outside the Lot. Non-muffled motorcycles, muffled or non-muffled motorbikes, trail bikes, snowmobiles and similar vehicles shall not be operated on any portion of the PRD (and the roads therein) whether licensed or not.

- b. All vehicles within the PRD shall be operated in a safe manner consistent with the rules of the road. Although the streets within the PRD are private rather than public, vehicles within the PRD shall travel at a maximum speed no greater than the City of Lynden speed limit in effect for the immediate surrounding area, and will otherwise operate under the standards imposed by the City’s ordinances.
- c. It is recognized that pursuant to the current Lynden Municipal Code, a minimum of two (2) parking spaces are required for each residential unit on each Lot. If an enclosed garage for two (2) or more vehicles is provided, then a minimum of one (1) outside parking space must be provided.<sup>1</sup>
- d. Because the size of the lots within the PRD allows for substantial on-site parking within PRD lots, the City of Lynden approved the PRD’s private street plan incorporating street widths of 30 feet with parking on only one side in some portions of the PUD, and street widths of only 24 feet in other portions. No on-street parking is permitted along those portions of street that are 24 feet in width. No parking is permitted adjacent to or within \_\_\_\_\_ feet of any hydrant. Owners must prioritize on-site parking for their own vehicles and that of their guests, so as to minimize use of the PRD’s streets for parking purposes, and on-street parking within the PRD must be consistent with the standards imposed by the City’s ordinances.
- e. All vehicle parking and operation within the PRD shall be conducted in such a way as to provide unimpeded access for emergency vehicles and personnel.
- f. The Association may adopt additional guidelines for vehicle operation and parking through bylaws or other rules; provided, however, that if the guidelines, bylaws, or rules adopted by the Association are more lenient than City ordinances, the stricter Lynden ordinances shall control.
- g. The provisions of this Section 3.7 shall be considered as an enforceable part of this Declaration regardless of modifications to the Lynden Municipal Code.

**3.8 Antennas.** No television, radio or satellite antenna, receivers, dishes or other telecommunication devices shall be installed on any portion of any Lot unless contained entirely within the interior of a building or in the backyard, reasonably screened from the view of all neighbors *except* that a satellite antenna disc of not more than eighteen (18) inches in diameter shall be allowed. The location of any permitted satellite disc shall be

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<sup>1</sup> Under City of Lynden requirements, a minimum of two outside spaces must be provided in the case of an enclosed single-car garage; however, pursuant to Section 3.20 of this Declaration, homes within the PRD may have no less than a two-car garage.

prior approved by the ARC.

- 3.9 **Fences.** Wire and chain link fencing is prohibited. The Lot Owners may install and maintain fencing encompassing the yard of their individual Lot at the time of construction of a new home or any time thereafter as approved by the ARC; provided, however, that no fencing may be installed within three (3) feet of any sidewalk. Fencing of individual Lots shall be consistent in materials, color, and style with the perimeter fencing of the entire PRD, as approved by the ARC, and shall also be subject to the permitting requirements of the City of Lynden. Individual Lot fencing may be no more than six (6) feet in height. There is a 42” height limit on fences from the front yard to the front of the house. A fence permit must be secured from the City of Lynden prior to installation of any fence.
- 3.10 **Retaining Walls.** Retaining walls shall not exceed a height of four (4) feet unless they are designed and installed consistent with plans produced by a licensed civil engineer and permitted by the City of Lynden. Retaining walls shall be constructed only of the following materials: stone, heavy timber, concrete with brick, stone or wood facing or concrete with high quality exposed aggregate finish.
- 3.11 **Roof Materials.** Roof materials are limited to natural cedar shakes or shingles, concrete or clay tiles, slate or textured thirty-year plus mineral surfaced composition shingles. Materials for roofing and siding of outbuildings shall be consistent in color(s), style and design with that of the house on the Lot on which it is situated. Metal roofs on certain structures will be allowed with the approval of the ARC.
- 3.12 **Chimney Design.** Exposed metal chimneys are not permitted.
- 3.13 **Clothesline Restrictions.** Clotheslines are only permitted in the backyard of a Lot.
- 3.14 **Surface Water Run-Off.** No Lot shall be improved in such a way as to cause excess surface water run-off that may damage or inconvenience other Lots or contiguous properties and the Owners thereof.
- 3.15 **Damaged Improvements.** No Improvement which has been partially or totally destroyed by fire, earthquake or any other cause shall be allowed to remain in a state of disrepair for a period in excess of four months from the date of such partial or total destruction. Corrective construction or reconstruction shall be required to commence within such four month period and shall be completed in accordance with the provisions of Section 4.1 hereof; provided, however, that such four month period shall be extended by the ARC upon the written request of the Owner for a reasonable period thereafter in the event that corrective construction or reconstruction has not commenced as a result of factors beyond the control of the subject Owner and in the event that the subject Owner has exercised and does thereafter continue to exercise due diligence in an effort to eliminate such factors causing such delay in commencement.
- 3.16 **Landscaping.** Within twelve (12) months after commencement of construction of individual improvements thereon all Lots shall be fully landscaped. All landscaping shall

be subject to approval from the ARC and the View Protection restrictions in section 3.21 herein. If the Owner of the Lot fails to properly maintain landscaping, then the Association may perform the work described in the approved landscaping plan and charge the Owner of the Lot for the cost of such work. The Association may collect this charge pursuant to the authority granted in Section 6.7 of this Declaration.

It is recognized that street trees and planting strips are required as part of the City of Lynden’s approval of the PRD, with a minimum of one (1) street tree per lot, and a maximum of fifty (50) feet between each tree; provided, however, that trees shall not be placed so as to block view triangles. These improvements have been planted by the Declarant, but *must* be maintained by the adjoining Lot in accordance with the City of Lynden’s engineering design and development standards. If the Owner of any Lot fails to properly maintain the street trees and/or planting strips adjoining said Owner’s Lot, then the Association may perform the work and charge the Owner of the Lot for the cost of such work. The Association may collect this charge pursuant to the authority granted in Section 6.7 of this Declaration. No street tree shall be removed without the approval of the City of Lynden.

- 3.17 **Setbacks.** All setbacks shall be consistent with setbacks required by the City of Lynden. Building setbacks are measured from the property line to building foundation. Garage door setbacks are measured from the edge of the property line or adjacent access easement to the face of the garage door. At the time of approval, the setbacks applicable to the PRD are as follows: a) a PRD perimeter setback of twenty-five (25) feet (except for Lot 11, where the PRD perimeter setback shall be reduced to seven (7) feet to allow a reasonable building footprint); b) rear setbacks of 20 feet for lots under 7,000 square feet in size, and 30 feet for lots 7,000 square feet in size or larger; c) side setbacks of seven (7) feet; d) front setbacks of fifteen (15) feet; and e) garage door setbacks of 24 feet. f) open sided decks and patios (three sides open) may encroach up to 12 (twelve) feet into the rear yard setback. Notwithstanding the foregoing, the ARC may impose more restrictive setbacks in their design guidelines as determined in their discretion.
- 3.18 **House Size.** Each single-family dwelling shall be of permanent construction (no mobile or modular homes are allowed) and must be a minimum of 1,400 square feet, with two-story dwellings having a minimum of 800 square feet on the main floor, exclusive of garage, basement and porches. The maximum square footage of two-story dwellings shall be 5,500 above ground. The maximum square footage of single level dwellings shall be 4,000 above ground. Lot coverage shall not exceed a maximum of forty percent (40%) of the lot size. Location of all buildings shall have prior approval by the ARC in an attempt to preserve views of the surrounding mountain and valley area from all Lots consistent with section 3.21 herein.
- 3.19 **Outbuildings.** All outbuildings are subject to the applicable City of Lynden development standards. Size and design of any outbuildings (shops, sheds, or any other structure detached from the residence) must also be approved by the ARC prior to construction and shall be of similar color and design with the residence approved for the Lot. Outbuildings shall only be allowed behind homes (*i.e.* on the opposite side of the home from the road the home faces). Pursuant to Section 3.21 below, the construction of outbuildings shall not block views of the surrounding mountain and valley area from

other Lots. The maximum size of outbuildings is 1,450 square feet, and outbuildings larger than 120 square feet require a building permit from the City of Lynden. Each parcel shall be allowed one outbuilding up to this maximum size and one shed not to exceed 20 by 15 feet. Provided, however, outbuildings may be large enough to accommodate a 14-foot-high door, with a maximum plate height of 16 feet, maximum peak height of 18 feet, and a minimum 5/12 roof pitch. Individual lot owners are allowed up to 1,750 square feet of accessory structures as long as they are below the lot coverage limits.

**3.20 Garages, Curb Cuts, Driveways and Pathways.** All houses shall have no less than a two-car garage. All garages must be a minimum of 400 square feet (2 car) and not more than 750 square feet (3 car). No Lot within the PRD will be allowed to have a driveway or curb cut along Northwood Road. Rather, access to and from all Lots within the PRD will be over and across the internal private streets within the PRD. Driveways must be a minimum of twenty-four (24) feet in length (as specifically allowed by the City of Lynden for this PRD, although the standard minimum is 25 feet). The City of Lynden also requires paved pathways to front doors throughout the PUD, and a vegetated strip (three to four feet in width) to avoid abrupt vertical changes in the sidewalk at each driveway cut. All pavement within the PRD, including not only the private streets and paths but also all driveways and pathways on individual Lots, must be constructed from pervious/permeable material. Each Owner must keep the paved areas within that Owner’s individual Lot free of debris and in good repair, using materials and techniques that will not impede the free movement of water through the pavement, consistent with the standards for street maintenance as provided in Section 2.6. The Association may adopt additional bylaws or other rules governing maintenance of paved surfaces.

**3.21 View Protection.** It is the intent of the Declarant and the Association, to maintain views of the surrounding mountain and valley area to the extent reasonable. Accordingly, the location of all improvements on all Lots (including but not limited to houses, outbuildings and landscaping) shall have prior approval by ARC in an attempt to reasonably preserve views of the surrounding mountain and valley area.

No trees or vegetation over 10 feet are allowed, with the exception of trees installed or preserved pursuant to the approved mitigation plan and street trees. Any improvements (including the residence) shall be located in the areas approved by the ARC and shall not exceed 35 feet in height. The height of the improvements shall be certified by an engineer or architect on the plans submitted to the ARC and shall be calculated as follows: The vertical distance from the lowest existing grade at the wall of the building to the highest point of the coping of a flat roof or to the height of the highest gable of a pitch or hip roof. If the actual height of the improvements varies from the height set forth on the plans submitted and approved by the ARC, it shall be that Lot Owner’s obligation to correct the improvements so that they meet the height identified in the approved plans.

**3.22 Density/Accessory Dwelling Units.** The currently permitted density shall be achieved with one single-family dwelling on each of the single-family Lots of the PRD. No Lots are eligible to apply for accessory dwelling units (ADU).

- 3.23 **Right to Farm Disclosure.** The PRD (and each of the Lots therein) is within or near designated agriculture lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. You may be subject to inconveniences or discomforts arising from such operations, including but not limited to noise, odors, flies, fumes, dust, smoke, the operation of machinery of any kind during any 24-hour period (including aircraft), the storage and application of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. Whatcom County has determined that the use of real property for agricultural operations is a high priority and favored use and will not consider be a nuisance those inconveniences or discomforts arising from farm operations, if such operations are consistent with commonly accepted good management practices and otherwise comply with local, state, and federal laws.
  
- 3.24 **Archaeological Discovery.** If archaeological materials (e.g., bone, shell midden, cobble tools, etc.) are observed during site work located within the PRD or any of the Lots located therein, work in the area of the discovery shall cease and the City of Lynden SEPA administrator, Lummi Nation Tribal Historic Preservation Office (360-384-2298) and the Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) as well as Lummi Nation Tribal Historic Preservation Office and the Washington State Office of Archaeology and Historic Preservation shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
  
- 3.25 **No Offensive Activities.** No Owner, their guests or invitees shall undertake or maintain any activity within the PRD that is obnoxious or offensive and/or constitutes disorderly conduct, disorderly house, and/or a breach of the peace pursuant to Lynden’s Municipal Code.
  
- 3.26 **Areas in Floodplain.** The FEMA designated floodplain and elevation for the Nooksack River are shown on the Plat, and the base flood elevation (BFE) is delineated on the ground. Any development within the floodplain must comply with FEMA regulations and the Floodplain Management provisions set forth in LMC 16.12, approval of such work will be subject to cut and fill analysis, compensatory storage, and a biological assessment. The City of Lynden has mandated that lots that contact or are directly adjacent to the floodplain will require an elevation certificate, to ensure two (2) feet of freeboard above BFE, prior to final occupancy.
  
- 3.27 **Permitting Requirements; Fire Code; Residential Design Standards.** All improvements within the PRD are subject to the permitting requirements of the City of Lynden, including but not limited to building permits, and will be in full compliance with the Fire Code. In addition to the above standards, and except as otherwise specifically provided in this Declaration, all homes within the PRD will be subject to the Residential Design Standards set forth in LMC 19.22, which include but are not limited to articulations on building elevations that face toward public streets or shared green spaces, exterior finish details, porches and stoops, and the screening of mechanical equipment.

**3.28 Critical Areas, buffers and mitigation plantings.** The Declarant shall install mitigation as required by the approved mitigation plan and shall maintain and monitor the mitigation during the period of Declarant control. After the period of Declarant control has ended, the Association is responsible for maintaining and monitoring the mitigation plantings in accordance with the approved mitigation plan.

**4. CONSTRUCTION**

**4.1 Impact/Mitigation Fees.** Impact and/or mitigation fees for parks, fire, [traffic/transportation?] and/or other impacts may be due at the time of home construction on the Lots, and Owners are advised to check with the City of Lynden regarding those fees.

**4.2 Erosion Control.** Provisions shall be made at each construction site as may be reasonably required to control erosion, including use of straw bales, seeding and shielding excavations through the use of material such as ground fabric.

**4.3 Construction Equipment.** Lot Owners and their contractors shall take normal precautions to prevent damage to installed roadways, curbs, sidewalks, services and trees and vegetation. Sidewalks and curbs shall be adequately protected during movement and operation of construction vehicles and equipment across them. Owners and their contractors shall be responsible for damage to Common Properties/Improvements caused by their activities.

**4.4 Conduct of Work.** The impact of construction activities on other Lot Owners and residents must be kept to a reasonable minimum by treating neighbors in a courteous manner, and by limiting construction activities to the hours between 7:00 a.m. and 6:00 p.m. Construction materials should be neatly stored on site at the end of each construction day. Owners and their contractors shall take all normal steps to keep the streets, and neighboring lots free of trailers, job toilets, construction materials, mud, dirt and construction debris. The construction site and surrounding areas should be regularly monitored for unnecessary construction debris and for drainage and mud slides onto neighboring lots and into storm drains. Construction waste and garbage should be disposed of in a large on-site temporary trash receptacle or removed from the site as required to prevent an unsightly build-up of waste materials, and the street in front of the construction site should be kept broom clean.

**4.5 Time For Completion.** Construction of all house improvements shall be prosecuted diligently from the date of commencement of work until the exterior is completed and painted or finished and all sanitation and health requirements have been fulfilled. Furthermore, the maximum time limit for the completion of construction of an improvement shall be nine (9) months from the date construction commences, which is defined as the date building materials are first delivered to the Lot for such purpose. Construction shall not be deemed to be completed until all improvements are finished, the Lot has been cleaned of construction debris consistent with approved plans. In accordance with section 3.16 herein, landscaping must be completed twelve (12) months from the date

construction commences. The Lot Owner shall be responsible for the cost of replacing any survey stakes lost or moved during construction.

5. ARCHITECTURAL REVIEW COMMITTEE

5.1 General. Construction of improvements on any Lot within the PRD shall be subject to the approval of an Architectural Review Committee ("ARC"), that shall consist of no less than three members appointed by the Declarant. No improvements shall be erected, placed or altered on any Lots until the construction plan, specification, site plan and landscaping plan, showing the location of all proposed improvements on the Lot in a form established by the ARC, have been approved. The approval or disapproval of the ARC as to such construction plan, specifications, site plan and landscaping plan, shall be based upon the quality of materials utilized in the construction, the harmony of the external design and color scheme of the proposed improvements with other existing improvements within the PRD, bulk and location of improvements with respect to topography and finish grade, reasonable view protection and compliance with the Declaration and the standards to be developed and made available to Owners by the ARC. In addition, the ARC shall have the authority to control the location and orientation of each structure/roof pitch to reasonably protect the views of the surrounding mountain and valley area from other Lots in the PRD. All Lot Owners agree to cooperate in good faith to locate and orient their structures/roof pitch to reasonably protect the views of the surrounding mountain and valley area from the Lots in the PRD. Notwithstanding the foregoing, the ARC cannot guarantee protection of all views of the surrounding mountain and valley area.

