

City of Kenmore



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City of Kenmore Planning Commission Meeting Agenda

Tuesday, August 21, 2018 @ 7:00 p.m.

**Kenmore City Hall
18120 68th Ave. NE, Kenmore, WA 98028**

If you have any questions or to confirm agenda items prior to the meeting, or if you require special accommodations, please call Bridgit Baker at 425-398-8900. You may also stop by City Hall at 18120 68th Avenue NE, Kenmore. Planning Commission agendas are also available on our website at www.kenmorewa.gov.

- 1. CALL TO ORDER**
- 2. CITIZEN COMMENTS**
- 3. AGENDA ITEMS**
 - a. Response to Newspaper Article
 - b. Critical Areas and Shoreline Update: Gap Analysis, continued
[Critical Areas/Shoreline Update Memo](#)
[Attachment 1](#)
- 4. ADJOURNMENT**
- 5. UPCOMING MEETINGS:**
September 4, 2018, 7:00 p.m. (tentative)



18120 68TH AVENUE NE
KENMORE, WASHINGTON 98028

MEMO

TO: Planning Commission

FROM: Debbie Bent, Community Development Director *DB*
Lauri Anderson, Senior Planner *WPK*
Amy Summe, Consultant, Shannon & Wilson, Inc.

DATE: August 15, 2018

SUBJECT: Critical Areas/Shoreline Update

At your meeting on August 21, the Planning Commission should be ready to give preliminary direction on the three remaining substantive code amendments recommended in the gap analysis. We also hope the Commission will identify focus group topics for which additional insight would be useful. The focus group meetings would be held in September.

Preliminary Policy Direction on Amendments

The remaining three questions follow:

Question 7: Should the City increase the **reduced** buffer width allowed from landslide hazard areas from 10 feet to 25 feet?

Background: The City's current standard requires a buffer measured from all edges of a landslide hazard area equal to the "height of the slope, as measured from the toe to the top, or 50 feet, whichever is greater." The purpose of having a reduced buffer is to recognize local conditions that may vary from those the standard buffer addresses.

Staff Recommendation: The top-of-slope buffer should be increased from 10 feet to 25 feet because experience over the past several decades has shown that unanticipated instability can engulf the slope by 25 to 50 feet. If a reduction to something less than 25 feet is necessary, it could still be pursued through a Variance process.

Question 8: The gap analysis considers a range of approaches that address development standards in geologically hazardous areas using example cities (e.g. Cities of Woodinville and Chelan, and Marin County). Some of these approaches address density transfer, clearing limits, and lot size ranges as slopes increase. The Planning Commission is open to considering approaches such as onsite density transfer and the other tools, but asked if offsite density transfer from critical areas should be allowed? How do other agencies handle offsite density transfer (e.g. King County)?

Background: Several residential and commercial zones in Kenmore allow base and maximum densities that may be achieved through a variety of criteria such as application of residential density incentives, transfers of density credits, or zone-specific standards (e.g. mixed-use development). This includes lower density areas with mapped geologic hazards (e.g. R-4 and R-6 zones).

The Planning Commission noted that they had been considering density incentives elsewhere in the community, and staff indicated that the City does not have a formal transfer of density rights (TDR) program where a developer can buy credits. There could be private transactions though none are known to have been accomplished in Kenmore.

King County's TDR program allows private to public and private to private transactions. Most of the eligible sending zones are rural or resource and receiving areas are within the UGA and cities. One urban sending area is the R-1 zone that acts as an urban separator. The sending sites should have some public benefit such as habitat, open space, or be a working land (agriculture, forestry), or serve as an urban separator.

Private market TDRs in urban areas between 1999 and spring 2018 included the purchase of credits to build 215 dwelling units. The program has also protected 141,500 acres of rural/resource land. The County's TDR exchange program has a template for a purchase and sale agreement and allows property owners and developers to register to offer credits for sale and indicate interest in purchase of TDR credits. See this website for more information:

<https://www.kingcounty.gov/services/environment/stewardship/sustainable-building/transfer-development-rights.aspx>.

Staff Recommendation: Staff can bring back a range of options that address density implications in geologic hazard areas, including improving the code that addresses onsite and offsite density transfers, clearing limits, and lot size ranges. Staff can identify pros/cons at a high level, including how well the different approaches address the objective of critical area protection, administrative costs, long-term maintenance, etc.

