CITY OF KIRKLAND

CITY COUNCIL

James Lauinger, Mayor • Joan McBride, Deputy Mayor • Dave Asher • Mary-Alyce Burleigh
Jessica Greenway • Tom Hodgson • Bob Sternoff • David Ramsay, City Manager

123 Fifth Avenue • Kirkland, Washington 98033-6189 • 425.587.3000 • TTY 425.587.3111 • www.ci.kirkland.wa.us

AGENDA
KIRKLAND CITY COUNCIL MEETING
City Council Chamber
Tuesday, September 19, 2006
6:00 p.m. – Study Session
7:30 p.m. – Regular Meeting

COUNCIL AGENDA material is available for public review at the Public Resource Area at City Hall or at the Kirkland Library on the Friday afternoon prior to the City Council meeting. Information regarding specific agenda topics may also be obtained from the City Clerk's Office on the Friday preceding the Council meeting. You are encouraged to call the City Clerk's Office (587-3190) or the City Manager's Office (587-3001) if you have any questions concerning City Council meetings, City services, or other municipal matters. The City of Kirkland strives to accommodate people with disabilities. Please contact the City Clerk's Office at 587-3190, or for TTY service call 587-3111 (by noon on Monday) if we can be of assistance. If you should experience difficulty hearing the proceedings, please bring this to the attention of the Council by raising your hand.

EXECUTIVE SESSIONS may be held by the City Council to discuss matters where confidentiality is required for the public interest, including buying and selling property, certain personnel issues, and lawsuits. An executive session is the only type of Council meeting permitted by law to be closed to the public and news media

ITEMS FROM THE AUDIENCE provides an opportunity for members of the public to address the Council on any subject which is not of a quasi-judicial nature or scheduled for a public hearing. (Items which may not be addressed under Items from the Audience are indicated by an asterisk*.) The Council will receive comments on other issues, whether the matter is otherwise on the agenda for the same meeting or not. Speaker's remarks will be limited to three minutes apiece. No more than three speakers may address the Council on any one subject. However, if both proponents and opponents wish to speak, then up to three proponents and up to three opponents of the matter may address the Council.

P - denotes a presentation from staff or consultant

1. *CALL TO ORDER*
2. *ROLL CALL*
3. *STUDY SESSION*
   - *a.* Capital Improvement Program Update
4. *EXECUTIVE SESSION*
   - *a.* To Discuss Labor Relations
5. *SPECIAL PRESENTATIONS*
   - *a.* Day of Concern for the Hungry Proclamation
   - *b.* State Route 520 Update – Washington State Department of Transportation
6. *REPORTS*
   - *a.* *City Council*
     - (1) Regional Issues
   - *b.* *City Manager*
     - (1) Calendar Update
7. *COMMUNICATIONS*
   - *a.* *Items from the Audience*
   - *b.* *Petitions*

CONSENT CALENDAR consists of those items which are considered routine, for which a staff recommendation has been prepared, and for items which Council has previously discussed and no further discussion is required. The entire Consent Calendar is normally approved with one vote. Any Council Member may ask questions about items on the Consent Calendar before a vote is taken, or request that an item be removed from the Consent Calendar and placed on the regular agenda for more detailed discussion.

GENERAL CORRESPONDENCE Letters of a general nature (complaints, requests for service, etc.) are submitted to the Council with a staff recommendation. Letters relating to quasi-judicial matters (including land use public hearings) are also listed on the agenda. Copies of the letters are placed in the hearing file and then presented to the Council at the time the matter is officially brought to the Council for a decision.

ORDINANCES are legislative acts or local laws. They are the most permanent and binding form of Council action, and may be changed or repealed only by a subsequent ordinance. Ordinances normally become effective five days after the ordinance is published in the City's official newspaper.

RESOLUTIONS are adopted to express the policy of the Council, or to direct certain types of administrative action. A resolution may be changed by adoption of a subsequent resolution.

8. CONSENT CALENDAR

a. Approval of Minutes: September 5, 2006

b. Audit of Accounts:

Payroll $

Bills $

c. General Correspondence

d. Claims

(1) Heidi Kirby

(2) Brian Ray

(3) Mike Stimmel

e. Authorization to Call for Bids

(1) Carillon Woods Park Improvements

f. Award of Bids

g. Acceptance of Public Improvements and Establishing Lien Period

h. Approval of Agreements

(1) Approving Interlocal Agreements for Additional Jail Space Capacity:

(a). Resolution R-4596, Approving the Interlocal Agreement Between the City of Kirkland and Okanogan County for the Housing of Inmates in the Okanogan County Jail

(b). Resolution R-4597, Approving the Interlocal Agreement Between the City of Kirkland and the City of Marysville for Jail Services

(c). Resolution R-4598, Approving the Interlocal Agreement Between the City of Kirkland and Chelan County for the Housing of Inmates in the Chelan County Regional Justice Center

(d). Resolution R-4599, Approving the Interlocal Agreement Between the City of Kirkland and the City of Renton for the Housing of Inmates in the Renton City Jail

i. Other Items of Business

(1) Resolution R-4600, Relating to the Adoption of Standards for Public Defense Services

(2) Ordinance No. 4057, Relating to Planning, Land Use, and Shorelines, and Repealing Ordinance No. 3050

P - denotes a presentation from staff or consultant

(3) Ordinance No. 4058, Repealing Section 15.36.090 of the Kirkland Municipal Code Relating to Drainage of Hard Surface or Graded Areas

(4) Resolution R-4601, Establishing Notice of Hearing for the Vacation of a Portion of the Slater Avenue NE Right-Of-Way

(5) Sethrina Dunlap, Human Services Advisory Committee Resignation

(6) Authorizing Issuance of a Cabaret Music License to the Brickhouse Pub

PUBLIC HEARINGS are held to receive public comment on important matters before the Council. You are welcome to offer your comments after being recognized by the Mayor. After all persons have spoken, the hearing is closed to public comment and the Council proceeds with its deliberation and decision making.

9. PUBLIC HEARINGS

a. Ordinance No.4059, Relating to the Second Interim Renewal of the Interim Ordinance as Amended Regulating Uses in a Study Area Within a PR 3.6 Zone in the Market Neighborhood Under Chapter 25 of the Kirkland Zoning Code

b. Regarding Proposed Revenue Sources for the 2007-2008 Budget

c. Initiative Measure 933:
This measure would require compensation when government regulation damages the use or value of private property, would forbid regulations that prohibit existing legal uses of private property, and would provide exceptions or payments. Should this measure be enacted into law?
Yes ( ) No ( )

(1) Resolution R-4602, Stating the City Council's Opposition to Initiative 933

10. UNFINISHED BUSINESS

a. Citywide Commercial Organics Program Proposal

NEW BUSINESS consists of items which have not previously been reviewed by the Council, and which may require discussion and policy direction from the Council.

11. NEW BUSINESS

* *a.* Resolution R-4603, Approving the Issuance of a Process IIB Permit and of a Substantial Development Permit as Applied for in Department of Planning and Community Development by Marina Suites LLC Being Within a PLA 15A Zone and UM 2 Shoreline Environment, and Setting Forth Conditions to Which Such Process IIB Permit and Substantial Development Permit Shall be Subject

b. Puget Sound Regional Council's Burlington Northern Corridor Advisory Committee Update

c. Authorizing Funds for NE 120th Street Right-of-Way Acquisition

d. Assessment, Update, and Authorization of Funds for the Downtown Strategic Plan

12. ANNOUNCEMENTS

13. ADJOURNMENT

P - denotes a presentation from staff or consultant

CITY OF KIRKLAND
Department of Finance & Administration
123 Fifth Avenue, Kirkland, WA 98033 425.587.3100
www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: Tracey Dunlap, Director of Finance and Administration
Sandi Miller, Financial Planning Manager

Date: September 12, 2006

Subject: Amendment of the 2006-2011 Capital Improvement Program

RECOMMENDATION:

City Council review the amendment to the 2006 to 2011 Capital Improvement Program (CIP).

BACKGROUND DISCUSSION:

The purpose of the mid-biennium review is to acknowledge changes made since adoption and to make any further changes needed to bring the CIP up-to-date. A revised CIP summary is attached along with a reconciliation of each section of the CIP showing the major increases and decreases between the original and revised CIP (Attachments A and B respectively).

The majority of the modifications in the revised CIP reflect changes to existing projects with the addition of a few new projects. The revised CIP is balanced within current funding resources.

A summary of project changes include:

TRANSPORTATION

- **Modified Projects** – Due to timing opportunities and funding source changes, five Transportation projects have been modified for this update. The first, NE 120th Street Roadway Extension (east section), is advancing funding from 2009 to 2006 in order to take advantage of an agreement that will allow the City to purchase needed right-of-way (ROW) at a favorable price. It was originally thought that the ROW could be purchased in 2007, but under the terms of the agreement, it is in the City's interest to move on the purchase in 2006. Purchasing the ROW in 2006 will allow for the entire project to be started sooner than originally planned.

  The second project is the NE 132nd Street Roadway Improvements. This project is an unfunded project; however, the State's Nickel Package projects in the area are prompting a study of the NE 132nd corridor now. Only funding for the corridor study is being proposed in this CIP. The balance of the project (i.e. design and construction) remains unfunded and will be looked at in the next full CIP process and once the study is completed. The REET 2 reserve is proposed to fund the study in the amount of $200,000.

The third project modified in this CIP revision is the Rose Hill Business District Sidewalks project. This project was reviewed in connection with the NE 85th Street Utility Underground Conversion project as a possible partial funding source. It was determined that this project could contribute $368,000 towards the utility underground conversion. The total budget was reduced by $368,000 in 2006.

The NE 85th Street/124th Ave NE Intersection Improvements project is the fourth project modified. The total cost of the project decreased as a result of a needed correction. In the original 2006-2011 CIP this project was planned to continue through 2008. While examining funding balances and reviewing the CIP in anticipation of this update, it was discovered that the funding shown for 2007-2008 was in error. This correction has no net impact on the planned CIP.

The final modified project is the NE 68th St./108th Avenue NE Intersection Improvements project. This project was also reviewed in connection with the NE 85th Utility Underground Conversion project. It was determined that this project could be delayed based on an impact from the transit center project and possible additional funding from Sound Transit. This project was reduced by a total of $372,000 in 2007 in order to partially fund the utility underground conversion project. This intersection improvement project will be reevaluated in the next CIP cycle for timing and funding options after more information is received from Sound Transit.

- **New Project** – One new project was added to the revised CIP – the NE 85th Street Utility Underground Conversion. As previous presentations to Council have shown, undergrounding of utilities is an expensive endeavor and the total cost along NE 85th Street is around $3 million. At the regular Council meeting in June, the Council directed staff to continue working with Puget Sound Energy (PSE) to develop options for the undergrounding other than the entire area and for Finance to work on funding options for these scenarios. Public Works staff has been working with PSE and have developed several options for the Council to consider. These options are laid out in a separate memo included with this packet (Attachment C). Likewise, Finance staff has been looking at funding options and the other various needs that those funding options need to consider. A further discussion of the funding options and the staff recommendation follows the CIP project revision descriptions later in this memo.

SURFACE WATER UTILITY

- **External Funding** – One Surface Water Utility project is being modified due to the receipt of external funding. The Forbes Creek/King County Metro Access Road Culvert Enhancements project has received $47,000 in funding from King County. The total cost of the project remains unchanged with the City's share reduced by the $47,000 of King County funding.

UTILITIES

- **New Projects** – Two new projects were added to the Utilities portion of the CIP to reflect arising needs. The first project, Telemetry Upgrades, was added to the CIP in 2007. This project will encompass both water and sewer telemetry upgrades. Currently the telemetry system operates on phone lines that have to be maintained by the phone company. When the phone lines go down, staff is required to monitor the systems manually, 24/7 till the phone lines are operating again. Three of the fifteen sites were upgraded previously to a frame relay system that does not depend on the phone company. The new frame relay system has proven much more reliable and has provided better service. This project would complete the upgrading of the remaining twelve sites to the frame relay system at a cost of $150,000.

  The second project added was the Plaza Lift Station Pump Upgrades. This project was added in 2007 for $50,000. One of the three pumps at this lift station was replaced previously and has required significantly less ongoing maintenance. The remaining two pumps at this station are less efficient and prone to more costly maintenance. The two pumps need to be replaced in order for this lift station to operate more reliably.

  Both of these projects are able to be funded from current revenue sources of utility connection charges and rates.

PUBLIC SAFETY

- **New Project** – Public Safety added one new project to address an emerging need of the Regional Fire Training Division (RFTD). The City participates in the RFTD along with the City of Redmond and the City of Woodinville Fire Departments. There is a need to move the RFTD out of Kirkland's Station 26 and into regular office space. A project has been added in 2007 for $50,000 for RFTD Office Space Improvements. This cost is the City of Kirkland's share and is funded jointly by City resources and Fire District #41.

- **Modified Projects** – Two Public Safety projects have been modified to address total costs needed for the projects: the Fire Boat and the Water Rescue Boat. The total cost for both projects has been increased to adequately cover the cost of equipment and training needed to properly operate the boats. In a review of the CIP, it was determined that the costs for both boats were slightly understated. The additional cost for equipment and training is proposed to be funded by available current resources and Fire District #41.

GENERAL GOVERNMENT

- **Technology** – Three projects were modified for the revised CIP. The first project, Disaster Recovery System Improvements, was previously scheduled for 2009 and has been moved forward to 2007-2008. Moving this project forward addressing the ever increasing need to have backup systems in place for all of the City's main software programs in the event of a disaster. Funding for the earlier timing of this project was made available in part by the delay of a second project, the Parks Work Order System. The Parks Work Order System project was delayed from 2007 to 2008 due to staffing commitments for Parks maintenance and IT staff to other, higher priority projects. The third project modified is the Permit Plan System Replacement project. The IT and development services staff feel the system can perform for a couple more years and have delayed the replacement from 2006-2007 to 2008-2009. The delay also is due to staffing time constraints for both IT and the development services staff.

  One new Technology project was added to the revised CIP. The Public Safety Scheduling Software project was added in 2007 to address needs of the Police and Fire departments to have a better means of scheduling 24/7 shift work and call-outs for overtime. The software will also work well with the implementation of the City's new timekeeping software, Tenrox, as we transition the public safety departments to the new timekeeping system. The project is proposed to be funded by an additional allocation of interest revenue in 2007 in the amount of $130,000.

- **Facilities** – Only one Facility project was modified for the revised CIP. The Council Chamber Renovation Project is currently an unfunded project pending further study and identification of cost estimates. However, the audio/visual equipment in the Council Chamber is outdated and needs to be upgraded to allow for more natural lighting, improve the look and sound recording of presentations, and to keep pace with the technological advances needed for the multiple media avenues broadcasting Council meetings and other taped events in the Council Chamber. This project would replace and upgrade the audio/visual and lighting systems in the Council Chamber. It is proposed for 2007 at a cost of $150,000 to be funded from an additional allocation of interest revenue.

LONGER TERM CAPITAL NEEDS

As mentioned earlier in this memo, the Finance staff has been reviewing funding options for the undergrounding of utilities along the NE 85th Street corridor on Rose Hill. In looking at capital reserves as a possible funding source, it is important to note the many other unfunded capital needs facing the City. The table on the following page summarizes the current CIP, both the funded 6 year program and the near and longer term needs that are unfunded.

	6-year Funded CIP	Unfunded CIP	Total CIP
Transportation	37,496,800	128,996,000	166,492,800
Parks	5,412,100	33,600,000	39,012,100
Public Safety	1,625,500	747,500	2,373,000
General Government	13,688,400	5,163,500	18,851,900
Subtotal	**58,222,800**	**168,507,000**	**226,729,800**
Surface Water	8,767,600	0	8,767,600
Water/Sewer	17,036,400	12,048,000	29,084,400
Utilities Subtotal	**25,804,000**	**12,048,000**	**37,852,000**
Grand Total	**84,026,800**	**180,555,000**	**264,581,800**

In addition to the long list of unfunded capital needs, there are many facilities needs that are not addressed in the current CIP. Facility needs have been an ongoing issue for City Hall as well as the Maintenance Center. With the prospect of annexation those needs grow even larger. The following table gives a range of costs for estimated unfunded CIP and facilities costs with and without annexation.

Near Term Major Facility Needs Not Addressed In CIP*	Cost Ranges	
	Without Annexation	With Annexation
City Hall Expansion (including Public Safety)	25,000,000	See below
Public Safety/Jail Facilities	Included above	44,000,000
City Hall Space Needs	Included above	28,900,000
Maintenance Center Space Needs	4,564,000	7,763,000
Subtotal Additional Needs	**29,564,000**	**80,663,000**
Plus: Unfunded CIP	180,555,000	180,555,000
Less: Existing CIP Proj. Replaced by Major Projects (i.e. PD and IT dept. space improve.)	(3,374,800)	(3,374,800)
Total Estimated Unfunded Needs	**206,744,200**	**257,843,200**

* List of projects does not include: additional parking facilities, purchase and/or improvements of the Cannery Building, or any annexation related projects to address that area's level of service needs.

The City has several capital reserve sources that can be used to address both the short term and longer term capital needs. When looking to these reserves as an option for funding all or part of the NE 85th undergrounding project, it is important to remember that these same reserves would be a needed source to address any of the other unfunded capital needs and the facilities needs as listed above. The table on the following page gives an up-to-date look at the reserve balances versus current targets of the capital reserves.

Reserve	2005-06 Est. Ending Balance*	2005-06 Target	Over (Under) Target
General Purpose Reserves			
General Capital Contingency	3,518,137	5,900,568	(2,382,431)
Building & Property Reserve	1,759,409	N/A	N/A
Total Gen Purpose Reserves	**5,277,546**	N/A	N/A
Special Purpose Reserves			
Excise Tax Capital Improvement:			
REET 1	7,500,814	1,435,000	6,065,814
REET 2	5,853,609	6,033,700	(180,091)
Street Improvement Reserve	1,571,781	N/A	N/A
Public Safety Building Reserve	1,205,100	TBD	TBD
Total Special Purpose Reserves	**16,130,304**	N/A	N/A

* The 2005-06 Estimated Ending Balance includes all budgeted uses and additions, Council approved uses and additions, and an estimated amount of revenue to be received in excess of budget through 2005-06.

The following points are of interest to note about each reserve:

- **General Capital Contingency** – this reserve is used to fund general capital projects when the scope or cost of the project exceeds the budgeted amount. The target established by fiscal policy is ten percent of the funded six-year Capital Improvement Program (CIP) less utility projects. The reserve has been utilized for several large projects in the past few years and is currently under target by a significant amount. It is not recommended to use this reserve for funding of the 85th Street utility underground conversion.

- **Building and Property Reserve** – This reserve is used for property purchases, building improvements and other property-related transactions. It has also been used as a general purpose reserve to fund Council-approved unanticipated expenditures. Given the unfunded facilities needs, it is not recommended to use this reserve for funding of the 85th Street utility underground conversion.

- **Real Estate Excise Tax (REET 1 and REET 2) -** There are two reserves in the Real Estate Excise Tax Capital Improvement Fund – one for the first quarter percent real estate excise tax (REET 1) and one for the second quarter percent real estate excise tax (REET 2). The REET 1 reserve is used primarily as a general CIP grant match reserve and/or for significant project scope changes. The REET 2 reserve is dedicated by Council policy for Transportation CIP and is used as a grant match for Transportation-related grants. Revenue from REET has been exceptionally good the last few years with the hot real estate market. Revenue for 2005 exceeded budget by $1.6 million and is on target to exceed budget in 2006 by $1.9 million for each REET 1 and REET 2.

  As shown in the reserve chart on the previous page, REET 1 is substantially over its target due to the hot real estate market. It should be noted that there is an outstanding need against this reserve for 2007 in the amount of $1.785 million for the balloon payment on the 505 Market Street building debt. For REET 2, the reserve is slightly under its target, but has made up substantial ground towards reaching the target with the excess revenue received over the past two years. In the original 2005-06 budget, the REET 2 reserve was planned to be $4 million under target. Given the significant increase in revenue received and the current balance of reserves to their targets, it is recommended that $309,000 come from each REET 1 and REET 2 for partial funding of the 85th Street utility underground conversion.

- **Street Improvement Reserve** – The Street Improvement Fund is dedicated to funding transportation CIP projects. Included in this fund is a portion of the gas tax which is a legally dedicated revenue source for

transportation capital projects. In addition, a portion of the sales tax received by the City is dedicated by Council policy to such projects. These revenue sources have been flat in recent years (gas tax) and stable (sales tax); there is little additional revenue beyond the CIP budget allocation to dedicate toward unplanned projects. The current reserve provides working capital for the fund and is utilized for small scope changes in Transportation CIP projects.

- **Public Safety Building Reserve** – This reserve was established as seed money towards building a reserve for the construction of a public safety building in the event of annexation. With the potential of annexation on the horizon, this reserve would be needed for the early stages of planning for a public safety building. Therefore, it is not recommended that this reserve be used for the 85th Street utility underground conversion.

In addition to reserves, staff discussed a variety of options including delays in existing projects, LIDs, and other general government resources. Based on the review by Public Works, Finance and City Manager's office, staff recommends the following sources of funding for Option 5 of the NE 85th Street utility underground conversion as described in the attached Public Works memo:

• Delay the NE 68th St/108th Ave NE Intersection Improvements project	$ 372,000
• Contribution from the Rose Hill Business District Sidewalks project	368,000
• Dedication of the Lee Johnson street vacation revenue	307,000
• REET 1 Reserve	309,000
• REET 2 Reserve	309,000
Total Funding	$1,665,000

It is important to point out again that the potential impacts of using the REET reserves include possible funding limitations of other unplanned project opportunities, such as land acquisitions or project scope changes. In addition, use of these reserves for the NE 85th Street utility underground conversion project means that they won't be available to set aside toward other unfunded needs.

Cc: Department Directors

ATTACHMENT A

City of Kirkland
Revised 2006-2011 Capital Improvement Program

TRANSPORTATION PROJECTS

Funded Projects:

Project Number	Project Title	Prior Year(s)	2006	2007	2008	2009	2010	2011	2006-2011 Total	Funding Sources: Current Revenue	Reserve	Debt	External Source
ST 0006	Annual Street Preservation Program		1,800,000	1,800,000	1,486,300	1,800,000	1,800,000	1,800,000	10,486,300	10,486,300			
ST 0057*	NE 120th Street Roadway Extension (east section)		300,000	309,000	1,268,800	1,639,100	1,109,200		4,626,100	1,044,700	495,900		3,085,500
ST 0058+	NE 132nd Street Rdwy Improv (Corridor Study Only)		200,000						200,000		200,000		
ST 0059	124th Ave NE Roadway Improvements (north section)			857,500	1,379,200	1,387,700			3,624,400	857,500	613,300		2,153,600
ST 0063	120th Avenue NE Roadway Improvements				392,500	1,693,600	3,104,200	992,400	6,182,700	2,464,600	712,100		3,006,000
ST 0070	120th Ave NE Traffic Calming Pedestrian Enhan.			113,300	413,700				527,000	527,000			
ST 0075	***NE 85th Street Utility Underground Conversion***			***1,665,000***					***1,665,000***	***1,047,000***	***618,000***		
NM 0012	Crosswalk Upgrade Program			70,000		70,000		70,000	210,000	210,000			
NM 0036	NE 100th Street Bikelane							231,900	231,900	231,900			
NM 0044^	116th Avenue NE Sidewalk (Highlands)			103,000	233,300	273,100			609,400	609,400			
NM 0049	112th Avenue NE Sidewalk						60,800	185,400	246,200	246,200			
NM 0051*	Rose Hill Business District Sidewalks	1,816,000	672,900	309,000					981,900	342,000	639,900		
NM 0052^	NE 73rd Street Sidewalk			81,400	123,000				204,400	204,400			
NM 0053	NE 112th Street Sidewalk				82,700	122,400			205,100	205,100			
NM 0054^	13th Avenue Sidewalk (Phase II)					50,300	155,300		205,600	205,600			
NM 0055	122nd Avenue NE Sidewalk					161,800	348,900	156,500	667,200	667,200			
NM 0057	Annual Sidewalk Maintenance Program		200,000	200,000	200,000	200,000	200,000	200,000	1,200,000	1,200,000			
TR 0004	Kirkland Avenue/3rd Street Traffic Signal					358,500			358,500				358,500
TR 0065	6th Street/Kirkland Way Traffic Signal					406,500			406,500	218,500			188,000
TR 0070	NE 124th Street/124th Avenue NE Intersection Improvements	2,077,000	624,200						624,200	624,200			
TR 0078	NE 85th Street/132nd Ave NE Intersection Improv. (Phase I)	1,257,500	530,400						530,400	130,400	280,000		120,000
TR 0079	NE 85th Street/114th Avenue NE Intersection Improv.	1,579,400	597,900						597,900	332,900	200,000		65,000
TR 0080*	NE 85th Street/124th Avenue NE Intersection Improv.	832,300	374,000						374,000	191,000			183,000
TR 0082	Central Way /Park Place Center Traffic Signal		110,000	224,500					334,500				334,500
TR 0083	100th Ave NE/NE 132nd St Intersection Improvements						424,300	652,700	1,077,000	1,077,000			
TR 0085*	NE 68th St/108th Ave NE Intersection Improvements			40,000	159,100	268,900			468,000	468,000			
TR 0086	NE 70th St/132nd Ave NE Intersection Improvements							652,600	652,600	73,000			579,600
Total Funded Transportation Projects		**7,562,200**	**5,409,400**	**5,772,700**	**5,738,600**	**8,431,900**	**7,202,700**	**4,941,500**	**37,496,800**	**23,663,900**	**3,759,200**	**0**	**10,073,700**

Notes
* = Modification in timing and/or cost (see Project Modification/Deletion Schedule for greater detail)
+ = Moved from unfunded status to funded status
'' = Moved from funded status to unfunded status
^ = Possible Sidewalk Bond project
Shaded year(s) = Previous timing
Bold italics = New projects

City of Kirkland
Revised 2006-2011 Capital Improvement Program

TRANSPORTATION PROJECTS

Unfunded Projects:

Project Number	Project Title	Six Year Total
ST 0055	98th Avenue NE Bridge Replacement	5,592,000
ST 0056	132nd Avenue NE Roadway Improvements	14,962,000
ST 0058	NE 132nd Street Roadway Improvements	27,549,000
ST 0060	118th Avenue Roadway Extension	3,677,000
ST 0061	119th Avenue NE Roadway Extension	3,122,000
ST 0062	NE 130th Street Roadway Extension	5,537,000
ST 0064	124th Ave NE Roadway Widening Improv (south section)	18,000,000
ST 0072	NE 120th Street Roadway Exten. (west section)	3,196,000
ST 0073	120th Avenue NE Roadway Extension	11,035,000
NM 0001	116th Avenue (south) Non-Motorized Facilities	1,928,000
NM 0007	NE 52nd Street Sidewalk	746,000
NM 0024	Cross Kirkland Trail	TBD
NM 0026	NE 90th Street Sidewalk (Phase II)	753,000
NM 0030	NE 90th Street/I-405 Pedestrian/Bicycle Overpass	3,388,000
NM 0031	Crestwoods Park/BNSFRR Pedestrian/Bike Facility	1,036,000
NM 0032	93rd Avenue NE Sidewalk	359,000
NM 0034^	NE 100th St Sidewalk at Spinney Homestead Park	200,000
NM 0037^	130th Avenue NE Sidewalk	313,000
NM 0041	Forbes Valley Pedestrian Facility	1,000,000
NM 0043	NE 126th Street Non-Motorized Facilities	2,300,000
NM 0045^	NE 95th Street Sidewalk (Highlands)	388,000
NM 0046	18th Avenue West Sidewalk	742,000
NM 0047	116th Avenue NE Sidewalk (S. Rose Hill)	238,000
NM 0048^	NE 60th Street Sidewalk	1,637,000
NM 0050^	NE 80th Street Sidewalk	282,000
NM 0056	NE 90th Street Sidewalk (Phase I)	567,000
TR 0056	NE 85th Street HOV Queue Bypass	478,000
TR 0057	NE 124th Street HOV Queue Bypass	976,000
TR 0067	Kirkland Way/BNSFRR Abutment/Intersection Improvements	3,672,000
TR 0068	Lake Washington Boulevard HOV Queue Bypass	3,373,000
TR 0072	NE 116th Street Eastbound HOV Queue Bypass	4,035,000
TR 0073	NE 70th Street Eastbound HOV Queue Bypass	935,000
TR 0074	NE 85th Street Westbound HOV Queue Bypass	978,000
TR 0075	NE 124th Street Westbound HOV Queue Bypass	705,000
TR 0084	100th Ave NE/NE 124th St Intersection Improvements	1,197,000
TR 0088	NE 85th St/120th Ave NE Intersection Improvements	1,400,000
TR 0089	NE 85th St/132nd Ave NE Inter. Improv. (Phase II)	1,000,000
TR 0090	Lk Washington Blvd/NE 38th Place Intersection Improv.	1,700,000
Total Unfunded Transportation Projects		**128,996,000**