5.2 ARC Fee. In addition to the construction plan, specifications, site plan and landscaping plan, the Owner shall give to the ARC **Two Hundred Dollars (\$200.00)** for each approval requested. A significant change to plans shall be deemed to be a new set of plans and shall require an additional **One Hundred Dollar (\$100.00)** fee. In addition, in the event the ARC implements outside review by a designer or architect the Owner shall be billed for the actual cost of the third-party review. The ARC is not obligated to commence review until the above specified fees have been paid. The fees for ARC review shall be considered an assessment and enforced as set forth in Section 6 below.

5.3 Approval/Disapproval. The ARC shall approve or disapprove the construction plans, specifications and site plan, including specified color finish, within thirty-five (35) days following receipt of a complete duplicate set thereof from the submitting Lot Owner or prospective Lot Owner. Any complete submission of construction plan, specifications, site plan and landscaping plan on which no action is taken by the ARC for sixty (60) days following the date of receipt thereof shall be deemed approved as submitted, unless within such sixty (60) day period the ARC has sought, in writing, clarifying information concerning the same. Two sets of construction plans, specifications (including exterior color finish detail), site plan and landscaping plan must be submitted to the ARC. One such complete set shall be returned to the submitting Lot Owner or prospective Lot Owner with the approval or disapproval endorsed upon such complete set by the ARC. The other complete set shall be retained by the ARC for its permanent files.

The ARC shall have the right to disapprove any construction plans, specifications and/or site plan in the event the same are not in accordance with the provisions of this Declaration, if the design or exterior color scheme of the proposed improvements is not in harmony with the general surroundings of the PRD or with the adjacent improvements, if the proposed improvements unreasonably interfere with the views of the surrounding mountain and valley area from other Lots in the PRD, if the construction plan, specification, site plan and landscaping plan are incomplete, or if the ARC determines that the construction plans, specifications and site plan, or any portion of them, are contrary to the interest, welfare and/or rights of the Owners of other Lots within the PRD.

**5.4 ARC General Guidelines.** The following are general guidelines for approval/disapproval of construction plans, specifications and/or site plans for the PRD.

- Exterior siding of all structures is required to be wood or high-quality wood-appearance fiber cementitious products. Alternative siding material shall only be permitted with ARC approval. No aluminum siding, vinyl siding, or similar siding is permitted. No stucco or dryvit exteriors are permitted.
- All homes shall have a minimum roof pitch of 6/12 and a maximum of 12/12 provided the height does not exceed the height limit or unreasonably interfere with view protection restrictions. Provided, however, outbuildings shall have a minimum 6/12 roof pitch.
- The location and orientation of each house on each Lot shall be approved in a manner to reasonably protect the views of the surrounding mountain and valley area from within the PRD.
- The top of the first floor shall not be less than twelve (12) inches above the road.
- Color schemes shall be muted tones that are consistent with the local community standard, and which blend with the adjacent structures.
- Lots within the floodplain and adjacent lots shall be elevated at least 2 (two) feet above base flood elevation.

**5.5 Variance.** In order to preserve the character of the PRD, and/or to resolve problems relating to unique and difficult topographical problems or in other extraordinary circumstances, the ARC shall have the right to grant a variance from the standards created by the ARC and from those restrictions relating to Improvements set forth in Section 3 of this Declaration. Any variance from the restrictions contained in this Declaration shall be made in recordable form and shall be placed of record on the Lot by the ARC.

**5.6 Conditional Approval.** Any approval given by the ARC may be conditioned upon compliance by the Owner with any reasonable condition which the ARC deems appropriate, including, without limitation, the posting of bonds or other acceptable security in order to ensure performance by the Owner in accordance with the construction plan, specifications, site plan and landscaping plan being approved.

**5.7 No Liability.** Neither the ARC, nor any member thereof nor any successor thereto nor the Declarant, shall be liable to any person for any action taken by the ARC or for any failure

to act by it under or pursuant to the provisions of this Declaration, so long as the ARC, and any successors thereto act in good faith and without malice.

**5.8** **Expiration.** The Declarant may remove and replace the ARC at the Declarant's sole discretion. This right to appoint and remove the ARC shall not expire until the Declarant no longer owns any Lots in the PRD and construction plan, specifications, site plan and landscaping plans have been approved for all Lots in the PRD.

**6. COMMUNITY ASSOCIATION**

The Declarant shall form a Community Association, designated herein as the Association, to include as its members all Owners of any Lot within the PRD. This organization shall be a nonprofit corporation pursuant to Title 24 of the Revised Code of Washington and shall be known as "Kamm Creek Homeowner Association" and shall be authorized to enforce the terms and conditions herein.

**6.1 Purpose, Powers and Authority.**

- a. Purpose. The purpose of the Association shall include, without limitation, the furtherance and promotion of the common welfare of the Owners of any Lot or Parcel within the PRD.
- b. Power/Authority to Maintain. In addition to the powers set forth in RCW 64.90 and as otherwise set forth in this Declaration, the Association shall have full power and authority to use, care for, construct, operate, repair, maintain and preserve the Common Properties within the PRD, including without limitation the following:
  - i. Maintenance of the private streets within the PRD consistent with the provisions of Section 2.6; maintenance and repair of light standards for the street lighting within the PRD to the extent that the standards deviate from City standards that were in effect at the time of their installation, and maintenance of any portions of private rights-of-way within the PRD that have not yet been developed as streets;
  - ii. Maintenance and preservation of the Open Space Tract(s) in open space, as well as maintenance and preservation of [the stormwater facilities as well as] any landscaping and irrigation systems and pedestrian paths or trails located in the PRD;
  - iii. Operation, maintenance and use of property held or controlled by the Association, including maintenance and repair of facilities within the Common Properties and such other facilities, equipment, activities, objects and purposes pertaining to the welfare, enjoyment, social well-being, protection and benefit of the members and of their Lots within the PRD,

- iv. Compliance with and performance of all obligations under the Conservation Easement granted in favor of the Association and recorded under Auditor’s File No. \_\_\_\_\_;
  - v. Payment of taxes, if imposed, on Common Properties and Improvements; and the protection and preservation of the interests of the Lot Owners for the common good.
- c. Power/Authority to Regulate. In addition to the powers set forth in RCW 64.90 and as otherwise set forth in this Declaration, the Association shall have full power and authority to enact rules and regulations (through adoption of bylaws or other rules) regarding activities, objects and purposes pertaining to the welfare, enjoyment, social well-being, protection and benefit of the members and of their Lots within the PRD, as well as the use, care, and operation of the Common Properties within the PRD, and to adopt and impose penalties and sanctions for the violation of said rules. These regulatory powers shall include, but are not limited to:
- i. Regulating the maintenance and use of Common Properties and the facilities thereon;
  - ii. Regulating the operation and parking of vehicles within the PRD consistent with the provisions of Section 3.7, including the authority to enforce requirements for parking, speed limit and other driving/vehicle operation requirements as mandated by the City of Lynden and any other regulations adopted by the Association (provide such regulations are no less restrictive than comparable City requirements);
  - iii. Regulating the use of any portions of dedicated rights-of-way within the PRD that have not yet been developed as streets; and
  - iv. The protection and preservation of the interests of the Lot Owners for the common good.

**6.2 Meetings.** All meetings shall be conducted as required by RCW 64.90.450 as hereinafter amended.

**6.3 Creation and Transfer of Control.** The Association shall be organized at the instance of the Declarant, and each Lot Owner shall be a member of the Association. The Declarant shall initially designate and appoint a governing Board of the Association. Within sixty (60) days after Declarant has sold twenty-five percent (25%) of the 40 total Lots that may be created within the PRD (i.e., 10 Lots) to parties other than Declarant, at least one member of the Board of Directors (or 25% of the Board, whichever is greater) shall be elected by Lot Owners other than the Declarant. Within sixty (60) days after Declarant has

sold fifty percent (50%) of the Lots (i.e., 20 Lots) to parties other than Declarant, at least one-third (1/3rd) of the members of the Board of Directors shall be elected by Lot Owners other than the Declarant. The period of Declarant control of the Association will end sixty (60) days after Declarant has sold seventy-five percent (75%) of the Lots (i.e., 30 Lots) to parties other than Declarant. Irrespective of the foregoing, the Declarant, at its sole and exclusive option, may elect at any time prior to the sale of all of its Lots within these PRDs to transfer control of the Association to the members thereof.

6.4 **Required Maintenance.** The Association shall perform all reasonable and necessary maintenance of the following: All of the repairs and maintenance required in Section 2.6 above as well as all repairs and maintenance required for the Common Properties, Easements and the Improvements located thereon as permitted in Section 6.1, including but not limited to compliance with all requirements related to the wetlands and buffers within the Open Space Tract(s), pursuant to Section 3.1 above, Lynden Municipal Code 16.16, and the Conservation Easement. All expenses related thereto shall be paid by the Association. The Association shall be authorized to require reimbursement for all expenses incurred in repairing or restoring the foregoing (apart from maintenance due from ordinary wear and tear) from the party causing the damage the required the repair or restoration.

6.5 **Assessments and Liens.**

- (a) **Authority.** The Association during the period of Declarant control and at all times thereafter shall be empowered to establish and to collect dues and assessments upon Lots in the PRD for the common benefit of such Lots.
- (b) **Purposes.** The purposes for which dues and assessments may be established and collected include, without limitation, making provision for the payment of charges associated with utilities, road, gate and utility maintenance, the Common Properties identified in Section 1.6, recreational improvements, drainage, property protection, landscaping, insurance, maintenance, improvements, payment of taxes upon Common Properties, the holding of ownership or a leasehold interest therein, for any other common purposes or for collecting fines or recovering money expended on the landscaping of a Lot, all as determined pursuant to the Articles of Incorporation and By-laws of the Association.
- (c) **Personal Obligation and Lien Foreclosure.** Dues and assessments shall constitute a personal obligation of any Owner of record of a Lot on the due date thereof and shall also constitute a lien on the Lot assessed. Such lien may be enforced by the Association in the same form and manner of procedure as foreclosure of real property mortgages under the laws of the State of Washington.
- (d) **Amounts Included.** Each Owner and each party hereinafter owning or claiming an equity interest in a Lot agrees that in the event of any action to collect assessments and/or foreclose a lien securing the same involving such Lot, the Owner or Owners of such affected Lot or other party asserting an equity interest therein will pay the Association's expenses of title examination and insurance, the cost of attorney's fees incurred by the Association and court costs, as well as all other costs reasonably and necessarily incurred in such action, and/or the collection of any passed due assessment (whether or not litigation or foreclosure is instituted to collect such amounts). In any such action, delinquent assessments shall bear

interest at the rate of 12% per annum from the date the same became due until the date of the entry of the judgment of foreclosure thereon.

(e) **Other Liens and Foreclosure Actions.** The method and manner provided for foreclosure of liens set forth in this Section shall pertain to all liens referred to in this Declaration. First mortgage liens placed upon any of the Lots created shall be superior to any and all charges, assessments, and liens thereafter asserted pursuant to this Declaration.

6.6 **Establishment and Assessment of Charges.** For the purpose of providing funds for uses specified herein the Board of the Association shall, for each year, charge yearly dues against all Lots. The Declarant shall determine the amount of the first-year dues to be paid. Until dues are assessed, the Declarant shall be responsible for payment of expenses of the Association. Each Lot shall be assessed an equal amount for each calendar year for all expenses common to all Lots. Assessments shall be adopted pursuant to the requirements set forth in RCW 64.90.480.

6.7 **Special Assessment.** The Association may make special assessments against any Lot and Lot Owner for violating the terms of this Declaration, or if such Owner is responsible for damage to the Common Properties.

6.8 **Annual Statement.** As soon as shall be practical in each calendar year, the Association shall send a written statement to each Owner setting forth the dollar amount of the assessment for such Lot for such calendar year. The Association may, in its sole discretion, provide for payment of such assessments on a periodic basis during such calendar year, with or without a service charge. This requirement shall not apply until the Declarant has elected to assess Lots in the PRD.

6.9 **Penalty on Delinquent Assessments.** If an Owner shall fail to pay any installment of an annual assessment within thirty (30) days from the date the same is due, then the entire annual assessment for such Lot shall be delinquent and shall become immediately due and payable, shall bear interest at the rate of 12% per annum thereafter until paid and shall also bear a penalty in such amount as shall be determined by the Board of the Association.

6.10 **Delinquency For More Than Ninety Days.** If the Owner of any assessable Lot shall be delinquent in the payment of the annual assessment, or any installment thereof, for more than ninety (90) days following the date the same is due, then the Association shall have the right to commence legal action seeking a personal judgment against such Owner and, in addition thereto, shall have the right to foreclose its lien upon such Lot. The total amount due from such Owner shall be such sums as provided in Sections 6.5, 6.6, and 6.7, plus any penalty imposed under Section 6.9 hereof.

6.11 **Rules and Procedures for Billing and Collecting Assessments.** The Board of the Association shall have the power and authority to adopt rules and procedures respecting the billing and collecting of annual assessments, which shall be binding upon all Lot Owners.

6.12 **Increase in Assessments.** Increase in assessments shall be made pursuant to RCW 64.90.480.

6.13 **Application of Assessment.** The Association shall apply all funds received by it pursuant to this Declaration in the following order:

- (a) Administrative costs and expenses incurred by the Association in the exercise of its powers, authority and duties described in its Articles of Incorporation and By-Laws.
- (b) The promotion of the recreation, health, safety, enjoyment and welfare of the users of the Common Properties, and the enhancement of the values of the Common Properties by means of construction, repair, maintenance, operation and administration of the Common Properties, including, but not limited to, the payment of taxes and insurance premiums on the Common Properties.
- (c) The service, repair, maintenance and/or replacement of any and all Improvements, including, but not limited to landscaping, fences, roads, paths, utilities, drainage facilities, lighting, and all other Improvements whatsoever belonging to the Association.
- (d) As to monies received on special assessments, to fulfill the purpose of the special assessment.

6.14 **Authority to Maintain surplus.** The Association shall not be obligated to spend in any particular time period all of the sums collected or received by it during such time period or any other time period. The Association may carry forward, as surplus, any balances remaining. The Association shall not be obligated to apply any such surplus to the reduction of the amount of the annual assessment in any future year.

7. **PROTECTION OF MORTGAGE OR DEED OF TRUST HOLDER**

No violation or breach of any covenant, condition, reservation or restriction contained in this Declaration, or in any supplement hereto, and no action to enforce the same, shall defeat, render invalid or impair the lien of any mortgage or deed of trust taken in good faith and for value against any title or interest in any Lot which is the subject of an action arising from such violation or breach. A purchaser of any such Lot at a trustee's sale, Sheriff's sale or Tax Foreclosure sale shall take title to such Lot free and clear of any violations or breaches which have occurred on such Lot, or by the previous Owner thereof, prior to such foreclosure, but such purchaser shall nevertheless take subject to this Declaration and to any supplements hereto.

8. **TENANTS AND INVITEES**

Tenants and Invitees of the Owners or residents of the PRD shall be bound by the terms and conditions of this Declaration, as well as Rules and Regulations adopted by the Board of the Association.

9. **ENFORCEMENT**

The Association, the Declarant and any Owner shall have the right to enforce, by any proceedings at law or in equity, all covenants, conditions, restrictions, reservations, liens and charges now

or hereafter imposed by this Declaration. The failure of the Association, of the Declarant or of any Owner to enforce any rights hereunder shall not be deemed to constitute a waiver of the right to do so thereafter. The prevailing party in any litigation involving the enforcement of any provision of this Declaration shall be entitled to judgment for the reasonable attorney's fees and costs incurred in such litigation by such prevailing party.

**10. GRANTEE'S ACCEPTANCE**

The grantee of any Lot subject to this Declaration shall, by the acceptance of a deed conveying title thereto or by the execution of any contract for the purchase thereof, whether from Declarant or any subsequent Owner of such Lot, accept such deed or contract upon, and subject to, each and every provision of this Declaration and the provisions contained herein, including the jurisdiction, rights and powers of Declarant, and by such acceptance shall, for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with Declarant and to and with the grantees and subsequent Owners of each of the Lots within the PRD, to keep, observe, comply with and perform all obligations set forth herein.