Question 9: During discussion on July 24, the Planning Commission agreed with distinguishing repair and maintenance of existing facilities from construction of new facilities (using roads as an example). However, there was interest in hearing more about what criteria could govern allowed roadway (or other use) expansions that would not require a Conditional Use Permit?

Staff Recommendation: The City could consider criteria that are similar to the following to allow roadway expansions with a substantial development permit and without a conditional use permit, such as:

1. The expansion is included in the Transportation Element of the Comprehensive Plan, Neighborhood Transportation Plan, Transportation Improvement Program, ADA Compliance Plan, or Target Zero strategy implementation.
2. The expansion does not require acquisition of private property that was unanticipated in the plans under #1.
3. The expansion is located within existing right-of-way or other City-managed land.
4. Minimum alteration and/or fill is needed to construct such facilities to meet established safety standards and all applicable SMP standards can be met.

Disturbed areas are restored during and immediately after the use of construction equipment.

Focus Groups

Up to three focus groups are included in the project scope. Focus groups are appropriate where there are complex topics and other persons with expertise who could help review different approaches. To date, two topics appear that would benefit from a focus group approach. A third topic may be identified, or, in its place, a larger community-wide open house could be held to educate attendees about the project and obtain feedback.

The two recommended focus groups are:

1. Sammamish River custom regulations (buffers, docks): This group could consist of selected contractors, residential and commercial waterfront property owners, state agencies with expertise or jurisdiction (WDFW, DNR), tribes (Muckleshoot), and City Parks. To date, the only public attendee of the Planning Commission meetings on this critical areas and shoreline master program update has been a representative of the contractor community who assists property owners with design and permitting of shoreline improvements. He has twice mentioned interest in being on a focus group for this topic.
2. Public Facility and Utility Review and Performance Standards: This group could consist of public agencies and utilities with property in Kenmore or who have sought local permits (e.g., Washington State Department of Transportation, Northshore Utility District, Washington State Parks and Recreation Commission, Kenmore Public Works and Community Development, franchise utilities), state agencies with expertise or jurisdiction (Washington Department of Fish and Wildlife, Department of Natural Resources), tribes (Muckleshoot Indian Tribe), neighboring jurisdictions with common conditions (e.g., Bothell, Seattle, King County), and academic experts if appropriate (UW Bothell or UW Seattle professors).

For each session, an agenda and materials would include the following:

- A statement of the focus group purpose and topics,
- transmittal of background documents on the subject (e.g. gap analysis, example approaches from other jurisdictions, relevant studies if needed), and
- a list of discussion questions.

The Commission should provide direction on the focus group topics and determine whether a third focus group should be convened or a community-wide open house should be held.

Response to Commissioners' Questions

At the August 7 meeting, Commissioners had several questions that might affect previously-discussed policy recommendations, particularly related to habitats of importance. Responses to the questions are included in Attachment 1. Once this material is reviewed, the Commission should finalize preliminary directions for four questions:

1. Should pileated woodpecker habitat be added to the list of habitats of importance?

2. Should the biodiversity area and corridor in St. Edward State Park be designated as a habitat of importance? Should other areas/corridors be identified?
3. Should bald eagle habitat be removed from the list of habitats of importance?
4. Should the City add “just in case” regulations to address groundwater protection?

Attachments

Attachment 1: Response to Commissioners’ questions

1. Should pileated woodpecker habitat be added to the list of habitats of importance?

For reference, the City's Comprehensive Plan states:

Policy LU-15.3.7 Designate and protect the following Fish and Wildlife Habitat Conservation Areas found in Kenmore:

- a. Habitat for federal or state listed Endangered, or Threatened species;
- b. Habitat for State Sensitive, and Candidate species; animal aggregations considered vulnerable; and those species of recreational, commercial, or tribal importance that are vulnerable as identified in the State Priority Habitats and Species List.

The pileated woodpecker is not federal or state listed as endangered or threatened, but it is a state candidate species. The current code does not include sensitive or candidate species in its current list of fish and wildlife habitats of importance.