Notes
* = Modification in timing and/or cost (see Project Modification/Deletion Schedule for greater detail)
+ = Moved from unfunded status to funded status
'' = Moved from funded status to unfunded status
Shaded year(s) = Previous timing
Bold italics = New projects

ATTACHMENT A

City of Kirkland
Revised 2006-2011 Capital Improvement Program

SURFACE WATER MANAGEMENT UTILITY PROJECTS

Funded Projects:

Project Number	Project Title	Prior Year(s)	2006	2007	2008	2009	2010	2011	2006-2011 Total	Funding Source: Current Revenue	Reserve	Debt	External Source
SD 0025	NE 85th Street Detention and Sediment Control	82,400	200,000	339,400					539,400	539,400			
SD 0029	124th Ave NE/NE 124th St Water Quality Treatment	41,000	175,000	450,200					625,200	625,200			
SD 0033	NE 90th Street/120th Ave NE Sediment Control	82,400	184,000						184,000	184,000			
SD 0037	Annual Streambank Stabilization Program						306,000	350,000	656,000	656,000			
SD 0537	Streambank Stabilization Program - NE 86th Street	50,000			84,800	333,300			418,100	418,100			
SD 0039	NE 126th Place/94th Ave NE Channel Restoration		42,000	142,100					184,100	184,100			
SD 0041	NE 125th Pl/95th Ave NE Sediment Pond Restoration		45,000	144,200					189,200	189,200			
SD 0043	124th Ave NE/NE 100th Pl Drainage Improvements	100,000	55,000						55,000	55,000			
SD 0045	Carillon Woods Erosion Control Measures				237,600				237,600	237,600			
SD 0046	Regional Detention in Forbes & Juanita Creek Basins							347,800	347,800	347,800			
SD 0047	Annual Repl of Aging/Failing Infrastructure			200,000	200,000	200,000	200,000	200,000	1,000,000	1,000,000			
SD 0048	Cochran Springs/Lk Washington Blvd Crossing Enh.					311,500	529,000	212,100	1,052,600	1,052,600			
SD 0049	Forbes Creek/108th Ave NE Fish Passage Impr					155,100			155,100	155,100			
SD 0050	NE 95th St/126th Ave NE Flood Control Measures							52,100	52,100	52,100			
SD 0051*	Forbes Creek/KC Metro Access Road Culvert Enh.		100,000	179,200					279,200	232,200			47,000
SD 0052	Forbes Creek/Slater Ave Bank Stabilization					16,400	44,000		60,400	60,400			
SD 0053	Forbes Creek/Coors Pond Channel Grade Controls		150,000	110,200					260,200	260,200			
SD 0054	Forbes Creek/BNSFRR Fish Passage Improvements			51,500	173,000				224,500	224,500			
SD 0055	Forbes Creek/98th Ave NE Riparian Plantings					74,300			74,300	74,300			
SD 0056	Forbes Creek Ponds Fish Passage/Riparian Plantings				93,300				93,300	93,300			
SD 0057	Juanita Creek Channel Enh. at Juanita Beach Park	100,000	250,000	200,000					450,000				450,000
SD 0058	Surface Water Sediment Pond Reclamation Phase II							69,600	69,600	69,600			
SD 0059	Totem Lake Blvd Flood Control Measures			82,400	583,500	327,800	244,300		1,238,000	1,238,000			
SD 0060	Juanita Creek/NE 121st St Bank Stabilization		100,000	3,300					103,300	103,300			
SD 0061	Everest Park Stream Channel/Riparian Enhancements						56,300	115,900	172,200	172,200			
SD 0062	Stream Flood Control Measures at Post Office							46,400	46,400	46,400			
Total Funded Surface Water Management Utility Projects		**455,800**	**1,301,000**	**1,902,500**	**1,372,200**	**1,418,400**	**1,379,600**	**1,393,900**	**8,767,600**	**8,270,600**	**0**	**0**	**497,000**

Unfunded Projects:

Project Number	Project Title	Six Year Total
Total Unfunded Surface Water Management Utility Projects		**0**

Notes
* = Modification in timing and/or cost (see Project Modification/Deletion Schedule for greater detail)
+ = Moved from unfunded status to funded status
" = Moved from funded status to unfunded status
Shaded year(s) = Previous timing
Bold italics = New projects

ATTACHMENT A

City of Kirkland
Revised 2006-2011 Capital Improvement Program

WATER/SEWER UTILITY PROJECTS

Funded Projects:

Project Number	Project Title	Prior Year(s)	2006	2007	2008	2009	2010	2011	2006-2011 Total	Funding Source: Current Revenue	Reserve	Debt	External Source
WA 0051	7th Avenue/114th Avenue Watermain Replacemen	108,200	380,000	344,000					724,000	724,000			
WA 0058	NE 75th Street/130th Avenue NE Watermain Replc							634,100	634,100	634,100			
WA 0078	NE 85th St/132nd Ave NE Watermain Replacemen	150,000		236,900	1,061,000	983,500	337,600		2,619,000	2,619,000			
WA 0090	Emergency Swr Pgm Watermain Replacement Program			50,000		50,000		50,000	150,000	150,000			
WA 0093	Vulnerability Analysis Facility Upgrades	70,000				218,600			218,600	218,600			
WA 0094	North Reservoir Rehabilitation/Repainting	150,000	690,000						690,000	690,000			
WA 0096	NE 83rd St Watermain Replacement					32,800	202,600		235,400	235,400			
WA 0097	120th Ave NE Watermain Replacement						251,000		251,000	251,000			
WA 0098	126th Ave NE Watermain Replacment						462,500		462,500	462,500			
WA 0099	Alexander Ave Watermain Replacement							211,000	211,000	211,000			
WA 0101	108th Ave NE Watermain Replacement			274,000					274,000	274,000			
WA 0102	104th Ave NE Watermain Replacement							374,500	374,500	374,500			
WA 0103	NE 113th Pl Watermain Replacement				193,000				193,000	193,000			
WA 0105	124th Ave Watermain Replacement			249,300					249,300	249,300			
WA 0110	105th Ave NE/106th Ave NE Watermain Rep		200,000	126,700					326,700	326,700			
WA 0115	***Telemetry Upgrades***			***150,000***					***150,000***	***150,000***			
SS 0046	Market Street Sewermain Replacement			206,000	801,000	218,500			1,225,500	1,225,500			
SS 0050	NE 80th Street Sewermain Replacemen		240,000	916,700	196,300				1,353,000	1,353,000			
SS 0051	6th Street South Sewermain Replacemen							391,800	391,800	391,800			
SS 0052	108th Avenue NE Sewermain Replacemen							753,500	753,500	753,500			
SS 0056	Emergency Sewer Construction Program			1,000,000		1,000,000		1,000,000	3,000,000		3,000,000		
SS 0060*	Trend Lift Station Elimination	160,000	399,000						399,000	399,000			
SS 0062	NE 108th Street Sewermain Replacement/Rehabilitatior					699,400	792,300		1,491,700	1,491,700			
SS 0063	NE 53rd Street Sewermain Replacemen				116,700	181,400			298,100	298,100			
SS 0064	7th Avenue South Sewermain Replacemen						310,700		310,700	310,700			
SS 0066	***Plaza Lift Station Pump Upgrades***			***50,000***					***50,000***	***50,000***			
Total Funded Utility Projects		**638,200**	**1,909,000**	**3,603,600**	**2,368,000**	**3,384,200**	**2,356,700**	**3,414,900**	**17,036,400**	**14,036,400**	**3,000,000**	**0**	**0**

Unfunded Projects:

Project Number	Project Title	Six Year Total
WA 0052	108th Avenue NE Watermain Replacemen	1,410,000
WA 0057	116th Avenue NE Watermain Replacemen	1,643,000
WA 0059	101st Avenue NE Watermain Replacemen	131,000
WA 0060	10th Avenue Watermain Replacemen	262,000
WA 0063	Supply Station #3 Replacement & Transmission Main Add	770,000
WA 0067	North Reservoir Pump Station Replacement	847,000
WA 0076	6th Avenue Watermain Replacement	366,000
WA 0077	NE 110th Street Watermain Replacemen	223,000
WA 0091	Norkirk Watermain Replacement Program	2,415,000
WA 0104	NE 62nd St Watermain Replacment	131,000
WA 0107	NE 73rd St Watermain Replacement	131,000
WA 0108	Public Watermain Replacements at NW University	1,288,000
WA 0109	112th Ave NE Watermain Replacement	547,000
WA 0111	111th Ave NE Watermain Replacement	364,000
WA 0112	116th Ave NE/NE 60th St Watermain Replacemen	849,000
WA 0113	116th Ave NE/NE 70th St Watermain Replacemen	671,000
Total Unfunded Utility Projects		**12,048,000**

Notes
* = Modification in timing and/or cost (see Project Modification/Deletion Schedule for greater detail
+ = Moved from unfunded status to funded statu
" = Moved from funded status to unfunded statu
Shaded year(s) = Previous timing
Bold italics = New projects

ATTACHMENT A

City of Kirkland
Revised 2006-2011 Capital Improvement Program

PARK PROJECTS

Funded Projects:

Project Number	Project Title	Prior Year(s)	2006	2007	2008	2009	2010	2011	2006-2011 Total	Funding Source: Current Revenue	Reserve	Debt	External Source
PK 0049	Open Space and Pk Land Acq Grant Match Program		100,000						100,000		100,000		
PK 0056	Forbes Lake Park Development				50,000		577,400		627,400	627,400			
PK 0066	Park Play Area Enhancements			100,000	100,000	125,000	125,000	125,000	575,000	575,000			
PK 0078 400	Rose Hill Elementary Playfields Improvements		250,000						250,000			250,000	
PK 0078 600	A.G. Bell Elementary Playfields Improvements							302,000	302,000	302,000			
PK 0091	South Rose Hill (north) Neigh. Park Development	50,000		429,000					429,000	249,000	180,000		
PK 0095	Heritage Park Development (formerly Waverly Park)	1,050,000	850,000	255,000					1,105,000	1,105,000			
PK 0099	N. Juanita Neigh. Park Acquisition/Development (Phase I)							579,600	579,600	279,600	300,000		
PK 0109	Juanita Bay Park Wetland Restoration	115,000	50,000	50,000					100,000	100,000			
PK 0119	Juanita Beach Park Development	400,000			456,800	577,300			1,034,100	1,034,100			
PK 0121	Green Kirkland		50,000	50,000	100,000				200,000	200,000			
PK 0122	Indoor Recreation Space Planning/Site Analysis		60,000						60,000	60,000			
PK 0123	Peter Kirk Pool Upgrades		50,000						50,000	50,000			
Total Funded Park Projects		**1,615,000**	**1,410,000**	**884,000**	**706,800**	**702,300**	**702,400**	**1,006,600**	**5,412,100**	**4,582,100**	**580,000**	**250,000**	**0**

Unfunded Projects:

Project Number	Project Title	Six Year Total
PK 0059	Indoor Recreation Space	10,000,000 - 20,000,000
PK 0086	Totem Lake Neighborhood Park Acquisition	335,000 - 1,000,000
PK 0087	Waverly Beach Park Renovation	660,000 - 1,000,000
PK 0096	Ohde Avenue Park Development	250,000
PK 0097	Reservoir Park Renovation	200,000
PK 0100	N. Juanita Neighborhood Park Acquisition/Development (Phase II)	1,000,000 - 1,500,000
PK 0101	N. Rose Hill Neighborhood Park Acquisition/Development (A)	1,000,000 - 1,500,000
PK 0102	N. Rose Hill Neighborhood Park Acquisition/Development (B)	1,000,000 - 1,500,000
PK 0103	Market Neighborhood Park Acquisition/Development	1,000,000 - 1,500,000
PK 0108	McAuliffe Park (Phase II)	500,000 - 2,000,000
PK 0112	Everest Park A-Field Bleachers	250,000
PK 0113	Spinney Homestead Park Renovation	400,000
PK 0114	Mark Twain Park Renovation	500,000
PK 0115	Terrace Park Renovation	400,000
PK 0116	Lee Johnson Field Artificial Turf Installation	1,000,000 - 1,500,000
PK 0117	Lake Avenue West Street End Park Enhancement	50,000 - 100,000
Total Unfunded Park Projects		**18,545,000 - 33,600,000**

Notes
* = Modification in timing and/or cost (see Project Modification/Deletion Schedule for greater detail)
+ = Moved from unfunded status to funded status
'' = Moved from funded status to unfunded status
Shaded year(s) = Previous timing
Bold italics = New projects

ATTACHMENT A

City of Kirkland
Revised 2006-2011 Capital Improvement Program

PUBLIC SAFETY PROJECTS

Funded Projects:

Project Number	Project Title	Prior Year(s)	2006	2007	2008	2009	2010	2011	2006-2011 Total	Funding Source: Current Revenue	Reserve	Debt	External Source
PS 0024*	Fire Boat			248,350					248,350	181,296			67,054
PS 0025*	Water Rescue Boat			109,450					109,450	79,899			29,551
PS 0055	Fire Paging and Alerting Systems	60,000	100,000						100,000	73,000			27,000
PS 0058	Special Operations Vehicle (vehicle upgrade)		297,100						297,100		216,883		80,217
PS 0059	Quick Attack Reduced Access Vehicle				298,500				298,500	217,905			80,595
PS 0061	Mobile Data Computers					219,600			219,600	160,308			59,292
PS 0062	Defibrillator Unit Replacements							144,900	144,900	105,777			39,123
PS 0063	Breathing Air Fill Station Replacement						157,600		157,600	115,048			42,552
PS 0064	***Regional Fire Training Div. Office Space Imprv.***			***50,000***					***50,000***	***36,500***			***13,500***
Total Funded Public Safety Projects		**60,000**	**397,100**	**407,800**	**298,500**	**219,600**	**157,600**	**144,900**	**1,625,500**	**969,733**	**216,883**	**0**	**438,884**

Unfunded Projects:

Project Number	Project Title	Six Year Total
PS 0043	Senior Center Emergency Power	410,000
PS 0046	North Kirkland Community Center Emergency Power	337,500
Total Unfunded Public Safety Projects		**747,500**

Notes
* = Modification in timing and/or cost (see Project Modification/Deletion Schedule for greater detail)
Shaded year(s) = Previous timing
Bold italics = New projects

ATTACHMENT A

City of Kirkland
Revised 2006-2011 Capital Improvement Program

GENERAL GOVERNMENT PROJECTS

Funded Projects:

Project Number	Project Title	Prior Year(s)	2006	2007	2008	2009	2010	2011	2006-2011 Total	Funding Source: Current Revenue	Reserve	Debt	External Source
TECHNOLOGY													
GG 0006 100	Geographic Information System		462,000	385,000	295,000	366,000	385,000	233,000	2,126,000	2,002,000			124,000
GG 0006 110	Records Management System	636,300			53,000		84,400		137,400	137,400			
GG 0006 130	Customer Relationship Mgmt System				194,400	120,200			314,600	314,600			
GG 0006 150	Wireless Access for Field Workers	113,300				158,400			158,400	158,400			
GG 0006 160	Finance and HR System Modules		200,700	77,500	81,100		129,400	121,700	610,400	610,400			
GG 0006 201	Police Automated Vehicle Location System		65,800	78,800					144,600	144,600			
GG 0006 202	Fire RMS System Replacement				79,600				79,600		79,600		
GG 0006 204	***Public Safety Scheduling Software***			***130,000***					***130,000***	***130,000***			
GG 0006 300	Local and Wide Area Networks		380,200	368,600	217,500	391,400	363,500	237,700	1,958,900	1,958,900			
GG 0006 301*	Disaster Recovery System Improvements			50,000	100,000				150,000	150,000			
GG 0006 501*	Permit Plan System Replacement				100,000	444,700			544,700		544,700		
GG 0006 600	Electronic Public Access to Information		82,000	123,600	175,000	136,600	202,600	162,300	882,100	882,100			
GG 0006 701	Fleet Management System Replacement				74,300				74,300		74,300		
GG 0006 702	Maintenance Management System Upgrade				79,600				79,600	79,600			
GG 0006 801*	Parks Work Order System				53,000				53,000	53,000			
GG 0006 802	Wireless Systems in Parks		84,200	31,400					115,600	115,600			
GG 0006 803	Recreation Registration System Replacement				79,600				79,600		79,600		
FACILITIES													
GG 0008	Electrical, Energy Mgt & Lighting Systems		237,900	133,800	2,200	204,700	54,500		633,100		633,100		
GG 0009	Mechanical/HVAC Systems Replacements		141,600	7,000	20,400	85,000	37,100	164,600	455,700		455,700		
GG 0010	Painting, Ceilings, Partition & Window Replc.		71,000	14,200	60,400	503,100	323,600	108,300	1,080,600		1,080,600		
GG 0011	Roofing, Gutter, Siding and Deck Replacements		61,300		27,700	64,900			153,900		153,900		
GG 0012	Flooring Replacements		108,400	18,100	25,700	493,600	130,900	40,500	817,200		817,200		
GG 0030 001+	Council Chamber Renovation - AV Equipment			150,000					150,000	150,000			
GG 0031 001	Police Evid. Storage/Proc. Lab (Phase I & II)		685,000	275,100					960,100		960,100		
GG 0032 001	Police Department Safety Improv. (Phase I)		998,000						998,000		998,000		
GG 0033 001	IT Department Reconfiguration (Phase I)		201,000						201,000		201,000		
CITYWIDE													
GG 0023	Neighborhood Connection Program		100,000	100,000	100,000	100,000	100,000	100,000	600,000	600,000			
Total Funded General Government Projects		**749,600**	**3,879,100**	**1,943,100**	**1,818,500**	**3,068,600**	**1,811,000**	**1,168,100**	**13,688,400**	**7,486,600**	**6,077,800**	**0**	**124,000**

Unfunded Projects:

Project Number	Project Title	Six Year Total
GG 0006 203	Police CAD & RMS System Replacement	1,400,000
GG 0006 401	Utility Billing/Cashiering System Replc.	491,700
GG 0006 402	Financial System Replacement	1,500,000
GG 0013	Public Safety Building	TBD
GG 0030 002	Council Chamber Renovation	543,400
GG 0031 002	Police Evidence Storage/Proc.Lab (Phase III)	281,000
GG 0032 002	Police Department Safety Improv. (Phases II & III)	691,000
GG 0033 002	IT Department Reconfiguration (Phase II)	256,400
Total Unfunded General Government Projects		**5,163,500**

Notes
* = Modification in timing and/or cost (see Project Modification/Deletion Schedule for greater detail)
+ = Moved from unfunded status to funded status
Shaded year(s) = Previous timing
Bold italics = New projects

ATTACHMENT B

Revised 2006 - 2011 CIP
PROJECT MODIFICATIONS & DELETIONS

Project Type/Title	Project #	Modification/Deletion
TRANSPORTATION		
Street:		
NE 120th Street Roadway Extension (east section)	ST 0057	Project moved from 2007-2010 to 2006-2010 to purchase right-of-way in 2006 under current agreement with Infinity dealership. Funding moved from 2009 costs.
NE 132nd St Roadway Improv. (Corridor Study Only)	ST 058	Initial study of the corridor funded in 2006 with project design and construction remaining in the unfunded portion of the CIP. The State Nickel package projects in the area have prompted an earlier than planned study of the corridor.
NE 85th Street Utility Underground Conversion	ST 0075	New project to underground overhead utilities along NE 85th in conjunction with other roadway improvement projects taking place along the corridor.
Non-Motorized:		
Rose Hill Business District Sidewalks	NM 0051	Total project cost decreased by $368,000 to partially fund the NE 85th Street Utility Underground Conversion project.
Traffic Improvement:		
NE 85th St/124th Ave NE Intersection Improvements	TR 0080	Total project cost decreased from $966,000 to $374,000 due to a correction.
NE 68th St/108th Ave NE Intersection Improvements	TR 0085	Total project cost decreased by $372,000 to partially fund the NE 85th Street Utility Underground Conversion project. This project will be reevaluated in the next CIP cycle for timing and funding options.

Six Year Funding Reconciliation - Transportation Projects

(in 000's)

Adopted Total Transportation Projects		$ 36,982
NE 120th Street Roadway Extension (east section)	$ (18)	
NE 132nd St Roadway Improv. (Corridor Study Only)	200	
NE 85th Street Utility Underground Conversion	1,665	
Rose Hill Business District Sidewalks	(368)	
NE 85th St/124th Ave NE Intersection Improvements	(592)	
NE 68th St/108th Ave NE Intersection Improvements	(372)	
Subtotal of Revisions		515
Revised Total Transportation Projects		$ 37,497

ATTACHMENT B

Project Type/Title	Project #	Modification/Deletion
SURFACE WATER MANAGEMENT		
Forbes Creek/KC Metro Access Road Culvert Enh.	SD 0051	Total project cost unchanged at $279,000; City funding decreased from $279,200 to $232,200 with receipt of funding from King County Metro of $47,000.

Six Year Funding Reconciliation - Surface Water Management Projects

(in 000's)

Adopted Total Surface Water Management Projects		$ 8,768
Forbes Creek/KC Metro Access Road Culvert Enh.	$ -	
Subtotal of Revisions		-
Revised Total Surface Water Management Projects		$ 8,768

Project Type/Title	Project #	Modification/Deletion
UTILITIES		
Water:		
Telemetry Upgrades	WA 0115	New project; total project cost of $150,000.
Sewer:		
Trend Lift Station Elimination	SS 0060	Total project decreased from $869,000 to $399,000 due to revised timing of the project prompted by the delay of a development in the area.
Plaza Lift Station Pump Upgrades	SS 0066	New project; total project cost of $50,000.

Six Year Funding Reconciliation - Utility Projects

(in 000's)

Adopted Total Utility Projects		$ 17,306
Telemetry Upgrades	$ 150	
Trend Lift Station Elimination	(470)	
Plaza Lift Station Pump Upgrades	50	
Subtotal of Revisions		(270)
Revised Total Utility Projects		$ 17,036

ATTACHMENT B

Project Type/Title	Project #	Modification/Deletion
PARKS		
No changes, additions or deletions to the Parks CIP		

Six Year Funding Reconciliation - Parks Projects

(in 000's)

Adopted Total Parks Projects		$ 5,412
	$ -	
Subtotal of Revisions		-
Revised Total Parks Projects		$ 5,412

Project Type/Title	Project #	Modification/Deletion
PUBLIC SAFETY		
Fire Boat	PS 0024	Total project cost increased from $225,100 to $248,350.
Water Rescue Boat	PS 0025	Total project cost increased from $73,200 to $109,450.
Regional Fire Training Division Office Space Improv.	PS 0064	New project; total project cost of $50,000.

Six Year Funding Reconciliation - Public Safety Projects

(in 000's)

Adopted Total Public Safety Projects		$ 1,516
Fire Boat	$ 24	
Water Rescue Boat	36	
Regional Fire Training Division Office Space Improv.	50	
Subtotal of Revisions		110
Revised Total Public Safety Projects		$ 1,626

ATTACHMENT B

Project Type/Title	Project #	Modification/Deletion
GENERAL GOVERNMENT		
Technology:		
Public Safety Scheduling Software	GG 0006 204	New project to assist with 24/7 shift scheduling, overtime call-outs, and timekeeping.
Disaster Recovery System Improvements	GG 0006 301	Moved from 2009 to 2007/2008; total project cost decreased from $163,900 to $150,000.
Permit Plan Replacement	GG 0006 501	Moved from 2006/2007 to 2008/2009; total project cost increased from $507,000 to $544,700.
Parks Work Order System	GG 0006 801	Moved from 2007 to 2008; total project cost increased from $51,500 to $53,000.
Facilities:		
Council Chamber Renovation - AV Equipment	GG 0030 001	Portion of project moved to funded from unfunded category in order to address needed audio, visual and lighting systems in the Council Chambers.

Six Year Funding Reconciliation - General Government Projects

(in 000's)

Adopted Total General Government Projects		$ 13,383
Public Safety Scheduling Software	$ 130	
Disaster Recovery System Improvements	(14)	
Permit Plan Replacement	38	
Parks Work Order System	2	
Council Chamber Renovation - AV Equipment	150	
Subtotal of Revisions		306
Revised Total General Government Projects		$ 13,689

ATTACHMENT C

CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Daryl Grigsby, Public Works Director
Ray Steiger, P.E., Capital Projects Manager

Date: September 12, 2006
Subject: NE 85th Street underground conversion project

RECOMMENDATION:

City Council provide direction to staff for the undergrounding of overhead utility lines along the NE 85th Street corridor.

BACKGROUND AND DISCUSSION:

At the June 20, 2006, Council meeting, the total cost for undergrounding overhead utilities along NE 85th Street between 120th Ave NE and 132nd Ave NE was presented by Staff. It was concluded that he City's total cost for the conversion was estimated to be $3 M;Council requested that various options be explored and returned to Council at a later date.

After several meetings with Puget Sound Energy (PSE) and considering multiple scenarios and impacts, City staff has assembled the following options for consideration (Attachment A):

		City Share
1.	Call concomitant agreements (approximately $140,000 private funds)	$0
2.	Underground just the 85th Street crossings from 120th Ave to 126th Ave	$700,000
3.	Underground all crossings from 120th Ave to 132nd Ave	$1,250,000
4.	All crossings and lines parallel to 85th St west from 120th Ave to 128th Ave	$1,465,000
5.	Same as option 4 plus install empty conduit east of 128th Ave	$1,665,000

The conversion of the entire corridor remains at approximately $3 M. Under all of the options, the City share represents approximately 60% of the entire cost and the remaining 40% is paid for by PSE under the terms of their franchise agreement with the City.

Staff examined costs for the corridor conversion from a number of perspectives including how much private property would be impacted under various options, highest and best current land uses, likely redevelopment properties, and current development trends. For the most part, property located west of approximately 126th Ave involves somewhat larger parcels of land and has been relatively recently developed. This redevelopment has provided for some underground conversion or is subject to concomitant agreements (Walgreen's, Safeway). Properties to the east of 126th Ave, appear to have redevelopment opportunities, and in fact some are in early stages of redevelopment. Considering these factors, staff assembled a cumulative cost scenario for underground conversion beginning at 120th Ave and working to the east (Attachment B).

From this scenario, it is evident that as anticipated, the higher cost impacts are on the eastern end of the corridor – the same area that appears to have the highest redevelopment potential. Based on this examination and after review of a

number of potential funding sources including a Business Local Improvement District, municipal bonds, grant sources, all of which were not viable, **staff is recommending that Option 5 be funded**.