Each such grantee also agrees, by such acceptance, to assume, as against Declarant, its successors or assigns, all of the risks and hazards of ownership and occupancy attendant to such Lot, including, but not limited to, its proximity to any Common Properties, public paths, streams or other water courses.

**11. AMENDMENT TO DECLARATION**

Each and every provision of this Declaration shall run with and bind the land and shall inure to the benefit of, and be enforced by, the Association, the Declarant, the Owners of any Lots subject hereto, their respective legal representatives, heirs, successors and assigns, for a period of ten (10) years from the date that this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless otherwise terminated or amended as provided herein and consistent with all applicable laws. This Declaration may only be amended by an instrument adopted by the Board and signed by not less than seventy-five (75%) percent of the Owners of all Lots subject to this Declaration. Any such amendment shall take effect upon being recorded with the Whatcom County Auditor.

No Amendment or termination of this Declaration shall affect, change, or terminate any of the following restrictions, obligations, limitations and/or easements without the prior written consent of the City of Lynden:

- Subsections 2.1, 2.3, 2.4, and 2.6;
- The provisions of subsection 3.1 relating to the Open Space Tract(s);
- The provisions of subsection 3.16 relating to street trees and planting strips;
- The provisions of subsection 3.20 relating to access/curb cuts via Northwood Road; and
- Subsection 3.23, 3.24, 3.25, 3.26, and 3.27.
- Subsection 6.4.

**12. SEVERABILITY**

In the event that any provision hereof is deemed by proper judicial decree to be invalid, then the remaining portion of this Declaration shall in no way be affected.

**13. PARAGRAPH HEADINGS**

The paragraph headings in this Declaration are for convenience only and shall not be considered in construing this Declaration.

**14. NO WAIVER**

The failure of any party entitled to enforce any provision hereof to take steps to enforce such provision shall not, in any fashion, operate or be deemed to be a waiver of any such provision or of any other provision hereof.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

Halo Holdings, LLC  
Managing Member of  
Kamm Creek Partners, LLC

By: \_\_\_\_\_  
Jeremy Parriera  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Tim Koetje  
Its: \_\_\_\_\_

STATE OF WASHINGTON            }  
  }  
  }        ss.  
COUNTY OF WHATCOM        }

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of **Kamm Creek Partners, LLC**, a Washington limited liability company, who acknowledged that he was authorized to execute this document on behalf of the company and acknowledged said instrument to be the free and voluntary act and deed of the company for the uses and purposes therein mentioned.

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

\_\_\_\_\_  
Notary Public in and for the State of Washington  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

## Exhibit A

### Legal Description of the Property

Lots 1 through 40, inclusive, of the Kamm Creek Planned Residential Development, as per the Plat thereof, recorded under Whatcom County Auditor's File No. \_\_\_\_\_ and located within the City of Lynden, Whatcom County, Washington, together with any Open Space Tract(s) within said Planned Residential Development.

Situate in Whatcom County, Washington.

Formerly known by the following metes-and-bounds legal description:

**PARCEL 1 (400315 248165 0000/128322):**

THE EAST 5 ACRES OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., EXCEPT NORTHWOOD ROAD ALONG EASTERLY BOUNDARY THEREOF, AND EXCEPT UNDIVIDED ONE HALF (1/2) INTEREST IN OIL, GAS AND MINERAL RIGHTS AS RESERVED UNDER WHATCOM COUNTY AUDITOR FILE NO. 927862.

SITUATE IN WHATCOM COUNTY, WASHIGTON

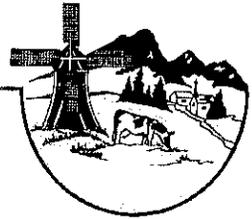
**PARCEL 2 (400315 183163 0000/128292):**

THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., EXCEPT THE EAST 5 ACRES THEREOF, AND EXCEPT UNDIVIDED ONE HALF (1/2) INTEREST IN OIL, GAS AND MINERAL RIGHTS AS RESERVED UNDER WHATCOM COUNTY AUDITOR FILE NO. 927862.

SITUATE IN WHATCOM COUNTY, WASHIGTON

# CITY OF LYNDEN

## Exhibit B



PLANNING DEPARTMENT  
(360) 354 - 5532

CITY OF LYNDEN  
MITIGATED DETERMINATION  
OF NON-SIGNIFICANCE  
August 28, 2020

**Project Name: Kamm Creek PRD**

**Description of Proposal:** A Planned Residential Development (PRD) requesting to develop approximately 20 acres into 40 residential lots within the RS-100 zone.

**Proponent:** Bob Libolt, Kamm Creek Investments, LLC

**Contact Info: Address:** 125 Rosemary Way, Lynden WA 98264  
**Phone:** 360-319-8357  
**Email:** boblibolt@gmail.com

**Parcels, Common Address and their Legal Descriptions:**

Two parcels located in Section 15 of Township 40 N, Range 3E

Parcel No: 4003152481650000

Address: Unaddressed

Legal Description: THE EAST 5 ACRES OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., EXCEPT NORTHWOOD ROAD ALONG THE EASTERLY BOUNDARY THEREOF.

Parcel No: 4003151831630000

Address: Unaddressed

Legal Description: THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., EXCEPT THE EAST 5 ACRES THEREOF. SITUATE IN WHATCOM COUNTY, WASHINGTON.

**Lead Agency:** City of Lynden (hereinafter "City")

The lead agency for this proposal has determined that it does not have a probable adverse impact on the environment if the standard conditions (*not all standard conditions are listed below*) and mitigating measures are enacted. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after the review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

THE COMMENT PERIOD FOR THIS MDNS EXPIRES September 16, 2020.  
IT IS ISSUED ON THE BASIS THAT THE APPLICANT WILL COMPLY WITH THE FOLLOWING REQUIREMENTS IN MITIGATION OF THE POTENTIAL ADVERSE IMPACTS ON THE ENVIRONMENT.

**Findings of Fact and Mitigating Measures**

1. Proponent will mitigate potential impacts to the earth through the implementation of Best Management Practices (BMPs) for Storm and Surface Water Management per the Dept of Ecology to prevent erosion during and after construction. A Construction Stormwater General Permit (CSWGP) may be required by the Dept of Ecology. It is up to the applicant to ensure compliance with the requirements of the CSWGP.
2. Stormwater: The applicant has provided a preliminary stormwater design report written and stamped by Freeland and Associates (July 21, 2020). The preliminary report indicates that the project, as proposed, can comply with the City of Lynden’s current stormwater management requirements.

The Kamm Creek PRD design must provide:

- A) A stormwater management plan including pipe sizing prepared by a professional engineer and meeting the requirements of the City’s Manual for Engineering Design and Development Standards and the Department of Ecology Stormwater Manual is required. This plan must be approved by the City of Lynden prior to final approval of the project plans.
- B) Stormwater Pollution Prevention Plan (SWPPP) (erosion control and sediment plan) must be included in the drainage plan and construction plans. This must be designed and constructed in compliance with the Department of Ecology’s Best Management Practices (including all known and reliable technologies) and the standards approved in the Manual for Engineering Design and Development Standards.
3. Critical Areas: The applicant has submitted a Critical Areas Detailed Study that analyzes proposed impacts to the wetlands and regulated streams and their buffers. The Critical Areas Report dated June 29, 2020 is considered preliminary and subject to necessary revisions based on requested information, subsequent plat design alterations, and Army Corps and WDFW permits.

Proposed wetland fill will require Army Corps permits. Stream crossing work will require a WDFW HPA permit.

- 4. Floodplain: The FEMA designated floodplain for the Nooksack River shall be indicated on the final plat. Applicant shall confirm the BFE for the subject property and locate and adequately delineate that elevation on the ground. Any approved alterations that would change the on-site location of the BFE will require a LOMA and/or a LOMR-F prior to final plat approval.

Proposed development of the floodplain shall comply with FEMA regulations and LMC 16.12 Floodplain Management. Approval of floodplain development is subject to cut and fill analysis, compensatory storage, and a biological assessment.

Future parcels that contact the floodplain or that are directly adjacent to the floodplain will require an elevation certificate at final occupancy to ensure 2 feet of freeboard above BFE.

- 5. Cultural Resources: The applicant has provided a cultural resources assessment report, titled: Cultural Resource Assessment for the Lower Kamm Creek Residential Development Project, Lynden, Whatcom County, Washington, by Garth Baldwin and Marsha Hanson. The assessment recommends that no further archaeological oversight is warranted.

The applicant shall have an Inadvertent Discovery Plan onsite that identifies protocol for contacting the appropriate authorities and protecting archaeological resources if they are inadvertently found during future construction activity.

- 6. Transportation: The applicant has provided a Traffic Impact Analysis for the proposal. The project is expected to generate 378 Average Daily Trips and meet the minimum site distance for access points. Applicant will pay Traffic Impact Fees and meet design standards.
- 7. Pedestrian Accommodations: The proposed public trail will require dedication of a public trail easement as a condition of the Planned Residential Development approval. Additionally, a trail easement that extends to the western property line and which would eventually connect to future development to the west shall be included on this plat.

**General Conditions and Disclaimers**

- 8. This environmental determination does not assure compliance with all state and federal laws. Compliance with all state and federal laws remains the responsibility of the property owner, applicant and designee.
- 9. Other City, State and or Federal permits may be required for specific development and construction projects. This SEPA determination does not constitute final approval for this plan or future associated construction projects.

This MDNS is issued under RCW 197-11-340(2); the lead agency will not act on this proposal until the expiration of the comment period noted below.

Responsible Official: Heidi Gudde      Position/Title: Planning Director  
Phone: (360) 354-5532

Signature: *Heidi Gudde*

You may appeal this determination to Heidi Gudde no later than **09/16/2020** in writing. You should be prepared to make specific factual objections regarding the environmental impacts. Contact, 300 4th Street, Lynden, phone number 354-5532, to ask about the procedures for SEPA appeals.

There is no agency appeal.

# KAMM CREEK PRD

PORTION OF THE NE 1/4, SW 1/4, SECTION 15,  
TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.  
WITHIN THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON

## Exhibit C

**LAND DESCRIPTION:**  
THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

SUBJECT TO THIS CONVEYANCE IS SUBJECT TO COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS, IF ANY, AFFECTING TITLE, WHICH MAY APPEAR IN THE PUBLIC RECORD, INCLUDING THOSE SHOWN ON ANY RECORDED PLAT OR SURVEY.

**DECLARATION:**  
KNOW ALL MEN BY THESE PRESENTS THAT WE, THE UNDERSIGNED DO HEREBY DECLARE THIS PRD IS MADE WITH MY FREE CONSENT AND IN ACCORDANCE WITH MY WISHES AND DO HEREBY GRANT, RESERVE AND AMEND ANY EASEMENTS SHOWN HEREON FOR THE USES INDICATED HEREON.

ROBERT D. LIBOLT, AUTHORIZED MEMBER  
KAMM CREEK INVESTMENTS, LLC  
ACKNOWLEDGMENT:  
STATE OF WASHINGTON }  
COUNTY OF WHATCOM }

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT ROBERT D. LIBOLT IS THE PERSON WHO APPEARED BEFORE ME, AND SAID PERSON ACKNOWLEDGED THAT HE SIGNED THIS INSTRUMENT, OR GAVE STATEMENT THAT HE IS AUTHORIZED TO EXECUTE THE INSTRUMENT AND ACKNOWLEDGED IT AS AUTHORIZED MEMBER OF NORTH PRAIRIE LLC, A WASHINGTON LIMITED LIABILITY COMPANY, TO BE THE FREE AND VOLUNTARY ACT OF SUCH PARTIES FOR THE USES AND PURPOSES MENTIONED IN THE INSTRUMENT.

THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2019.

NOTARY PUBLIC IN AND FOR THE STATE OF WASHINGTON.

RESIDING AT \_\_\_\_\_ WASHINGTON. MY COMMISSION EXPIRES \_\_\_\_\_

**SURVEYOR'S NOTES:**

- " \* DENOTES 5/8 INCH REBAR WITH PLASTIC CAP MARKED "CPS PLB 83687" SET BY THIS SURVEY IN XXXX OF 2020.
- " \* DENOTES 5/8 INCH REBAR WITH PLASTIC CAP MARKED "XXXXXXX" OR OTHERWISE NOTED FOUND BY THIS SURVEY IN XXXX OF 2020.
- " \* DENOTES BRASS DISC IN CONCRETE FOUND BY THIS SURVEY IN XXXX OF 2019 AND HELD FOR STREET INTERSECTION MONUMENTS.
- " \* DENOTES HUB AND LATH SET ON PROPERTY LINE BY THIS SURVEY IN XXXXX OF 2020.
- " \* DENOTES CALCULATED POINT ONLY.
- THIS SURVEY WAS PERFORMED BY STANDARD FIELD TRAVERSE USING A GEOMAX ZOOM 80 TOTAL STATION WITH A CARLSON SURVEYOR 2 DATA COLLECTOR/FIELD COMPUTER IN XXXXX OF 2020.
- THIS SURVEY WAS PERFORMED USING A LEICA RX1250T OPS SYSTEM IN XXXX OF 2020.
- THE PURPOSE OF THIS SURVEY IS TO SUBDIVIDE TAX PARCEL No. 4020121831650000 AND 4020152481650000. COMPASS POINT SURVEY, LLC ASSUMES NO LIABILITY IF THIS SURVEY IS USED FOR ANY PURPOSE OTHER THAN STATED ABOVE.
- THIS SURVEY TIED INTO SECTION MONUMENTATION AS SHOWN. THE BASIS OF BEARINGS FOR THIS SURVEY IS XXXXXXXXXXXX FILED UNDER A.F. NO. XXXXXXXXXXXX. THIS SURVEY RELED UPON SAID SURVEY FOR SECTION SUBDIVISION.
- THIS SURVEY WAS COMPLETED WITHOUT THE BENEFIT OF A CURRENT TITLE REPORT AND MAY NOT SHOW ALL EASEMENTS THAT A CURRENT TITLE REPORT MIGHT REVEAL.

**SURVEYOR'S CERTIFICATE:**  
I HEREBY CERTIFY THAT THIS PLAT WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON AN ACTUAL SURVEY MADE IN COMPLIANCE WITH STATE LAWS.

DAVID G. LEIGHTON, CERTIFICATE NO. 83867  
COMPASS POINT SURVEY, LLC, 823 FRONT STREET, LYNDEN, WA 98294



**AUDITOR'S CERTIFICATE:**  
I HEREBY CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE AUDITOR OF WHATCOM COUNTY, WASHINGTON, AT THE REQUEST OF COMPASS POINT SURVEY, LLC.

THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2020 AT \_\_\_\_\_, WA, AND THAT IT IS RECORDED

UNDER WHATCOM COUNTY AUDITOR'S FILE No. \_\_\_\_\_ RECORDS OF WHATCOM COUNTY, WASHINGTON.

COUNTY AUDITOR \_\_\_\_\_ BY DEPUTY \_\_\_\_\_

**PUBLIC WORKS DEPARTMENT APPROVAL:**  
EXAMINED AND APPROVED BY THE LYNDEN PUBLIC WORKS DEPARTMENT AS TO THE LAYOUT OF ROADS AND RIGHTS-OF-WAY AND ACCEPTANCE OF THE DESIGNATION AND/OR EASEMENTS ON BEHALF OF THE CITY OF LYNDEN IN ACCORDANCE WITH THE CITY OF LYNDEN DEVELOPMENT STANDARDS.

THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2020.

STEVE BANHAM, P.E., CITY OF LYNDEN PUBLIC WORKS DIRECTOR

**CITY PLANNING APPROVAL:**  
I HEREBY CERTIFY THAT I HAVE EXAMINED THIS PLAT FOR CONFORMANCE WITH APPLICABLE STATE STATUTES AND CITY SUBDIVISION AND ZONING ORDINANCES AND HEREBY APPROVE THE SAME.

THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2020.

HEIDI GUIDE, ACP, CITY OF LYNDEN PLANNING DIRECTOR

**CITY PLANNING COMMISSION APPROVAL:**  
EXAMINED AND APPROVED BY THE CITY OF LYNDEN PLANNING COMMISSION.

THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2020.

CHAIRMAN, CITY OF LYNDEN PLANNING COMMISSION

**CITY COUNCIL APPROVAL:**  
APPROVED BY THE ORDER OF THE CITY OF LYNDEN, WASHINGTON, BY AN ORDER MADE AND ENTERED ON

THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2020.