A recent study by a University of Washington professor and graduate student of pileated woodpecker use of suburban areas (study areas included Bellevue and Redmond) stated that:

"...suburban areas could and should be incorporated into management and conservation plans for Pileated Woodpeckers. Our results indicate that areas with less than 20% forest (heavily urbanized areas) were used significantly less than areas with higher forest cover. Retaining greater than 20% forest cover over large suburban areas may help to sustain this species (and maybe others tied to it). This forest will be better suited for woodpeckers if dead trees are retained in green spaces. Early-successional species, such as bigleaf maple, red alder, and Douglas-fir, are easy to include in green space management. These species are used by Pileated Woodpeckers for nesting, roosting, foraging, drumming, and calling. By increasing the sustainability of snags and other resources used by large cavity-nesting species, such as the Pileated Woodpecker, cities can play an important role in the conservation of biodiversity."¹

WDFW has developed Management Recommendations for the pileated woodpecker, which would be addressed in a Habitat Management Plan when required. Key provisions follow, but can be read in full here:

https://wdfw.wa.gov/publications/00026/Abbreviated_Pileated_Woodpecker.pdf

- Target larger forest patches with large trees and snags for conservation during the planning process.
- Retain forest in the largest patches available (>74 ac would be considered large). Where large patches are unavailable, smaller patches should be retained; the average size of smaller patches should be no less than approximately 7 ac. This acreage could be attained through cumulative retention by various adjacent landowners within an urban landscape.

¹ Tomasevic, J and J. Marzluff, 2018, Use of suburban landscapes by the Pileated Woodpecker (*Dryocopus pileatus*). The Condor. 120. 10.1650/CONDOR-17-171.1

- Retain or create snags as well as retain live trees in the largest size classes available in the stand.

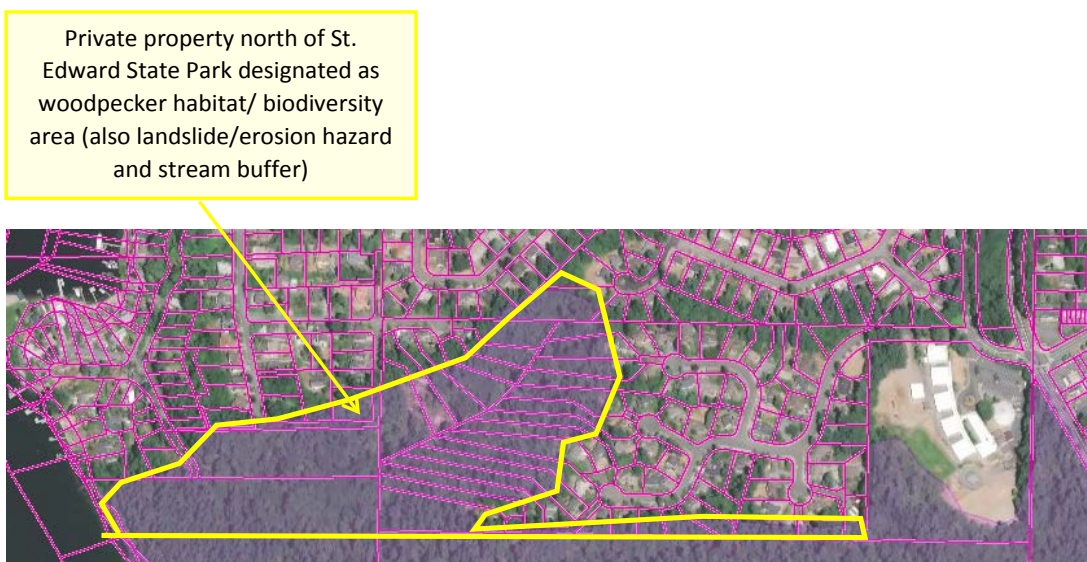
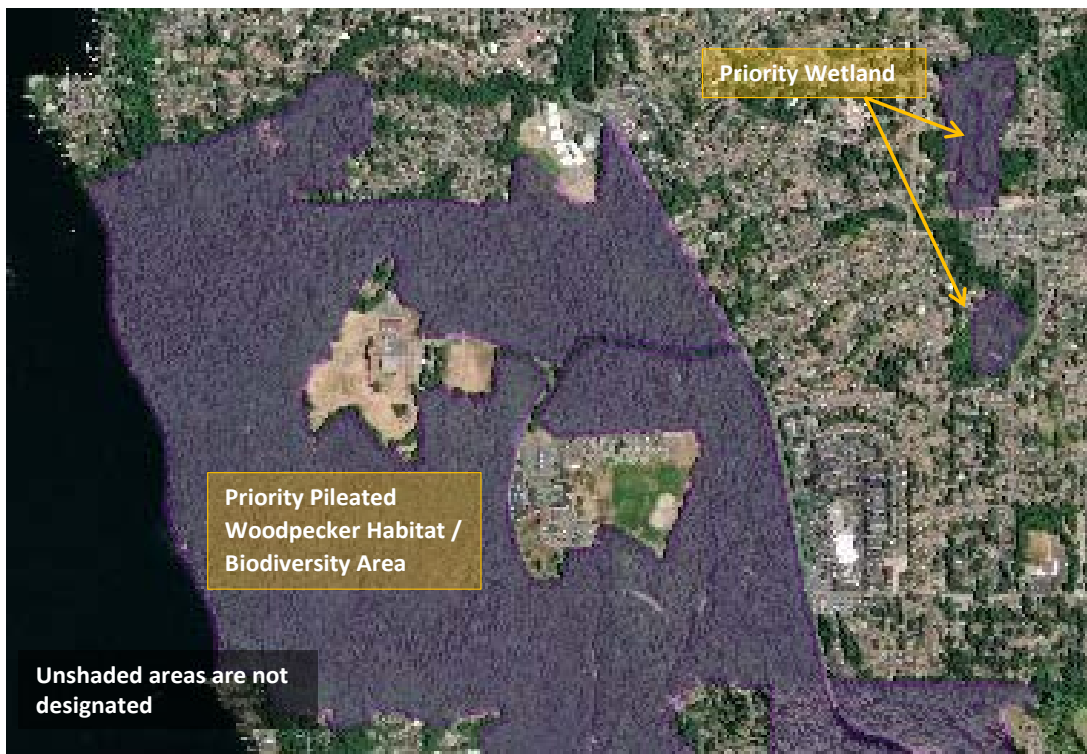
Based on the available science and Kenmore's existing development patterns, a habitat management plan addressing the potential for pileated woodpecker habitat might be appropriate for the following:

- Any proposed development that may impact forest or individual trees or snags within a wetland or wetland buffer, stream buffer, or geologically hazardous area and its buffers.
- Any proposed development that may impact a portion of a forested community that is at least five acres in size (including areas off of the subject parcel).

The City, in the future, could also consider modifying its tree protection priority standards to specifically include snags. Currently, the code says: "Trees to be preserved and protected must be healthy and vigorous, wind-firm, and not in conflict with utilities" (KMC 18.57.080.B). The code goes on to say, though, that "Individual trees which provide wildlife habitat as identified through environmental review" are a tree protection priority. The requirement that preserved and protected trees be healthy, vigorous and wind-firm eliminates a lot of trees which currently provide or will provide exceptional wildlife habitat.

We hope to present information about Kirkland's and Bellevue's experiences with implementing pileated woodpecker regulations at the meeting.

The images below show Washington Department of Fish and Wildlife's identification (purple shading) of pileated woodpecker priority habitat and the biodiversity area priority habitat. Areas not included in the designation (omitted from the purple shading) are the St. Edward State Park ballfield, seminary building and surrounding lawn areas, internal roadways, and Bastyr University and its adjacent ballfields. The purple shading extends northward into forested areas of adjacent residential lots, overlapping to a large degree with the City's mapping of erosion/landslide hazard and a stream buffer. Based on aerial photo review, it does not appear that the WDFW area overlaps any existing single-family residences.



2. Should the biodiversity area and corridor in St. Edward State Park be designated as a habitat of importance? Should other areas/corridors be identified?

For reference, the City's Comprehensive Plan states:

Policy LU-15.3.7 Designate and protect the following Fish and Wildlife Habitat Conservation Areas found in Kenmore:

- d. Urban natural open spaces designated in the Priority Habitat and Species Project by the State Department of Fish and Wildlife; and...

WDFW's "urban natural open space" category of priority habitat was replaced by the "biodiversity area and corridor" category. The same area shown above under question #1 has also been mapped by WDFW as the City's "biodiversity area and corridor."

Other areas of the City that are larger tracts of forest that could meet the definition of "biodiversity area and corridor" appear to overlap with other designated critical areas, such as wetlands and wetland buffers, stream buffers, and/or geologically hazardous areas and buffers.