Option 5 will provide for the conversion of all utilities parallel to NE 85th Street between 120th Ave. NE and 128th Ave. NE. Additionally, empty conduit will be installed for future underground conversion between 128th Ave NE and 132nd Ave NE thereby limiting the impact to the public when redevelopment does occur. All crossings of NE 85th Street between 120th Ave and 128th Ave NE will be converted to underground facilities; crossings between 128th Ave NE and 132nd Ave NE will remain until redevelopment activities. This recommendation includes underground conversion along cross streets to existing PSE poles that have overhead utilities (i.e. 120th Ave. NE, 122nd Ave).

The estimate for this conversion is $1,665,000 and is recommended to be funded from a number of sources as follows:

a)	Rose Hill Business District Sidewalk "savings" (CIP # NM-0051)	$368,000
b)	NE 68th Street/108th Ave NE project delay (CIP # TR-0085)	$372,000
c)	118th Ave NE right of way (Lee Johnson) vacation	$307,000
d)	REET I reserves	$309,000
e)	REET II reserves	$309,000
	Total funding	**$1,665,000**

The Rose Hill Business District sidewalk improvement project is jointly funded by Sound Transit who will be contributing $1.5M to the project, and approx $1.7M are from Kirkland. Current 70% estimates for the project indicate that with Kirkland contribution reduced by the proposed $368,000, sufficient funds remain in the project to complete sidewalks, landscaping and other amenities originally envisioned in the project.

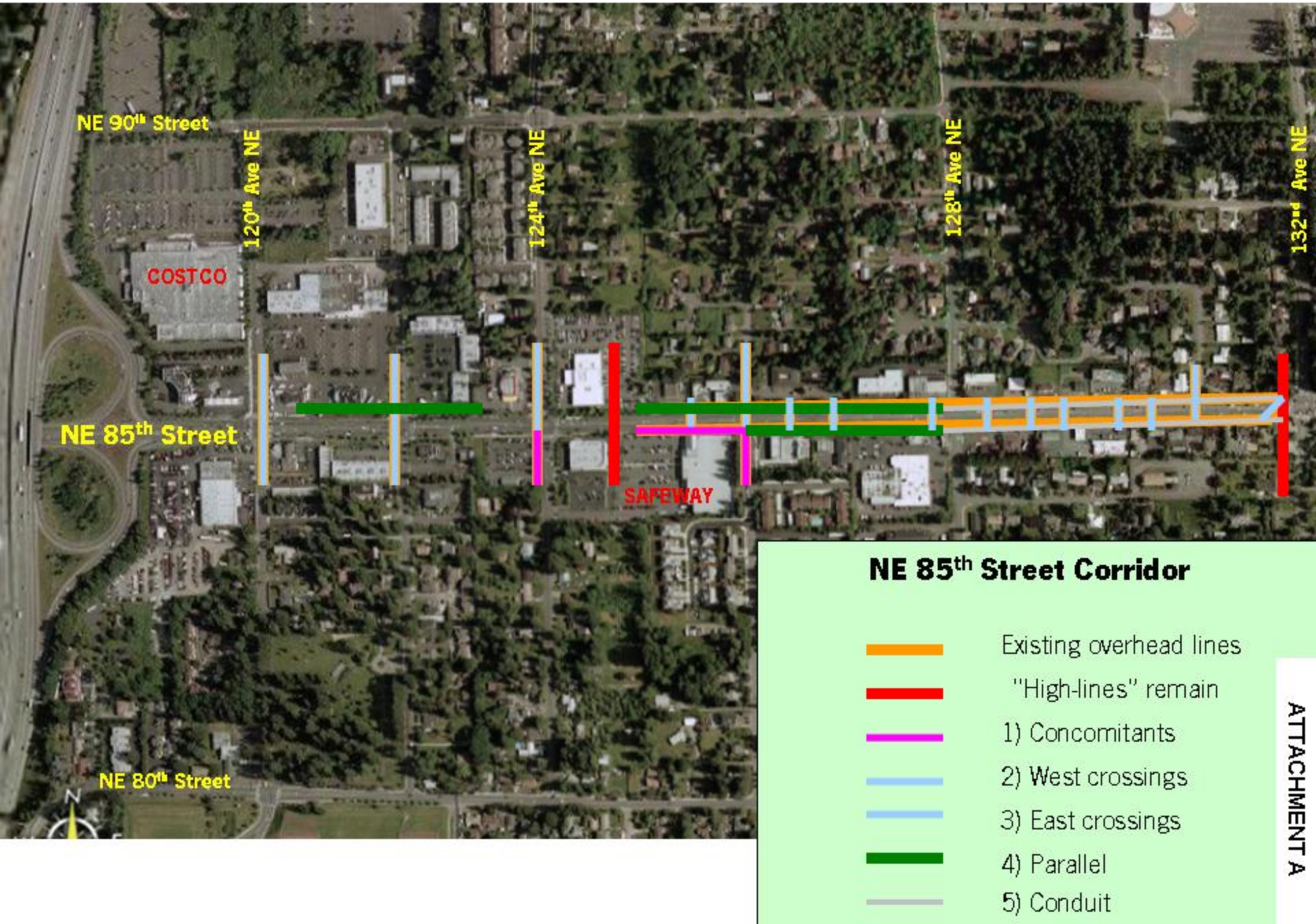
The NE 68th Street/108th Ave NE intersection improvement project includes modifications to the signal and rechannelization at this intersection; it is currently funded in the CIP beginning in 2007. This intersection is also a project that has been identified as a component of the Downtown Transit Center being built by Sound Transit. Because the configuration and preliminary design of the Transit Center has yet to be completed, the intersection improvement will likely be delayed by at least one year. Staff will reexamine funding and timing of this intersection with the 2008-2013 CIP process in the spring/summer of 2007.

The City's vacation of 118th Ave NE during redevelopment of the Lee Johnson property resulted in funds being paid to the City in 2006. It is staff's recommendation that this funding ($307,000) be utilized along the 85th corridor as a part of the Rose Hill improvements.

And finally, the balance of funding for this option is recommended to come from the two REET reserves. The impact of these earmarks will be discussed further as a part of the CIP study session on September 19th.

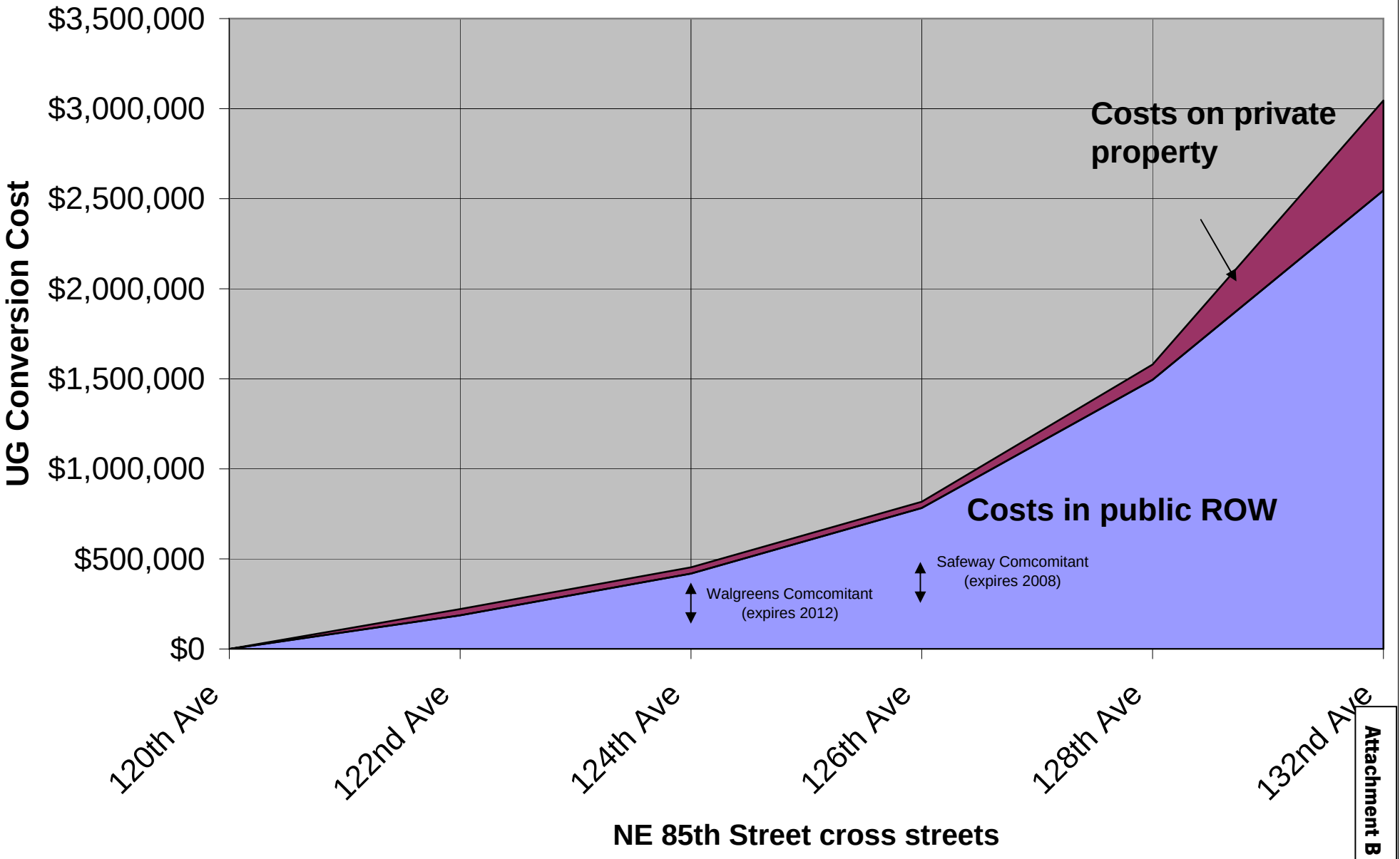
Should the City proceed with this undergrounding recommendation, design and construction schedules would be extended. Additional design coordination will be necessary and construction needs will include additional trenching by the City's contractor. It is currently anticipated that the project will bid during the summer/fall of 2007 with construction beginning fall of 2007.

Attachments:
Attachment A, NE 85th Street Conversion Options
Attachment B, NE 85th Street Conversion costs (west to east)



ATTACHMENT A

Cumulative undergrounding costs along NE 85th Street (shown from west to east)



Attachment B

CITY OF KIRKLAND
City Manager's Office
123 Fifth Avenue, Kirkland, WA 98033 425.587.3001
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Tracy Burrows, Senior Management Analyst

Date: September 11, 2006

Subject: Day of Concern for the Hungry Proclamation

RECOMMENDATION**:**

It is recommended that Mayor James L. Lauinger proclaim September 30, 2006 *"Day of Concern for the Hungry"*.

BACKGROUND DISCUSSION:

Arthur R. Lee, Executive Director of Emergency Feeding Program of Seattle-King County, requested a proclamation by Mayor Lauinger. The Emergency Feeding Program has for many years sought to provide balanced, nutritious meals to hungry people and recognizes that adequate nutrition is a basic goal for each citizen. The organization knows that the needs of the hungry increases as winter approaches and their low incomes must stretch to cover increasing fuel, electricity and rental costs, leaving less money for food. The Emergency Feeding Program coordinates an annual food drive to help support the efforts of their program and the local food banks, which will be held at grocery stores throughout King County on Saturday September 30, 2006.

Brian Anderson, Eastside Coordinator for the Emergency Feeding Program will be attending the September 19th Council meeting to accept the Day of Concern for the Hungry proclamation on their behalf.

A PROCLAMATION OF THE CITY OF KIRKLAND

Designating September 30, 2006, As a "Day of Concern for the Hungry"

WHEREAS, the City of Kirkland recognizes adequate nutrition as a basic goal for each citizen; and

WHEREAS, no child should have to come to school hungry, no baby should be without the comfort of the feedings needed for both mental and physical health, no elderly person's health should be jeopardized by lack of appropriate foods; and

WHEREAS, food banks, the City of Kirkland, churches, social service agencies, and hundreds of volunteers are striving day in and day out to stem the tide of hunger, but still need more help; and

WHEREAS, the Emergency Feeding Program has, for many years, sought to provide balanced, nutritious meals to hungry people; and

WHEREAS, when the citizens of Kirkland hear of the needs of the hungry as winter approaches and their low incomes must stretch to cover increasing fuel, electricity and rental costs-leaving even less money for monthly food purchase, an outpouring of assistance will follow; and

WHEREAS, the Emergency Feeding Program coordinates an annual food drive to help support the efforts of their program and the area's food banks in fighting hunger which will be held at grocery stores throughout King County on Saturday, September 30, 2006.

NOW, THEREFORE, I, James L. Lauinger, Mayor of Kirkland, do hereby proclaim September 30, 2006 as *Day of Concern for the Hungry* in the City of Kirkland and strongly urge all citizens to join the Emergency Feeding Program to feed those who are hungry.

Signed this 19th day of September, 2006

_____

James L. Lauinger, Mayor

KIRKLAND CITY COUNCIL REGULAR MEETING MINUTES
September 05, 2006

1. CALL TO ORDER

2. ROLL CALL

ROLL CALL:
Members Present: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.
Members Absent: None.

3. STUDY SESSION

None.

4. EXECUTIVE SESSION

a. To Discuss Potential Litigation

5. SPECIAL PRESENTATIONS

a. Recognition of Citizen for Life Saving Rescue

Timothy Heaton was recognized for his efforts in saving the life of a vulnerable neighbor.

6. REPORTS

a. City Council

(1) Regional Issues

Councilmembers shared information regarding the Kirkland Interfaith Network's back to school supplies drive; a reminder to watch out for children's safety walking to and from school; the Suburban Cities Association Public Issues Committee meeting; Eastside Transportation Partnership meeting; National Incident Management System training; Cascade Water Alliance Board meeting; Regional Transportation Commission Hearing; Suburban Cities Position Statement; Kirkland Classics Softball Team 55 and over Division Tournament Champions;

Lodging Tax Advisory Committee meeting; Police promotion ceremony; "Green Drinks" event; NorKirk Neighborhood Picnic; Kirkland Downtown Association Flowerpot fundraising event; Heritage Park Grand Opening; the Heritage Society's Blackberry Sundae Social; Enterprise Seattle Economic Update on Alternative Energy; and the Kirkland Concours d'Elegance.

b. City Manager

(1) Neighborhood Council Meeting Dates

(2) Calendar Update

7. COMMUNICATIONS

a. Items from the Audience

Tod Johnson, 20513 113th Drive SE, Snohomish, WA

b. Petitions

(1) Kirkland Residents for Improvement of Traffic and Pedestrian Safety on Slater Avenue NE between NE 97th Street and NE 112th Place

Council acknowledged receipt of the petition.

8. CONSENT CALENDAR

a. Approval of Minutes: August 1, 2006

b. Audit of Accounts:
Payroll $ 3,770,486.70
Bills $ 2,514,445.37
run #617 check # 480675
run #618 check # 480701 - 480883
run #619 check # 480884 - 481118
run #620 check # 481119 - 481314
run #621 check # 481339 - 481489
run #622 check # 481490 - 481627

c. General Correspondence

(1) Margaret Carnegie, Regarding Sidewalk Installation with New Development

d. Claims

(1) Steve Ensminger

(2) Susan M. Hayes

(3) Ron Olson

(4) Geraldine Shippee

(5) Ardis Todd Tyson

e. Authorization to Call for Bids

f. Award of Bids

g. Acceptance of Public Improvements and Establishing Lien Period

h. Approval of Agreements

i. Other Items of Business

(1) Resolution R-4591, entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING INTERNATIONAL COUNCIL FOR LOCAL ENVIRONMENTAL INITIATIVES (ICLEI) MEMBERSHIP & CITIES FOR CLIMATE PROTECTION CAMPAIGN PARTICIPATION."

(2) Authorizing Correspondence to King County Executive and Council Regarding Regional Veterans and Human Services Levy

(3) Resolution R-4592, entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING A SOLE SOURCE PURCHASE OF FIRE DEPARTMENT AID UNITS MANUFACTURED BY ROAD RESCUE, INC. AND SOLD BY H & W EMERGENCY VEHICLES, INC. AUTHORIZING THE PURCHASING AGENT TO MAKE SAID PURCHASE AS REPLACEMENT VEHICLES ARE REQUIRED FOR 2007, 2008, 2009 AND 2010."

(4) Ordinance No. 4055, entitled "AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO VACATING A PORTION OF A RIGHT-OF-WAY BASED ON AN APPLICATION FILED BY LMJ ENTERPRISES LIMITED PARTNERSHIP, FILE NO. VAC05-00003

(5) Ordinance No. 4056, entitled "AN ORDINANCE OF THE CITY OF KIRKLAND ESTABLISHING THE SALARY FOR THE MUNICIPAL COURT JUDGE AND REPEALING ORDINANCE NO. 4019."

(6) Resolution R-4595, entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND ADOPTING A POLICY FOR INVESTMENT OF CITY FUNDS."

Motion to Approve the Consent Calendar.
Moved by Councilmember Mary-Alyce Burleigh, seconded by Councilmember Dave Asher
Vote: Motion carried 7-0
Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

9. PUBLIC HEARINGS

a Resolution R-4593, Expressing Intent to Vacate Portions of 1st Street South and an East/West Oriented Alley Located Between Kirkland Avenue and 1st Avenue South Filed by Merrill Gardens at Kirkland, LLC

The Mayor declared the public hearing open. Senior Planner Janice Soloff presented an overview of the project. Further testimony was provided by: Andy Loos, SRM Development, LLC, 808 5th Avenue North, Seattle, WA, Michelle Goerdel, 12511 NE 95th Street, Kirkland, WA, Glenn Peterson, Kirkland Parking Advisory Board, 319 Lake Street South, Kirkland, WA, Bea Nahon, 129 Third Avenue, Kirkland, WA. Following Council comment, no other testimony was offered and the Mayor closed the hearing.

Motion to Approve Resolution R-4593, entitled "A RESOLUTION OF THE CITY OF KIRKLAND EXPRESSING INTENT TO VACATE PORTIONS OF 1ST STREET SO. AND AN EAST/WEST ORIENTED ALLEY LOCATED BETWEEN KIRKLAND AVENUE AND 1ST AVENUE SO. FILED BY MERRILL GARDENS AT KIRKLAND, LLC, FILE NUMBER VAC06-00001."
Moved by Councilmember Dave Asher, seconded by Councilmember Bob Sternoff
Vote: Motion carried 7-0
Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

b. King County Proposition No. 1: Regular Property Tax Levy Automated Fingerprint Identification System Services. The King County Council passed Ordinance No. 15537 concerning this proposition for the Automated Fingerprint Identification System (AFIS) levy. This proposition would fund the continued operation and enhancement of the AFIS program, which assists law enforcement agencies in identifying and convicting criminals. It would authorize King County to levy an additional regular property tax of not more than $0.0568 (5.68 cents) per $1,000 of assessed valuation for collection in 2007 and levy the tax each year thereafter as allowed by chapter 84.55 RCW for each of the five succeeding years. Should this proposition be: APPROVED REJECTED

The Mayor opened the public hearing. Police Chief Stan Aston shared information regarding the AFIS program, followed by Council comment. No further testimony was offered and the Mayor closed the hearing.

(1) Resolution R-4590, Stating the City Council's Support for King County Proposition No. 1, the Automated Fingerprint Identification System (AFIS) Levy

Motion to Approve Resolution R-4590, entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND STATING THE CITY COUNCIL'S SUPPORT FOR KING COUNTY PROPOSITION NO. 1, THE AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM (AFIS) LEVY."
Moved by Councilmember Dave Asher, seconded by Councilmember Mary-Alyce Burleigh
Vote: Motion carried 7-0
Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

Council recessed for a short break at 9:09 p.m.

10. UNFINISHED BUSINESS

a. Discussing Potential Annexation

City Consultants Penny Mabie and Sarah Brandt of EnviroIssues reviewed the proposed annexation communications strategy, which was approved by the City Council.

b. Authorizing Support of proposed Recommendations for the Regional Solid

Waste Transfer and Waste Export System Plan

Solid Waste Coordinator Elaine Borjeson described the proposed recommendations in the plan and responded to Council questions.

Motion to authorize Kirkland's MSWMAC representative to support the proposed recommendations contained in the draft of the Regional Solid Waste Transfer and Waste Export System Plan.
Moved by Councilmember Jessica Greenway, seconded by Deputy Mayor Joan McBride
Vote: Motion carried 7-0
Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

11. NEW BUSINESS

a. Northeast King County Regional Public Safety Communications Center (NORCOM) Status Briefing

Senior Management Analyst Tracy Burrows provided an update on the NORCOM project and received Council comments and questions. Other NORCOM team members responding were Mark Nelson, ADCOMM Engineering, CIO Brenda Cooper, Police Lt. Gene Markle and Fire Chief Jeff Blake.

b. Resolution R-4594, Approving the Issuance of a Process II B Reasonable Use Permit as Applied for by Heather Skinner and Shawn Schneider Being Within a RSX 7.2 Zone, and Setting Forth Conditions to Which Such Process IIB Permit Shall be Subject

Councilmember Tom Hodgson recused himself from the deliberations for the appearance of fairness. Councilmember Greenway and Deputy Mayor McBride disclosed email and personal communications directed to them on the subject which they felt would in no way influence their consideration and deliberation of the issues before them. Following these actions, Planner Tony Leavitt reviewed the issues for consideration.

Motion to to suspend the Council rule of procedure which provides that the Council consider a Process IIB application at one meeting and vote on the matter at the next.
Moved by Councilmember Bob Sternoff, seconded by Deputy Mayor Joan McBride
Vote: Motion carried 7-0

Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

Motion to Approve Resolution R-4594, entitled "A RESOLUTION OF THE CITY OF KIRKLAND APPROVING THE ISSUANCE OF A PROCESS IIB REASONABLE USE PERMIT AS APPLIED FOR IN DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT FILE NO. ZON05-00003 BY HEATHER SKINNER AND SHAWN SCHNEIDER BEING WITHIN A RSX 7.2 ZONE, AND SETTING FORTH CONDITIONS TO WHICH SUCH PROCESS IIB PERMIT SHALL BE SUBJECT."
Moved by Councilmember Bob Sternoff, seconded by Councilmember Mary-Alyce Burleigh
Vote: Motion carried 5-1
Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, and Councilmember Bob Sternoff.
No: Councilmember Dave Asher.

c. Award Bid for City Hall Direct Digital Control Replacement Project to ESC Automation and Authorize Budget Increase

Motion to Approve the award of bid for City Hall Direct Digital Control Replacement Project to ESC Automation in the amount of $186,279 and to increase the project budget by approving the transfer of $47,500. from the Facilities Sinking Fund Reserve to the this project to cover the cost overages in engineering and system replacement.
Moved by Deputy Mayor Joan McBride, seconded by Councilmember Mary-Alyce Burleigh
Vote: Motion carried 7-0
Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

d. Designating Delegates to the National League of Cities Annual Business Meeting

Motion to designate Councilmember Mary Alyce Burleigh as the City's delegate to the National League of Cities Annual Business Meeting.
Moved by Councilmember Dave Asher, seconded by Deputy Mayor Joan McBride

Vote: Motion carried 7-0
Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

Motion to Approve designate Councilmember Bob Sternoff as the City's alternate delegate to the National League of Cities Annual Business Meeting.

Moved by Councilmember Mary-Alyce Burleigh, seconded by Councilmember Dave Asher
Vote: Motion carried 7-0
Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

e. Appointment to the Jail Advisory Group
Motion to appoint Councilmember Bob Sternoff as Kirkland's representative to the Jail Advisory Group.
Moved by Councilmember Dave Asher, seconded by Deputy Mayor Joan McBride
Vote: Motion carried 7-0
Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

12. ANNOUNCEMENTS
None

13. ADJOURNMENT
The Kirkland City Council regular meeting of September 5, 2006 adjourned at 10:53 p.m.

City Clerk Mayor

CITY OF KIRKLAND
Department of Finance and Administration
123 Fifth Avenue, Kirkland, WA 98033 425.587.3100
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Kathi Anderson, City Clerk

Date: September 13, 2006

Subject: CLAIM(S) FOR DAMAGES

RECOMMENDATION

It is recommended that the City Council acknowledge receipt of the following Claim(s) for Damages and refer each claim to the proper department (risk management section) for disposition.

POLICY IMPLICATIONS

This is consistent with City policy and procedure and is in accordance with the requirements of state law (RCW 35.31.(040).

BACKGROUND DISCUSSION

The City has received the following Claim(s) for Damages from:

(1) Heidi Kirby
13333 31st Avenue NE
Seattle, WA 98125

Amount: Unspecified

Nature of Claim: Claimant states damage to property resulted from backup of sewer line

(2) Brian Ray
109 2nd Street #328
Kirkland, WA 98033

Amount: $1082.28

Nature of Claim: Claimant states damage occurred when vehicle was struck by a City vehicle.

(3) Mike Stimmel
10403 NE 52nd Street
Kirkland, WA 98033

Amount: $924.80

Nature of Claim: Claimant states damage to property resulted from paint striping on roadway.

CITY OF KIRKLAND
Department of Parks & Community Services
505 Market Street, Suite A, Kirkland, WA 98033 425.587.3300
www.ci.kirkland.wa.us

To: David Ramsay, City Manager

From: Jennifer Schroder, Director of Parks and Community Services
Michael Cogle, Park Planning Manager

Date: September 12, 2006

Subject: AUTHORIZATION TO CALL FOR BIDS: Carillon Woods Park Improvements

RECOMMENDATION:

That the City Council authorize staff to call for bids for improvements to Carillon Woods.

POLICY IMPLICATIONS:

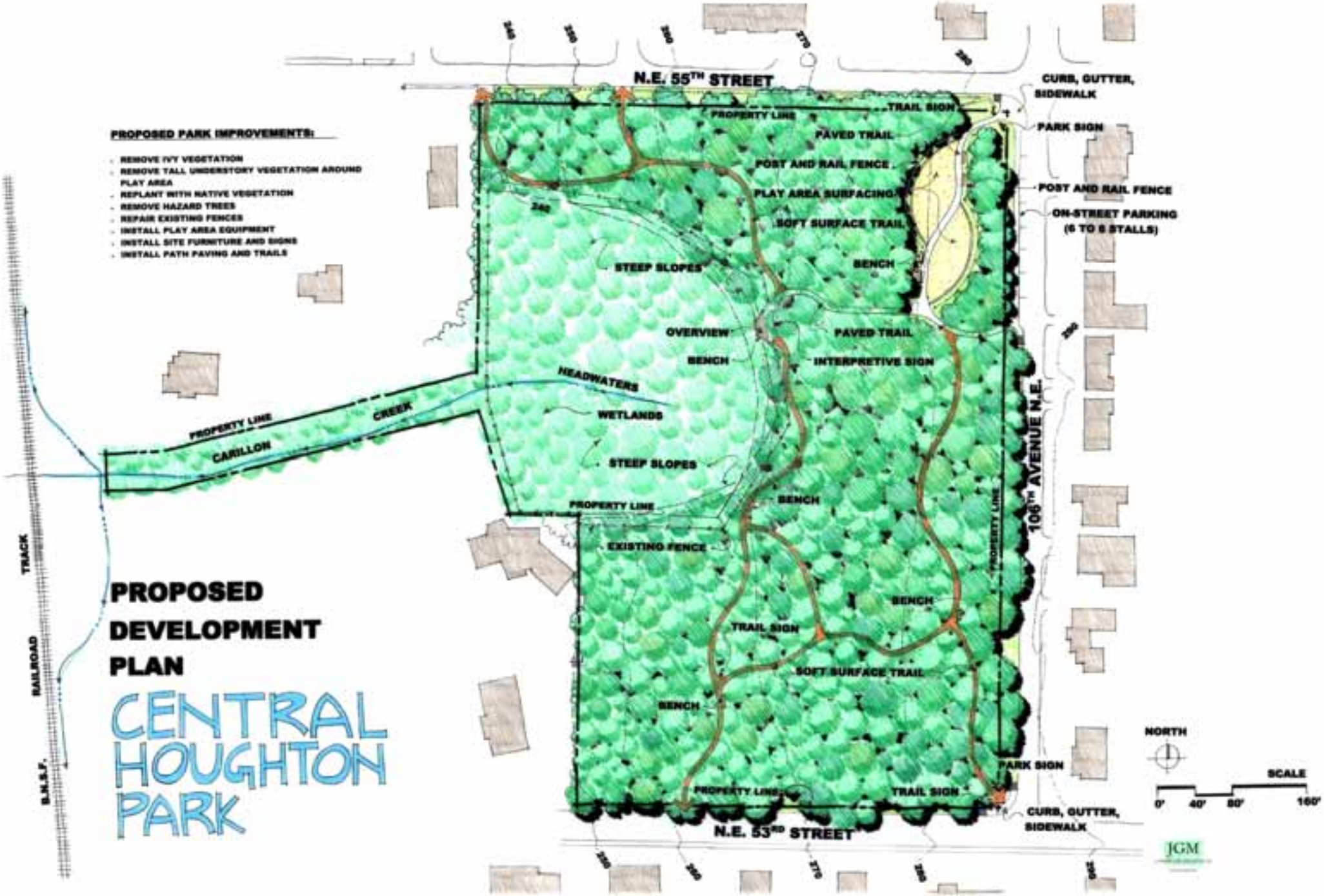
This is a Parks Capital Improvement Program project, with funding provided via the 2002 voter-approved Kirkland Park Bond.