BDOTT KORTHUIS, MAYOR, CITY OF LYNDEN

ATTEST: CITY CLERK

**FINANCE DIRECTOR APPROVAL:**  
I, ANTHONY BURROWS, FINANCE DIRECTOR OF THE CITY OF LYNDEN, WASHINGTON, DO HEREBY CERTIFY THAT I AM THE OFFICER IN CHARGE OF COLLECTIONS OF SPECIAL ASSESSMENTS LEVIED BY THE CITY OF LYNDEN ON ALL LAND EMBRACED WITHIN THIS PLAT AND THAT ALL CITY ASSESSMENTS FOR WHICH THE PROPERTY EMBRACED IN THIS PLAT MAY BE LIABLE AT THIS DATE AND THAT ALL SPECIAL CITY OF LYNDEN ASSESSMENTS ASSESSED AGAINST THE PROPERTY IN THIS PLAT WHICH UNDER SAID PLAT BECOMES STREETS, ALLEYS AND OTHER PUBLIC PLACES, HAVE BEEN PAID.

ANTHONY BURROWS, CITY OF LYNDEN FINANCE DIRECTOR DATE \_\_\_\_\_

**WHATCOM COUNTY TREASURER'S CERTIFICATE:**

I, \_\_\_\_\_, WHATCOM COUNTY TREASURER, WHATCOM COUNTY, WASHINGTON, DO HEREBY CERTIFY THAT ALL TAXES REQUIRED BY LAW TO BE PAID UPON THAT PORTION OF REAL ESTATE EMBRACED WITHIN THIS PLAT ENTITLED "KAMM CREEK PRD" AND ALL DELINQUENT ASSESSMENTS HAVE BEEN FULLY PAID, SATISFIED OR DISCHARGED AS SHOWN IN THE RECORDS OF MY OFFICE.

DATED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2020.

TREASURER, WHATCOM COUNTY, WASHINGTON

**MAINTENANCE OF PRIVATE STORMWATER FACILITIES:**  
THE PROPERTY OWNER(S) OR COMMUNITY ASSOCIATION HAS THE RESPONSIBILITY TO PROPERLY MAINTAIN ALL STORMWATER FACILITIES NOT WITHIN CITY RIGHTS-OF-WAY. THE CITY MAY ACCESS AND INSPECT ALL STORMWATER FACILITIES AND COMMUNITY ASSOCIATION INSPECTION RECORDS. IF THE PROPERTY OWNER(S) OR COMMUNITY ASSOCIATION HAS FAILED TO MAINTAIN THE STORMWATER FACILITIES, THE CITY CAN ISSUE WRITTEN NOTICE SPECIFYING THE REQUIRED ACTIONS. IF THE ACTIONS ARE NOT COMPLETED IN A TIMELY MANNER OR IN THE EVENT OF A PUBLIC HAZARD, THE CITY MAY ENTER THE PROPERTY TO PERFORM THE ACTIONS NEEDED AND BILL THE PROPERTY OWNER(S) OR COMMUNITY ASSOCIATION. ANY ACTION TAKEN BY THE CITY OF LYNDEN SHALL NOT RELIEVE THE PROPERTY OWNER(S) OR COMMUNITY ASSOCIATION FROM ITS RESPONSIBILITY TO MAINTAIN THE STORMWATER FACILITIES.

**RIGHT TO FARM DISCLOSURE STATEMENT:**  
THIS SUBJECT PROPERTY IS WITHIN OR NEAR DESIGNATED AGRICULTURE LANDS ON WHICH A VARIETY OF COMMERCIAL ACTIVITIES MAY OCCUR THAT ARE NOT COMPATIBLE WITH RESIDENTIAL DEVELOPMENT FOR CERTAIN PERIODS OF LIMITED DURATION. YOU MAY BE SUBJECT TO INCONVENIENCES OR DISCOMFORTS ARISING FROM SUCH OPERATIONS, INCLUDING BUT NOT LIMITED TO NOISE, ODORS, INSECTS, FUMES, DUST, SMOKE, THE OPERATION OF MACHINERY OF ANY KIND DURING ANY 24-HOUR PERIOD (INCLUDING AIRCRAFT), THE STORAGE AND APPLICATION OF MANURE, AND THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL, FERTILIZERS, SOIL AMENDMENTS, HERBICIDES AND PESTICIDES. THE CITY OF LYNDEN AND WHATCOM COUNTY HAS DETERMINED THAT THE USE OF REAL PROPERTY FOR AGRICULTURAL OPERATIONS IS A HIGH PRIORITY AND FAVORED USE AND WILL NOT CONSIDER TO BE A NUISANCE. THESE INCONVENIENCES OR DISCOMFORTS ARISING FROM FARM OPERATIONS, IF SUCH OPERATIONS ARE CONSISTENT WITH COMMONLY ACCEPTED GOOD MANAGEMENT PRACTICES AND OTHERWISE COMPLY WITH LOCAL, STATE, AND FEDERAL LAWS.

**RIGHT TO FARM COVENANT:**  
THIS PROPERTY IS LOCATED WITHIN ONE-HALF MILE OF AN OPERATING FARM, AGRICULTURE OR RURAL DISTRICT. THE DEVELOPER AND ANY SUBSEQUENT PURCHASER OR SUCCESSORS IN INTEREST OF ALL OF THE LOTS WITHIN THIS SHORT PLAT WILL REFRAIN FROM ANY LEGAL ACTION TO RESTRAIN OR COLLECT DAMAGES FROM OWNERS OR OPERATORS OF SUCH SAID AGRICULTURAL LANDS FROM THE CITY OF LYNDEN OR FROM WHATCOM COUNTY, ARISING OUT OF ANY REASONABLE AND LAWFUL FARM OPERATIONS ON SAID AGRICULTURAL LANDS WHICH OCCURS IN THE NORMAL COURSE OF THEIR ESTABLISHED USE. UPON SALE OF EACH LOT, THE SELLER SHALL REQUIRE THAT THE "DISCLOSURE STATEMENT" AS SET FORTH IN CHAPTER 17.22(4) SECTION 8, LYNDEN MUNICIPAL CODE BE SIGNED BY THE PURCHASER AND RECORDED IN THE COUNTY AUDITOR'S OFFICE IN CONJUNCTION WITH THE DEED CONVEYING SAID LOT. THIS COVENANT SHALL RUN WITH THE LAND.

**PLAT NOTES AND CONDITIONS:**  
1. FOR ADDITIONAL PLAT RESTRICTIONS SEE THAT CERTAIN DECLARATION OF COVENANTS, RESTRICTIONS AND ARCHITECTURAL STANDARDS RECORDED UNDER WHATCOM COUNTY AUDITOR'S FILE NO. \_\_\_\_\_

2. ALL LOTS SHALL HAVE ONSITE DOWNSPOUT INFILTRATION PER APPROVED PLAT DRAINAGE PLAN.

**PRIVATE STREET NOTE:**

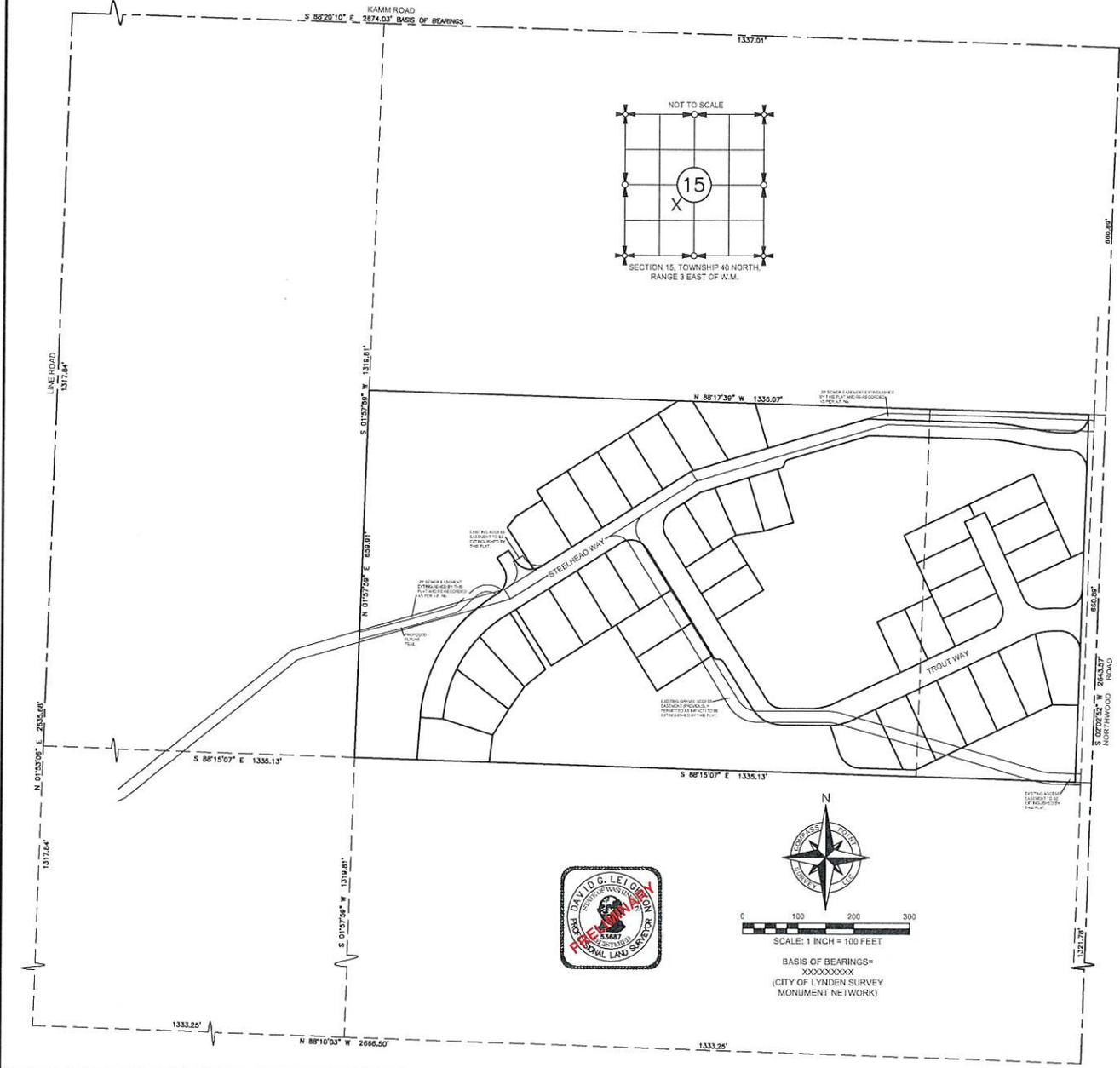
SEE A.F.No. \_\_\_\_\_ (P.R.D. DEVELOPMENT AGREEMENT) AND A.F.No. \_\_\_\_\_ (DECLARATION OF PROTECTIVE COVENANTS, RESTRICTIONS AND EASEMENTS) FOR MAINTENANCE AGREEMENTS FOR PRIVATE STREETS AND UTILITIES IN TRACT A.

SHEET 1 OF 4	DATE 04/22/20 05/07/20	PROJECT NO. 2019-03-05-001	DATE 05/07/20
DRAWN BY DL	REVIEWED BY DL	CHECKED BY KAMM CREEK PRD/DR	

COMPASS POINT SURVEY, LLC  
823 FRONT STREET, LYNDEN, WA 98294  
PH: 360-334-0370 FAX: 360-364-8281

# KAMM CREEK PRD

WITHIN THE CITY OF LYNDEN, WHATCOM COUNTY, WASHINGTON.



SHEET: 2 OF 4	DATE: 08/10/20 17/11/20	DRAWN BY: RL	REVIEWED BY: DL	 <p><b>COMPASS POINT SURVEY, LLC</b> 529 FRONT STREET, LYNDEN, WA 98264 PH: 360-354-8325 FAX: 360-354-8321</p>
				<p>PL: 154803-08 CPL: 54803-08SD01RLCRD DRAWING: KAMM CREEK PRD.DWG</p>





Filed for and Recorded at Request of:

Kamm Creek Partners, LLC  
1841 Front Street, Suite A  
Lynden WA 98264

Grantor: Kamm Creek Partners, LLC

Grantee: The Public

Abbreviated Legal: Lots 1 - 40, Kamm Creek Planned Residential Development  
Full legal descriptions on Exhibit A, page 15.

Tax Parcel Number: 4003152481650000/128322 and 4003151831630000/128292

**DECLARATION OF COVENANTS, CONDITIONS,  
RESERVATIONS AND RESTRICTIONS OF  
KAMM CREEK PLANNED RESIDENTIAL DEVELOPMENT**

This Declaration is made by Kamm Creek Partners, LLC (the Declarant), with reference to the following facts and conditions:

**RECITALS**

**A.** The Declarant is the owner in fee simple of the real property located in Whatcom County, Washington, described on Exhibit A, which is attached and fully incorporated by reference.

**B.** The Declarant has received preliminary approval to develop the real property described on Exhibit A as a forty (40) lot planned residential development (PRD). The real property described on Exhibit A and subject to these covenants shall be referred to in this Declaration as the "Kamm Creek PRD" and/or as the "PRD." The recorded final plat maps depicting and dedicating the PRD and all rights-of-way will be referred to herein as the "Plat."

**C.** The Declarant intends for all lots located within the PRD to be subject to the benefits and burdens of this Declaration, and wishes to provide the means to enforce the rights, reservations, easements, liens and charges provided in this Declaration to provide for necessary maintenance and enhancement of the PRD and to provide for the formation of a Homeowner Association in the form of a non-profit corporation which includes as its members those persons who purchase any Lot within the PRD.

**DECLARATION**

The Declarant hereby certifies and declares that the following covenants, conditions, reservations and restrictions shall inure and be binding upon the respective Owners of each lot or parcel within the PRD, and the Declarant further declares that all of the real property within the legal described on Exhibit A is held and shall be held, conveyed, encumbered, leased, rented, used, occupied and improved subject to the following covenants, conditions, reservations and restrictions for the purpose of enhancing and protecting the value, desirability and attractiveness of the PRD and every part thereof. All of the following covenants, conditions, reservations and restrictions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in the PRD or any part thereof.

**1. LAND CLASSIFICATION AND DEFINITIONS**

The following words and classifications of land shall have the following meanings under this Declaration:

- 1.1 **Lot or Lots.** All lots within the PRD, individually or collectively, as set forth on the face of the Plat, that are designated for the location and construction of a single-family residence.
- 1.2 **Parcel.** Any parcel of real property within the boundaries of the PRD and real property dedicated to the City of Lynden, Washington.
- 1.3 **Person.** Any individual, firm, corporation, partnership, association, unincorporated association, or other legal entity.
- 1.4 **Owner.** Any person holding either fee title or a vendee’s interest under a Deed and/or Real Estate Contract for a Lot as shown by the records of the Auditor of Whatcom County, Washington, or otherwise holding a beneficial ownership interest in a Lot.
- 1.5 **Declarant.** Declarant is Kamm Creek Partners, LLC, a Washington limited liability company.
- 1.6 **Common Properties.** Common properties are the following:
  - (a) **All Roadways/Streets** within the boundaries of the PRD, which are private streets, are delineated on the face of the Plat, and which will be known as Steelhead Way, Trout Way, and Street C.
  - (b) **The Pedestrian Paths/Trails,** including the portion running along the easterly boundary of the PRD parallel to Northwood Road, as well as the portions located south of Lots 11 through 17, and extending westward south of Lots 18 through 23, and separating Lot 23 from Lot 24, as shown

on the face of the Plat. Future trails/paths may be created as provided in Section 2.1(d) below.

- (c) **Open Space Tract(s)** in the westerly and southerly portions of the PRD as well as the northeast and southeast corners of the PUD, as identified on the face of the Plat.
- (d) **Stormwater Facilities** located within the street rights-of-way and other portions and areas of the Common Properties, as identified on the face of the Plat.

**1.7 Plat.** The final recorded plat maps for the Kamm Creek PRD, as filed under Whatcom County Auditor's File No. \_\_\_\_\_.

**1.8 Assessable Property.** Each of the individual Lots as defined in Section 1.1 above.

**1.9 Improvements.** Improvements shall mean and include, without limitation, any buildings, out-buildings, private streets and roads, driveways, parking areas, fencing, retaining walls, swimming pools, screening, walls, ornamentation, signs, stairs, decks, hedges, pedestrian trails, wind breaks, plantings, planted trees, shrubs, poles, lighting, utilities, hot tubs and any other structure or landscaping.