3. Should bald eagle habitat be removed from the list of habitats of importance?

After additional review of the state and federal information about protection of the bald eagle (see below), we recommend the following:

- Retain the bald eagle on the City's current list of fish and wildlife habitats of importance.
- Do not require a stand-alone habitat management plan, but instead require that applicants self-certify that they are in compliance with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act, perhaps through a simple checklist. WDFW no longer maps bald eagle nest sites, so applicants would complete the certification based on their knowledge of their site and local conditions.

Other Bald Eagle Protection Laws

Excerpt from WDFW website: https://wdfw.wa.gov/conservation/bald_eagle/

"Local governments' responsibilities for bald eagles

Local governments should comply with the federal guidelines for actions – such as removing a tree or building a road – that have the potential to disturb eagles. Some counties and cities also protect bald eagles using their land use regulatory authority under the Growth Management Act and Shoreline Management Act. In those cases, local jurisdictions may choose to require project proponents to certify they are in compliance with federal bald eagle guidelines as a condition of local permit approval.

The USFWS encourages local governments to review the national guidelines and use the agency's self-certification tool if an activity is unlikely to disturb eagles or take an eagle nest. The USFWS does not recommend local governments require a written statement from the USFWS that "no permit is necessary." These determinations cannot be made outside the permit process, which is not appropriate for all projects. For more information, contact the USFWS.

Developers' and foresters' responsibilities for bald eagles

Private project proponents are also advised to consult – and follow – the federal guidelines any time they plan to take an action that could disturb a bald eagle. The guidelines not only describe precautionary actions recommended by USFWS to avoid disturbing eagles, but also clarify when a federal permit is required.

Project proponents should also be aware that county or city land use regulations may require them to confirm to the local planning department that they are in compliance with federal requirements.”

The federal guidelines can be found here:

<https://www.fws.gov/pacific/eagle/documents/NationalBaldEagleManagementGuidelines.pdf>

The following are some key excerpts:

The bald eagle (*Haliaeetus leucocephalus*) is protected by the Bald and Golden Eagle Protection Act (Eagle Act) and the Migratory Bird Treaty Act (MBTA). The MBTA and the Eagle Act protect bald eagles from a variety of harmful actions and impacts. The U.S. Fish and Wildlife Service (Service) developed these National Bald Eagle Management Guidelines to advise landowners, land managers, and others who share public and private lands with bald eagles when and under what circumstances the protective provisions of the Eagle Act may apply to their activities. A variety of human activities can potentially interfere with bald eagles, affecting their ability to forage, nest, roost, breed, or raise young. The Guidelines are intended to help people minimize such impacts to bald eagles, particularly where they may constitute “disturbance,” which is prohibited by the Eagle Act.

The Bald and Golden Eagle Protection Act

The Eagle Act (16 U.S.C. 668-668c), enacted in 1940, and amended several times since then, prohibits anyone, without a permit issued by the Secretary of the Interior, from “taking” bald eagles, including their parts, nests, or eggs. The Act provides criminal and civil penalties for persons who “take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle ... [or any golden eagle], alive or dead, or any part, nest, or egg thereof.” The Act defines “take” as “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb.” “Disturb” means: “Disturb means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior.” In addition to immediate impacts, this definition also covers impacts that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagle=s return, such alterations agitate or bother an eagle to a degree that injures an eagle or substantially interferes with normal breeding, feeding, or sheltering habits and causes, or is likely to cause, a loss of productivity or nest abandonment. A

violation of the Act can result in a criminal fine of \$100,000 (\$200,000 for organizations), imprisonment for one year, or both, for a first offense. Penalties increase substantially for additional offenses, and a second violation of this Act is a felony.

The Migratory Bird Treaty Act

The MBTA (16 U.S.C. 703-712), prohibits the taking of any migratory bird or any part, nest, or egg, except as permitted by regulation. The MBTA was enacted in 1918; a 1972 agreement supplementing one of the bilateral treaties underlying the MBTA had the effect of expanding the scope of the Act to cover bald eagles and other raptors. Implementing regulations define “take” under the MBTA as “pursue, hunt, shoot, wound, kill, trap, capture, possess, or collect.”