BACKGROUND DISCUSSION:

Improvements will include construction of new soft-surface and asphalt trails, interpretive signage, native plantings, and a children's playground.

The consultant's estimate for construction costs is $260,000. Construction is slated to begin this fall with completion by spring of 2007.

Attachment: Site Development Plan


PROPOSED PARK IMPROVEMENTS:
REMOVE IVY VEGETATION
REMOVE TALL UNDERSTORY VEGETATION AROUND PLAY AREA
REPLANT WITH NATIVE VEGETATION
REMOVE HAZARD TREES
REPAIR EXISTING FENCES
INSTALL PLAY AREA EQUIPMENT
INSTALL SITE FURNITURE AND SIGNS
INSTALL PATH PAVING AND TRAILS
PROPOSED DEVELOPMENT PLAN
CENTRAL HOUGHTON PARK
N.E. 55TH STREET
N.E. 53RD STREET
106TH AVENUE N.E.
CURB, GUTTER, SIDEWALK
PARK SIGN
POST AND RAIL FENCE
ON-STREET PARKING (6 TO 8 STALLS)
TRAIL SIGN
PROPERTY LINE
PAVED TRAIL
POST AND RAIL FENCE
PLAY AREA SURFACING
SOFT SURFACE TRAIL
BENCH
STEEP SLOPES
OVERVIEW
INTERPRETIVE SIGN
HEADWATERS
WETLANDS
CARILLON CREEK
EXISTING FENCE
B.N.S.F. RAILROAD TRACK
NORTH
SCALE
0' 40' 80' 160'
JGM

CITY OF KIRKLAND

123 FIFTH AVENUE KIRKLAND, WASHINGTON 98033-6189 425.587.3465

Kirkland Police Department
MEMORANDUM

To: David Ramsay, City Manager

From: Stan Aston, Police Chief
Robert Balkema, Correction's Sergeant

Date: September 5, 2006

Subject: Interlocal Agreements Providing Additional Jail Space Capacity

RECOMMENDATION:

That City Council pass the attached resolutions which authorize the City Manager to sign interlocal agreements with four jails to provide additional jail capacity for City of Kirkland inmates.

BACKGROUND DISCUSSION:

The Kirkland Police Department is asking for Council authorization to enter into the attached interlocal agreements to provide housing for City of Kirkland inmates at the Renton Jail, Marysville Jail, Chelan County Jail, and Okanogan County Jail. These agreements allow the City of Kirkland to house inmates at the various jails and do not require "buying" bed space. The City of Kirkland will only be obligated to pay for the specific time an inmate is housed in one of the four jail facilities. If the City does not use the bed space, the City does not pay for it. The Department is requesting these additional jail agreements to provide the City with more options in short and long term planning.

Please let me know if you have any questions.

Attachments: Resolutions and Corresponding Interlocal Agreement for:

Okanogan County Jail
Marysville Jail
Chelan County Regional Justice Center
Renton Jail

RESOLUTION R-4596

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF KIRKLAND AND OKANOGAN COUNTY FOR THE HOUSING OF INMATES IN THE OKANOGAN COUNTY JAIL.

WHEREAS, the City of Kirkland wishes to secure the use of additional jail bed capacity; and

WHEREAS, Okanogan County of is willing to accept City of Kirkland inmates for a rate of compensation mutually agreed upon by the parties; and

WHEREAS, Chapter 39.34 RCW authorizes the parties to enter into an interlocal cooperation agreement to perform any governmental service, activity or undertaking which each contracting party is authorized by law to perform;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City of Kirkland an interlocal agreement substantially similar to that attached as Exhibit "A", which is entitled "Agreement Between Okanogan County, Washington and the City of Kirkland, Washington, for the Housing of Inmates in the Okanogan County Jail."

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2006.

Signed in authentication thereof this _____ day of _____, 2006.

_____
MAYOR

Attest:

_____
City Clerk

AGREEMENT BETWEEN OKANOGAN COUNTY, WASHINGTON AND THE CITY OF KIRKLAND, WASHINGTON, FOR THE HOUSING OF INMATES IN THE OKANOGAN COUNTY JAIL

THIS AGREEMENT is made and entered into on this day of _____ 2006 by and between the City of Kirkland, hereinafter referred to as "The City", and the Board of County Commissioners of Okanogan County, Washington, hereinafter referred to as "Okanogan County", each party having been duly organized and now existing under the laws of the State of Washington.

WITNESSETH:

WHEREAS, Okanogan County is authorized by law to operate a jail and the City is authorized by law to operate a jail; and

WHEREAS, the City wishes to designate the Okanogan County jail as a place of confinement for the incarceration of one or more inmates lawfully committed to the City's custody; and

WHEREAS, the Director of the Corrections Facility of Okanogan County is desirous of accepting and keeping in his/her custody such inmate(s) in the Okanogan County jail for a rate of compensation mutually agreed upon by the parties hereto; and

WHEREAS, RCW 39.34.080 and other Washington law, as amended, authorizes any county to contract with any city to perform any governmental service, activity or undertaking which each contracting jurisdiction is authorized by law to perform; and

WHEREAS, the governing bodies of each of the parties hereto have determined to enter into this Agreement as authorized and provided for by RCW 39.34.080 and other Washington law, as amended,

NOW, THEREFORE, in consideration of the above and foregoing recitals, the payments to be made, the mutual promises and covenants herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

Section 1. GOVERNING LAW

The parties hereto agree that, except where expressly otherwise provided, the laws and administrative rules and regulations of the State of Washington shall govern in any matter relating to inmate confinement pursuant to this Agreement.

Section 2. DURATION

This Agreement shall remain full force and effect from the effective date hereto until December 31, 2011, subject to earlier termination as provided by Section 3 herein. This Agreement may be renewed for like successive periods by written addendum under such terms and conditions as the

parties may determine. Nothing in this Agreement shall be construed to make it necessary for the City to have inmates housed in Okanogan County continuously.

Section 3. TERMINATION

(a) By either party. This Agreement may be terminated by written notice from either party to the other party delivered by regular mail to the contact person identified herein, provided that termination shall become effective ninety (90) days after receipt of such notice. Within said ninety (90) days, the City agrees to remove its inmate(s) from the Okanogan County jail.

(b) By the City due to lack of funding. The obligation of the City to pay Okanogan County under the provision of this Agreement beyond the current fiscal year is expressly made contingent upon the appropriation, budgeting, and availability of sufficient funds by and from the City of Kirkland. In the event that such funds are not budgeted, appropriated or otherwise made available for the purpose of payment under this Agreement at any time after the current fiscal year, then the City shall have the option of terminating the Agreement upon written notice to Okanogan County, except that all services provided to that point shall be compensated at the agreed rate. The termination of this Agreement for this reason will not cause any penalty to be charged to the City.

(c) Compensation Due for Services Rendered. In the event of termination of this Agreement for any reason, the City shall compensate Okanogan County in the same manner, and at the same rates as if this Agreement had not been terminated, should any City inmates remain housed by Okanogan County after notice of such termination.

Section 4. MAILING ADDRESSES

(a) All notices, reports, and correspondence to the respective parties of this Agreement shall be sent to the attention of the following people, except as set forth in (b) below:

Okanogan County:
Okanogan County Corrections
Street 149 4th Ave N
City Okanogan, WA 98840
Contact Person: Noah Stewart

City of Kirkland:
City of Kirkland Corrections
Kirkland Police Department
123 5th Ave
Kirkland, WA 98033
Contact Person: Sgt. Bob Balkem

(b) Contact Person: Notification related to the Medical, Removal, Escape, or Death clauses herein shall be given by facsimile with a follow up telephone call to: Sgt. Bob Balkema (Fax) 425.587.3410 (Phone) 425.5873465.

B

Section 5. COMPENSATION

(a) Rates. Except as provided in subsection (b), Okanogan County agrees to perform at no transport cost to the City, between the Okanogan County Corrections Facility and the Kirkland City Jail or such other location as designated by the City in order to transport inmates to and from the City, and to house the City inmates for compensation per day per inmate, at the rate of forty dollars ($42.00) per day.

(b) Billing and payment. Okanogan County agrees to provide the City with an itemized bill listing all names of inmates who are housed, the case or citation number, the number of days housed including the date and time booked into Okanogan County's jail and the date and time released from Okanogan County's jail, and the dollar amount due for each. Okanogan County agrees to provide said bill on or about the 10th of each month. The City agrees to make payment to Okanogan County on or about thirty (30) days from the date the bill is received.

Section 6. RIGHT OF INSPECTION

The City shall have the right to inspect but not the duty of, at all reasonable times, all Okanogan County jails in which inmates of the City are confined in order to determine if such jail maintains standards of confinement acceptable to the City and that such inmates therein are treated equally regardless of race, religion, color, creed or national origin. Okanogan County shall be obligated to manage, maintain and operate its facilities consistent with all applicable federal, state and local laws and regulations.

Section 7. INMATE ACCOUNTS

Okanogan County shall establish and maintain an account for each inmate received from the City and shall credit to such account all money which is received and shall make disbursements, debiting such account in accurate amounts for the inmate's personal needs. Disbursements shall be made in limited amounts as are reasonably necessary for personal maintenance. Okanogan County shall be accountable to the City for such inmate funds. At either the termination of this Agreement, the inmate's death, release from incarceration or return to either the City or indefinite release to the court, the inmate's money shall be transferred to the inmate's account in care of the City. If requested by the City, Okanogan County Corrections will return said inmate reimbursement to the City in the form of a check in the name of each inmate eligible for said reimbursement.

Section 8. RESPONSIBILITY FOR INMATE'S CUSTODY

(a) It shall be the responsibility of Okanogan County to confine the inmate or inmates; to provide treatment, including the furnishing of subsistence and all necessary medical and hospital services and supplies; to provide for the inmates' physical needs; to make available to them programs and/or treatment consistent with their individual needs; to retain them in said

custody; to supervise them; to maintain proper discipline and control; to make certain that they receive no special privileges and that the sentence and orders of the committing court in the State are faithfully executed; provided that nothing herein contained shall be construed to require Okanogan County, or any of its agents, to provide treatment, facilities or programs for any inmates confined pursuant to this Agreement, which it does not provide for similar inmates not confined pursuant to this Agreement.

(b) Except as provided in Section 12, it is expressly understood that Okanogan County shall not be authorized to transfer custody of any inmate confined pursuant to this Agreement to any party other than the City, or to release any inmate from custody without written authorization from the committing court.

Section 9. MEDICAL SERVICES

(a) Inmates from the City shall receive such medical, psychiatric and dental treatment as may be necessary to safeguard their health while housed in the Okanogan County jail. Okanogan County shall provide or arrange for the providing of such medical, psychiatric, and dental services., the City shall pay directly or reimburse Okanogan County for all costs associated with the delivery of medical services, or any emergency and/or major medical service, provided to the City inmates.

(b) Okanogan County shall keep an adequate record of all such services. The City will be able to review at its request any medical or dental services of major consequence, in accordance with applicable law, including but not limited to HIPPA. Okanogan County will report to the City any medical or dental services of a major consequence as soon as is practical.

(c) Should medical or dental services require hospitalization, the City agrees to compensate Okanogan County dollar for dollar any amount expended or cost incurred in providing the same; provided that, except in emergencies, the City will be notified either by phone or fax prior to the inmate's transfer to a hospital and nothing herein shall preclude the City from retaking the ill or injured inmates.

Section 10. DISCIPLINE

Okanogan County shall have physical control over and power to execute disciplinary authority over all inmates of the City. However, nothing contained herein shall be construed to authorize or permit the imposition of a type of discipline prohibited by state or federal law or the imposition of a type of discipline that would not be imposed on an inmate who is not confined pursuant to this contract.

Section 11. RECORDS AND REPORTS

(a) Before or at the time of delivery of each inmate, the City shall forward to Okanogan County a copy of all inmate records pertaining to the inmate's present incarceration at the Kirkland City Jail. If additional information is requested regarding a particular inmate, the parties shall mutually cooperate to provide any additional information.

(b) Okanogan County shall keep all necessary and pertinent records concerning such inmates in the manner mutually agreed upon by the parties hereto. During an inmate's confinement in Okanogan County, the City shall, upon request, be entitled to receive and be furnished with copies of any report or record associated with said inmate's incarceration.

Section 12. REMOVAL FROM THE JAIL

Except for eligible inmates for correctional work details and under the direct supervision of a corrections officer, an inmate of the City legally confined in Okanogan County shall not be removed therefrom by any person without written authorization from the City or by order of any court having jurisdiction. Okanogan County agrees that no early releases or alternatives to incarceration, including furloughs, passes, home detention, or Work Release shall be granted to any inmate housed pursuant to this Agreement without written authorization by the committing court. This paragraph shall not apply to an emergency necessitating the immediate removal of the inmate for medical, dental, psychiatric treatment or other catastrophic condition presenting an eminent danger to the safety of the inmate or to the inmates or personnel of Okanogan County. In the event of any such emergency removal, Okanogan County shall inform the City of the whereabouts of the inmate or inmates so removed, at the earliest practicable time, and shall exercise all reasonable care for the safe keeping and custody of such inmate or inmates.

Section 13. ESCAPES

In the event any City inmate shall escape from Okanogan County's custody, Okanogan County will use all reasonable means to recapture the inmate. The escape shall be reported immediately to the City. Okanogan County shall have the primary responsibility for and authority to direct the pursuit and retaking of the inmate or inmates within its own territory. Any cost in connection therewith shall be chargeable to and borne by Okanogan County; however, Okanogan County shall not be required to expend unreasonable amounts to pursue and return inmates from other states or other counties.

Section 14. DEATH OF AN INMATE

(a) In the event of the death of a City inmate, the Okanogan County coroner shall be notified. The City shall receive copies of any records made at or in connection with such notification. Okanogan County will investigate any death within its facility and will allow the City to join in on the investigation.

(b) Okanogan County shall immediately notify the City of the death of a City inmate, furnish information as requested and, subject to the authority of the Okanogan County coroner, follow the instructions of the City with regard to the disposition of the body. Written notice shall be provided within three-week calendar days of receipt by the City of notice of such death. All expenses relative to any necessary preparation of the body and shipment charges shall be paid by the City. With the City's consent, Okanogan County may arrange for burial and all matters related or incidental thereto, and all such expenses shall be paid by the City. The provisions of this paragraph shall govern only the relations between or among the parties hereto and shall not affect the liability of any relative or other person for the disposition of the deceased or for any expenses connected therewith.

(c) The City shall receive a certified copy of the death certificate for any of its inmates who have died while in Okanogan County custody.

Section 15. RETAKING OF INMATES

In the event the confinement of any City inmate is terminated for any reason by either party, retaking of inmates shall be coordinated in the same manner and at the same rates as if this Agreement had not been terminated, or in a manner as agreed in writing by the parties.

Section 16. HOLD HARMLESS AND INDEMNIFICATION

(a) The City shall defend, indemnify and hold harmless Okanogan County, its officers, agents and employees from any claim, cost, judgment or damages, including attorneys' fees, arising from any City action or proceeding involving the confinement of any inmates from the City in Okanogan County: provided that this subsection shall not apply to any such claim, cost, judgment or damage that arises out of or in any way results from any allegations of any intentional, willful or negligent act or omission on the part of Okanogan County or any officer, agent or employee thereof.

(b) Okanogan County shall defend, indemnify and hold harmless the City, its officers, agents and employees from any claim, cost, judgments or damages, including attorneys' fees, including third party claims, arising out of any action or omission of Okanogan County, its officers, agents, independent contractors, or employees while City inmates are in the custody of Okanogan County, or for any wrongful release of inmates placed in their custody, or for any claim by its employees, agents or independent contractors that may be asserted against the City in performing this Agreement.

(c) An inmate shall become the responsibility of Okanogan County at the point that the inmate(s) is booked into Okanogan County jail or when the inmate(s) has been released to the care, custody and control of Okanogan County, including without limitation the point at which Okanogan County, or its agents, picks up inmates or transports inmates as in Section 5, whichever occurs first. Okanogan County shall hold the City harmless under the terms of this section for all claims arising out of the detention of the inmate(s). Accordingly, Okanogan County shall be held harmless by the City under the terms of this Agreement, for claims arising out of the arrest of the inmate(s), or arising out of any situation occurring prior to the time that Okanogan County assumes responsibility for the inmate(s).

Section 17. INSURANCE

(a) Each party agrees to provide the other with evidence of insurance coverage, in the form of a certificate of insurance from a solvent insurance provider and/or a letter confirming coverage from a solvent self insurance pool, which is sufficient to address the insurance and indemnification obligations set forth in this Agreement.

(b) Each party shall obtain and maintain coverage in minimum liability limits of one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in the aggregate for its liability exposures, including comprehensive general liability, errors and omissions, auto liability and police professional liability. The insurance policy shall provide

coverage for those events that occur during the term of the policy, despite when the claim is made. For the purpose of this paragraph, membership in a self insurance risk pool that provides coverage with limits that are no less than the policy, and limits identified above shall satisfy the requirements of this.

Section 18. RIGHT TO REFUSE INMATE(S)

(a) Okanogan County shall have the right to refuse to accept any inmate from the City when, in the opinion of Okanogan County, its inmate census is at capacity or so near capacity that there is a substantial risk that, through usual operation of the jail, the reasonable operational capacity limits of the jail might be reached or exceeded.

(b) Okanogan County shall further have the right to refuse to accept any inmate from the City who, in the judgment of Okanogan County, has a current illness or injury which may adversely affect the operations of the Okanogan County jail, has a history of serious medical problems, presents a substantial risk of escape, or presents a substantial risk of injury to other persons or property.

(c) Except as provided in Section 5 (a) and (b), Okanogan County shall further have the right to refuse to keep any inmate from the City as provided in Section 18 of subsection (b.

Section 19. MISCELLANEOUS

In providing services under this contract, Okanogan County is an independent contractor and neither it nor its officers, agents or employees are employees of the City for any purpose, including responsibility for any federal or state tax, industrial insurance or Social Security liability. Neither shall the provision of services under this contract give rise to any claim of career service or civil service rights, which may accrue, to an employee of the City under any applicable law, rule or regulation.

Section 20. FINANCING

There shall be no financing of any joint or cooperative undertaking pursuant to this Interlocal Agreement. There shall be no budget maintained for any joint or cooperative undertaking pursuant to this Agreement.

Section 21. PROPERTY

This Interlocal Agreement does not provide for the acquisition, holding or disposal of real or personal property.

Section 22. JOINT ADMINISTRATIVE BOARD

No separate legal or administrative entity is created by this Agreement. To the extent necessary, this Interlocal Agreement shall be administered by the City Manager for the City of Kirkland or his/her designee, and the Chairman of the Okanogan County Board of Commissioners, or his/her designee.

IN WITNESS WHEREOF, the above and foregoing Agreement as been executed in duplicate by the parties hereto and made effective on the day and year first above written:

DATED at Okanogan, Washington this _____ day of _____ 2006.

CITY OF KIRKLAND

By: _____
David Ramsay, City Manager

ATTEST/AUTHENTICATED:

By: _____
Kathi Anderson, City Clerk

APPROVED AS TO FORM:

_____
Robin S. Jenkinson, City Attorney

BOARD OF COUNTY COMMISSIONERS
OKANOGAN, WASHINGTON

_____
Mary Lou Peterson, Member

_____
Andrew Lampe, Member

_____
Don Hover, Chairman

ATTEST:

_____
Brenda J. Crowell, Clerk of the Board

OKANOGAN COUNTY SHERIFF

By: _____
Frank Rogers, Sheriff

APPROVED AS TO FORM:

_____
Heidi Appel, Civil Deputy

RESOLUTION R-4597

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF KIRKLAND AND CITY OF MARYSVILLE FOR JAIL SERVICES.

WHEREAS, the City of Kirkland wishes to secure the use of additional jail bed capacity; and

WHEREAS, the City of Marysville is willing to accept City of Kirkland inmates for a rate of compensation mutually agreed upon by the parties; and

WHEREAS, Chapter 39.34 RCW authorizes the parties to enter into an interlocal cooperation agreement to perform any governmental service, activity or undertaking which each contracting party is authorized by law to perform;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City of Kirkland an interlocal agreement substantially similar to that attached as Exhibit "A", which is entitled "Interlocal Agreement for Jail Services."

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2006.

Signed in authentication thereof this _____ day of _____, 2006.

_____
MAYOR

Attest:

_____
City Clerk

AFTER RECORDING RETURN TO:

City of Marysville
4822 Grove Street
Marysville, WA 98270

INTERLOCAL AGREEMENT FOR JAIL SERVICES

THIS INTERLOCAL AGREEMENT FOR JAIL SERVICES (hereinafter "Agreement") is made and entered into by and between the CITY OF MARYSVILLE (hereinafter "Marysville"), and the CITY OF KIRKLAND (hereinafter "Kirkland").

WHEREAS, Chapters 39.34 and 70.48 RCW authorize cities to enter into contracts for jail services that specify the responsibilities of each party; and

WHEREAS, Marysville has a jail facility, and Kirkland desires to enter into this agreement to utilize Marysville's jail facility and the terms and conditions of this agreement;

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein, Marysville and Kirkland mutually agree as follows:

1. **DEFINITIONS**. Unless the context clearly shows another usage is intended, the following terms shall have the following meanings in this agreement:

a. **Marysville Jail** means a place owned and operated by Marysville primarily designed, staffed and used for the housing of adults

charged with a criminal offense; for the punishment and correction of offenders after conviction of a criminal defense; or for confinement and/or holding during a criminal investigation, or a civil detention to enforce a court order. As of the date of the execution of this agreement, this jail is located at 1635 Grove, Marysville, Washington.

b. **Kirkland prisoner** means a person arrested by Kirkland Police and held and confined in the Marysville Jail (either pre- or post-trial) pursuant to a violation of a Kirkland ordinance or a violation of state law which designates the crime for which the person is held to be a misdemeanor or gross misdemeanor. The term **Kirkland prisoner** shall not include a person arrested for a felony offense by Kirkland Police, a person arrested on a warrant issued by another jurisdiction or for charges initiated by a non-Kirkland Police officer, or a person charged by the County Prosecutor with a felony or an attempt to commit a felony, even if there is a plea to or a conviction of a lesser offense. A Kirkland prisoner shall not include juveniles.

2. **JAIL AND HEALTH SERVICES**.

a. For prisoners accepted under this Agreement, Marysville shall accept Kirkland prisoners and furnish jail facilities, booking, custodial services, and personnel for the confinement of Kirkland prisoners equal to those Marysville provides for the confinement of its own prisoners. Medical costs for emergency or necessary health care for Kirkland prisoners shall be the responsibility of Kirkland. In the event an inmate is transported to the hospital, the hospital shall be directed to bill Kirkland directly. With respect to inmate prescriptions, Kirkland agrees to utilize the same pharmacies as Marysville, and Kirkland shall be billed directly for its inmates' prescriptions. Kirkland retains the option to contract with medical providers to provide medical service to Kirkland prisoners. Marysville shall notify Kirkland prior to outside medical care being provided for a Kirkland prisoner; provided, however, that when emergency medical care is required in life-threatening circumstances, the notification may occur as soon as practicable, which may be after emergency medical care has been provided.

b. While Marysville will have the primary responsibility for transporting prisoners to the Snohomish County Jail and to medical care providers during this agreement, Marysville may request Kirkland to provide the transport of prisoners when Marysville Jail and police staff are unavailable. The rate and payment amount set forth in **Schedule A** shall include the cost of transport of Kirkland prisoners.

3. **ACCEPTANCE OF PRISONERS**.

a. Kirkland understands that Marysville will accept prisoners on a nonexclusive basis under this Agreement. The acceptance of prisoners is subject to space being available. Marysville reserves the right to reserve space in the jail for its anticipated prisoner needs and may require the removal of Kirkland prisoners to accommodate Marysville prisoners. If Kirkland prisoners are to be displaced and must be removed from the jail, Marysville agrees to provide Kirkland with notice in writing that the Kirkland prisoner must be removed.

b. Prisoners may not be incarcerated in the Marysville Jail longer than thirty (30) days or contrary to any federal or state statutes or regulations or constitutional requirements for the Marysville Jail. Should an inmate serve his/her 30-day sentence in the Marysville Jail and still have additional days of jail time, Kirkland will have the option of transporting their inmates to another facility or have Marysville transport with reimbursement by Kirkland of Marysville's actual costs. Should transportation be required for Kirkland inmates to appear in other than the Marysville Municipal Courts, transportation will be the responsibility of Kirkland.

c. Kirkland agrees that if any Kirkland prisoner is deemed out of control or dangerous by the personnel at the Marysville Jail, on eight (8) hours' notice from Marysville to Kirkland, Kirkland shall make arrangements to remove and transport to another facility. Marysville may also refuse to book any persons who are suspected to be an extreme danger to themselves or to other inmates. In cases where a Kirkland prisoner has obvious medical needs, Kirkland shall transport such prisoner to a medical facility for treatment prior to being booked into Marysville's Jail. In all cases, Kirkland officers will remain at the Marysville Jail until the prisoner is accepted by the Marysville custody staff.

4. **RATE AND PAYMENT**. Kirkland shall pay Marysville at a rate per prisoner on a 24-hour basis (or portion of 24 hours) set out in **Schedule A** attached hereto. Said rates shall be adjusted from time to time by mutual agreement in advance of the renewal of any term of this agreement as provided in Section 6. Kirkland shall be responsible for all costs for the transport of its prisoners.

a. Payment shall be made promptly by Kirkland to Marysville within thirty (30) days after a monthly statement is submitted by Marysville to Kirkland.

b. Each party may examine the other's books and records to verify charges. If an examination reveals an improper charge, an adjustment shall be applied to the next month's statement, or if the agreement has terminated, by an appropriate payment from one to the other. The parties agree to meet at least once each year to examine and verify charges for the previous year. The parties shall enter into a written agreement verifying and reconciling charges for the previous year and closing the books on an annual basis.

c. Should the prisoner be sentenced to pay a portion of the daily rate, that amount once paid will be deducted from the full daily rate.

5. **DURATION**. The initial term of this agreement shall commence October 1, 2006, upon execution by both parties and shall expire on December 31, 2009. Kirkland shall have an option to renew this agreement for a three-year term commencing on January 1, 2010, and ending on December 31, 2013, and a second renewal for a four-year term, commencing on January 1, 2014 and ending on December 31, 2018. Said renewals shall be subject only to mutual agreement of the parties with the rate and payment set forth in **Schedule A**.