**1.10 Resident.**

- (a) Each person lawfully residing on or in any part of any Lot; and
- (b) Members of the immediate family of each such person actually living in the same household with such person.

**1.11 Board.** The Board of Directors of the Association.

**1.12 Association.** The community association of all Lot Owners, as more fully described in Section 6 hereof, which is being created concurrent with the execution hereof in the form of a Washington nonprofit corporation and which will be known as “Kamm Creek Homeowner Association.”

**1.13 PRD.** The “PRD” shall refer to the real property referenced in the Recitals of this Declaration and legally described on Exhibit A, as well as the residential development being developed on said real property.

**1.14 Declaration.** This Declaration of Covenants, Conditions, Reservations, and Restrictions for the Kamm Creek PRD.

**2. RESERVATIONS AND EASEMENTS**

**2.1 Creation of Easements.** Separate easements for access, drainage, sewers, water pipes and utilities, facilities and services (including, but not limited to, water supply, electricity, gas, telephone and television) are hereby granted, reserved, covenanted and created over, under,

upon, in and through all roadways and walkways, and over, under, upon, in and through those certain portions of Lots or other areas which are necessary for existing facilities and equipment serving the PRD, together with the right to enter upon such easements for their installation and repair, as identified on the face of the Plat. The easements created hereby include, without limitation, the following:

a. The Steelhead Way Easement, which is that easement for ingress, egress, and utilities \_\_\_\_\_ feet in width as described and delineated on the face of the recorded Plat, and which benefits all Lots and property within the PRD, and which provides for a private street \_\_\_\_\_ feet in width [and sidewalk(s) \_\_\_\_\_]. This easement does not benefit the general public.

b. The Trout Way Easement, which is that easement for ingress, egress, and utilities \_\_\_\_\_ feet in width as described and delineated on the face of the recorded Plat, and which benefits all Lots and property within the PRD, and which provides for a private street \_\_\_\_\_ feet in width [and sidewalk(s) \_\_\_\_\_].

c. The Street C Easement, which is that easement for ingress, egress, and utilities \_\_\_\_\_ feet in width as described and delineated on the face of the recorded Plat, and which benefits all Lots and property within the PRD, and which provides for a private street \_\_\_\_\_ feet in width [and sidewalk(s) \_\_\_\_\_].

d. The Pedestrian Trail/Path Easement, which is that easement for pedestrian-only access \_\_\_\_\_ feet in width as described in Section 1.6(b) above and delineated on the face of the recorded Plat. This easement benefits all the Lots and property within the PRD, but the public shall also have the right of pedestrian-only access over the Pedestrian Trail/Path Easement. This public pedestrian-only easement may be confirmed by a separate easement agreement between Declarant and the City of Lynden, but the public’s right of pedestrian access over the trail/path is hereby confirmed and acknowledged even if no separate easement agreement is created. It is also expected that additional trails/paths may be constructed over and within the Open Space Tract(s) to provide future public use connections, including but not limited to connection to the East Lynden Loop Trail. The Association has ownership and control of Open Space Tract(s)/common areas within the PRD for the purpose of constructing such trails and granting further easements for the same, and for any future dedication/conveyance to the public or City of Lynden, in the event the Association’s Board determines such dedication/conveyance to be in the best interests of the Association.

e. Utility Easements in favor of the City of Lynden, as follows:  
i) Utility Easements for water and/or sewer mains, which easements are twenty (20) and/or thirty (30) feet in width (depending on whether there is more than one public utility installed in such easement) within the private street rights-of-way and as otherwise shown on the face of the Plat.  
ii) Utility Easements five (5) feet in width around the interior property line of all residential Lots, as shown on the face of the Plat, pursuant to LMC 18.14.075.

**2.2 Private Nature of Streets.**

a. While the Pedestrian Trail/Path Easement may be used by the public (for pedestrian-only use), it is understood and acknowledged that all area within the PRD remains private property, and that the streets within the PRD as further described in Sections 2.1(a), (b), and (c) are private streets and will be posted as such. These private streets and the easements therefor benefit all of the Lots and property within the PRD, as well as the Association, and the Declarant during the period of Declarant Control of the Association.

b. Nothing within the Plat or this Declaration shall be considered a public dedication, and the streets within the PRD shall continue their private nature unless or until a formal public dedication is made. Streets must be brought up to City standards prior to any request for City acceptance. The Association has ownership and control of the private streets for the purpose of granting further easements (as may be necessary and desirable for utility service or other purposes) and for any future dedication/conveyance to the public or City of Lynden, in the event the Association’s Board determines such dedication/conveyance to be in the best interests of the Association and upon approval by the City.

c. The easements will be construed to benefit the Owners of the Lots within the PRD, utility providers and contractors performing utility and other work, as well as the Lot Owners’ tenants, guests, invitees, and service providers. Use of the private streets by the Owners’ guests, tenants, service providers (including delivery persons), and other invitees of such Owners constitutes use by the Owners benefitted by the easements and shall NOT be construed as public use or as any other type of non-permissive use which would give rise to prescriptive rights of access.

**2.3 Conveyance of Common Properties.** The Common Properties shall be conveyed by the Declarant to the Association at such time as determined in the sole discretion of the Declarant, but in any event no later than the date upon which Declarant achieves the sale to Owners of at least eighty percent (80%) of the Lots within the PRD.

**2.4 Reservation of Drainage Easement and The Right to Drain.** The Declarant hereby reserves the right to drain all roadways, walkways, easement ways, and areas over and across any Lot or parcel within the PRD as noted on the face of the Plat, identified herein and/or where water might take a natural course after the grading of such Lot or parcel. The Association shall be responsible for the maintenance and upkeep thereof, including regular cleaning to remove sediments, the replanting of grass and the replacement of rock as necessary to insure the effective operation thereof. All work related to the PRD drainage shall meet the approved stormwater plan and all identified operations and maintenance and comply with the Stormwater Facilities Inspection and Maintenance Agreement described in paragraph 2.5 below.

**2.5 Stormwater Facilities Inspection and Maintenance Agreement.** The entire Plat is subject to the Stormwater Facilities Inspection and Maintenance Agreement which is recorded under Auditor’s File No. \_\_\_\_\_. The Declarant shall be responsible for compliance with the Stormwater Agreement during the period of

Declarant control, after which time the Association shall assume responsibility for compliance with the Stormwater Agreement.

**2.6 Easement Restoration.** Any work done within any easement created by this Declaration or by the Plat shall be done in a prompt and workmanlike manner and the property shall be restored as nearly as is reasonably practical to its condition prior to work within the easement.

**2.7 Obligation to Maintain.** The Association shall be obligated to operate, repair, maintain and preserve all of the Common Properties consistent with the purpose of and easement restrictions affecting each parcel. The Association’s maintenance obligations shall include but are not limited to [maintaining stormwater facilities, as well as] maintaining posted signs indicating the private nature of the streets, keeping the streets within the PRD in good repair, removing snow from said private streets and conducting regular cleaning and maintenance of said private streets, using materials and techniques that will not impede the free movement of water through the streets’ pervious/permeable pavement. This includes regularly removing foreign matter from the pavement so as to prevent the void spaces in the pervious/permeable pavement from becoming clogged with dirt, leaves, and other debris. Said shall not be used on the PRD streets to de-ice or provide traction; rather, rock salt or other snow-melt products appropriate for pervious/permeable pavement shall be used to prevent clogging. All operations and maintenance shall be per the approved stormwater report and associated operations and maintenance manual and as outlined in the Stormwater Facilities Inspection and Maintenance Agreement described in paragraph 2.5 above.

**3. GENERAL USE RESTRICTIONS AND REQUIREMENTS**

These general use restrictions and requirements apply to all Lots within the PRD, as defined in Section 1.1 above (without limiting the requirement for all improvements to be pre-approved by the Architectural Review Committee (“ARC”) as provided in Section 5 of this Declaration).

**3.1 Permanent Residential Purposes.** All Lots within the PRD shall be used exclusively for permanent single-family residential purposes. No business or commercial activity (including but not limited to home care facilities, domestic shelters, day care and/or pre-schools) shall be maintained, occur or be allowed on any Lot or Common Properties within the PRD. Only one single-family dwelling is allowed to be constructed and/or maintained on each Lot.

Notwithstanding the foregoing, the PRD also contains Open Space Tract(s) as shown on the face of the Plat and described in Section 1.6 above. The Open Space Tract(s) contain protected wetland and buffer areas which are subject to a Conservation Easement in favor of the Association which is recorded under Auditor’s File No. \_\_\_\_\_. Use of the wetlands and buffer areas contained within the Open Space Tract(s) is limited to those uses permitted under the Conservation Easement and shall be in accordance with the requirements set forth in the Conservation Easement and the requirements of Lynden Municipal Code 16.16, including but not limited to the requirements for fencing and

signage along the buffer perimeters. Those portions of the Open Space Tract(s) that lie outside the wetland and buffer areas may be used as common/recreational space by the Owners, subject to reasonable rules that may be adopted by the Community Association. The entirety of the Open Space Tract(s) shall be kept in open space in perpetuity, and maintained by the Community Association as provided in Section 6.1(b)(ii) and consistent with the provisions of LMC 19.29 and the provisions of the Conservation Easement.

**3.2 Recreational Vehicles.** All boats, utility trailers, trucks of more than one-ton rating, campers, recreational vehicles, travel trailers, motor homes and similar items or vehicles maintained or kept upon any Lot within the PRD shall at all times be enclosed within a garage or otherwise neatly stored behind the front wall line of the residence and reasonably screened from view from the street, and any such items or vehicles shall not be parked on any street within the PRD overnight. Out-of-town guests of an Owner may, with such Owner's permission, park a recreational vehicle or travel trailer on Lots for up to a maximum of two (2) weeks per guest visit within any calendar year without being in violation of this section.

**3.3 Explosives.** No firearms or explosives shall be discharged within the boundaries of the PRD.

**3.4 Animals.** No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets may be kept, provided that they are not kept, bred or maintained for commercial purposes. No animal shall be allowed to roam freely within the PRD. No animal shall be allowed to bark or make other noise for excessive periods. No pit bulls, rottweilers or any combination of these breeds of dog shall be allowed within the PRD.

**3.5 Signs.** No signs or billboards shall be placed on any Lot, except one identification sign bearing the Owner's name and address may be placed upon the Owner's Lot. In addition, the Declarant and any Owner or such Owner's agent, may subsequently advertise any Lot for sale; and furthermore, an Owner may display signs of a political nature, promoting a candidate or a political proposition, during periods of political campaigns.

**3.6 Garbage/Refuse.** No Owner shall deposit or permit the accumulation of any trash, ashes, garbage, or other refuse or debris on or about such Owner's Lot or any other property within the PRD, except in appropriate covered trash receptacles. Each Owner shall keep such Owner's Lot neat and orderly in appearance and shall not cause or permit any noxious or odorous conditions to exist, nor maintain any tangible objects, which are unsightly in appearance to exist, on any Lot within the PRD.

**3.7 Vehicles and Parking.**  
a. All automobiles and all other permitted vehicles, if kept or parked on any Lot or otherwise within the PRD, shall be in good order and in working condition. Partially wrecked vehicles, discarded vehicles, unlicensed vehicles or vehicles which are in a state of disrepair shall not be kept on any Lot or street in the PRD, unless enclosed in a garage or otherwise completely screened from view from

outside the Lot. Non-muffled motorcycles, muffled or non-muffled motorbikes, trail bikes, snowmobiles and similar vehicles shall not be operated on any portion of the PRD (and the roads therein) whether licensed or not.

- b. All vehicles within the PRD shall be operated in a safe manner consistent with the rules of the road. Although the streets within the PRD are private rather than public, vehicles within the PRD shall travel at a maximum speed no greater than the City of Lynden speed limit in effect for the immediate surrounding area, and will otherwise operate under the standards imposed by the City’s ordinances.
- c. It is recognized that pursuant to the current Lynden Municipal Code, a minimum of two (2) parking spaces are required for each residential unit on each Lot. If an enclosed garage for two (2) or more vehicles is provided, then a minimum of one (1) outside parking space must be provided.<sup>1</sup>
- d. Because the size of the lots within the PRD allows for substantial on-site parking within PRD lots, the City of Lynden approved the PRD’s private street plan incorporating street widths of 30 feet with parking on only one side in some portions of the PUD, and street widths of only 24 feet in other portions. No on-street parking is permitted along those portions of street that are 24 feet in width. No parking is permitted adjacent to or within \_\_\_\_\_ feet of any hydrant. Owners must prioritize on-site parking for their own vehicles and that of their guests, so as to minimize use of the PRD’s streets for parking purposes, and on-street parking within the PRD must be consistent with the standards imposed by the City’s ordinances.
- e. All vehicle parking and operation within the PRD shall be conducted in such a way as to provide unimpeded access for emergency vehicles and personnel.
- f. The Association may adopt additional guidelines for vehicle operation and parking through bylaws or other rules; provided, however, that if the guidelines, bylaws, or rules adopted by the Association are more lenient than City ordinances, the stricter Lynden ordinances shall control.
- g. The provisions of this Section 3.7 shall be considered as an enforceable part of this Declaration regardless of modifications to the Lynden Municipal Code.

**3.8 Antennas.** No television, radio or satellite antenna, receivers, dishes or other telecommunication devices shall be installed on any portion of any Lot unless contained entirely within the interior of a building or in the backyard, reasonably screened from the view of all neighbors *except* that a satellite antenna disc of not more than eighteen (18) inches in diameter shall be allowed. The location of any permitted satellite disc shall be

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<sup>1</sup> Under City of Lynden requirements, a minimum of two outside spaces must be provided in the case of an enclosed single-car garage; however, pursuant to Section 3.20 of this Declaration, homes within the PRD may have no less than a two-car garage.

prior approved by the ARC.

- 3.9 **Fences.** Wire and chain link fencing is prohibited. The Lot Owners may install and maintain fencing encompassing the yard of their individual Lot at the time of construction of a new home or any time thereafter as approved by the ARC; provided, however, that no fencing may be installed within three (3) feet of any sidewalk. Fencing of individual Lots shall be consistent in materials, color, and style with the perimeter fencing of the entire PRD, as approved by the ARC, and shall also be subject to the permitting requirements of the City of Lynden. Individual Lot fencing may be no more than six (6) feet in height. There is a 42” height limit on fences from the front yard to the front of the house. A fence permit must be secured from the City of Lynden prior to installation of any fence.
- 3.10 **Retaining Walls.** Retaining walls shall not exceed a height of four (4) feet unless they are designed and installed consistent with plans produced by a licensed civil engineer and permitted by the City of Lynden. Retaining walls shall be constructed only of the following materials: stone, heavy timber, concrete with brick, stone or wood facing or concrete with high quality exposed aggregate finish.
- 3.11 **Roof Materials.** Roof materials are limited to natural cedar shakes or shingles, concrete or clay tiles, slate or textured thirty-year plus mineral surfaced composition shingles. Materials for roofing and siding of outbuildings shall be consistent in color(s), style and design with that of the house on the Lot on which it is situated. Metal roofs on certain structures will be allowed with the approval of the ARC.
- 3.12 **Chimney Design.** Exposed metal chimneys are not permitted.
- 3.13 **Clothesline Restrictions.** Clotheslines are only permitted in the backyard of a Lot.
- 3.14 **Surface Water Run-Off.** No Lot shall be improved in such a way as to cause excess surface water run-off that may damage or inconvenience other Lots or contiguous properties and the Owners thereof.
- 3.15 **Damaged Improvements.** No Improvement which has been partially or totally destroyed by fire, earthquake or any other cause shall be allowed to remain in a state of disrepair for a period in excess of four months from the date of such partial or total destruction. Corrective construction or reconstruction shall be required to commence within such four month period and shall be completed in accordance with the provisions of Section 4.1 hereof; provided, however, that such four month period shall be extended by the ARC upon the written request of the Owner for a reasonable period thereafter in the event that corrective construction or reconstruction has not commenced as a result of factors beyond the control of the subject Owner and in the event that the subject Owner has exercised and does thereafter continue to exercise due diligence in an effort to eliminate such factors causing such delay in commencement.
- 3.16 **Landscaping.** Within twelve (12) months after commencement of construction of individual improvements thereon all Lots shall be fully landscaped. All landscaping shall

be subject to approval from the ARC and the View Protection restrictions in section 3.21 herein. If the Owner of the Lot fails to properly maintain landscaping, then the Association may perform the work described in the approved landscaping plan and charge the Owner of the Lot for the cost of such work. The Association may collect this charge pursuant to the authority granted in Section 6.7 of this Declaration.