4. Should the City add “just in case” regulations to address groundwater protection?

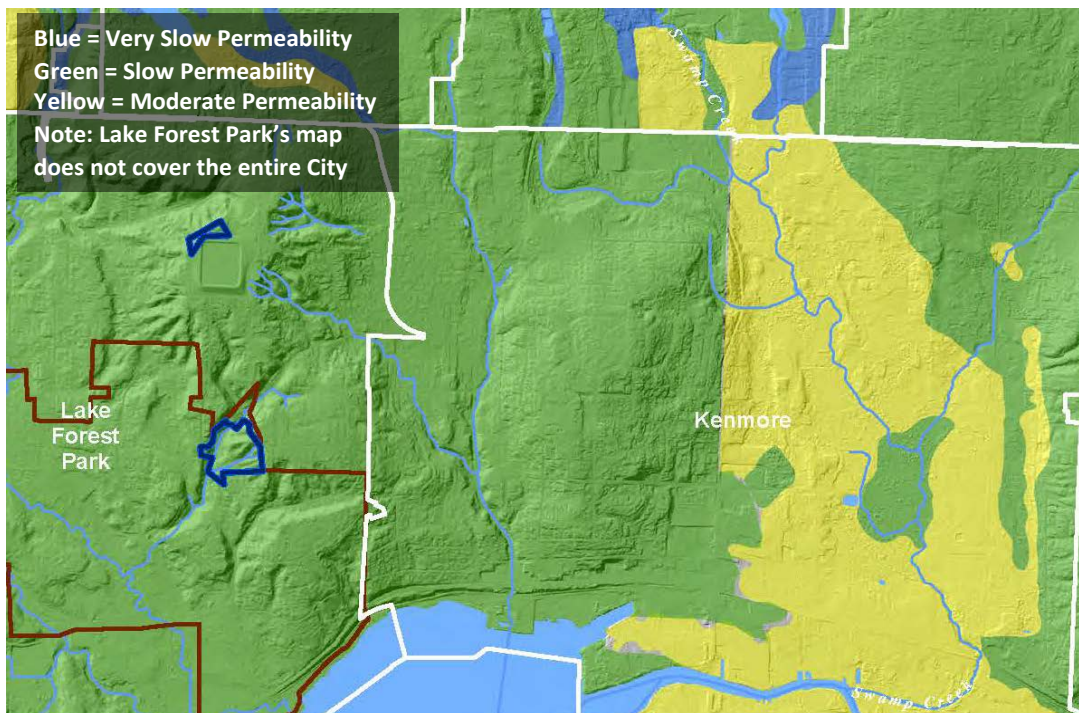
For reference, the City's Comprehensive Plan provides the following objective and policies related to groundwater:

OBJECTIVE 13.4 Cooperate regionally and strive locally to protect surface and ground water quality and quantity from degradation.

Policy LU-13.4.2 Use incentives, regulations and programs to manage Kenmore's water resources (rivers, streams, lakes, wetlands and ground water) and to protect and enhance their multiple beneficial uses including fish and wildlife habitat, flood and erosion control, water supply, energy production, transportation, recreational opportunities and scenic beauty. Use of water resources for one purpose should, to the fullest extent practicable, preserve opportunities for other uses.

Policy LU-13.4.3 Allow development that supports continued ecological and hydrologic functioning of water resources. Development should not have a significant adverse impact on water quality or water quantity.

As requested by the Planning Commission, a figure included at a smaller scale in a prior presentation is duplicated below. The figure is taken from the Lake Forest Park Water District CARA Delineation Report and shows the areas of greater and lesser permeability within the north portion of Kenmore (AESI, 2016). A similar assessment could not be located for the south portion of Kenmore.



Other Information Requested by the Commission

Environmental Protection/Incentive Programs

The following are a few programs that provide different types of incentives for preservation or restoration.

1. WDFW's Backyard Wildlife Sanctuary Program: <https://wdfw.wa.gov/living/backyard/>
Benefits: personalized certificate suitable for framing, a yard sign to educate others about your habitat project, and a subscription to our "Crossing Paths" newsletter
2. King Conservation District's Landowner Incentive Program:
<http://kingcd.org/programs/better-backyards/landowner-incentive-program/>
Benefits: cost-share funding for natural resource projects, such as buffer plantings and relocating structures from buffers/aquatic areas
3. King County Public Benefit Rating System (PBRs):
<https://www.kingcounty.gov/services/environment/stewardship/sustainable-building/resource-protection-incentives.aspx/>
https://www.kingcounty.gov/~media/services/environment/stewardship/sustainable-building/documents/resource-protection-incentives/PBRs_Resource_Information_April_2011.ashx?la=en