6. **RECORD KEEPING (BOOKING)**. Marysville agrees to maintain a system of record keeping relative to the booking and confinement of each Kirkland prisoner in such style and manner as equivalent to Marysville's records pertaining to its own prisoners. Such records shall include, but not be limited to, the following information: defendant's name, charge, booking date, release date, and manner of release (i.e., personal recognizance, bond, cash bail). Along with monthly billing statements, Marysville shall submit to Kirkland or its authorized representatives copies of said records.

7. **BOOKING PROCEDURE**. Prisoners will be booked by Marysville according to procedures and policies of Marysville by completing for each such prisoner an appropriate booking sheet with a copy to be provided to Kirkland, if requested. Personal property will be held by Marysville in the same manner as for its own prisoners.

8. **RELEASE OF KIRKLAND PRISONERS FROM MARYSVILLE JAIL**. No Kirkland prisoner confined in the Marysville jail subject to this Agreement shall be released except:

a. When requested by a member of Kirkland Police Department;

b. In compliance with orders of the court in those matters in which the courts have jurisdiction;

c. For appearance in court;

d. For interviews by Kirkland Police or attorneys;

e. If the prisoner has served his or her sentence or the charge pending against the prisoner has been dismissed; or

f. As determined by the Marysville Chief of Police or his designee as part of a plan to reduce prisoner population as a result of facility overcrowding; PROVIDED, however, Marysville and Kirkland prisoners shall be released or relocated to a mutually agreed upon facility on a "first in first out" basis.

g. Where in the discretion of the custody/patrol supervisor or jail administrator such release is warranted, Marysville shall notify Kirkland Police of such event as soon as possible.

9. **ALTERNATIVE/PARTIAL CONFINEMENT**. Kirkland prisoners shall be considered for Marysville's alternative and partial confinement programs on an equal basis with Marysville prisoners and subject to the same rules and regulations, as well as potential sanctions, for program rule violations. Kirkland shall have access to all alternative sentencing options which are available now and which may become available in the future. Prisoner participation in such programs may be limited to an operational capacity as identified by Marysville. Alternative and partial confinement programs shall include, but not be limited to, work release and work crew. It is understood by the parties that the term "alternative confinement program" shall include electronic home monitoring.

10. **ACCESS TO KIRKLAND PRISONERS**. All Kirkland Police officers, investigators, interpreters, mental health professionals, the prosecuting attorney and the prisoner's counselor or assigned counsel shall have the right to interview the prisoner inside the confines of the Marysville Jail, subject only to necessary security rules. Interview rooms will be made available to Kirkland Police and others in equal priority with those made available for Marysville prisoners.

11. **OPERATION OF JAIL**. Marysville agrees to operate the jail to current professional standards and practices in accordance with all state and federal standards, whether set by constitution, statute or regulation. Kirkland shall receive equal treatment to that supplied to Marysville's own prisoners.

12. **INDEMNIFICATION**.

a. Except as otherwise provided in 12(c), Kirkland agrees to defend, indemnify and hold harmless Marysville and its officers, agents and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever by reason of or arising out of any act or omission of Kirkland, its officers, agents and employees, or any of them in arresting, detaining, charging or transporting prisoners. In the event that any suit based upon such a claim, action, loss or damage is brought against Marysville, Kirkland shall defend the same at its sole cost and expense; provided, that Marysville retains the right to participate in said suit if any principle of governmental or public law is involved; and if a final judgment is rendered against Marysville, its officers, agents, employees or any of them or jointly against Marysville and Kirkland and their respective officers, agents and employees or any of them, Kirkland shall satisfy and discharge the same.

b. Except as otherwise provided in 12(c), Marysville shall defend, indemnify and hold harmless Kirkland and its officers, agents and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever by reason of or arising out of any act or omission of Marysville, its officers, agents and employees, or any of them in confining or releasing persons who have been presented to and accepted by the Marysville Jail by Kirkland, its officers, agents and employees while said persons are in the Jail or in the custody of Marysville outside the Jail, except to the extent said claim, action, loss or damage is the result of the negligence of Kirkland. In the event that any suit based upon such a claim, action, loss or damage is brought against Kirkland, Marysville shall defend the same at its sole cost and expense, provided that Kirkland retains the right to participate in said suit if any principle of governmental or public law is involved, and if a final judgment is rendered against Kirkland, its officers, agents and employees or any of them, or jointly against Kirkland and Marysville and their respective officers, agents and employees or any of them, Marysville shall satisfy and discharge the same.

c. In the event of the concurrent negligence of the parties, each party shall be responsible for payment of any claim or judgment in proportion to the percentage fault attributed to that party.

d. The indemnities provided for in this paragraph 12 shall apply to all legal costs and attorneys' fees incurred by the party indemnified. In any

action to enforce the indemnities provided for in this paragraph, the prevailing party shall be entitled to recovery of costs and attorneys' fees for the enforcement of these indemnities.

13. **INSURANCE**. At the date of entering into this agreement, the City of Marysville and the City of Kirkland are members of the Washington Cities Insurance Authority (WCIA). So long as each city maintains membership in the insurance pool and agrees to abide by the compact and all other applicable rules, regulations and requirements that are necessary to keep each city as a member in good standing neither City shall be required to acquire other or additional insurance. In the event either party to this agreement ceases to be a member of the insurance pool, the parties shall renegotiate the insurance provisions of this agreement with the intent being the provision of insurance which adequately covers the nature of the risks associated with each party's responsibilities under this agreement.

14. **TERMINATION OF AGREEMENT**. Kirkland shall provide written notice of its intent to terminate this agreement without cause not less than 180 days prior to expiration of this agreement. Marysville shall provide written notice of its intent to terminate this agreement not less than one hundred eighty (180) days prior to expiration of this agreement (or any renewal thereof). In the event of termination of this agreement (or any extension thereof), the parties will work cooperatively to ensure the orderly transition of defendants from Marysville jail to the new facility.

15. **DISPUTE RESOLUTION**.

a. The Police Chiefs for each city and appropriate staff shall meet quarterly to discuss any pending issues and to resolve disputes, if any.

b. It is the parties' intent to resolve any disputes relating to the interpretation or application of this agreement informally through discussions at the staff level as described in paragraph 15(a) above. In the event disputes cannot be resolved informally, resolution shall be sought by the City Administrator and City Manager. If the City Administrator and City Manager reach no resolution within thirty (30) days, the parties agree to submit the dispute to nonbinding mediation/dispute resolution.

16. **WAIVER**. No waiver of any right under this Agreement shall be effective unless made in writing by the authorized representative of the party to be bound thereby. Failure to insist upon full performance on any one or several occasions does not constitute consent to or waiver of any later nonperformance.

17. **ASSIGNMENT**. Neither this Agreement nor any interest herein or claim hereunder shall be assigned or transferred, in whole or in part, by either Marysville or Kirkland to any other person or entity without the prior written consent of the other party. In the event that such prior written consent to an assignment is granted, the assignee shall assume all duties, obligations and liabilities of its assignor stated in this Agreement.

18. **INDEPENDENT CONTRACTOR**. Each party to this agreement is an independent contractor with respect to the subject matter herein. Nothing in this agreement shall make any employee of Marysville an employee of Kirkland, and vice versa, for any purpose, including, but not limited to, for withholding of taxes, payment of benefits, worker's compensation pursuant to Title 51 RCW, or any other rights or privileges according to either city's employee by virtue of their employment. At all times pertinent hereto, employees of Marysville are acting as Marysville employees and employees of Kirkland are acting as Kirkland employees.

19. **PARTIAL INVALIDITY**. Whenever possible, each provision of this agreement shall be interpreted in such a manner as to be effective and valid under applicable law. Any provisions of this agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provisions hereof, and such other provisions shall remain in full force and effect.

20. **ASSIGNABILITY**. The rights, duties and obligations of either party to this agreement may not be assigned to any third party without the prior written consent of the other party, which consent shall not be unreasonably withheld.

21. **NO THIRD-PARTY RIGHTS**. Except as expressly provided herein, nothing in this agreement shall be construed to permit anyone other than the parties hereto and their successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third-party beneficiary or otherwise) on account of any nonperformance hereunder.

22. **ENTIRE AGREEMENT**. This agreement constitutes the entire agreement between the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or bind any of the parties hereto. Either party may request changes in the agreement. Proposed changes that are mutually agreed upon shall be incorporated by written amendment hereto.

23. **SEVERABILITY**. If any portion of this Agreement is changed per mutual agreement, or any portion is held invalid, the remainder of the Agreement shall remain in full force and effect.

24. **INTEGRATION**. This written Agreement constitutes the complete and final agreement between Marysville and Kirkland. There are no other oral or written agreements between the parties as to the subjects covered by this Agreement. No changes or additions to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and executed by both parties.

25. **NOTICES AND ADMINISTRATOR**. Unless stated otherwise herein, all notices and demands shall be in writing and sent or hand-delivered to the parties at their addresses as follows:

TO CITY OF KIRKLAND:

City Manager
City of Kirkland
City Hall
123 5th Avenue
Kirkland, WA 98294

TO CITY OF MARYSVILLE:

City Administrator
1049 State Avenue
Marysville, WA 98270

The Marysville Chief of Police shall serve as Marysville's administrator or responsible official for this Agreement. The Chief of Police for Kirkland shall serve as Kirkland's administrator or responsible official for this Agreement.

26. **GOVERNING LAW**. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington as they now read or are hereafter amended.

27. **APPROVAL AND FILING**. Each party shall approve this Agreement by resolution, ordinance or otherwise pursuant to the laws of the governing body of said party. The attested signature of the officials identified below shall constitute a presumption that such approval was properly obtained. A copy of this Agreement shall be filed with the Snohomish County Auditor's office pursuant to RCW 39.34.040.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this _____ day of _____, 2006.

CITY OF KIRKLAND	CITY OF MARYSVILLE
By_____	By_____
David Ramsay, City Manager	Dennis L. Kendall, Mayor
DATE:_____	DATE:_____
APPROVED as to form:	APPROVED as to form:
_____	_____
Robin S. Jenkinson, City Attorney	Grant K. Weed, City Attorney
DATE:_____	DATE:_____

/m/ila.jail services.Unnamed 2005 final

SCHEDULE A

Booking fee $32.OO

* Should Marysville decide to collect booking fees pursuant to RCW 70.48.390 from the funds possessed by the prisoner or defendant directly at the time of booking, the booking fee to be paid by the City of Kirkland for such prisoner or defendant shall be adjusted by a credit in favor of the City Kirkland of that sum actually paid by the prisoner or defendant.

Inmate transfer administrative fee $10.00

* In cases where Kirkland prisoners are relocated to another jail facility other than the Snohomish County jail, Kirkland agrees to reimburse Marysville for the actual rates and fees charged by such other jail facility.

Daily maintenance fee $50.00

*Kirkland agrees to contract for two (2) beds per day, 365 or 366 days per year, 60 bed days per month. Kirkland will only be billed for additional bed days after they have used 60 bed days per month at a rate of $50.00 per day per bed.

RESOLUTION R-4598

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF KIRKLAND AND CHELAN COUNTY FOR THE HOUSING OF INMATES IN THE CHELAN COUNTY REGIONAL JUSTICE CENTER.

WHEREAS, the City of Kirkland wishes to secure the use of additional jail bed capacity; and

WHEREAS, Chelan County is willing to accept City of Kirkland inmates for a rate of compensation mutually agreed upon by the parties; and

WHEREAS, Chapter 39.34 RCW authorizes the parties to enter into an interlocal cooperation agreement to perform any governmental service, activity or undertaking which each contracting party is authorized by law to perform;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City of Kirkland an interlocal agreement substantially similar to that attached as Exhibit "A", which is entitled "Interlocal Agreement Between Chelan County, Washington and the City of Kirkland, Washington, for the Housing of Inmates in the Chelan County Regional Justice Center."

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2006.

Signed in authentication thereof this _____ day of _____, 2006.

_____
MAYOR

Attest:

_____
City Clerk

INTERLOCAL AGREEMENT BETWEEN CHELAN COUNTY, WASHINGTON AND THE CITY OF KIRKLAND, WASHINGTON, FOR THE HOUSING OF INMATES IN THE CHELAN COUNTY REGIONAL JUSTICE CENTER

THIS INTERLOCAL AGREEMENT is made and entered into on this ___ day of _____, 2006 by and between the City of Kirkland, Washington, a Washington municipal corporation, hereinafter referred to as "City", and Chelan County, Washington, hereinafter referred to as "Chelan County", each party having been duly organized and now existing under the laws of the State of Washington.

WITNESSETH:

WHEREAS, The Chelan County Department of Corrections and the City Manager are authorized by law to have charge and custody of the County Jail and the City prisoners or inmates, respectively; and

WHEREAS, the City wishes to designate the Chelan County Regional Justice Center as a place of confinement for the incarceration of one or more inmates lawfully committed to its custody; and

WHEREAS, Chelan County Department of Corrections is desirous of accepting and keeping in his custody such inmate(s) in the Chelan County Regional Justice Center for a rate of compensation mutually agreed upon by the parties hereto; and

WHEREAS, RCW 39.34.080 and other Washington law, as amended, authorizes any county to contract with any other county *or city* to perform any governmental service, activity or undertaking which each contracting county is authorized by law to perform; and

WHEREAS, the governing bodies of each of the parties hereto have determined to enter into this Agreement as authorized and provided for by RCW 39.34.080 and other Washington law, as amended,

NOW, THEREFORE, in consideration of the above and foregoing recitals, the payments to be made, the mutual promises and covenants herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. <u>GOVERNING LAW</u>

The parties hereto agree that, except where expressly otherwise provided, the laws and administrative rules and regulations of the State of Washington shall govern in any matter relating to an inmate(s) confined pursuant to this Agreement.

2. DURATION

This Agreement shall enter into full force and effect from October 1, 2006 and end September 31, 2007, subject to earlier termination as provided by Section 3 herein. This agreement shall be renewed automatically for like successive periods under such terms and conditions as the parties may determine. Nothing in this Agreement shall be construed to require the City to house inmates in Chelan County continuously.

3. TERMINATION

(a) By either party. This Agreement may be terminated by written notice from either party to the other party delivered by regular mail to the contact person identified herein, provided that termination shall become effective sixty (60) working days after receipt of such notice. Within said sixty (60) days, the City agrees to remove its inmate(s) from the Chelan County Regional Justice Center.

(b) By City due to lack of funding. The obligation of the City to pay Chelan County under the provision of this Agreement beyond the current fiscal year is expressly made contingent upon the appropriation, budgeting availability of sufficient funds by the City. In the event that such funds are not budgeted, appropriated or otherwise made available for the purpose of payment under this Agreement at any time after the current fiscal year, then the City shall have the option of terminating the Agreement upon written notice to Chelan County, except that all services provided to that point shall be compensated at the agreed rate. The termination of this Agreement for this reason will not cause any penalty to be charged to the City.

(c) Termination for Breach. In the event the City breaches or fails to perform or observe any of the terms or conditions herein, and fails to cure such breach or default within seven (7) days of County's giving City written notice thereof, or, if not reasonably capable of being cured within such seven (7) days, within such other period of time as may be reasonable in the circumstances, County may terminate City's rights under this Agreement in addition to and not in limitation of any other remedy of County at law or in equity, and the failure of County to exercise such right at any time shall not waive County's right to terminate for any future breach or default.

(d) In the event of termination of this agreement for any reason, the City shall compensate Chelan County for prisoners housed by Chelan County after notice of such termination until the City retakes its inmates in the same manner and at the same rates as if this agreement had not been terminated.

4. MAILING ADDRESSES

All notices, reports, and correspondence to the respective parties of this Agreement shall be sent to the following:

Chelan County: Chelan County Regional Justice Center
401 Washington Street Level 2
Wenatchee, WA 98801

Primary Contact Person: Gale Wick, Director
Secondary Contact: Mark McCormick, Assistant Director

City of Kirkland: City Hall
123 Fifth Avenue
Kirkland, WA 98033-6189

Primary Contact Person: Bob Balkema, Sergeant
Corrections

Notices mailed shall be deemed given on the date mailed. The Parties shall notify each other in writing of any change of address.

5. DEFINITIONS

The Parties hereby agree that the following terms shall have the specified meanings unless indicated otherwise herein:

(a) Day. A twenty-four hour-long unit of time commencing at 00:00:01 a.m., and ending 23:59:59 p.m.

(b) Inmate Classifications shall be pursuant to the Chelan County Objective Jail Inmate Classification System which is modeled after the National Institute of Corrections Jail Classification System:

(i) "Minimum" classification shall apply to those inmates who present a low risk to staff and the community.

(ii) "Medium" classification shall apply to those inmates who present a moderate risk to staff and the community.

(iii) "Maximum" classification shall apply to those inmates who present a substantial risk to staff and the community.

6. COMPENSATION

(a) Rates. Chelan County agrees to accept and house City inmates for compensation per inmate at the rate of $56.00 per day (also see #12 below). This includes minimum and medium classification inmates. The parties agree that Chelan County will not charge a separate booking fee in addition to such rate. The date of booking into the CCRJC of City inmates, no matter how little time of a twenty-four hour day it constitutes, shall count as one day and shall be billed to the City as a day of custody in Chelan County. The date of release from the CCRJC and return to the City, no matter how much of a twenty-four hour day it constitutes, shall not be billed by Chelan County against the City.

(b) Billing and payment. Chelan County agrees to provide the City with an itemized bill listing all names of inmates who are housed, the case/citation number, the number of days housed (including the date and time of booking and date and time of release), and the dollar amount due for each. Chelan County agrees to provide said bill by the 10th of each month. The City agrees to make payment to Chelan County within 30 days of receipt of such bill for the amount billed for the previous calendar month.

7. RIGHT OF INSPECTION

The City shall have the right to inspect, at all reasonable times, all Chelan County facilities in which inmates of the City are confined in order to determine if such jail maintains standards of confinement acceptable to the City and that such inmates therein are treated equally regardless of race, religion, color, creed or national origin; provided, however, that Chelan County shall be obligated to manage, maintain and operate its facilities consistent with all applicable federal, state and local laws and regulations.

8. FURLOUGHS, PASSES, AND WORK RELEASE

Chelan County agrees that no early releases or alternatives to incarceration, including furloughs, passes, work crews, electronic home detention or work release shall be granted to any inmate housed pursuant to this Agreement without written authorization by the committing court.

9. INMATE ACCOUNTS

Chelan County shall establish and maintain an account for each inmate received from the City and shall credit to such account all money which is received and shall make disbursements, debiting such accounts in accurate amounts for the inmate's personal needs. Disbursements shall be made in limited amounts as are reasonably necessary for personal maintenance. The Chief of Corrections for Chelan County Regional Justice Center shall be accountable to the City for such inmate funds. At either the termination of this Agreement, the inmate's death, release from incarceration or return to either the City or indefinite release to the court, the inmate's money shall be transferred to the inmate's account in care of the City; at such time the City shall be accountable to the inmate for said fund.

10. INMATE PROPERTY

The City may transfer to Chelan County only limited amounts of personal property of City inmates recovered from or surrendered by inmates to the City upon booking. Personal property in excess of one simple "grocery bag" shall at no time be transferred to Chelan County.

11. RESPONSIBILITY FOR OFFENDER'S CUSTODY

It shall be the responsibility of Chelan County to confine the inmate or inmates; to provide treatment, including the furnishing of subsistence and all necessary medical and

hospital services and supplies; to provide for the inmates' physical needs; to make available to them programs and/or treatment consistent with the individual needs; to retain them in said custody; to supervise them; to maintain proper discipline and control; to make certain that they receive no special privileges and that the sentence and orders of the committing court in the State are faithfully executed; provided that nothing herein contained shall be construed to require Chelan County, or any of its agents, to provide service, treatment, facilities or programs for any inmates confined pursuant to this Agreement, which it does not provide for similar inmates not confined pursuant to this Agreement. Nothing herein shall be construed as to require Chelan County to provide services, treatment, facilities or programs to City inmates above, beyond or in addition to that which is required by applicable law

12. MEDICAL SERVICES

(a) Inmates deemed City inmates shall receive such medical, psychiatric and dental treatment when emergent and necessary to safeguard their health while housed in the CCRJC. Chelan County shall provide or arrange for the providing of such medical, psychiatric and dental services. Except for routine minor medical services provided in the CCRJC, the City shall pay directly or reimburse Chelan County for any and all costs associated with the delivery of any emergency and/or major medical service provided to City inmates. The City shall be responsible for any and all medical, dental and psychiatric treatment provided outside of the CCRJC and shall be billed therefore. Examples of medical services which may be provided in the CCRJC but which are not routine, and for which the City shall be billed, include, but are not necessarily limited to, HIV/AIDS treatment, chemotherapy, dialysis treatment, and hemophiliac treatment. No dental or psychiatric treatment can be provided in the CCRCJ; all dental and psychiatric treatment of City inmates shall be billed to the City.

(b) An adequate record of all such services shall be kept by Chelan County for the City's review at its request, to the extent consistent with confidentiality regulations. Any medical or dental services of major consequence shall be reported to the City as soon as time permits.

(c) Should medical, psychiatric or dental services require hospitalization, the City agrees to compensate Chelan County dollar for dollar any amount expended or cost incurred in providing the same; provided that, except in emergencies, the City will be notified by contacting Sgt. Bob Balkema at Kirkland Police Department prior to the inmate's transfer to a hospital, if and when circumstances allow, or as soon afterward as practicable.

13. DISCIPLINE

Chelan County shall have physical control over and power to execute disciplinary authority over all inmates of the City. However, nothing contained herein shall be construed to authorize or permit the imposition of a type of discipline prohibited by applicable law.

14. RECORDS AND REPORTS

(a) The City shall forward to Chelan County before or at the time of delivery of each inmate; a copy of all inmate records pertaining to the inmate's present incarceration. If

additional information is requested regarding a particular inmate, the parties shall mutually cooperate to provide any additional information in a timely manner.

(b) Chelan County shall keep all necessary and pertinent records concerning such inmates in the manner mutually agreed upon by the parties hereto. During an inmate's confinement in Chelan County, the City shall upon request be entitled to receive and be furnished with copies of any report or record associated with said inmate(s) incarceration.

15. REMOVAL FROM THE JAIL

An inmate of the City legally confined in Chelan County shall not be removed therefrom by any person without written authorization from the City or by order of any court having jurisdiction. The City hereby designates Sgt. Bob Balkema as the official authorized to direct Chelan County to remove City inmates from the CCRJC. Chelan County agrees that no early releases or alternatives to incarceration, including furloughs, passes, work release, work crews or electronic home detention shall be granted to any inmate without written authorization from the committing court. This paragraph shall not apply to an emergency necessitating the immediate removal of the inmate for medical, dental, psychiatric treatment or other catastrophic condition presenting an eminent danger to the safety of the inmate or to the inmates or personnel of Chelan County. In the event of any such emergency removal, Chelan County shall inform the City of the whereabouts of the inmate or inmates so removed, at the earliest practicable time, and shall exercise all reasonable care for the safe keeping and custody of such inmate or inmates.

16. ESCAPES

In the event any City inmate escapes from Chelan County's custody, Chelan County will use all reasonable means to recapture the inmate. The escape shall be reported immediately to the City. Chelan County shall have the primary responsibility for and authority to direct the pursuit and retaking of the inmate or inmates within its own territory. Any cost in connection therewith shall be chargeable to and borne by Chelan County; however, Chelan County shall not be required to expend unreasonable amounts to pursue and return inmates from other counties, states or other countries.

17. DEATH OF AN INMATE

(a) In the event of the death of a City inmate, the Chelan County Coroner shall be notified. The City shall receive copies of any records made at or in connection with such notification.

(b) Chelan County shall immediately notify the City of the death of a City inmate furnish information as requested and follow the instructions of the City with regard to the disposition of the body. The City hereby designates Sgt. Bob Balkema the official authorized to request information from and provide instructions to Chelan County regarding deceased inmates. The body shall not be released except on written order of said appropriate official(s) of the City. Written notice shall be provided within three weekdays of receipt by the City of notice of such death. All expenses relative to any necessary preparation of the body and shipment charges shall be paid by the City. With the City's

consent, Chelan County may arrange for burial and all matters related or incidental thereto, and all such expenses shall be paid by the City. The provisions of this paragraph shall govern only the relations between or among the parties hereto and shall not affect the liability of any relative or other person for the disposition of the deceased or for any expenses connected therewith.

(c) The City shall receive a certified copy of the death certificate for any of its inmates who have died while in Chelan County custody.

18. RETAKING OF INMATES

Upon request from Chelan County, the City shall, at its expense, retake any City inmate within thirty-six (36) hours after receipt of such request. In the event the confinement of any City inmate is terminated for any reason, the City shall, at its expense, retake such inmate at the Chelan County Regional Justice Center Facility.

19. HOLD HARMLESS AND INDEMNIFICATION

Chelan County agrees to hold harmless, indemnify and defend the City, its officers, agents and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, or damage to property, arising out of any wilfull misconduct or negligent act, error, or omission of the County, its officers, agents, or employees, in connection with the services required by this agreement, provided, however, that:

(a) The County's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or negligence of the City, it agents, officers, employees or subconsultants; and

(b) The County's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or wilfull misconduct of the County and the City or of the County and a third party other than an officer, agent or employee of the County, shall apply only to the extent of the negligence or wilfull misconduct of the County.

20. RIGHT OF REFUSAL AND TRANSPORTATION

(a) Chelan County shall have the right to refuse to accept any inmate from the City when, in the opinion of Chelan County, its inmate census is at capacity or so near capacity that there is a substantial risk that, through usual operation of the jail, the reasonable operational capacity limits of the jail might be reach or exceeded.

(b) Chelan County shall further have the right to refuse to accept any inmate from the City who, in the judgment of Chelan County, has a current illness or injury which may adversely affect the operations of the Chelan County Regional Justice Center, has a history of serious medical problems, presents a substantial risk of escape, or presents a substantial risk of injury to other persons or property, or is classified as a maximum security inmate pursuant to Chelan County's Objective Jail Classification System.

(c) The City prisoners incarcerated in Chelan County pursuant to this Agreement shall be transported to Chelan County by and at the expense of Chelan County and shall be returned, if necessary, to the City by Chelan County personnel and at the County's expense provided that notice of the necessity of transport is received by Chelan County three (3) days prior to time of expected transport. The City hereby designates Sgt. Bob Balkema as the official authorized to notify Chelan County of the dates for transport and the specific inmates to be transported.

21. INDEPENDENT CONTRACTOR

In providing services under this contract, Chelan County is an independent contractor and neither it nor its officers, agents or employees are employees of the City for any purpose, including responsibility for any federal or state tax, industrial insurance or Social Security liability. Neither shall the provision of services under this Agreement give rise to any claim of career service or civil service rights, which may accrue to an employee of the City under any applicable law, rule or regulation.

22. GENERAL PROVISIONS

(a) Severability. In the event any provisions of this Agreement shall be determined to be unenforceable or otherwise invalid for any reason, such provisions shall be enforced and valid to the extent permitted by law. All provisions of this Agreement are severable and the unenforceability or invalidity of a single provision herein shall not effect the remaining provisions.

(b) Governing Law and Venue. This Agreement shall be governed by the laws of the State of Washington and venue for any lawsuit shall be in the Chelan County Superior Court.

(c) Attorney's Fees. In the event it is necessary for either party to utilize the services of an attorney to enforce any of the terms or this Agreement, such enforcing party shall be entitled to compensation for its reasonable attorney's fees and costs. In the event of litigation regarding any terms of this Agreement, the substantially prevailing party shall be entitled, in addition to other relief, to such reasonable attorney's fees and costs as determined by the Court.

(d) Waiver of Breach. The waiver by either party of the breach of any provision of this Agreement by the other party must be in writing and shall not operate nor be construed as a waiver of any subsequent breach by such other party.