It is recognized that street trees and planting strips are required as part of the City of Lynden’s approval of the PRD, with a minimum of one (1) street tree per lot, and a maximum of fifty (50) feet between each tree; provided, however, that trees shall not be placed so as to block view triangles. These improvements have been planted by the Declarant, but *must* be maintained by the adjoining Lot in accordance with the City of Lynden’s engineering design and development standards. If the Owner of any Lot fails to properly maintain the street trees and/or planting strips adjoining said Owner’s Lot, then the Association may perform the work and charge the Owner of the Lot for the cost of such work. The Association may collect this charge pursuant to the authority granted in Section 6.7 of this Declaration. No street tree shall be removed without the approval of the City of Lynden.

**3.17 Setbacks.** All setbacks shall be consistent with setbacks required by the City of Lynden. Building setbacks are measured from the property line to building foundation. Garage door setbacks are measured from the edge of the property line or adjacent access easement to the face of the garage door. At the time of approval, the setbacks applicable to the PRD are as follows: a) a PRD perimeter setback of twenty-five (25) feet (except for Lot 11, where the PRD perimeter setback shall be reduced to seven (7) feet to allow a reasonable building footprint); b) rear setbacks of 20 feet for lots under 7,000 square feet in size, and 30 feet for lots 7,000 square feet in size or larger; c) side setbacks of seven (7) feet; d) front setbacks of fifteen (15) feet; and e) garage door setbacks of 24 feet. f) open sided decks and patios (three sides open) may encroach up to 12 (twelve) feet into the rear yard setback. Notwithstanding the foregoing, the ARC may impose more restrictive setbacks in their design guidelines as determined in their discretion.

**3.18 House Size.** Each single-family dwelling shall be of permanent construction (no mobile or modular homes are allowed) and must be a minimum of 1,400 square feet, with two-story dwellings having a minimum of 800 square feet on the main floor, exclusive of garage, basement and porches. The maximum square footage of two-story dwellings shall be 5,500 above ground. The maximum square footage of single level dwellings shall be 4,000 above ground. Lot coverage shall not exceed a maximum of forty percent (40%) of the lot size. Location of all buildings shall have prior approval by the ARC in an attempt to preserve views of the surrounding mountain and valley area from all Lots consistent with section 3.21 herein.

**3.19 Outbuildings.** All outbuildings are subject to the applicable City of Lynden development standards. Size and design of any outbuildings (shops, sheds, or any other structure detached from the residence) must also be approved by the ARC prior to construction and shall be of similar color and design with the residence approved for the Lot. Outbuildings shall only be allowed behind homes (*i.e.* on the opposite side of the home from the road the home faces). Pursuant to Section 3.21 below, the construction of outbuildings shall not block views of the surrounding mountain and valley area from

other Lots. The maximum size of outbuildings is 1,450 square feet, and outbuildings larger than 120 square feet require a building permit from the City of Lynden. Each parcel shall be allowed one outbuilding up to this maximum size and one shed not to exceed 20 by 15 feet. Provided, however, outbuildings may be large enough to accommodate a 14-foot-high door, with a maximum plate height of 16 feet, maximum peak height of 18 feet, and a minimum 5/12 roof pitch. Individual lot owners are allowed up to 1,750 square feet of accessory structures as long as they are below the lot coverage limits.

**3.20 Garages, Curb Cuts, Driveways and Pathways.** All houses shall have no less than a two-car garage. All garages must be a minimum of 400 square feet (2 car) and not more than 750 square feet (3 car). No Lot within the PRD will be allowed to have a driveway or curb cut along Northwood Road. Rather, access to and from all Lots within the PRD will be over and across the internal private streets within the PRD. Driveways must be a minimum of twenty-four (24) feet in length (as specifically allowed by the City of Lynden for this PRD, although the standard minimum is 25 feet). The City of Lynden also requires paved pathways to front doors throughout the PUD, and a vegetated strip (three to four feet in width) to avoid abrupt vertical changes in the sidewalk at each driveway cut. All pavement within the PRD, including not only the private streets and paths but also all driveways and pathways on individual Lots, must be constructed from pervious/permeable material. Each Owner must keep the paved areas within that Owner’s individual Lot free of debris and in good repair, using materials and techniques that will not impede the free movement of water through the pavement, consistent with the standards for street maintenance as provided in Section 2.6. The Association may adopt additional bylaws or other rules governing maintenance of paved surfaces.

**3.21 View Protection.** It is the intent of the Declarant and the Association, to maintain views of the surrounding mountain and valley area to the extent reasonable. Accordingly, the location of all improvements on all Lots (including but not limited to houses, outbuildings and landscaping) shall have prior approval by ARC in an attempt to reasonably preserve views of the surrounding mountain and valley area.

No trees or vegetation over 10 feet are allowed, with the exception of trees installed or preserved pursuant to the approved mitigation plan and street trees. Any improvements (including the residence) shall be located in the areas approved by the ARC and shall not exceed 35 feet in height. The height of the improvements shall be certified by an engineer or architect on the plans submitted to the ARC and shall be calculated as follows: The vertical distance from the lowest existing grade at the wall of the building to the highest point of the coping of a flat roof or to the height of the highest gable of a pitch or hip roof. If the actual height of the improvements varies from the height set forth on the plans submitted and approved by the ARC, it shall be that Lot Owner’s obligation to correct the improvements so that they meet the height identified in the approved plans.

**3.22 Density/Accessory Dwelling Units.** The currently permitted density shall be achieved with one single-family dwelling on each of the single-family Lots of the PRD. No Lots are eligible to apply for accessory dwelling units (ADU).

- 3.23 **Right to Farm Disclosure.** The PRD (and each of the Lots therein) is within or near designated agriculture lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. You may be subject to inconveniences or discomforts arising from such operations, including but not limited to noise, odors, flies, fumes, dust, smoke, the operation of machinery of any kind during any 24-hour period (including aircraft), the storage and application of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. Whatcom County has determined that the use of real property for agricultural operations is a high priority and favored use and will not consider be a nuisance those inconveniences or discomforts arising from farm operations, if such operations are consistent with commonly accepted good management practices and otherwise comply with local, state, and federal laws.
  
- 3.24 **Archaeological Discovery.** If archaeological materials (e.g., bone, shell midden, cobble tools, etc.) are observed during site work located within the PRD or any of the Lots located therein, work in the area of the discovery shall cease and the City of Lynden SEPA administrator, Lummi Nation Tribal Historic Preservation Office (360-384-2298) and the Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) as well as Lummi Nation Tribal Historic Preservation Office and the Washington State Office of Archaeology and Historic Preservation shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
  
- 3.25 **No Offensive Activities.** No Owner, their guests or invitees shall undertake or maintain any activity within the PRD that is obnoxious or offensive and/or constitutes disorderly conduct, disorderly house, and/or a breach of the peace pursuant to Lynden’s Municipal Code.
  
- 3.26 **Areas in Floodplain.** The FEMA designated floodplain and elevation for the Nooksack River are shown on the Plat, and the base flood elevation (BFE) is delineated on the ground. Any development within the floodplain must comply with FEMA regulations and the Floodplain Management provisions set forth in LMC 16.12, approval of such work will be subject to cut and fill analysis, compensatory storage, and a biological assessment. The City of Lynden has mandated that lots that contact or are directly adjacent to the floodplain will require an elevation certificate, to ensure two (2) feet of freeboard above BFE, prior to final occupancy.
  
- 3.27 **Permitting Requirements; Fire Code; Residential Design Standards.** All improvements within the PRD are subject to the permitting requirements of the City of Lynden, including but not limited to building permits, and will be in full compliance with the Fire Code. In addition to the above standards, and except as otherwise specifically provided in this Declaration, all homes within the PRD will be subject to the Residential Design Standards set forth in LMC 19.22, which include but are not limited to articulations on building elevations that face toward public streets or shared green spaces, exterior finish details, porches and stoops, and the screening of mechanical equipment.

3.28 **Critical Areas, buffers and mitigation plantings.** The Declarant shall install mitigation as required by the approved mitigation plan and shall maintain and monitor the mitigation during the period of Declarant control. After the period of Declarant control has ended, the Association is responsible for maintaining and monitoring the mitigation plantings in accordance with the approved mitigation plan.

**4. CONSTRUCTION**

4.1 **Impact/Mitigation Fees.** Impact and/or mitigation fees for parks, fire, [traffic/transportation?] and/or other impacts may be due at the time of home construction on the Lots, and Owners are advised to check with the City of Lynden regarding those fees.

4.2 **Erosion Control.** Provisions shall be made at each construction site as may be reasonably required to control erosion, including use of straw bales, seeding and shielding excavations through the use of material such as ground fabric.

4.3 **Construction Equipment.** Lot Owners and their contractors shall take normal precautions to prevent damage to installed roadways, curbs, sidewalks, services and trees and vegetation. Sidewalks and curbs shall be adequately protected during movement and operation of construction vehicles and equipment across them. Owners and their contractors shall be responsible for damage to Common Properties/Improvements caused by their activities.

4.4 **Conduct of Work.** The impact of construction activities on other Lot Owners and residents must be kept to a reasonable minimum by treating neighbors in a courteous manner, and by limiting construction activities to the hours between 7:00 a.m. and 6:00 p.m. Construction materials should be neatly stored on site at the end of each construction day. Owners and their contractors shall take all normal steps to keep the streets, and neighboring lots free of trailers, job toilets, construction materials, mud, dirt and construction debris. The construction site and surrounding areas should be regularly monitored for unnecessary construction debris and for drainage and mud slides onto neighboring lots and into storm drains. Construction waste and garbage should be disposed of in a large on-site temporary trash receptacle or removed from the site as required to prevent an unsightly build-up of waste materials, and the street in front of the construction site should be kept broom clean.

4.5 **Time For Completion.** Construction of all house improvements shall be prosecuted diligently from the date of commencement of work until the exterior is completed and painted or finished and all sanitation and health requirements have been fulfilled. Furthermore, the maximum time limit for the completion of construction of an improvement shall be nine (9) months from the date construction commences, which is defined as the date building materials are first delivered to the Lot for such purpose. Construction shall not be deemed to be completed until all improvements are finished, the Lot has been cleaned of construction debris consistent with approved plans. In accordance with section 3.16 herein, landscaping must be completed twelve (12) months from the date

construction commences. The Lot Owner shall be responsible for the cost of replacing any survey stakes lost or moved during construction.

**5. ARCHITECTURAL REVIEW COMMITTEE**

**5.1 General.** Construction of improvements on any Lot within the PRD shall be subject to the approval of an Architectural Review Committee ("**ARC**"), that shall consist of no less than three members appointed by the Declarant. No improvements shall be erected, placed or altered on any Lots until the construction plan, specification, site plan and landscaping plan, showing the location of all proposed improvements on the Lot in a form established by the ARC, have been approved. The approval or disapproval of the ARC as to such construction plan, specifications, site plan and landscaping plan, shall be based upon the quality of materials utilized in the construction, the harmony of the external design and color scheme of the proposed improvements with other existing improvements within the PRD, bulk and location of improvements with respect to topography and finish grade, reasonable view protection and compliance with the Declaration and the standards to be developed and made available to Owners by the ARC. In addition, the ARC shall have the authority to control the location and orientation of each structure/roof pitch to reasonably protect the views of the surrounding mountain and valley area from other Lots in the PRD. All Lot Owners agree to cooperate in good faith to locate and orient their structures/roof pitch to reasonably protect the views of the surrounding mountain and valley area from the Lots in the PRD. Notwithstanding the foregoing, the ARC cannot guarantee protection of all views of the surrounding mountain and valley area.

**5.2 ARC Fee.** In addition to the construction plan, specifications, site plan and landscaping plan, the Owner shall give to the ARC **Two Hundred Dollars (\$200.00)** for each approval requested. A significant change to plans shall be deemed to be a new set of plans and shall require an additional **One Hundred Dollar (\$100.00)** fee. In addition, in the event the ARC implements outside review by a designer or architect the Owner shall be billed for the actual cost of the third-party review. The ARC is not obligated to commence review until the above specified fees have been paid. The fees for ARC review shall be considered an assessment and enforced as set forth in Section 6 below.

**5.3 Approval/Disapproval.** The ARC shall approve or disapprove the construction plans, specifications and site plan, including specified color finish, within thirty-five (35) days following receipt of a complete duplicate set thereof from the submitting Lot Owner or prospective Lot Owner. Any complete submission of construction plan, specifications, site plan and landscaping plan on which no action is taken by the ARC for sixty (60) days following the date of receipt thereof shall be deemed approved as submitted, unless within such sixty (60) day period the ARC has sought, in writing, clarifying information concerning the same. Two sets of construction plans, specifications (including exterior color finish detail), site plan and landscaping plan must be submitted to the ARC. One such complete set shall be returned to the submitting Lot Owner or prospective Lot Owner with the approval or disapproval endorsed upon such complete set by the ARC. The other complete set shall be retained by the ARC for its permanent files.

The ARC shall have the right to disapprove any construction plans, specifications and/or site plan in the event the same are not in accordance with the provisions of this Declaration, if the design or exterior color scheme of the proposed improvements is not in harmony with the general surroundings of the PRD or with the adjacent improvements, if the proposed improvements unreasonably interfere with the views of the surrounding mountain and valley area from other Lots in the PRD, if the construction plan, specification, site plan and landscaping plan are incomplete, or if the ARC determines that the construction plans, specifications and site plan, or any portion of them, are contrary to the interest, welfare and/or rights of the Owners of other Lots within the PRD.

**5.4**     **ARC General Guidelines.** The following are general guidelines for approval/disapproval of construction plans, specifications and/or site plans for the PRD.

- Exterior siding of all structures is required to be wood or high-quality wood-appearance fiber cementitious products. Alternative siding material shall only be permitted with ARC approval. No aluminum siding, vinyl siding, or similar siding is permitted. No stucco or dryvit exteriors are permitted.
- All homes shall have a minimum roof pitch of 6/12 and a maximum of 12/12 provided the height does not exceed the height limit or unreasonably interfere with view protection restrictions. Provided, however, outbuildings shall have a minimum 6/12 roof pitch.
- The location and orientation of each house on each Lot shall be approved in a manner to reasonably protect the views of the surrounding mountain and valley area from within the PRD.
- The top of the first floor shall not be less than twelve (12) inches above the road.
- Color schemes shall be muted tones that are consistent with the local community standard, and which blend with the adjacent structures.
- Lots within the floodplain and adjacent lots shall be elevated at least 2 (two) feet above base flood elevation.

**5.5**     **Variance.** In order to preserve the character of the PRD, and/or to resolve problems relating to unique and difficult topographical problems or in other extraordinary circumstances, the ARC shall have the right to grant a variance from the standards created by the ARC and from those restrictions relating to Improvements set forth in Section 3 of this Declaration. Any variance from the restrictions contained in this Declaration shall be made in recordable form and shall be placed of record on the Lot by the ARC.

**5.6**     **Conditional Approval.** Any approval given by the ARC may be conditioned upon compliance by the Owner with any reasonable condition which the ARC deems appropriate, including, without limitation, the posting of bonds or other acceptable security in order to ensure performance by the Owner in accordance with the construction plan, specifications, site plan and landscaping plan being approved.

**5.7**     **No Liability.** Neither the ARC, nor any member thereof nor any successor thereto nor the Declarant, shall be liable to any person for any action taken by the ARC or for any failure

to act by it under or pursuant to the provisions of this Declaration, so long as the ARC, and any successors thereto act in good faith and without malice.

**5.8**     **Expiration.** The Declarant may remove and replace the ARC at the Declarant's sole discretion. This right to appoint and remove the ARC shall not expire until the Declarant no longer owns any Lots in the PRD and construction plan, specifications, site plan and landscaping plans have been approved for all Lots in the PRD.

**6.     COMMUNITY ASSOCIATION**

The Declarant shall form a Community Association, designated herein as the Association, to include as its members all Owners of any Lot within the PRD. This organization shall be a nonprofit corporation pursuant to Title 24 of the Revised Code of Washington and shall be known as "Kamm Creek Homeowner Association" and shall be authorized to enforce the terms and conditions herein.

**6.1     Purpose, Powers and Authority.**

- a.     Purpose. The purpose of the Association shall include, without limitation, the furtherance and promotion of the common welfare of the Owners of any Lot or Parcel within the PRD.
  
- b.     Power/Authority to Maintain. In addition to the powers set forth in RCW 64.90 and as otherwise set forth in this Declaration, the Association shall have full power and authority to use, care for, construct, operate, repair, maintain and preserve the Common Properties within the PRD, including without limitation the following:
  - i.     Maintenance of the private streets within the PRD consistent with the provisions of Section 2.6; maintenance and repair of light standards for the street lighting within the PRD to the extent that the standards deviate from City standards that were in effect at the time of their installation, and maintenance of any portions of private rights-of-way within the PRD that have not yet been developed as streets;
  
  - ii.    Maintenance and preservation of the Open Space Tract(s) in open space, as well as maintenance and preservation of [the stormwater facilities as well as] any landscaping and irrigation systems and pedestrian paths or trails located in the PRD;
  
  - iii.   Operation, maintenance and use of property held or controlled by the Association, including maintenance and repair of facilities within the Common Properties and such other facilities, equipment, activities, objects and purposes pertaining to the welfare, enjoyment, social well-being, protection and benefit of the members and of their Lots within the PRD,

- iv. Compliance with and performance of all obligations under the Conservation Easement granted in favor of the Association and recorded under Auditor’s File No. \_\_\_\_\_;
  - v. Payment of taxes, if imposed, on Common Properties and Improvements; and the protection and preservation of the interests of the Lot Owners for the common good.
- c. **Power/Authority to Regulate.** In addition to the powers set forth in RCW 64.90 and as otherwise set forth in this Declaration, the Association shall have full power and authority to enact rules and regulations (through adoption of bylaws or other rules) regarding activities, objects and purposes pertaining to the welfare, enjoyment, social well-being, protection and benefit of the members and of their Lots within the PRD, as well as the use, care, and operation of the Common Properties within the PRD, and to adopt and impose penalties and sanctions for the violation of said rules. These regulatory powers shall include, but are not limited to:
- i. Regulating the maintenance and use of Common Properties and the facilities thereon;
  - ii. Regulating the operation and parking of vehicles within the PRD consistent with the provisions of Section 3.7, including the authority to enforce requirements for parking, speed limit and other driving/vehicle operation requirements as mandated by the City of Lynden and any other regulations adopted by the Association (provide such regulations are no less restrictive than comparable City requirements);
  - iii. Regulating the use of any portions of dedicated rights-of-way within the PRD that have not yet been developed as streets; and
  - iv. The protection and preservation of the interests of the Lot Owners for the common good.

**6.2 Meetings.** All meetings shall be conducted as required by RCW 64.90.450 as hereinafter amended.

**6.3 Creation and Transfer of Control.** The Association shall be organized at the instance of the Declarant, and each Lot Owner shall be a member of the Association. The Declarant shall initially designate and appoint a governing Board of the Association. Within sixty (60) days after Declarant has sold twenty-five percent (25%) of the 40 total Lots that may be created within the PRD (i.e., 10 Lots) to parties other than Declarant, at least one member of the Board of Directors (or 25% of the Board, whichever is greater) shall be elected by Lot Owners other than the Declarant. Within sixty (60) days after Declarant has

sold fifty percent (50%) of the Lots (i.e., 20 Lots) to parties other than Declarant, at least one-third (1/3rd) of the members of the Board of Directors shall be elected by Lot Owners other than the Declarant. The period of Declarant control of the Association will end sixty (60) days after Declarant has sold seventy-five percent (75%) of the Lots (i.e., 30 Lots) to parties other than Declarant. Irrespective of the foregoing, the Declarant, at its sole and exclusive option, may elect at any time prior to the sale of all of its Lots within these PRDs to transfer control of the Association to the members thereof.

**6.4** **Required Maintenance.** The Association shall perform all reasonable and necessary maintenance of the following: All of the repairs and maintenance required in Section 2.6 above as well as all repairs and maintenance required for the Common Properties, Easements and the Improvements located thereon as permitted in Section 6.1, including but not limited to compliance with all requirements related to the wetlands and buffers within the Open Space Tract(s), pursuant to Section 3.1 above, Lynden Municipal Code 16.16, and the Conservation Easement. All expenses related thereto shall be paid by the Association. The Association shall be authorized to require reimbursement for all expenses incurred in repairing or restoring the foregoing (apart from maintenance due from ordinary wear and tear) from the party causing the damage the required the repair or restoration.

**6.5** **Assessments and Liens.**

- (a) **Authority.** The Association during the period of Declarant control and at all times thereafter shall be empowered to establish and to collect dues and assessments upon Lots in the PRD for the common benefit of such Lots.
- (b) **Purposes.** The purposes for which dues and assessments may be established and collected include, without limitation, making provision for the payment of charges associated with utilities, road, gate and utility maintenance, the Common Properties identified in Section 1.6, recreational improvements, drainage, property protection, landscaping, insurance, maintenance, improvements, payment of taxes upon Common Properties, the holding of ownership or a leasehold interest therein, for any other common purposes or for collecting fines or recovering money expended on the landscaping of a Lot, all as determined pursuant to the Articles of Incorporation and By-laws of the Association.
- (c) **Personal Obligation and Lien Foreclosure.** Dues and assessments shall constitute a personal obligation of any Owner of record of a Lot on the due date thereof and shall also constitute a lien on the Lot assessed. Such lien may be enforced by the Association in the same form and manner of procedure as foreclosure of real property mortgages under the laws of the State of Washington.
- (d) **Amounts Included.** Each Owner and each party hereinafter owning or claiming an equity interest in a Lot agrees that in the event of any action to collect assessments and/or foreclose a lien securing the same involving such Lot, the Owner or Owners of such affected Lot or other party asserting an equity interest therein will pay the Association's expenses of title examination and insurance, the cost of attorney's fees incurred by the Association and court costs, as well as all other costs reasonably and necessarily incurred in such action, and/or the collection of any passed due assessment (whether or not litigation or foreclosure is instituted to collect such amounts). In any such action, delinquent assessments shall bear

interest at the rate of 12% per annum from the date the same became due until the date of the entry of the judgment of foreclosure thereon.

(e) **Other Liens and Foreclosure Actions.** The method and manner provided for foreclosure of liens set forth in this Section shall pertain to all liens referred to in this Declaration. First mortgage liens placed upon any of the Lots created shall be superior to any and all charges, assessments, and liens thereafter asserted pursuant to this Declaration.

**6.6 Establishment and Assessment of Charges.** For the purpose of providing funds for uses specified herein the Board of the Association shall, for each year, charge yearly dues against all Lots. The Declarant shall determine the amount of the first-year dues to be paid. Until dues are assessed, the Declarant shall be responsible for payment of expenses of the Association. Each Lot shall be assessed an equal amount for each calendar year for all expenses common to all Lots. Assessments shall be adopted pursuant to the requirements set forth in RCW 64.90.480.

**6.7 Special Assessment.** The Association may make special assessments against any Lot and Lot Owner for violating the terms of this Declaration, or if such Owner is responsible for damage to the Common Properties.

**6.8 Annual Statement.** As soon as shall be practical in each calendar year, the Association shall send a written statement to each Owner setting forth the dollar amount of the assessment for such Lot for such calendar year. The Association may, in its sole discretion, provide for payment of such assessments on a periodic basis during such calendar year, with or without a service charge. This requirement shall not apply until the Declarant has elected to assess Lots in the PRD.

**6.9 Penalty on Delinquent Assessments.** If an Owner shall fail to pay any installment of an annual assessment within thirty (30) days from the date the same is due, then the entire annual assessment for such Lot shall be delinquent and shall become immediately due and payable, shall bear interest at the rate of 12% per annum thereafter until paid and shall also bear a penalty in such amount as shall be determined by the Board of the Association.

**6.10 Delinquency For More Than Ninety Days.** If the Owner of any assessable Lot shall be delinquent in the payment of the annual assessment, or any installment thereof, for more than ninety (90) days following the date the same is due, then the Association shall have the right to commence legal action seeking a personal judgment against such Owner and, in addition thereto, shall have the right to foreclose its lien upon such Lot. The total amount due from such Owner shall be such sums as provided in Sections 6.5, 6.6, and 6.7, plus any penalty imposed under Section 6.9 hereof.

**6.11 Rules and Procedures for Billing and Collecting Assessments.** The Board of the Association shall have the power and authority to adopt rules and procedures respecting the billing and collecting of annual assessments, which shall be binding upon all Lot Owners.

6.12 **Increase in Assessments.** Increase in assessments shall be made pursuant to RCW 64.90.480.

6.13 **Application of Assessment.** The Association shall apply all funds received by it pursuant to this Declaration in the following order:

- (a) Administrative costs and expenses incurred by the Association in the exercise of its powers, authority and duties described in its Articles of Incorporation and By-Laws.
- (b) The promotion of the recreation, health, safety, enjoyment and welfare of the users of the Common Properties, and the enhancement of the values of the Common Properties by means of construction, repair, maintenance, operation and administration of the Common Properties, including, but not limited to, the payment of taxes and insurance premiums on the Common Properties.
- (c) The service, repair, maintenance and/or replacement of any and all Improvements, including, but not limited to landscaping, fences, roads, paths, utilities, drainage facilities, lighting, and all other Improvements whatsoever belonging to the Association.
- (d) As to monies received on special assessments, to fulfill the purpose of the special assessment.

6.14 **Authority to Maintain surplus.** The Association shall not be obligated to spend in any particular time period all of the sums collected or received by it during such time period or any other time period. The Association may carry forward, as surplus, any balances remaining. The Association shall not be obligated to apply any such surplus to the reduction of the amount of the annual assessment in any future year.

**7. PROTECTION OF MORTGAGE OR DEED OF TRUST HOLDER**

No violation or breach of any covenant, condition, reservation or restriction contained in this Declaration, or in any supplement hereto, and no action to enforce the same, shall defeat, render invalid or impair the lien of any mortgage or deed of trust taken in good faith and for value against any title or interest in any Lot which is the subject of an action arising from such violation or breach. A purchaser of any such Lot at a trustee's sale, Sheriff's sale or Tax Foreclosure sale shall take title to such Lot free and clear of any violations or breaches which have occurred on such Lot, or by the previous Owner thereof, prior to such foreclosure, but such purchaser shall nevertheless take subject to this Declaration and to any supplements hereto.

**8. TENANTS AND INVITEES**

Tenants and Invitees of the Owners or residents of the PRD shall be bound by the terms and conditions of this Declaration, as well as Rules and Regulations adopted by the Board of the Association.

**9. ENFORCEMENT**

The Association, the Declarant and any Owner shall have the right to enforce, by any proceedings at law or in equity, all covenants, conditions, restrictions, reservations, liens and charges now

or hereafter imposed by this Declaration. The failure of the Association, of the Declarant or of any Owner to enforce any rights hereunder shall not be deemed to constitute a waiver of the right to do so thereafter. The prevailing party in any litigation involving the enforcement of any provision of this Declaration shall be entitled to judgment for the reasonable attorney's fees and costs incurred in such litigation by such prevailing party.

**10. GRANTEE'S ACCEPTANCE**

The grantee of any Lot subject to this Declaration shall, by the acceptance of a deed conveying title thereto or by the execution of any contract for the purchase thereof, whether from Declarant or any subsequent Owner of such Lot, accept such deed or contract upon, and subject to, each and every provision of this Declaration and the provisions contained herein, including the jurisdiction, rights and powers of Declarant, and by such acceptance shall, for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with Declarant and to and with the grantees and subsequent Owners of each of the Lots within the PRD, to keep, observe, comply with and perform all obligations set forth herein.

Each such grantee also agrees, by such acceptance, to assume, as against Declarant, its successors or assigns, all of the risks and hazards of ownership and occupancy attendant to such Lot, including, but not limited to, its proximity to any Common Properties, public paths, streams or other water courses.

**11. AMENDMENT TO DECLARATION**

Each and every provision of this Declaration shall run with and bind the land and shall inure to the benefit of, and be enforced by, the Association, the Declarant, the Owners of any Lots subject hereto, their respective legal representatives, heirs, successors and assigns, for a period of ten (10) years from the date that this Declaration is recorded, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless otherwise terminated or amended as provided herein and consistent with all applicable laws. This Declaration may only be amended by an instrument adopted by the Board and signed by not less than seventy-five (75%) percent of the Owners of all Lots subject to this Declaration. Any such amendment shall take effect upon being recorded with the Whatcom County Auditor.

No Amendment or termination of this Declaration shall affect, change, or terminate any of the following restrictions, obligations, limitations and/or easements without the prior written consent of the City of Lynden:

- Subsections 2.1, 2.3, 2.4, and 2.6;
- The provisions of subsection 3.1 relating to the Open Space Tract(s);
- The provisions of subsection 3.16 relating to street trees and planting strips;
- The provisions of subsection 3.20 relating to access/curb cuts via Northwood Road; and
- Subsection 3.23, 3.24, 3.25, 3.26, and 3.27.
- Subsection 6.4.

**12. SEVERABILITY**

In the event that any provision hereof is deemed by proper judicial decree to be invalid, then the remaining portion of this Declaration shall in no way be affected.

**13. PARAGRAPH HEADINGS**

The paragraph headings in this Declaration are for convenience only and shall not be considered in construing this Declaration.

**14. NO WAIVER**

The failure of any party entitled to enforce any provision hereof to take steps to enforce such provision shall not, in any fashion, operate or be deemed to be a waiver of any such provision or of any other provision hereof.

**DATED** this \_\_\_\_ day of \_\_\_\_\_, 2022.

Halo Holdings, LLC  
Managing Member of  
Kamm Creek Partners, LLC

By: \_\_\_\_\_  
Jeremy Parriera  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Tim Koetje  
Its: \_\_\_\_\_

STATE OF WASHINGTON            }  
  }  
COUNTY OF WHATCOM        }        ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of **Kamm Creek Partners, LLC**, a Washington limited liability company, who acknowledged that he was authorized to execute this document on behalf of the company and acknowledged said instrument to be the free and voluntary act and deed of the company for the uses and purposes therein mentioned.

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

\_\_\_\_\_  
Notary Public in and for the State of Washington  
Residing at: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

## Exhibit A

### Legal Description of the Property

Lots 1 through 40, inclusive, of the Kamm Creek Planned Residential Development, as per the Plat thereof, recorded under Whatcom County Auditor’s File No. \_\_\_\_\_ and located within the City of Lynden, Whatcom County, Washington, together with any Open Space Tract(s) within said Planned Residential Development.

Situate in Whatcom County, Washington.

Formerly known by the following metes-and-bounds legal description:

**PARCEL 1 (400315 248165 0000/128322):**

THE EAST 5 ACRES OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., EXCEPT NORTHWOOD ROAD ALONG EASTERLY BOUNDARY THEREOF, AND EXCEPT UNDIVIDED ONE HALF (1/2) INTEREST IN OIL, GAS AND MINERAL RIGHTS AS RESERVED UNDER WHATCOM COUNTY AUDITOR FILE NO. 927862.

SITUATE IN WHATCOM COUNTY, WASHIGTON

**PARCEL 2 (400315 183163 0000/128292):**

THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., EXCEPT THE EAST 5 ACRES THEREOF, AND EXCEPT UNDIVIDED ONE HALF (1/2) INTEREST IN OIL, GAS AND MINERAL RIGHTS AS RESERVED UNDER WHATCOM COUNTY AUDITOR FILE NO. 927862.

SITUATE IN WHATCOM COUNTY, WASHIGTON

# CITY OF LYNDEN

PLANNING DEPARTMENT  
(360) 354 - 5532



CITY OF LYNDEN  
MITIGATED DETERMINATION  
OF NON-SIGNIFICANCE  
August 28, 2020

**Project Name: Kamm Creek PRD**

**Description of Proposal:** A Planned Residential Development (PRD) requesting to develop approximately 20 acres into 40 residential lots within the RS-100 zone.

**Proponent:** Bob Libolt, Kamm Creek Investments, LLC

**Contact Info: Address:** 125 Rosemary Way, Lynden WA 98264  
**Phone:** 360-319-8357  
**Email:** boblibolt@gmail.com

**Parcels, Common Address and their Legal Descriptions:**

Two parcels located in Section 15 of Township 40 N, Range 3E

Parcel No: 4003152481650000  
Address: Unaddressed  
Legal Description: THE EAST 5 ACRES OF THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., EXCEPT NORTHWOOD ROAD ALONG THE EASTERLY BOUNDARY THEREOF.

Parcel No: 4003151831630000  
Address: Unaddressed  
Legal Description: THE SOUTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 3 EAST OF W.M., EXCEPT THE EAST 5 ACRES THEREOF. SITUATE IN WHATCOM COUNTY, WASHINGTON.