(e) Savings Clause. Nothing in this Agreement shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provisions of this Agreement and any statute, law, public regulation or ordinance, the latter shall prevail, but in such event, the provisions of this Agreement affected shall be curtailed and limited only the extent necessary to bring it within legal requirements.

(f) Filing. This Agreement shall be filed with the Chelan County Auditor's Office pursuant to RCW 39.34.040.

23. INTERPRETATION

This Agreement has been submitted to the scrutiny of all parties and their counsel, if desired, and it shall be given a fair and reasonable interpretation in accordance with its words, without consideration or weight given to its being drafted by any party or its counsel. All words used in the singular shall include the plural; the present tense shall include the future tense; and the masculine gender shall include the feminine and neuter gender.

24. ACCESS TO RECORDS CLAUSE

The parties hereby agree that authorized representatives of the parties shall access to any books, documents, paper and record of the other party which are pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. All such records and all other records pertinent to this Agreement and work undertaken pursuant to this Agreement shall be retained by the parties for a period of three years after the final expiration date of this Agreement or any amendments hereto, unless a longer period is required to resolve audit, findings or litigation. In such cases, the parties may expressly agree by an amendment or separate agreement for such longer period for record retention.

25. ENTIRE AGREEMENT

This Agreement represents the entire integrated Agreement between the City and the County and supercedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS WHEREOF, the above and foregoing Agreement has been executed in duplicate by the parties hereto and made effective on the day and year first above written:

CITY OF KIRKLAND

By: _____
DAVID RAMSAY, City Manager

Attest:

_____
KATHI ANDERSON
City Clerk

BOARD OF CHELAN COUNTY COMMISSIONERS

_____
BUELL HAWKINS, Chair

_____
KEITH GOEHNER, Commissioner

_____
RONALD WALTER, Commissioner

Attest:
JANET K. MERZ
Clerk of the Board

_____

Approved as to Form:

_____
ROBIN S. JENKINSON
Kirkland City Attorney

DATED:_____

_____
GALE WICK, Director, Chelan County Department of Corrections

Approved as to form:

_____
GARY A. RIESEN, Chelan County Prosecutor

RESOLUTION R-4599

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE CITY OF KIRKLAND AND CITY OF RENTON FOR THE HOUSING OF INMATES IN THE RENTON CITY JAIL.

WHEREAS, the City of Kirkland wishes to secure the use of additional jail bed capacity; and

WHEREAS, the City of Renton is willing to accept City of Kirkland inmates for a rate of compensation mutually agreed upon by the parties; and

WHEREAS, Chapter 39.34 RCW authorizes the parties to enter into an interlocal cooperation agreement to perform any governmental service, activity or undertaking which each contracting party is authorized by law to perform;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City of Kirkland an Interlocal Agreement substantially similar to that attached as Exhibit "A", which is entitled "Interlocal Agreement Between the City of Renton, Washington and the City of Kirkland, Washington, for the Housing of Inmates in the Renton City Jail."

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2006.

Signed in authentication thereof this _____ day of _____, 2006.

_____
MAYOR

Attest:

_____
City Clerk

INTERLOCAL AGREEMENT BETWEEN THE CITY OF RENTON, WASHINGTON AND THE CITY OF KIRKLAND, WASHINGTON, FOR THE HOUSING OF INMATES IN THE RENTON CITY JAIL

This agreement, between the City of Renton, a municipal corporation of the State of Washington (hereinafter "Renton") and the City of Kirkland, a municipal corporation of the State of Washington (hereinafter "City").

WITNESSETH:

WHEREAS, Pursuant to RCW 70.48.l90, Renton is authorized by law to have charge and custody of the Renton Jail inmates; and

WHEREAS, RCW 70.48.090, authorizes cities and counties to enter into interlocal agreements for the provision of jail services; and

WHEREAS, RCW 39.34.080 and other Washington law, authorizes any public agency to contract with any other county or city to perform any governmental service, activity or undertaking which each contracting county or city is authorized by law to perform; and

WHEREAS, the City wishes to designate the Renton Jail as a place of confinement for the incarceration of one or more inmates lawfully committed to its custody; and

WHEREAS, the governing bodies of each of the parties hereto have determined to enter into this Agreement as authorized and provided for by RCW 39.34.080, RCW 70.48.090 and other Washington law, as may be amended,

NOW, THEREFORE, in consideration of the above and foregoing recitals, the payments to be made, the mutual promises and covenants herein contained, and for other good and valuable considerations, the parties hereto agree as follows:

1. GOVERNING LAW

The parties hereto agree that, except where expressly otherwise provided, the laws and administrative rules and regulations of the State of Washington shall govern in any matter relating to inmate confinement pursuant to this Agreement.

2. DURATION

This Agreement shall be effective the date of execution and continue through December 31, 2007. This contract shall automatically renew for one-year periods unless either Renton or the City, provide notice of termination as provided in Section 3 of this Agreement.

3. TERMINATION

(a) By either party. This Agreement may be terminated by written notice from either party to the other party delivered by regular mail to the contact person identified herein, provided that termination shall become effective sixty (60) calendar days after receipt of such notice. Notice will be presumed received 3 working days after the notice is posted in the mail. Within said sixty (60) days, The City agrees to remove its inmates(s) from the Renton Jail.

(b) In the event of termination of this Agreement for any reason, the City shall compensate Renton for inmates housed by the Renton Jail after notice of termination until the City retakes its inmates in the same manner and at the same rates as if this agreement had not been terminated.

4. MAILING ADDRESSES

All notices, reports, and correspondence to the respective parties of this Agreement shall be sent to the following:

City of Renton: Chief of Police
Renton Police Department
1055 South Grady Way
Renton, Washington 98055

Contact: Penny Bartley, Jail Manager

City of Kirkland City Manager
City Hall
123 5th Avenue
Kirkland, Washington 98033

Contact: Sgt. Bob Balkema, Corrections

5. COMPENSATION

(a) Rates. Renton agrees to accept and house City inmates at the rate of $70.00 per day in 2006. The parties agree that Renton shall not charge a separate booking fee in addition to such rate.

(b) Minimum Daily Rate. The City agrees that the daily rate will be consistent with the daily rate charged by Yakima County plus any additional charges that Renton may assess based upon total correctional and insurance costs.

(c) Billing and Payment. Renton agrees to provide the City with an itemized bill listing all names of inmates who are housed, the number of days housed (including date of booking and date of releases), and the dollar amount due for each. Renton agrees to provide said bill by the 30th of each following month. The City agrees to make payment to Renton within 30 days of receipt of such bill for the amount billed for the previous calendar month.

6. SERVICES PROVIDED

(a) Renton agrees to provide jail services and alternative incarceration programs for gross misdemeanor/misdemeanor inmates for those offenses that have been committed by adults within the City.

(b) City inmates will automatically be screened for Home Detention unless expressly prohibited by the sentencing court.

(c) Inmates will be billed directly for Home Detention services and the City will not be obligated to pay Home Detention fees.

7. RESPONSIBLIILTY FOR OFFENDER'S CUSTODY

It shall be the responsibility of Renton to confine the inmate or inmates; to provide treatment, including the furnishing of subsistence and all necessary medical and hospital services and supplies; to provide for inmates' physical needs; to retain them in said custody; to supervise them; to maintain proper discipline and control; to make certain that they receive no special privileges and that the sentence and orders of the committing court in the State are faithfully executed; provided that nothing herein contained shall be construed to require Renton, or any of its agents, to provide treatment, facilities or programs for any inmates confined pursuant to this Agreement, which it does not provide for similar inmates not confined pursuant to this Agreement.

8. RIGHT TO REFUSAL

(a) Renton shall have the right to refuse to accept any inmate from the City when, in the opinion of Renton, its inmate population is at capacity or so near capacity that there is a substantial risk that, through usual operation of the jail, the reasonable operational capacity limits of the jail might be reached or exceeded.

(b) Renton shall further have the right to refuse to accept any inmate from the City who, in the judgment of Renton, has a current illness or injury which may adversely affect the operations of the Renton Jail, has history of serious medical problems, presents a substantial risk of escape, or presents a substantial risk of injury to other persons or property.

9. HOUSING DECISIONS

In order to manage its jail population, Renton reserves the right to decide where City's inmate(s) will be housed. In the event that City's inmate is transferred to any county jail facility, City's obligation to pay the daily rate to Renton will cease and the City's obligation to pay the daily rate to holding county will be governed by City's contract with that county.

10. RETAKING OF INMATES

Upon request from Renton, the City shall, at its expense, retake any City's inmate within twelve (12) hours after receipt of such request. In the event the confinement of any City inmate is terminated for any reason, the City, shall, at its expense, retake such inmate from Renton.

11. COPY OF ARREST WARRANT OR CITATION AND BAIL SCHEDULE

City law enforcement officers placing City misdemeants charged inmates in the Renton Jail shall, in every instance, first furnish an arrest warrant or citation to the Renton Jail upon booking of an inmate. City is also responsible for providing Renton Jail with a complete bail schedule no later than January 1 of each year.

12. TRANSPORTATION

(a) The City's inmates incarcerated in Renton pursuant to this Agreement shall be transported to Renton by and at the expense of the City and shall be returned, if necessary, to the City by City personnel and at the City's expense. Renton is not responsible for transportation of the City's inmates under this Agreement and shall be reimbursed by the City for any actual expense incurred in transport of an inmate if, in fact, transportation of an inmate by Renton becomes necessary.

(b) The daily rate for housing shall include an amount necessary to provide one Metro bus pass to inmates upon release to provide transportation to a location of their choice, within the county.

13. RECORDS AND REPORTS:

(a) The City shall forward to Renton before or at the time of delivery of each inmate a copy of all inmate records pertaining to the inmate's present incarceration at other correctional facilities. If additional information is requested regarding a particular inmate, the parties shall mutually cooperate to provide any additional information.

(b) Renton shall keep all necessary and pertinent records concerning such inmates incarcerated in Renton Jail. During an inmate's confinement in Renton, the City shall upon request, be entitled to receive and be furnished with copies of any report or record associated with said inmates(s) incarceration, as may be permitted by law.

14. MEDICAL TREATMENT

(a) Inmates from the City shall receive such medical, psychiatric and dental treatment as may be necessary to safeguard their health while housed in the Renton Jail. Renton shall provide or arrange for the provision of such medical, psychiatric and dental services. Except for routine minor medical services, which includes those health care services routinely delivered at normal cost by Renton staff, contracted physicians, or nursing staff and delivered within the facility, the City shall pay directly or reimburse Renton for all costs associated with the delivery of any additional medical services including prescriptions, diagnostic testing, emergency and/or major medical service provided to City inmates.

(b) An adequate record of all such services shall be kept by Renton in accordance with HIPAA regulations for the City's review at its request. Any medical or dental services of major consequence shall be reported to the City as soon as time permits.

(c) Should medical or dental services require hospitalization, the City agrees to compensate Renton dollar for dollar any amount expended or cost incurred in providing the same; provided that, except in emergencies, the City will be notified by contacting Sgt. Bob Balkema at 425.587.3465 prior to the inmate's transfer to a hospital and nothing herein shall preclude the City from retaking the ill or injured inmate. The City is responsible for providing security during any period of hospitalization.

15. DISCIPLINE

Renton shall have physical control over and power to exercise disciplinary authority over all inmates of the City. However, nothing contained herein shall be construed to authorize or permit the imposition of any type of discipline prohibited by the laws of the State of Washington.

16. REMOVAL FROM THE JAIL

An inmate from the City legally confined in Renton shall not be removed therefrom by any person except:

(a) When requested by the City Police Department.

(b) By order of the City court in those matters in which it has jurisdiction, or upon order of the King County District Court or the King County Superior Court in those matters in which said courts have jurisdiction.

(c) For appearance in the court in which a City inmate is charged.

(d) In compliance with a Writ of Habeas Corpus.

(e) For interviews by the City Attorney or member of the City Police Department.

(f) If the prisoner has served his sentence, or the charge pending against said inmate has been dismissed, or bail or other recognizance has been posted as required by the courts.

(g) For other scheduled court appearances, including those for which they are not being held.

17. ESCAPES:

In the event any City inmate shall escape from Renton's custody, Renton will use all reasonable means to recapture the inmate. The escape shall be reported immediately to the City. Renton shall have the primary responsibility for and authority to direct the pursuit and retaking of the inmate or inmates within its own jurisdiction. Any cost in connection therewith shall be chargeable to and borne by Renton, however, Renton shall not be required to expend unreasonable amounts to pursue escaped inmates beyond their jurisdiction.

18. DEATH OF AN INMATE:

(a) In the event of the death of a City inmate, Renton shall notify the King County Medial Examiner. The City shall receive copies of any records made at or in connection with such notification.

(b) Renton shall immediately notify the City of the death of a City inmate, furnish information as requested and follow the instructions of the City with regard to the disposition of the body. The body shall be released to the Medical Examiner. All expenses relative to any necessary preparation of the body and shipment charges shall be paid by the City. With the City's consent, Renton may arrange for burial and all matters related or incidental thereto, and all such expenses shall be paid by the City. The provisions of this paragraph shall govern only the relations between or among the parties hereto and shall not affect the responsibility or liability of any relative or other person for the disposition of the deceased or any expenses connected therewith.

(c) The City shall receive a certified copy of the death certificate for any of its inmates who have died while in Renton custody.

19. DISPUTE BETWEEN CITY AND RENTON

Should a dispute arise as to the levels of compensation between the City and Renton, such dispute shall be progressively resolved in the following manner:

1) Through negotiations between the City and Renton's respective contacts;
2) Through negotiations between the Mayors, or designee;
3) In the event that the City and Renton do not reach agreement within 90 days of commencing negotiations, the matter will be submitted to binding arbitration.

Renton and the City may mutually agree to extend the negotiation period. If the City and Renton cannot agree upon the selection of an impartial arbitrator within fourteen (14) days of a written request for arbitration by either of the parties, the arbitrator shall be selected as provided in the King County Local Rules for Mandatory Arbitration Rules by a judge of the Superior Court of King County. The arbitration shall be conducted pursuant to the King County Local Rules for Mandatory Arbitration Rules.

20. INSURANCE

(a) Each party agrees to provide the other with evidence of insurance coverage, in the form of a certificate of insurance from a solvent insurance provider and/or a letter confirming coverage from a solvent insurance pool, which is sufficient to address the insurance and indemnification obligation set forth in the Agreement;

(b) Each party shall obtain and maintain coverage in minimum liability limits of one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) in the aggregate for its liability exposures, including comprehensive general liability, errors and omissions, auto liability and police professional liability. The insurance policy shall provide coverage for those events that occur during the term of the policy, despite when the claim is made.

21. HOLD HARMLESS AND INDEMNIFICATION

Renton will assume the liability for the custody and care of the City's inmates once they have been delivered to Renton and the City's officer has left the "sally port." Renton shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Renton and the City, its officers, officials, employees, and volunteers, Renton's liability hereunder shall be only to the extent of Renton's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes Renton's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purpose of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

22. INDEPENDENT CONTRACTOR

In providing services under this contract, Renton is an independent contractor and neither it, nor its officers, officials, agents or employees are employees of the City for any purpose, including responsibility for any federal or state tax, industrial insurance, or Social Security liability. Neither shall the provision of services under this agreement give rise to any claim or career service or civil service rights, which may accrue to an employee of the City under any applicable law, rule or regulation.

23. PROPERTY DISTRIBUTION UPON DISSOLUTION

The terms of this Agreement do not contemplate the acquisition of any property. However, in the event any property is acquired for the performance of this contract, upon termination of this contract said property will be sold and the proceeds will remain with Renton.

24. SEVERABILITY

Should any provision of this Agreement be determined to be unenforceable by a court of law, such provision shall be severed from the remainder of the Agreement, and such action shall not affect the enforceability of the remaining provisions herein.

IN WITNESS WHEREOF, the above and forgoing Agreement has been executed in duplicate by the parties hereto and made effective on the day and year first above written:

Date: _____

_____
David Ramsay
City Manager

City of Kirkland

Attest:

_____
Kathi Anderson
City Clerk

Approved as to legal form:

_____
Robin S. Jenkinson
City Attorney
City of Kirkland

Date: _____

_____
Kathy Keolker-Wheeler
Mayor

City of Renton

Attest:

_____
Bonnie Walton
City Clerk/Treasurer

Approved as to legal form:

_____
Lawrence Warren
City Attorney
City of Renton

CITY OF KIRKLAND
City Manager's Office
123 Fifth Avenue, Kirkland, WA 98033 425.587.3001
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Robin S. Jenkinson, City Attorney

Date: September 1, 2006

Subject: Resolution Adopting Standards for Public Defense

RECOMMENDATION:

That City Council pass the attached resolution adopting standards for the delivery of public defense services.

BACKGROUND:

Under RCW 10.101.030 the City of Kirkland is required to adopt standards for the delivery of public defense services. This requirement applies whether the services are provided by contract, as they are in Kirkland, by assigned counsel, or a public defender office. The statute also provides that the standards endorsed by the Washington State Bar Association for the provision of public defense services should serve as guidelines for local legislative authorities in adopting standards. The standards are required to include the following: compensation of counsel; duties and responsibilities of counsel; case load limits and types of cases; responsibility for expert witness fees and other costs associated with representation; administrative expenses; support services; reports of attorney activity and vouchers; training; supervision; monitoring and evaluation of attorneys; substitution of attorneys or assignment of contracts; limitations on private practice of contract attorneys; qualifications of attorneys; disposition of client complaints; cause for termination of contract or removal of attorney; and nondiscrimination. Adoption of the standards endorsed by the Washington State Bar Association Board of Governors, attached to the Resolution, will satisfy these requirements.

Attachment

cc: Marilynne Beard, Assistant City Manager
Tracy Jeffries, Court Administrator

RESOLUTION R-4600

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND RELATING TO THE ADOPTION OF STANDARDS FOR PUBLIC DEFENSE SERVICES.

WHEREAS, under RCW 10.101.030 the City of Kirkland is required to adopt standards for the delivery of public defense services; and

WHEREAS, RCW 10.101.030 further provides that the standards endorsed by the Washington State Bar Association for the provision of public defense services should serves as guidelines to local legislative authorities in adopting standards.

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The Washington Defender Association Standards for Public Defense Services, endorsed by the Washington State Bar Association Board of Governors, attached as Exhibit A and incorporated by reference, are adopted as standards for the delivery of public defense services.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2006.

Signed in authentication thereof this _____ day of _____, 2006.

_____
MAYOR

Attest:

_____
City Clerk

EXHIBIT A

R-4600

WASHINGTON DEFENDER ASSOCIATION STANDARDS FOR PUBLIC DEFENSE SERVICES

Objectives and minimum requirements for providing legal representation to poor persons accused of crimes or facing Juvenile or Civil Commitment proceedings in Washington State

October 1989

ENDORSEMENT
These Standards were endorsed by the Washington State Bar Association Board of Governors in January, 1990.

ACKNOWLEDGEMENTS
Publication of these Standards was made possible in part by funding from the Washington Indigent Defense Task Force.

Index

- INTRODUCTION
- STANDARD ONE: Compensation
- STANDARD TWO: Duties and Responsibilities of Counsel
- STANDARD THREE: Caseload Limits and Types of Cases
- STANDARD FOUR: Responsibility for Expert Witness Fees
- STANDARD FIVE: Administrative Expenses
- STANDARD SIX: Investigators
- STANDARD SEVEN: Support Services
- STANDARD EIGHT: Reports of Attorney Activity and Vouchers
- STANDARD NINE: Training
- STANDARD TEN: Supervision
- STANDARD ELEVEN: Monitoring and Evaluation of Attorneys
- STANDARD TWELVE: Substitution of Attorneys or Assignment of Contracts
- STANDARD THIRTEEN: Limitation on Private Practice of Contract Attorneys
- STANDARD FOURTEEN: Qualifications of Attorneys
- STANDARD FIFTEEN: Disposition of Client Complaints
- STANDARD SIXTEEN: Cause for Termination or Removal of Attorney
- STANDARD SEVENTEEN: Nondiscrimination
- STANDARD EIGHTEEN: Guidelines for Awarding Defense Contracts

INTRODUCTION

These Standards represent the efforts of the Washington Defender Association to address the problems of

providing legal representation to poor persons accused of crimes, or facing Juvenile or Civil Commitment proceedings. Drawing on the practical experience of defense attorneys around the state and on existing national standards which set forth the objectives and minimum requirements for public defender and assigned counsel programs, the Standards are intended to help government establish public defense systems which operate efficiently and meet the constitutional requirements for effective assistance of counsel.

Public agencies and officials responsible for administering public defense programs should view these standards as a practical document, one which provides a means of evaluating existing programs and of setting priorities and goals to improve future ones. The Standards are not based on a conception of the ideal public defense system; rather, they represent the minimum acceptable qualities of a workable and efficient public defense program.

A recent survey by the Washington Defender Association found that there are many different approaches to providing public defense services in Washington and that there have been substantial questions about the adequacy of service in some counties. These standards are designed to ensure that all accused persons receive effective assistance of counsel, regardless of the place or system under which they may be tried. Effective assistance of counsel is a constitutional right, not a luxury to be provided only to a few.

These Standards originally were developed in 1984. In 1988, the State Indigent Defense Task Force was formed and prepared a report to the Legislature with the assistance of the Spangenberg Group. In 1989, the Washington Legislature passed a law requiring local governments to adopt standards for the delivery of public defense services, covering 16 areas. The law states: 'The standards endorsed by the Washington State Bar Association for the provision of public defense services may serve as guidelines to contracting authorities." **RCW 10.101.030.**

The Washington Defender Association prepared these amended standards and the Washington State Bar Association endorsed them in January, 1990. The Standards draw on several national sources, most notably the American Bar Association Standards for Criminal Justice and the National Legal Aid and Defender Association Standards for Defense Services. The full text of relevant standards is provided in the appendix. All commentary on the standards was prepared by the Washington Defender Association, a non-profit organization representing more than 400 public defenders and assigned counsel in 30 Washington counties.

The Washington Defender Association is indebted to its past Executive Director, Lynn Thompson, who drafted the amended standards and helped to present them to the State Bar before her resignation in 1989.

Robert C. Boruchowitz
President of the Board
Washington Defender Association

Christie Hedman
Executive Director
Washington Defender Association

Index

STANDARDS FOR PUBLIC DEFENSE SERVICES

STANDARD ONE: Compensation

Standard:

Public defense attorneys and staff should be compensated at a rate commensurate with their training and experience. To attract and retain qualified personnel, compensation and benefit levels should be comparable to those of attorneys and staff in prosecutorial offices in the area.

For assigned counsel, reasonable compensation should be provided. Compensation should reflect the time and

labor required to be spent by the attorney and the degree of professional experience demanded by the case. Assigned counsel should be compensated for out-of-pocket expenses.

Contracts should provide for extraordinary compensation over and above the normal contract terms for cases which require an extraordinary amount of time and preparation, including, but not limited to, death penalty cases. Services which require extraordinary fees should be defined in the contract.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, 5-2.4 and 5-3.1.

American Bar Association, **Guidelines for the Appointment and Performance in Death Penalty Cases**, 1988, Standard 10-1.

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, Standards 13.7 and 13.11.

National Legal Aid and Defender Association, **Standards for Defender Services**, Standard IV-4.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts**, 1984, Standard III-10 and III-11. [1]

Seattle-King County Bar Association Indigent Defense Services Task Force, **Guidelines for Accreditation of Defender Agencies**, 1982, Guideline No. 6.

Commentary: [2]

The report on public defense commissioned by the 1988 legislature found that salaries for public defenders in Washington are lower than in other states. Further, the report said, there are no state standards which assume parity in salary and job classification between public defenders and prosecuting attorneys. (The Spangenberg Group, **Indigent Defense Services in Washington**, 1989, p. ii.)

The ability to attract and retain qualified lawyers in criminal defense programs is extremely difficult when the compensation is inadequate. Many of the most skilled attorneys quickly move on, creating defender offices where inexperienced attorneys handle the bulk of the cases. Lawyers who know they will not receive compensation which reflects the time and effort they have put into a case may fail to do all within their power to vigorously defend their client. The resulting cynicism of clients toward their attorneys or of the attorneys themselves toward the system can only undermine the public's confidence in the judicial system and the integrity of the fact-finding process. No other members of the criminal justice system are asked to work for patently inadequate wages, and yet public defense attorneys routinely represent clients at a fraction of the rate which private attorneys would receive.

The American Bar Association's **Standards for Criminal Justice** (5-3.1) suggests that defender salaries be "comparable to that provided their counterparts in the prosecutorial offices" so that the quality of the defense bar remains high and so that public defenders might have the same career opportunities as prosecutors.

Parity between public defense attorneys and staff and those in prosecutorial offices should not be limited to salary. Rather, the total compensation package, including medical, sick leave, insurance, and retirement benefits, should be equal. An attorney's "counterpart" in a prosecutor's office should be determined based upon professional experience and the type of case each lawyer is qualified to handle.

The 1988 report on public defense also found that the fees paid to assigned counsel in Washington were frequently inadequate. Judges cited the difficulty in securing competent counsel, particularly in serious felony cases, because of the low level of compensation. Experienced attorneys were withdrawing their names from assigned counsel lists rather than accept payment which in no way reflected the time and professional experience demanded by the appointment. In King County, for example, assigned counsel receive $22 per hour, a rate unchanged in a decade.

One measure of whether compensation for defense attorneys is adequate is to compare the fees paid to assigned counsel, contract, or public defense attorneys to those paid to privately retained counsel in the same jurisdiction for performing the same type of work. The NLADA Guidelines note that compensation should reflect "the customary compensation in the community for similar services rendered by privately retained counsel to a non-indigent client or by government or other publicly-paid attorneys to a public client...."

Extraordinary compensation should be provided for those cases which demand exceptional amounts of time and labor, as well as an unusually high degree of professional ability. Counsel in death penalty cases have duties and functions significantly different than those of counsel in ordinary criminal cases. Death penalty cases now involve two "trials", the trial phase and the penalty proceeding at which the decision to take or spare the client's life is made. The length, complexity, and extreme pressure of death penalty representation must be reflected in the compensation.

Extraordinary compensation is also warranted in those cases in which unusually large number of counts have been filed against one defendant, or when the government has had several years to develop its case or has retained an unusually high number of specified experts. Each of these situations is likely to produce exceptional amounts of evidence, much of it highly specialized, and will demand extraordinary amounts of attorney time.

These exceptional cases can seldom be predicted either by the attorney or the contracting authority and there is no reason why the financial burden of such cases should fall upon the defense attorney. Contracts which do not make some provision for such cases will discourage qualified attorneys from participating or will invite contract padding to protect the attorney against the unforeseen financially disastrous case.

● Index

STANDARD TWO: Duties and Responsibilities of Counsel

Standard:

The legal representation plan shall require that defense services be provided to all clients in a professional, skilled manner consistent with minimum standards set forth by the American Bar Association, applicable state bar association standards, the Rules of Professional Conduct, case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases. Counsel's primary and most fundamental responsibility is to promote and protect the best interests of the client.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, 4-1.1, 5-5.1 and 5-1.1.

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, Standards 13.1.

National Legal Aid and Defender Association, **Standards for Defender Services**, Standard II-2.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Defense Contracts**, 1984, Guideline III-18.

Commentary:

Just as in other professions, law has rules of professional conduct and ethical canons governing the actions of its members. These rules state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. These rules include truthfulness in representation of matters before the court, the disclosure to clients of potential conflicts of interest, the confidentiality of all client communications, and many other matters.

In addition to these professional standards, the federal and state courts, in their rulings on criminal cases, have defined the constitutional obligation of the states to provide counsel to the accused and the level of legal

assistance which that obligation entails. The Arizona Supreme Court in 1984 found an entire county public defense system unconstitutional because high attorney caseloads made effective assistance of counsel impossible. *Arizona v. Smith*, 681 P.2d 1374 (1984). The U.S. Supreme Court in *Ake v. Oklahoma*, 470 U.S. 68, 84 L.Ed.2d 53, 105 S.Ct. 1087 (1985), ruled that the state's failure to provide psychiatric experts to the defense deprived the defendant of a fair trial.

Convictions may be reversed, or an entire program be held unconstitutional if the county or city, through its contracts with defense attorneys, does not ensure that legal and ethical obligations can be met.

The role of the criminal defense attorney set forth in the **ABA Standards** is that of a "zealous advocate" whose "basic duty" is to "serve as the accused's counselor and advocate with courage, devotion, and to the utmost of his or her learning and ability and according to law." It is inappropriate for the courts or contracting authorities to limit defense counsel's zeal in the pursuit of the client's interests unless the advocacy violates specific standards of professional conduct. The commentary on the standard notes that the adversary system "requires defense counsel's presence and zealous advocacy just as it requires the presence and zealous advocacy of the prosecutor and the constant neutrality of the judge."

Among the duties required of defense counsel in each case are investigation of the facts, research of relevant law, communication with the client, review of possible motions, review of plea alternatives, review of dispositional alternatives, trial preparation, and vigorous representation in court.

● Index

STANDARD THREE: Caseload Limits and Types of Cases

Standard:

The contract or other employment agreement shall specify the types of cases for which representation shall be provided and the maximum number of cases which each attorney shall be expected to handle. The caseload of public defense attorneys should allow each lawyer to give each client the time and effort necessary to ensure effective representation. Neither defender organizations, county offices, contract attorneys nor assigned counsel should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation.

The caseload of a full-time public defense attorney or assigned counsel shall not exceed the following:

150 Felonies per attorney per year; or
300 Misdemeanors per attorney per year; or
250 Juvenile Offender cases per attorney per year; or
60 Juvenile dependency clients per attorney per year; or[3]
250 Civil Commitment cases per attorney per year; or
25 Appeals to appellate court hearing a case on the record and briefs per attorney per year.

A case is defined by the Office of the Administrator for the Courts as: A filing of a document with the court naming a person as defendant or respondent.

Caseload limits should be determined by the number and type of cases being accepted and on the local prosecutor's charging and plea bargaining practices. In jurisdictions where assigned counsel or contract attorneys also maintain private law practices, the contracting agency should ensure that attorneys not accept more cases than they can reasonably discharge. In these situations, the caseload ceiling should be based on the percentage of time the lawyer devotes to public defense.

Related and Source Standards:

American Bar Association, **Standards for Criminal Justice**, 4-1.2, 5-4.3.

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, Standard

13.12.

American Bar Association Disciplinary Rule 6-101.

National Legal Aid and Defender Association, **Standards for Defender Services**, Standard IV-I.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Defense Contracts**, 1984, Standard III-6 and III-12.

Seattle-King County Bar Association Indigent Defense Services Task Force, **Guidelines for Accreditation of Defender Agencies**, 1982, Guideline Number 1.

Commentary:

Five years after these standards were first adopted, many public defender and contract defense attorneys are still handling caseloads substantially above the levels recommended by the Washington Defender Association and endorsed by the state bar. Many cities and some counties are still using fixed-price contracts which contain no caseload limitations at all.

Caseload levels are the single biggest predictor of the quality of public defense representation. Not even the most able and industrious lawyers can provide effective representation when their workloads are unmanageable. A warm body with a law degree, able to affix his or her name to a plea agreement, is not an acceptable substitute for the effective advocate envisioned when the Supreme Court extended the right to counsel to all persons facing incarceration.

The American Bar Association's **Standards for Criminal Justice** call heavy caseloads "one of the most significant impediments to the furnishing of quality defense services for the poor" and note that lawyers with too many clients may not be able to carry out the basic responsibilities outlined in the Code of Professional Responsibility. The Code admonishes an attorney not to accept "employment...when he is unable to render competent service" or to handle cases "without preparation adequate in the circumstances." The "Defense Function" section of the American Bar Association's **Standards** also urges attorneys not to accept more cases than they can reasonably discharge.

In addition to the risks of an innocent person being unjustly convicted and of accused persons receiving unequal treatment because they are too poor to retain private counsel, these high caseloads have serious consequences to the integrity and efficiency of the judicial system. High caseloads result in correspondingly high turnover among public defenders; inexperienced defenders are less efficient, less able to move cases quickly through the system; and the number of cases which must be retried because of improper defense may increase. Finally, lawyers become vulnerable to malpractice lawsuits when they are unable to meet basic professional responsibilities. Legal research, investigation and the timely presentation of motions become luxuries to the attorney burdened with too many cases.

Other factors, often beyond defense counsel's control, affect the number of cases he or she may effectively dispatch. A prosecutor's refusal to accept plea negotiations, the seriousness and complexity of the types of cases being handled, and, for assigned counsel and some contract attorneys, the number of privately retained cases being accepted, will reduce the total number of cases counsel can discharge.

If the caseload levels being contracted for approach these recommended levels, the attorney undertaking the work should not have a significant number of privately retained cases. The American Bar Association **Standards for Providing Defense Services** state that full-time defense attorneys "should be prohibited from engaging in the private practice of law." The commentary on this standard notes that when part-time defenders are used, clear standards for performance of duties, particularly as to limits on private practice, should be adopted.

The caseload levels recommended here follow closely those caseload guidelines specified by two national studies, the National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, and the National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts** (1984). They are also drawn from the standards approved in 1982 by the King County

Bar Association following a Task Force study which found that in the absence of guidelines, public defender offices were being made to accept so many cases that clients' constitutional rights were seriously threatened.

The National Advisory Commission standard recommends 150 felonies per attorney per year and 400 misdemeanors, figures set in 1973, before the full impact of the U.S. Supreme Court's *Argersinger* decision was felt. Recent changes in Washington Law have resulted in substantially more misdemeanor jury trials with a corresponding increase in attorney time per case. For these reasons, we recommend 300 misdemeanors per attorney per year.

One measure of the reasonableness of these figures is to assess the amount of time an attorney would spend on a case under these standards. An accepted national standard for attorneys is to work 1650 billable hours per year. Even under the caseload standards recommended here, an attorney could only spend an average of 11 hours per case if he or she were to complete 150 felonies during a year. One serious case, requiring 40 to 50 hours to bring to trial, limits the time an attorney can devote to his or her remaining cases.

The situation is similar for misdemeanor attorneys. If the recommended standard of 300 cases per year were adopted, an attorney would be able to give roughly 5 hours to each case. The expanded right to jury trial for misdemeanor charges requires a substantial increase in preparation and litigation time. Currently in Washington State, most full-time public defense attorneys are handling significantly more than these recommended levels and work upwards of 2000 hours each year.

In setting these recommended caseload levels, we assume the attorneys will have adequate investigative and clerical support. Clearly, where these essential services are not available, maximum caseload levels should be set at lower levels. The limits may also have to be adjusted downward in rural areas where attorneys must travel great distances between courts.

● Index

STANDARD FOUR: Responsibility for Expert Witnesses

Standard:

Reasonable compensation for expert witnesses necessary to preparation and presentation of the defense case shall be provided. Expert witness fees should be maintained and allocated from funds separate from those provided for defender services. Requests for expert witness fees under Court Rule 3.1 f should be made through an ex parte motion. The defense should be free to retain the expert of its choosing and in no cases should be forced to select experts from a list pre-approved by either the court or the prosecution.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, 5-1.4.

National Legal Aid and Defender Association, **Standards for Defender Services**, Standard IV 2d, 3.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Defense Contracts**, 1983, Standard III-8d.

National Advisory Commission, **Task Force on Courts**, 1973, Standard 13.14.

Commentary:

The availability to the defense of funds for expert witnesses varies greatly from county to county and is often significantly less than the funds available to the prosecution.

Many attorneys contracting for public defense services must pay for expert witnesses crucial to the defense case out of the money they receive for their legal representation. This creates a conflict of interest for attorneys who

must choose between their own income and retaining an expert for the defendant.

The ABA **Standards for Providing Defense Services** state that the legal representation plan "should provide for investigatory, expert, and other services necessary to quality legal representation." These services are required not only for an effective defense at trial, but also for "effective participation at every stage of the criminal proceeding." The NLADA **Guidelines** warn against contracts creating conflicts of interest between the defense attorney and the client. "Expenses for investigations, expert witnesses, transcripts and other necessary services for the defense should not substantially decrease the contractor's income or compensation."

In many jurisdictions, defense attorneys must seek court approval for defense experts. This is often done in open court, where the prosecutor is allowed to comment on the appropriateness of the request. The NLADA **Standards for Defense Services** require that funds be provided to defender programs for the "confidential employment of experts and specialists" which may be of assistance to the defense.

In some jurisdictions in Washington, judges have budget line items for defense services which are inadequate to meet the reasonable requests of defense counsel. The approval of expert funds in one case should not deprive another defendant of his or her ability to mount an effective defense. In other jurisdictions only those experts which have been approved by the prosecuting attorney are available to the defense. This severely compromises the defense's ability to present independent evidence and to seek out those experts who will most effectively represent the client's best interests.

● Index

STANDARD FIVE: Administrative Expenses

Standard:

Contracts for public defense services should include the administrative costs associated with providing legal representation. These costs may include travel, telephones, law library, financial accounting, case management systems, the reporting requirements imposed by these standards, and other costs necessarily incurred in the day to day management of the contract.

Related Standards:

American Bar Association, **Standards for Criminal Justice, Providing Defense Services**.

National Study Commission on Defense Services, **Guidelines for Legal Defense Systems in the United States**, (1976), Guideline 3.4.

National Legal Aid and Defender Association, **Standards for Defender Services**, 1976 I-3, IV 2a-e, IV 5.

Commentary:

The amount of compensation paid to public defense or contract attorneys must not only cover the amount of time the attorney devotes to a case, but also those expenses necessary to support the attorney's public defense practice. The prosecutors and courts, as branches of local government, have operating budgets which permit the efficient organization and delivery of their legal services. The defense should have facilities, equipment and resources no less than those provided to prosecuting attorneys and judges.

Including these funds in the contracting agreement helps to assure that administrative and business management functions will be performed effectively and on a timely basis. Conversely, the failure to provide these essential funds could lead to poor administrative practices and erratic case management.

The NLADA Standards note that the state "has the responsibility to insure adequate funding of defender offices and appointed counsel programs."

Index

STANDARD SIX: Investigators

Standard:

Public defender offices, assigned counsel, and private law firms holding contracts to provide representation for poor people accused of crimes should employ investigators with criminal investigation training and experience. A minimum of one investigator should be employed for every four attorneys.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, 4-4.1 and 5-1.14.

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, Standard 13.14.

National Legal Aid and Defender Association, **Standards for Defender Services**, Standard IV-3.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Defense Contracts**, 1984, Standard III-9.

Seattle-King County Bar Association Indigent Defense Services Task Force, **Guidelines for Accreditation of Defender Agencies**, 1982, Guideline Number 8.

Commentary:

Criminal investigation is an essential element of criminal defense; indeed, the failure to provide adequate pre-trial investigation may be grounds for a finding of ineffective assistance of counsel. All too often it is neglected because attorneys lack the time to conduct their own investigation of the facts of a case or because their office does not employ an investigator.

If the defense attorney must personally conduct factual investigations, the financial costs to the system are likely to be greater. When an attorney personally interviews witnesses, the attorney may be placed in the untenable position of withdrawing from the case in order to take the stand to challenge the witnesses' credibility if their testimony conflicts with statements previously made.

When the defense conducts an independent investigation of the facts, the results can be dramatic -- missing witnesses may be brought to the attention of the police, new evidence may be uncovered, and an innocent person may be cleared of charges. In nationally publicized cases, citizens have been wrongfully convicted and imprisoned because the defense did not adequately investigate the circumstances surrounding the case against the client.

Effective pre-trial investigation may benefit the criminal justice system by eliciting information which makes a costly courtroom confrontation unnecessary.

Index

STANDARD SEVEN: Support Services

Standard:

The legal representation plan should provide for adequate numbers of investigators, secretaries, paralegals, social work staff, mental health professionals and other support services. These professionals are essential to

ensure the effective performance of defense counsel during trial preparation, in the preparation of dispositional plans, and at sentencing.

1. Secretaries - At least one full-time secretary should be employed for every four staff attorneys. Fewer secretaries may be necessary, however, if the agency has access to word processing or overload secretaries, or other additional staff performing clerical work.
2. Social Work Staff - Social work staff should be available to assist in developing release, treatment, and dispositional alternatives.
3. Mental Health Professionals - Each agency should have access to mental health professionals to perform mental health evaluations.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, 4-8.1 and 5-1.4.

National Advisory Committee on Criminal Justice Standards and Goals, **Task Force on Courts**, Standard 13.14.

National Legal Aid and Defender Association, **Standards for Defender Services**, Standard IV-3.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Defense Contracts**, 1984, Standard III-8.

Seattle-King County Bar Association Indigent Defense Services Task Force, **Guidelines for Accreditation of Defender Agencies**, 1982, Guideline Number 7.

Commentary:

An effective defense cannot be undertaken without adequate support staff services. These services include not only those needed for trial preparation, but also those required for effective defense participation in every phase of the defense. Secretaries with legal training are clearly essential to the efficient preparation of pre-trial motions and affidavits. Social service personnel are necessary to defense counsel at the sentencing stage when the judge may consider a range of sentencing alternatives. The pre-sentence reports prepared by defense social workers may be decisive in the court's selection of the term of incarceration or use of alternatives to incarceration. Mental health professionals, in their evaluation and treatment recommendations for clients, also play an important part in the trial preparation and sentencing phase of a case. The defense at trial may be based on the accused's mental state at the time of an incident; the court's disposition at sentencing may turn on mitigating factors presented by a psychological evaluation.

● Index

STANDARD EIGHT: Reports of Attorney Activity and Vouchers

Standard:

The legal representation plan shall require that the defense attorney or office maintain a case-reporting and management information system which includes number and type of cases, attorney hours and disposition. This information shall be provided regularly to the Contracting Authority and shall also be made available to the Office of the Administrator of the Courts. Any such system shall be maintained independently from client files so as to disclose no privileged information.

A standardized voucher form shall be used by assigned counsel attorneys seeking payment upon completion of a case. For attorneys under contract, payment should be made monthly, or at times agreed to by the parties, without regard to the number of cases closed in the period.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, 5-3.3. (b) xii, The Report to the Criminal Justice Section Council from the Criminal Justice Standards Committee, 1989.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Defense Contracts**, 1984 Standard III-22.

National Study Commission on Defense Services, **Guidelines for Legal Defense Systems in the United States**, 1976, Guideline 3.4, 4.1, and 5.2.

Commentary:

The ABA Standards for Providing Defense Services call for all contracts to provide for an appropriate system of case management and reporting. Unfortunately, the 1989 report to the legislature on defense services in Washington found that in many jurisdictions, there is no management information system in place for collecting and maintaining reliable data on costs, caseloads, and attorney activity.

Contracting authorities have an obligation to the public to show how its funds are being spent. Without standardized reports of attorney activities and uniform requests for payment, government has no way to review defense expenditures or to anticipate future costs. The attorneys under contract cannot be held accountable for their work if the oversight agency has no record of what has been done.

The maintenance of records of hours spent on a case, the costs incurred, and the amounts billed are standard business practices in the legal field. Defense attorneys receiving public funds likewise have a responsibility to maintain professional records and to be accountable to the funding agency.

Some attorneys may protest that keeping accurate time records will only take time away from clients; but these records can be of great value to the lawyer who wants to document caseload levels or present an argument for adequate funds. Defense attorneys may also be better able to anticipate workloads if they are able to calculate the average amount of time spent on a particular class of case. Case management and accounting functions are a part of any well-run legal practice.

The specification of regular payments to attorneys under contract is meant to assure them a steady income flow so they can meet regular and necessary business expenses. It is not intended to prohibit a payment system or schedule which reasonably assures the contracting authority that the conditions of the contract, which may include acceptance of a specific number of cases in a given time period, are being met.

● Index

STANDARD NINE: Training

Standard:

Attorneys providing public defense services should participate in regular training programs on criminal defense law, including a minimum of seven hours of continuing legal education annually in areas relating to their public defense practice.

In offices of more than seven attorneys, an orientation and training program for new attorneys and legal interns should be held to inform them of office procedure and policy. All attorneys should be required to attend regular in-house training programs on developments in criminal law, criminal procedure and the forensic sciences. Attorneys in civil commitment and dependency practices should attend training programs in these areas. Offices should also develop manuals to inform new attorneys of the rules and procedures of the courts within their jurisdiction.

Every attorney providing counsel to indigent accused should have the opportunity to attend courses that foster trial advocacy skills and to review professional publications and tapes.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, 5-1.4.

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, Standard 13.16.

National Legal Aid and Defender Association, **Standards for Defender Services**, Standard V.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts**, 1984, Standard III-17.

Seattle-King County Bar Association Indigent Defense Services Task Force, **Guidelines for Accreditation of Defender Agencies**, 1982, Guideline Number 3.

National Legal Aid and Defender Association, **Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases**, 1988, Standard 9.1.

Commentary:

The American Bar Association **Standards for Criminal Justice** (5-1.4) describes training programs as "crucial to the delivery of effective defense services." Criminal law is a complex and difficult legal area, and trial practice skills must be carefully developed. Moreover, the consequences of mistakes in defense representation may be substantial, including wrongful conviction and loss of liberty.

Former Chief Justice Warren Burger has estimated that fifty percent of trial lawyers in this country are so lacking in training that their incompetence contributes to the backlog of cases pending in our courts. Lawyers who are poorly prepared in trial techniques hamper the judicial system. Lack of precision in written documents, fumbling oral presentations, the inability to weed out useless motions and the lack of skill in selecting and focusing on key issues all contribute to costly bottlenecks in what should be an orderly and speedy process.

To meet the need for training, programs should be established for both beginning and advanced practitioners, and should emphasize substantive legal subjects as well as effective trial techniques. The National Legal Aid and Defender Association **Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts** (III-15) urge that the training provided to defenders be no less than is provided to prosecutors and judges in their jurisdiction, and should include continuing legal education programs and the opportunity to review professional publications and tapes.

● Index

STANDARD TEN: Supervision

Standard:

Each agency or firm providing public defense services should provide one full-time supervisor for every ten staff lawyers or one half-time supervisor for every five lawyers. Supervisors should be chosen from among those lawyers in the office qualified under these guidelines to try Class A felonies. Supervisors should serve on a rotating basis, and except when supervising fewer than ten lawyers, should not carry caseloads.

Related Standards:

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, Standard 13.9.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Legal Defense Contract**, 1984, Standard III-16.

Seattle-King County Bar Association Indigent Defense Services Task Force, **Guidelines for Accreditation of Defender Agencies**, 1982, Guideline Number 4.

Commentary:

The most important function of supervisors is ensuring effective representation. Defender offices are not simply confederations of individual attorneys, but organizations whose effectiveness is measured, in part, by their ability to introduce young attorneys to the practice of criminal law. Many new defenders lack experience and need close supervision as they gain familiarity with specific courts and procedures and work toward developing effective trial advocacy skills. The mere granting of a law degree and admission to the bar do not automatically qualify a lawyer to represent a client in criminal matters.

Supervision is also essential to evaluate the performance of staff attorneys in order to make recommendations regarding promotions or termination and to help coordinate services and ensure that office policies are understood and followed.

● Index

STANDARD ELEVEN: MOnitoring and Evaluation of Attorneys

Standard:

The plan for public defense services should establish a procedure for systematic monitoring and evaluation of attorney performance based upon publicized criteria. Supervision and evaluation efforts should include review of time and caseload records, review and inspection of transcripts, in-court observations, and periodic conferences.

Performance evaluations made by a supervising attorney should be supplemented by comments from judges, prosecutors, other defense lawyers and clients. Attorneys should be evaluated on their skill and effectiveness as criminal lawyers or as dependency or civil commitment advocates.

Related Standards:

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Defense Contracts**, 1984, Standard III-16.

National Study Commission on Defense Services, **Guidelines for Legal Defense Systems in the United States**, 1976, Recommendations 5.4 and 5.5.

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, Standard 13.9.

Commentary:

Regular performance evaluations are important to assure the highest quality of public defender services and to give timely notice to attorneys whose performance can be improved.

Public defense attorneys, by the very necessity of protecting those charged with crime, may be unpopular in the eyes of the police or courts in the exact proportion to their diligence in protecting clients' rights. For this reason, the evaluation of attorneys is most appropriately made by a supervising attorney with full understanding of the constitutional role played by defense counsel in the justice system. Comments from a range of court personnel and professional colleagues who have seen the attorney in action should supplement regular review.

Many contracting authorities do not now provide for monitoring of the fulfillment of contractual responsibilities. In some jurisdictions, payment is made to public defense attorneys without even requiring attorneys to report the number of cases accepted or closed during that period. Contracting authorities should become familiar with the elements which constitute effective defense representation and should systematically review programs to

determine whether public funds are being usefully spent.

● Index

STANDARD TWELVE: Substitution of Attorneys or Assignment of Contract

Standard:

The attorney engaged by local government to provide public defense services should not sub-contract with another firm or attorney to provide representation and should remain directly involved in the provision of representation. If the contract is with a firm or office, the contracting authority should request the names and experience levels of those attorneys who will actually be providing the services, to ensure they meet minimum qualifications. The employment agreement shall address the procedures for continuing representation of clients upon the conclusion of the agreement.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, Standard 5-5.2.

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, Standard 13.1.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Defense Contracts**, 1984, Guideline III-23.

Commentary:

Problems have arisen in some Washington counties when local government contracts for defense services with one attorney only to have that attorney sub-contract part of the work to a second attorney whose credentials were not subject to public review.

In responding to government requests for proposals, prospective contract attorneys should include the names, education and criminal defense experience of all lawyers who will represent indigent clients under the contract. Firms should also meet the supervision and training provisions of these standards for all attorneys they employ.

When the defense contract ends and a new defense provider is chosen, provision must be made for those cases opened but not yet completed by the former contractor.

Both the ABA and NLADA standards emphasize the importance of continuous representation of clients. The ABA **Standards** state that "counsel initially provided should continue to represent the defendant throughout the trial court proceedings." The NLADA **Guidelines** note that local governments would be poorly served by a system in which a contractor could simply walk away from uncompleted cases at the end of the contract. The NLADA recommends that cases open at the termination of a contract be handled to completion by the attorney initially assigned. In turn, the contract needs to address the terms by which the attorney will be paid for these cases.

It may be more practical for attorneys under contract to seek court approval to transfer to the new contractor those cases for which no significant work has yet been undertaken. In these situations, the attorney transferring the cases must provide thorough and accurate information about the case to the new defense lawyer so the latter can become familiar with the pending deadlines and legal issues in the case.

● Index

STANDARD THIRTEEN: Limitations on Private Practice of Contract

Attorneys

Standard:

Contracts for public defense representation with private attorneys or firms shall set limits on the amount of privately retained work which can be accepted by the contracting attorney. These limits shall be based on the percentage of a full-time caseload which the public defense cases represent.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, 4-1.2(d), 5-3.2.

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, Standard 13.7.

National Legal Aid and Defender Association, **Standards for Defender Services**, Standard III-3 and IV-1.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts**, 1984, Guideline III-6.

Commentary:

The potential for conflict of interest exists if public defense attorneys also maintain private law practices. Where part-time private practice is permitted, the attorneys may be tempted to increase their total income by devoting their energies to private practice at the expense of their non-paying clients.

Where rural settings or small caseloads make full-time public defense impractical, the contracting authority should set clear standards for the performance of duties and should limit the total number of cases assigned. The caseload limit should be based on the percentage of time the lawyer devotes to public defense.

Index

STANDARD FOURTEEN: Qualifications of Attorneys

Standard:

1. In order to assure that indigent accused receive the effective assistance of counsel to which they are constitutionally entitled, attorneys providing defense services should meet the following minimum professional qualifications:
   A. Satisfy the minimum requirements for practicing law in Washington as determined by the Washington Supreme Court; and
   B. Complete seven hours of continuing legal education within each calendar year in courses relating to their public defense practice.
2. **Trial attorneys' qualifications according to severity or type of case:**
   A. **Death Penalty Representation**. Each attorney acting as lead counsel in a death penalty case shall meet the following requirements:
      i. The minimum requirements set forth in Section 1; and
      ii. at least five years criminal trial experience; and
      iii. have prior experience as lead counsel in no fewer than nine jury trials of serious and complex cases which were tried to completion; and
      iv. have served as lead or co-counsel in at least one jury trial in which the death penalty was sought; and
      v. have completed at least one death penalty defense seminar within the previous two years.
   B. **Adult Felony Cases - Class A**. Each staff attorney representing a defendant accused of a Class A felony as defined in RCW 9A.20.020 shall meet the following requirements:
      i. Minimum requirements set forth in Section 1, and

ii. Either:
   a. has served two years as a prosecutor; or
   b. has served two years as a public defender; or
   c. has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in five felony cases that have been submitted to a jury.

C. **Adult Felony Cases - Class B** Violent Offense or Sexual Offense. Each attorney representing a defendant accused of a Class B violent offense or sexual offense as defined in RCW 9A.20.020 shall meet the following requirements:
   i. Minimum requirements set forth in section 1, and
   ii. Either:
      a. has served one year as prosecutor; or
      b. has served one year as public defender; and
      c. has been trial counsel alone or with other counsel and handled a significant portion of the trial in two Class C felony cases that have been submitted to a jury.

D. **Adult Felony Cases - All other Class B Felonies, Class C Felonies, Probation or Parole Revocation**. Each staff attorney representing a defendant accused of a Class B felony not defined in c above or a Class C felony, as defined in RCW 9A.20.020, or involved in a probation or parole revocation hearing shall meet the following requirements:
   i. Minimum requirements set forth in section 1, and
   ii. Either:
      a. Has served one year as a prosecutor; or
      b. Has served one year as a public defender; or
      c. has been trial counsel alone or with other trial counsel and handled a significant portion of the trial in two criminal cases that have been submitted to a jury; and
   iii. Each attorney shall be accompanied at his or her first felony trial by a supervisor.

E. **Juvenile Cases - Class A** - Each attorney representing a juvenile accused of a Class A felony shall meet the following requirements:
   i. Minimum requirements set forth in section 1, and
   ii. Either:
      a. has served one year as a prosecutor; or
      b. has served one year as a public defender; or
      c. has been trial counsel alone of record in five juvenile Class B and C felony trials; and
   iii. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor.

F. **Juvenile Cases - Classes B and C**. Each attorney representing a juvenile accused of a Class B or C felony shall meet the following requirements:
   i. Minimum requirements set forth in Section 1; and
   ii. Either:
      a. has served one year as a prosecutor; or
      b. has served one year as a public defender; or
      c. has been trial counsel alone in five misdemeanor cases brought to a final resolution; and
   iii. Each attorney shall be accompanied at his or her first juvenile trial by a supervisor

G. **Misdemeanor Cases**. Each attorney representing a defendant involved in a matter concerning a gross misdemeanor or condition of confinement, shall meet the requirements as outlined in Section 1.

H. **Dependency Cases**. Each attorney representing a client in a dependency matter shall meet the following requirements:
   i. The minimum requirements as outlined in Section; and
   ii. Attorneys handling termination hearings shall have six months dependency experience or have significant experience in handling complex litigation.

I. **Civil Commitment Cases**. Each attorney representing a respondent shall meet the following requirements:
   i. Minimum requirements set forth in Section 1; and
   ii. Each staff attorney shall be accompanied at his or her first 90 or 180 day commitment hearing by a supervisor; and
   iii. Shall not represent a respondent in a 90 or 180 day commitment hearing unless he or she has either:
      a. served one year as a prosecutor, or
      b. served one year as a public defender, or
      c. been trial counsel in five civil commitment probable cause hearings.

J. In order to advance from one qualification category to the next, an attorney must participate in a

supervised trial of the next higher category.