**Lead Agency:** City of Lynden (hereinafter "City")

The lead agency for this proposal has determined that it does not have a probable adverse impact on the environment **if** the standard conditions (*not all standard conditions are listed below*) and mitigating measures are enacted. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after the review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

THE COMMENT PERIOD FOR THIS MDNS EXPIRES **September 16, 2020.**  
IT IS ISSUED ON THE BASIS THAT THE APPLICANT WILL COMPLY WITH THE FOLLOWING REQUIREMENTS IN MITIGATION OF THE POTENTIAL ADVERSE IMPACTS ON THE ENVIRONMENT.

**Findings of Fact and Mitigating Measures**

1. Proponent will mitigate potential impacts to the earth through the implementation of Best Management Practices (BMPs) for Storm and Surface Water Management per the Dept of Ecology to prevent erosion during and after construction. A Construction Stormwater General Permit (CSWGP) may be required by the Dept of Ecology. It is up to the applicant to ensure compliance with the requirements of the CSWGP.
2. Stormwater: The applicant has provided a preliminary stormwater design report written and stamped by Freeland and Associates (July 21, 2020). The preliminary report indicates that the project, as proposed, can comply with the City of Lynden's current stormwater management requirements.

The Kamm Creek PRD design must provide:

- A) A stormwater management plan including pipe sizing prepared by a professional engineer and meeting the requirements of the City's Manual for Engineering Design and Development Standards and the Department of Ecology Stormwater Manual is required. This plan must be approved by the City of Lynden prior to final approval of the project plans.
  - B) Stormwater Pollution Prevention Plan (SWPPP) (erosion control and sediment plan) must be included in the drainage plan and construction plans. This must be designed and constructed in compliance with the Department of Ecology's Best Management Practices (including all known and reliable technologies) and the standards approved in the Manual for Engineering Design and Development Standards.
3. Critical Areas: The applicant has submitted a Critical Areas Detailed Study that analyzes proposed impacts to the wetlands and regulated streams and their buffers. The Critical Areas Report dated June 29, 2020 is considered preliminary and subject to necessary revisions based on requested information, subsequent plat design alterations, and Army Corps and WDFW permits.

Proposed wetland fill will require Army Corps permits. Stream crossing work will require a WDFW HPA permit.

- 4. Floodplain: The FEMA designated floodplain for the Nooksack River shall be indicated on the final plat. Applicant shall confirm the BFE for the subject property and locate and adequately delineate that elevation on the ground. Any approved alterations that would change the on-site location of the BFE will require a LOMA and/or a LOMR-F prior to final plat approval.

Proposed development of the floodplain shall comply with FEMA regulations and LMC 16.12 Floodplain Management. Approval of floodplain development is subject to cut and fill analysis, compensatory storage, and a biological assessment.

Future parcels that contact the floodplain or that are directly adjacent to the floodplain will require an elevation certificate at final occupancy to ensure 2 feet of freeboard above BFE.

- 5. Cultural Resources: The applicant has provided a cultural resources assessment report, titled: Cultural Resource Assessment for the Lower Kamm Creek Residential Development Project, Lynden, Whatcom County, Washington, by Garth Baldwin and Marsha Hanson. The assessment recommends that no further archaeological oversight is warranted.

The applicant shall have an Inadvertent Discovery Plan onsite that identifies protocol for contacting the appropriate authorities and protecting archaeological resources if they are inadvertently found during future construction activity.

- 6. Transportation: The applicant has provided a Traffic Impact Analysis for the proposal. The project is expected to generate 378 Average Daily Trips and meet the minimum site distance for access points. Applicant will pay Traffic Impact Fees and meet design standards.
- 7. Pedestrian Accommodations: The proposed public trail will require dedication of a public trail easement as a condition of the Planned Residential Development approval. Additionally, a trail easement that extends to the western property line and which would eventually connect to future development to the west shall be included on this plat.

**General Conditions and Disclaimers**

- 8. This environmental determination does not assure compliance with all state and federal laws. Compliance with all state and federal laws remains the responsibility of the property owner, applicant and designee.
- 9. Other City, State and or Federal permits may be required for specific development and construction projects. This SEPA determination does not constitute final approval for this plan or future associated construction projects.

This MDNS is issued under RCW 197-11-340(2); the lead agency will not act on this proposal until the expiration of the comment period noted below.

Responsible Official: Heidi Gudde      Position/Title: Planning Director  
Phone: (360) 354-5532

Signature: 

You may appeal this determination to Heidi Gudde no later than **09/16/2020** in writing. You should be prepared to make specific factual objections regarding the environmental impacts. Contact, 300 4th Street, Lynden, phone number 354-5532, to ask about the procedures for SEPA appeals.

There is no agency appeal.

# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	January 17, 2023	
<b>Name of Agenda Item:</b>	Community Development Committee Minutes of 1-4-23	
<b>Section of Agenda:</b>	Other	
<b>Department:</b>	Planning Department	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input type="checkbox"/> Other: _____
	<b>Legal Review:</b> <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required	
<b>Attachments:</b>	Draft CDC Minutes of 1-4-23	
<b>Summary Statement:</b>	Draft CDC minutes attached for review.	
<b>Recommended Action:</b>	Council review.	

# CITY OF LYNDEN



PLANNING DEPARTMENT  
Heidi Gudde – Planning Director  
(360) 354 - 5532

## COMMUNITY DEVELOPMENT COMMITTEE

### MINUTES

4:00 PM January 4, 2023  
2<sup>nd</sup> Floor Conference Room, City Hall

#### 1. ROLL CALL

**City Council Members:** Brent Lenssen, Gary Bode, Mayor Scott Korthuis

**City Staff:** Heidi Gudde, Dave Timmer, John Williams

**Community Members:** Gary Vis, Dale Assink, Stephanie Rogers, Beck Straussner

#### 2. APPROVAL OF MINUTES

Community Development Committee Meeting Minutes of 11/16/22 delayed until the next meeting.

#### 3. **Unscheduled Item: Enclosure of Patios**

Dale Assink, a local contractor joined the meeting to discuss a pending violation of work without a permit and encroachment of a rear property setback.

Gudde provided the Committee with context on this issue. Code currently allows outdoor patios to encroach within 18 feet of the rear setback and be roofed but must remain open on 3 sides. Rear setback to living space is typically 30 feet as is the case in this scenario. Assink completed a building permit to cover a patio at 950 Captain Bay Court. After finalization of that permit Assink enclosed all three sides of the patio with glass panels and two overhead doors which was not part of the approved permit. This after-permit work was cited as a violation a work without a permit and encroachment into a rear setback. (Opportunities to appeal the decision were declined.) The violation was not corrected within the allotted time and is currently being assessed a daily fine.

Council members expressed an interest in revising code to allow this violation to become conforming.

Lenssen discussed what the code meant by “open” using various examples. Gudde noted that the code has been updated to say that a patio cannot be “enclosed in any way”. Some on the Committee felt that overhead doors provided a degree of openness. Gudde disagreed saying that any

permanently door or window in a home could be considered open. Timmer noted that the provisions are simply intended only to provide a roof over an outdoor space. Gudde and Timmer both confirmed that there was not confusion about the definition of “open on three sides” and the original permit submitted and constructed by Assink was in conformance. Additionally, staff has not seen any confusion among contractors on this issue.

Timmer also explained to the Committee that enclosing a patio can essentially equate to an addition to a home as the space becomes more living space than outdoor space. If reduced rear setbacks are desired, then the Council may choose to enact changes in this way rather than trying to determine a degree of openness needed when enclosing a patio which could be very difficult to enforce.

Williams gave the Committee a brief summary of concerns related to the meeting of the energy code, fire code, and life safety concerns related to the use of grills or propane heaters within enclosed spaces especially when attached to primary living quarters.

Bode expressed the desire to allow property owners to utilize more lot area especially in light of smaller lots.

The Committee discussed options for enclosing patios which are more varied than in previous years to include louvered walls, powered screens, and various folding or raising glass / transparent doors and walls.

Assink asked for clarification as to why the open patio provisions are needed and why can't patios be enclosed.

Staff noted that living spaces are separated by setbacks to provide buffers between neighbors, yard space, aesthetics, and managing stormwater.

Assink noted that a detached structure could be added within the rear setback. Staff confirmed this is true but these structures are not considered living spaces unless they are approved ADUs which have their own setback requirements.

Vis expressed that he preferred to see homes maintain some open yard space – one of the reason why he liked to see larger lots.

Vis asked if patios should simply be included in the building setbacks. This is how the code used to read. Staff noted that builders typically built homes to the full extent of the building envelop and it was often later homeowners that sought to cover portions of the rear yard – and were not able to because

encroachment into the setback was not allowed. Staff expressed concern that if the building envelop was expanded then homes would simply grow to use the entire area and outdoor living spaces would, again, be uncovered.

Temporary vs permanent enclosures were also discussed as well as conditioned vs. non-conditioned spaces, and if it would be possible to include in the code a path to partially enclosure which would maintain the patio space as outdoor living vs. an expansion of the home.

The Committee discussed the nature of an enclosed patio that is connected to living space – often called a sunroom, 3 season, or Florida room and the potential to limit the scale of these types of additions to a home.

Assink requested that the accruing fine be paused while options for code revision be discussed. Timmer asked what level of effort it would take to come into compliance and stop the fine. Assink indicated that the enclosure was a significant investment, and he didn't want to remove it. Williams stated that he would ask legal to review the issue an outline a process by which a pause in the fine could be explored.

**Conclusions:** Staff was asked to return to the January 18<sup>th</sup> CDC with follow-up on this issue regarding the handling of violations and fines.

**4. Community Residential Facilities and Short-Term Rentals**

Gudde explained that Ord 1654 had been drafted, had gone to public hearing before the Planning Commission and is currently being reviewed by the Department of Commerce. The Commission has recommended approval of the ordinance which encompasses a new section on Community Residential Facilities. This topic has been discussed multiple times in multiple committees however additional portions of the ordinance had not and these were the points that staff wanted to bring to the attention of the CDC.

Section 19.49 of the Lynden Municipal Code (LMC) is being vacated to become the new location of the ordinance on Community Residential Facilities. The current contents of LMC 19.49 include provisions for Conditional Use Permit and, embedded within that code, regulations related to Bed and Breakfasts.

Staff is proposing that the existing content of LMC 19.49 be added to LMC 19.57 which is the code for Home Occupation Permits. This amendment is an opportunity to make some clarifications or edits to the shifting sections of code. Specifically that additional language be added to the Bed and

Breakfast section to include short term rentals (vacation rentals) which have become very popular through platforms like AirBNB and Verbo.

To date short term rentals (STRs) in Lynden have been regulated according to the current Bed and Breakfast code. Gudde pointed out that a few policy changes are proposed within the draft and have received Planning Commission recommendation for approval.

1. That STRs not require that the property owner be on site.
2. A conditional use permit is currently required for a STR. The draft code proposes a process which could be slightly less arduous in that of Home Occupation Permit.
3. That the definition of transient accommodation be modified to be stays of less than 30 days rather than 2 weeks or less to be consistent with the State's definition.

Gudde noted that there is overlap between this topic and the Community Residential Facilities topic as the State has taken a stance that transitional housing must be allowed where every lodging is permitted. The Council should keep in mind that STRs, as a form of lodging, and the approval process for an STR could be compared to emergency housing. Gudde also pointed out that, as currently drafted, Ord 1654 does not permit Community Residential Facilities that are transient in nature (stays of less than 30 days) to be located in single-family zoning categories.

Vis expressed his concern about short term rentals because of the competition they create for local hotels but without the costs of commercial construction. He also expressed concern as to the impact to housing availability and the disruption transitory stays can have on residential neighborhoods

The Committee discussed the currently requirement of securing a Conditional Use permit (CUP) for an STR. Staff noted that this is a rather arduous process for a homeowner to undertake. Some, about 4, have done so and been successful. Neighborhood concerns usually relate to traffic, privacy, potential noise, and the addition of strangers coming and going from their neighborhood. The City currently has some vacation rental listings that have clearly not been through the CUP process. Timmer detailed examples of a few complaints and reactive enforcement actions.

The Committee expressed support for potential limits to the number that can occur within the City or perhaps limits per sub-area.

The group discussed examples from other cities that included issues related to neighborhood hostility toward renters, the use of signs to identify STRs that include a contact phone number, but also the benefits of staying in an STR as most people in the room had utilized these as a lodging option.

After hearing discussion and the concern related to STRs, Timmer suggested that the code remain as written, that owner occupancy be required. The group also discussed the possibility of having a more arduous approval process for facilities that would not be owner occupied and an easier process for facilities that would be owner occupied.

Straussner suggested that the City be careful to define what “owner occupancy” means.

**Conclusions:** The Committee asked staff to review the policies of other cities to explore options for limits on STRs and comparable approval processes.

## 5. Beck with Pioneer Ford Property

Beck Straussner, the owner of the property commonly called the “Pioneer Ford” property located at the Guide Meridian gateway to the City joined the meeting after being encouraged to do so at the January 3<sup>rd</sup> City Council meeting. He is interested in learning more about what the City is hoping to see develop on the property.

He had heard that the code had been updated to provide additional mixed-use opportunities.

Staff noted that the property is likely affected by some floodplain and it likely falls within the shoreline jurisdiction. The group also discussed access, potential connections for sewer, and a potential use for the existing building.

**Conclusions:** Straussner was encouraged to connect with Planning staff to discuss options for the property.

**Next Meeting Date: January 18, 2023**

# CITY OF LYNDEN

## EXECUTIVE SUMMARY



<b>Meeting Date:</b>	January 17, 2023	
<b>Name of Agenda Item:</b>	Calendar	
<b>Section of Agenda:</b>	Other Business	
<b>Department:</b>	Administration	
<b>Council Committee Review:</b>	<input type="checkbox"/> Community Development <input type="checkbox"/> Finance <input type="checkbox"/> Parks	<input type="checkbox"/> Public Safety <input type="checkbox"/> Public Works <input checked="" type="checkbox"/> Other: N/A
		<b>Legal Review:</b> <input type="checkbox"/> Yes - Reviewed <input type="checkbox"/> No - Not Reviewed <input checked="" type="checkbox"/> Review Not Required
<b>Attachments:</b>	Calendar	
<b>Summary Statement:</b>	Calendar	
<b>Recommended Action:</b>	Not an action item, information only.	

**January 17, 2023**

Tuesday

10:00 AM - 11:00 AM

**Copy: Airport Board Meeting -- City Hall 2nd Floor Large Conference Room  
Welcome Board Members & Guests,**

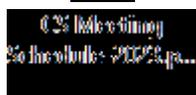
The Airport board meeting will be in person at City Hall, 2<sup>nd</sup> Floor Conference room. The meeting takes place the third Tuesday of each month at 10:00 A.M.

4:00 PM - 5:00 PM

**Copy: Parks Committee Meeting -- City Hall 1st Floor Small Conference Room**

4:30 PM - 5:00 PM

**Copy: Civil Service Meeting -- City Hall 1st Floor Large Conference Room**



Please see attached proposed meeting schedule for 2023.

7:00 PM - 9:00 PM

**Copy: City Council Meeting -- Annex Council Chamber**

**January 18, 2023**

Wednesday

8:30 AM - 5:00 PM

**Court -- Annex Council Chamber; Annex East Training Room; Annex North East Conference Room; Annex South East Conference Room**

4:00 PM - 6:00 PM

**Community Development Committee -- City Hall 2nd Floor Large Conference Room**

7:00 PM - 9:00 PM

**Berthusen Advisory Committee -- Annex South East Conference Room**  
Berthusen Advisory Committee meets the 3<sup>rd</sup>. Wednesday in January, March, May, September, and November

**January 19, 2023**

Thursday

2:00 PM - 4:00 PM

Technical Review Committee -- tbd

**January 24, 2023**

Tuesday

9:00 AM - 10:00 AM

Leadership Team Meeting -- City Hall 1st Floor Large Conference Room

12:00 PM - 3:00 PM

Copy: 2023 Wellness Event Planning Meeting -- City Hall 2nd Floor Large Conference Room

**January 26, 2023**

Thursday

7:00 PM - 10:00 PM

Planning Commission -- Annex Council Chamber

**February 1, 2023**

Wednesday

8:30 AM - 5:00 PM

Court -- Annex Council Chamber; Annex East Training Room; Annex North East Conference Room; Annex South East Conference Room

**February 2, 2023**

Thursday

2:00 PM - 4:00 PM

TRC -- City Hall 2nd Floor Large Conference Room

**February 6, 2023**

Monday

7:00 PM - 9:00 PM

Copy: City Council Meeting -- Annex Council Chamber