3. **Appellate Representation**. Each attorney who is counsel for a case on appeal to the Washington Supreme Court or to the Washington Court of Appeals shall meet the following requirements:
   A. The minimum requirements as outlined in Section 1; and
   B. Either:
      i. has filed a brief with the Washington Supreme Court or any Washington Court of Appeals in at least one criminal case within the past two years; or
      ii. has equivalent appellate experience, including filing appellate briefs in other jurisdictions, at least one year as an appellate court or federal court clerk, extensive trial level briefing or other comparable work.
      iii. Attorneys with primary responsibility for handling a death penalty appeal shall have at least five years' criminal experience, preferably including at least one homicide trial and at least six appeals from felony convictions.
4. **Legal Interns.**
   A. Legal interns must meet the requirements set out in APR 9.
   B. Legal interns shall receive training pursuant to APR 9 and Standard Nine, Training.

Related Standards:

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, Standard 13.15.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Public Defense Contracts**, 1984, Standard III-7.

National Legal Aid and Defender Association, **Standards for the Appointment and Performance of Counsel in Death Penalty Cases**, 1987, Standard 5.1.

Commentary:

Effective representation can only be provided by attorneys experienced in the type of case in which they appear. The standard assigns the most difficult cases to those attorneys with the most experience and skill in trial advocacy while at the same time establishing the method for less experienced attorneys to become qualified for more serious cases.

Inexperienced attorneys cannot only deprive their clients of their right to effective counsel, they also create problems for the criminal justice system itself. Inexperienced attorneys are less able to effectively negotiate with prosecutors, thus lengthening the time needed to resolve pre-trial issues. They are less efficient in bringing cases to resolution and may burden the court with irrelevant issues.

The practice of criminal law has become highly specialized in recent years. Only attorneys who possess effective trial advocacy skills and have a thorough knowledge of substantive and procedural law can be expected to competently represent persons accused of crime. Less experienced attorneys benefit from training under the direction of more experienced attorneys, acquiring theoretical and practical knowledge before they assume sole responsibility for a criminal defense.

● Index

STANDARD FIFTEEN: Disposition of Client Complaints

Standard:

The legal representation plan shall include a method to respond promptly to client complaints. Complaints should first be directed to the attorney, firm or agency which provided representation. If the client feels that he or she has not received an adequate response, the contracting authority or public defense administrator should designate a person or agency to evaluate the legitimacy of complaints and to follow up meritorious ones. The complaining client should be informed as to the disposition of his or her complaint within one week.

Related Standards:

The American Bar Association, **Standards for Criminal Justice**, 4-5.1 and 4-5.2.

Commentary:

The nature of public defense work may give rise to client complaints about the attorney's handling of the case. Defendants are often in extreme circumstances, sometimes awaiting trial in jail; their employment and family lives have been severely disrupted, and their expectations of what legal counsel can accomplish may not be realistic.

It is essential that local governments develop a means to respond to client complaints promptly and to investigate and act on meritorious complaints. Many complaints may be unfounded or minor, but clients deserve a respectful hearing and a prompt response. The follow up on client complaints may also alert contracting authorities to persistent problems with a particular attorney or firm or a problem in the system of delivering services.

Under the ABA Standards for Criminal Justice, defense attorneys have the professional obligation to keep clients advised at all stages of the legal proceeding. Unfortunately, the high level of caseloads handled by public defense attorneys often limits the frequency of attorney-client contacts. Studies on client satisfaction have shown that indigent clients can have a significant lack of trust in their attorneys, in large part because they were not kept fully informed about developments in their case. Local jurisdictions investigating client complaints need to be sensitive to the special nature of the attorney-client relationship and to be aware of the workload demands faced by public defense attorneys. Funding levels which permit adequate communication with clients will help reduce the number of complaints.

● Index

STANDARD SIXTEEN: Cause for Termination of Removal of Attorney

Standard:

Contracts for defense services shall include the grounds for termination of the contract by the parties. Termination of an attorney's contract should only be for cause. Good cause shall include the failure of the attorney to render adequate representation to clients; the willful disregard of the rights and best interests of the client; and the willful disregard of the standards herein addressed.

The representation in an individual case establishes an inviolable attorney-client relationship. Removal of counsel from representation therefore normally should not occur over the objection of the attorney and the client.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, Standard 5-1.3, 5-5.3.

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Defense Contracts**, 1984, Guideline III-5.

National Study Commission on Defense Services, **Guidelines for Legal Defense Systems in the United States**, 1976, Recommendations 2.12 and 2.14.

National Advisory Commission on Criminal Justice Standards and Goals, **Task Force on Courts**, 1973, Standard 13.8.

Commentary:

The intent of this standard is to assure contracting attorneys' independence and stability by insulating them from arbitrary removal or termination. The adversarial and frequently high-profile nature of criminal defense work

invites criticism and sometimes the inappropriate interference of politicians. The ABA standards say clearly that public defense lawyers "should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice." Vigorous representation of an unpopular client is not grounds for discipline or removal.

Actions which do merit termination of employment could include the attorney's failure to protect client interests and to meet professional standards.

The NLADA Guidelines' commentary notes that the power to discipline attorneys for conduct or inaction in a single case lies with the state bar and the judiciary.

● Index

STANDARD SEVENTEEN: Non-Discrimination

Standard:

Neither the Contracting Authority, in its selection of an attorney, firm or agency to provide public defense representation, nor the attorneys selected, in their hiring practices or in their representation of clients, shall discriminate on the grounds of race, color, religion, national origin, age, marital status, sex, sexual orientation or handicap. Both the contracting authority and the contractor shall comply with all federal, state, and local non-discrimination requirements.

Related Standards:

American Bar Association, **Standards for Criminal Justice**, Providing Defense Services, Standard 5-3.1.

National Legal Aid and Defender Association, **Standards for Defender Services**, 1976, Standard III-8.

Commentary:

This standard addresses both the concern about non-discrimination in client representation and in the selection of public defenders and their staffs.

The American Bar Association standard emphasizes the importance of recruiting attorney candidates "from minority groups which are substantially represented in the defender program's client populations." An office or attorney who is perceived as racially biased will not enjoy the confidence of clients or the courts.

Local governments and attorneys providing services must be sensitive to the potential for discrimination. All legal requirements on hiring and on the treatment of clients must be met.

● Index

STANDARD EIGHTEEN: Guidelines for Awarding Defense Contracts

Standard:

The county or city should award contracts for public defense services only after determining that the attorney or firm chosen can meet accepted professional standards. Under no circumstances should a contract be awarded on the basis of cost alone. Attorneys or firms bidding for contracts must demonstrate their ability to meet these standards.

Contracts should only be awarded to a) attorneys who have at least one year's criminal trial experience in the jurisdiction covered by the contract (i.e., City and District Courts, Superior Court or Juvenile Court), or b) to a firm

where at least one attorney has one year's trial experience.

City attorneys, county prosecutors, and law enforcement officers should not select the attorneys who will provide indigent defense services.

Related Standards:

National Legal Aid and Defender Association, **Guidelines for Negotiating and Awarding Indigent Legal Defense Contracts**, 1984, Standard IV-3.

King County Bar Association Indigent Defense Services Task Force, **Guidelines for Accreditation of Defender Agencies**, 1982, Statement of Purpose.

Commentary:

Currently in Washington State, some counties award contracts for public defense on the basis of competitive bidding, without consideration of the quality of representation that will be provided by the contracting attorney or firm. Contracts which do not address the issues raised in these standards -- reasonable caseloads, adequate support staff and minimum experience levels, to name just three -- cannot be expected to deliver the effective representation mandated by the state and federal constitutions.

Government has a responsibility to contain costs for public defense programs, but cost alone is no guarantee of efficiency. Poorly organized, understaffed, short-term defender programs may be more costly in the long run and may open counties to lawsuits for their failure to ensure effective representation of indigent accused citizens. By the same token, adopting these standards without providing the funds necessary to implement them only defeats their purpose. Our legal system is based on the premise that justice will emerge from the clash between equal adversaries, but this ideal is little more than a pretense if one of the adversaries is denied all but the most meager resources. The vigorous representation to which all accused citizens are entitled simply cannot be purchased at a discount.

Inexperienced attorneys with no office overhead or very young attorneys with no family obligations may indeed be able to submit lower bids than their more experienced colleagues, but if the guarantee of effective counsel is to have any meaning, attorneys receiving contracts for public defense must have adequate experience. Although the minimum experience standards here, by themselves, cannot guarantee that the defendant will be adequately represented, they provide certain assurances that the counsel has developed fundamental abilities and knowledge as well as advocacy skills which will enable him or her to conduct the defense in a competent manner.

●Index

[1]The NLADA Guidelines were approved by the American Bar Association House of Delegates in 1985.(back)

[2]All commentary was provided by the Washington Defender Association. (back)

[3]Because one dependency case may involve multiple hearings over several years - shelter care hearings, review hearings, fact-finding hearings and, in some cases, termination hearings - this standard is based on total number of clients per year. (back)

RCW 10.101.030 Standards for Public Defense services.
Each county or city under this chapter shall adopt standards for the delivery of public defense services, whether those services are provided by contract, assigned counsel, or a public defender office. Standards shall include the following: Compensation of counsel, duties and responsibilities of counsel, case load limits and types of cases, responsibility for expert witness fees and other costs associated with representation, administration expenses, support services, reports of attorney activity and vouchers, training, supervision, monitoring and evaluation of attorneys, substitution of attorneys or assignment of contracts, limitations on private practice of contract attorneys, qualifications of attorneys, disposition of client complaints, cause for termination of contract or removal of attorney, and nondiscrimination. The standards endorsed by the Washington State Bar Association for the

provision of public defense services may serve as guidelines to contracting authorities. [1989 c 409 § 4.] (back)

CITY OF KIRKLAND
123 Fifth Avenue, Kirkland, WA 98033 425.587.3000
www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: Jeremy McMahan, Planning Supervisor
Eric Shields, Planning Director

Date: September 6, 2006

Subject: Repeal of Ordinance No. 3950, amendment to the Kirkland Shoreline Master Program (File No. ZON04-00004)

Recommendation

Adopt an ordinance repealing Ordinance 3950.

Background

On July 6, 2004, the City Council adopted Ordinance 3950 amending the Kirkland Shoreline Master Program (SMP) (see Attachment 1). The amendments were to the Urban Mixed Use 1 shoreline environment (essentially the shoreline area of the Central Business District). The amendments were intended to bring the shoreline regulations into consistency with the Kirkland Zoning Code on the following points:

- Eliminate lot size/density restrictions (7,200 square feet with 1 unit/1,800 square feet per dwelling unit). There are no density restrictions in the CBD.
- Eliminate 30% view corridor requirements. Continuous retail frontage required in the CBD.
- Add Hotel as an allowed use. Hotel is an allowed use in the CBD.

The amendments were considered minor in nature and received no public comment through the hearing process. Pursuant to RCW 90.58.090, the amending ordinance and background materials were sent to the Washington State Department of Ecology for approval. After several conversations with the State, the Department of Ecology concluded that the amendments were considered "comprehensive" in nature and should be processed in conjunction with the City's comprehensive update to the SMP that is currently underway (see Attachment 2).

Staff will take the proposed changes through the current amendment process, anticipated for completion in fall of 2007.

Effective after appr al by State DOE

ORDINANCE NO. 3950

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO PLANNING, LAND USE, AND SHORELINES, AMENDING PORTIONS OF THE FOLLOWING CHAPTERS OF TITLE 24 (ENVIRONMENTAL PROCEDURES) OF THE KIRKLAND MUNICIPAL CODE: CHAPTER 24.05 – SHORELINE MASTER PROGRAM (FILE NO. ZON04-00004) AND REPEALING ORDINANCE NO. 3945.

WHEREAS, the City Council has received from the Kirkland Planning Commission a recommendation to amend certain sections of the Kirkland Shoreline Master Program (Chapter 24.05 of Title 24 of the Kirkland Municipal Code), and bearing Kirkland Department of Planning and Community Development File No. ZON04-00004; and

WHEREAS, pursuant to the City of Kirkland's Concurrency Management System, KMC Title 25, this action is exempt from the concurrency management process; and

WHEREAS, prior to making the recommendation, the Planning Commission, following notice thereof as required by RCW 35A.63.070 and WAC 173-26-100, on March 25th, 2004, held a public hearing on the amendment proposals and considered the comments received at the hearing; and

WHEREAS, pursuant to the State Environmental Policy Act there has accompanied the legislative proposal and recommendation through the entire consideration process, a final determination of nonsignificance, including supporting environmental documents, issued by the responsible official pursuant to WAC 197-11-340 and WAC 197-11-390; and

WHEREAS, in regular public meeting the City Council considered the environmental documents received from the responsible official, together with the report and recommendation of the Planning Commission;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. The following specified sections of the Kirkland Shoreline Master Program (Chapter 24.05 of Title 24 of the Kirkland Municipal Code) are amended to read as follows:

As set forth in Attachment A which by this reference is incorporated herein.

Section 2. If any section, subsection, sentence, clause, phrase, part or portion of this ordinance, including those parts adopted by reference, is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 3. Ordinance Number 3945 is hereby repealed.

Section 4. This ordinance shall be in full force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law, or upon the date of a letter to the City of Kirkland from the Washington State Department of Ecology, or of a rule of the Department, approving the Shoreline Master Program amendments adopted by this ordinance, whichever occurs last in time.

Section 5. A complete copy of this ordinance, including Findings, Conclusions, and Recommendations adopted by reference, shall be certified by the City Clerk, who shall then forward the certified copy to the King County Department of Assessments.

PASSED by majority vote of the Kirkland City Council in regular, open meeting this 6th day of July, 2004.

SIGNED IN AUTHENTICATION thereof this 6th day of July, 2004.

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

ATTACHMENT A

Title 24 KMC – Environmental Procedures Amendments

Chapter 24.05 KMC - Shoreline Master Program

24.05.110 See Attachment 1 - Adds a use listing of "Hotel" to the Urban Mixed Use 1 Shoreline Environment.

24.05.150 Use regulations—Attached and stacked dwelling units.

(a) General (no change)
(b) Permitted Use (no change)
(c) Lot Size.
  (1) (no change)
  (2)(A) Minimum lot size for properties in the Urban Mixed Use 1 Shoreline Environment lying waterward of 98th Avenue NE or Juanita Drive is seven thousand two hundred square feet of lot area landward of the high waterline, with at least one thousand eight hundred square feet of lot area landward of the high waterline per dwelling unit.
  (B) There is no minimum lot size or minimum lot area per dwelling unit for other properties in the Urban Mixed Use 1 Shoreline Environment.
  (3) (no change)
  (4) (no change)
  (5) (no change)
(d) Required Yards (no change)
(e) Minimum View Corridor Required. For properties lying waterward of Lake Washington Boulevard, Lake Street South (except properties in the Urban Mixed Use 1 Shoreline Environment), 98th Avenue NE, or Juanita Drive, a minimum view corridor of thirty percent of the average parcel width must be maintained. The view corridor must be in one continuous piece. Within the view corridor, structures, parking areas and landscaping will be allowed, provided that they do not obscure the view from these rights-of-way to and beyond Lake Washington.
(f) Height (no change)

24.05.155 Use regulations—Restaurants.

(a) General (no change)
(b) Permitted Use (no change)
(c) Lot Size (no change)
(d) Required Yards (no change)
(e) Minimum View Corridor Required. For properties lying waterward of Lake Washington Boulevard, Lake Street South (except properties in the Urban Mixed Use 1 Shoreline Environment), 98th Avenue NE or Juanita Drive, a minimum view corridor of thirty percent of the average parcel width must be maintained.

The view corridor must be in one continuous piece. Within the view corridor, structures, parking areas and landscaping will be allowed, provided that they do not obscure the view from these rights-of-way to and beyond Lake Washington.

(f) Height (no change)

24.05.160 Use regulations—Retail and office use.

(a) General (no change)

(b) Permitted Use (no change

(c) Lot Size (no change)

(d) Required Yards (no change)

(e) Minimum View Corridor Required. For properties lying waterward of Lake Washington Boulevard, Lake Street South (except properties in the Urban Mixed Use 1 Shoreline Environment), 98th Avenue NE or Juanita Drive, a minimum view corridor of thirty percent of the average parcel width must be maintained. The view corridor must be in one continuous piece. Within the view corridor, structures, parking areas and landscaping will be allowed, provided that they do not obscure the view from these rights-of-way to and beyond Lake Washington.

(f) Height (no change)

Attachments:

1. KMC 25.04.110: Adds "Hotel" use listing to Urban Mixed Use 1 Shoreline Environment

CHART 24.05.110

SHORELINE ENVIRONMENT USES	URBAN MIXED 1 SHORELINE ENVIRON.	URBAN MIXED 2 SHORELINE ENVIRON.	URBAN RESIDENTIAL 1 SHORELINE ENVIRON.	URBAN RESIDENTIAL 2 SHORELINE ENVIRON.	SUBURBAN RESIDENTIAL SHORELINE ENVIRON.	CONSERVANCY 1 SHORELINE ENVIRON.	CONSERVANCY 2 SHORELINE ENVIRON.
Detached Residential	SDP/*	SDP/*	SDP/*	SDP/*	SDP/*	SCUP	SCUP
Attached or Stacked Residential	SDP	SDP	SDP	SDP	NP	NP	SCUP
Restaurant or Tavern	SDP	SDP	SDP	NP	NP	NP	NP
Retail	* Add						
Office	SDP	SDP	NP	NP	NP	NP	NP
Hotel	SDP**	SDP/***	NP	NP	NP	NP	NP
Structures and Facilities	SDP	SDP	SDP	SDP	SDP	NP*	NP*
Public Parks	SDP	SDP	SDP	SDP	SDP	SDP	SDP
Utilities Government Facilities. Roads, etc.	SDP	SDP	SDP	SDP	SDP	SDP	SDP
Bulkheads and Similar Structures	SDP	SDP	SDP	SDP	SDP	NP*	NP
Breakwaters	SDP	SDP	SCUP	SCUP	NP	NP*	NP*
Dredging	SDP	SDP	SDP	SDP	SDP	NP*	NP*
Filling	SCUP	SCUP	SCUP	SCUP	SCUP	NP*	NP*
Public Access Pier or Boardwalk	SDP	SDP	SDP	SDP	NP	NP*	NP*
Land Surface Modification	SDP	SDP	SDP	SDP	SDP	SCUP	SCUP

SDP: Substantial Development Permit
SCUP: Shoreline Conditional Use Permit
NP: Not Permitted
NP*: May be permitted as an accessory to public parks if approved through a S.C.U.P.
*: This use is exempt from Substantial Development Permit requirements if this is for construction of only one detached unit built by an owner, lessee, or contract purchaser who will be occupying the residence, in accordance with WAC 173-14-040(g), as amended.

NOTE: Hydraulic permits may also be required from the State Department of Fisheries and Wildlife for development or activities located waterward of the ordinary high water mark.

** Subject to the same use regulations as Retail or Office use in this shoreline environment
*** May be permitted subject to KMC 24.05.205

Attachment 1

ORDINANCE NO. 3950
PUBLICATION SUMMARY

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO PLANNING, LAND USE, AND SHORELINES, AMENDING PORTIONS OF THE FOLLOWING CHAPTERS OF TITLE 24 (ENVIRONMENTAL PROCEDURES) OF THE KIRKLAND MUNICIPAL CODE: CHAPTER 24.05 – SHORELINE MASTER PROGRAM (FILE NO. ZON04-00004) AND REPEALING ORDINANCE NO. 3945.

Section 1. Identifies the specific amendments to Ordinance 3719, as amended, the Kirkland Zoning Code, and Chapter 24.05, the Shoreline Master Program.

Section 2. Addresses severability.

Section 3. Repeals Ordinance 3945.

Section 4. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.088.017 Kirkland Municipal Code and establishes the effective date as five days after publication of said summary, or upon the date of a letter to the City of Kirkland from the Washington State Department of Ecology, or of a rule of the Department, approving the Shoreline Master Program amendments adopted by this ordinance, whichever occurs last in time.

Section 5. Directs the City Clerk to certify and forward a complete certified copy of this ordinance to the King County Department of Assessments.

The full text of this ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The ordinance was passed by the Kirkland City Council at its regular meeting on the 6th day of July, 2004.

I certify that the foregoing is a summary of Ordinance 3950 approved by the Kirkland City Council for summary publication.

Attest:

City Clerk
ICAOEXTSUMM73001

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

RECEIVED
JUL 11 2006
AM PM
PLANNING DEPARTMENT
BY

July 7, 2006

City of Kirkland
Department of Planning and Community Development
Attn: Jeremy McMahan, Planning Supervisor
123 Fifth Avenue
Kirkland, WA 98033-6189

Dear Jeremy:

RE: Request for Department of Ecology's Feedback on City of Kirkland Proposed Amendment to existing Shoreline Master Program (SMP)

Thank you for your email dated May 25, 2006 requesting Ecology feedback on the City's proposed amendment to their existing Shoreline Master Program (SMP). It is my understanding that the City would like to request a "less than comprehensive" amendment limited to the "Urban Mixed 1" (UB1) shoreline environment to reduce code inconsistencies between the Cities's downtown zoning regulations and the existing SMP. The amendment would consist of the following three changes:

1. Eliminate minimum lot size requirements: current SMP regulations require a minimum of 7200 square feet with 1 unit/1800 square feet per dwelling unit;
2. For consistency with the downtown zoning code, eliminate the existing SMP requirement for 30% view corridor;
3. Also for consistency with the downtown zoning code, add "hotel" as a permitted use in the UB1 shoreline environment.

HISTORY:

Initially, the City submitted a request for the amendment to Ecology on July 16th, 2004. Prior to submittal to Ecology the City's Planning Commission held a public study session on March 11, 2004 considering the amendments, which were ultimately adopted by the City Council on July 6, 2004[1]. Upon receipt of the City's requested SMP amendment, Ecology informed the City that the following information was required prior to accepting the SMP amendment:

1. Shoreline Inventory of the UB1 environment area pursuant to WAC 173-26-201 Including a cumulative impact analysis concluding no net loss of shoreline ecological functions.

[1] Ordinance 3950 replacing Ordinance 3945 – proposing the identified changes to the existing City of Kirkland's SMP.

2. Shoreline Restoration plan pursuant to WAC 173-26-186(8)(c);

3. Further explanation (narrative and visual) of the affect of the changes to the UB1 shoreline environment area considering the proposed changes.

ISSUES/ANALYSIS: (GENERLIZED)

Pursuant to the RCW 90.58.090, Ecology has been mandated to adopt guidelines consistent with the goals of the Washington State Shoreline Management Act. The "guidelines" (WAC 173-26) are intended to be used by local jurisdictions to guide development of regulations administering appropriate use of shorelines within the state.

The first step in evaluating the extent of the amendment is to determine if the proposed changes will qualify as a "less than comprehensive update" or alternatively will need to be considered as a complete update pursuant to WAC 173-26-201. Section 1 - **Applicability** states (emphasis added): *"This section outlines a comprehensive process to prepare or amend a shoreline master program. Local governments shall incorporate the steps indicated if one or more of the following criteria apply"*. Of the listed criteria section (a, d & e) are most relevant to the City's proposed amendment:

(a) *The master program amendments being considered represent a significant modification to shoreline management practices within the local jurisdiction, they modify more then on environment designation boundary, or significantly add, change or delete use regulations;*

(d) *There are substantive issues that must be addressed on a comprehensive basis. This may include issues such as salmon recovery, major use conflicts or public access;*

(e) *The current master program and the comprehensive plan are not mutually consistent;*

Essentially if any part of the proposed amendment meets the above listed criteria, then the update is considered comprehensive and is required to be reviewed in compliance with the full extent of the guidelines. Alternatively, if the amendment is determined to not meet the above listed criteria, then the "less than comprehensive update" can be prepared to conform to sections of WAC 173-26-030 through 173-26-160.

Because the City is proposing to eliminate the required 30% view corridors within the UM1 shoreline environment, the proposed amendment has the potential to affect (visual) public access to the shoreline. WAC 173-26-221 (emphasis added) states that public access includes, *"...the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the water of the state, and to view the water and the shoreline from adjacent location"*

Further the guidelines - WAC 173-26-221(4) (d), state (emphasis added):

(i) *Based on the public access planning described in (c) of this subsection, establish policies and regulations that protect and enhance both physical and visual public access...The master program should seek to increase the amount and diversity of public access to the state's shorelines consistent with the natural shoreline character, property rights, public rights under the Public Trust Doctrine, and public safety.*

It is understood that existing structures within the UM1 shoreline do not currently conform to the existing SMP regulation requiring a 30% view corridor; however redevelopment of these structures would require consistency with the applicable SMP regulations. Ecology also understands the City's position that public access is already provided along almost the entire shoreline length of the subject environment designation. However, the above referenced sections of the guidelines suggest a *"diversity"* of public access identifying both *"physical and visual public access"* to the shoreline (173-26-221(4) (d) i).

Alternatively, the guidelines provide exceptions to *"uniform public access requirements to all developments"*, subject to the provisions identified in WAC 173-26-221(4) (c):

> ***Planning process to address public access.*** *Local governments should plan for an integrated shoreline area public access system that identifies specific public needs and opportunities to provide public access. Such a system can often be more effective and economical than applying uniform public access requirements to all development.*

WAC 173-26-221(4) (B) & (iv) provide additional standards when considering alternative public access requirements:

> (B): *Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable. In determining the infeasibility, undesirability, or incompatibility of public access in a given situation, local governments shall consider alternate methods of providing public access, such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access.*
>
> (iv): *Adopt provisions, such as maximum height limits, setbacks, and view corridors, to minimize the impacts to existing views from public property or substantial numbers of residences. Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority, unless there is a compelling reason to the contrary.*

Pursuant to the above referenced sections, the City might be able to propose alternative public access standards to the 30% view corridor requirement depending on future visual impacts of upland uses (residential or public areas) and identification of comparable alternative public access requirements.

CONCLUSIONS:

Based on the standards and policies listed above from the guidelines, Ecology would not be able to review the proposed SMP amendment as "less than comprehensive". Specifically, the potential for a significant change in public access requirements pertaining to the proposed elimination of the existing 30% view corridor within the UB1 shoreline environment would be considered by Ecology as a policy change requiring a comprehensive review. However, Ecology

would encourage the City to continue to consider these changes for consistency with the guidelines during the comprehensive SMP update that is currently underway. Ecology would also like to offer assistance in formation of a technically sound and objective criteria to evaluate the potential public access (view) impacts of the proposed change.

Prior to adoption of the updated SMP, Ecology would also suggest that proposals within the UB1 zone that are not able to met the applicable regulations because of physical constraints such as lot size etc, be considered on a case-by-case basis under review of either a shoreline variance (VAR) or condition use permit (CUP).

For example, because "hotel(s)" are not listed as a permitted, prohibited, or conditional uses within the existing SMP, but are allowed in the underlying zoning, future proposals could potentially be considered after review and approval of a shoreline CUP. Similarly, as mentioned above, future proposals that because of physical constraints involving bulk or dimensional standards listed in the SMP, may qualify for a shoreline VAR subject to compliance with WAC 173-27-170 (VAR review criteria) as well as other relevant sections of the SMP and zoning code.

Ecology can appreciate the City's efforts to align the current SMP with the underlying zoning regulations. However, Ecology has been mandated to focus policy review of shoreline master programs to ensuring compliance with the guidelines (WAC 173-26) and the Shoreline Management Act RCW 90.58 and not to consider consistency with locally adopted land-use regulations as justification for variability shoreline master program standards.

We look forward to continuing discussion of the proposed amendments during review of the comprehensive master program update that the City is currently working on. Please do not hesitate to contact me if I can be of any further assistance on this issue.

Sincerely,

Joe Burcar, Shoreline Planner
Department of Ecology – NW Regional Office

JB:cja

cc: Peter Skowlund, Ecology
Geoff Tallent, Ecology
Paul Stewart, City of Kirkland
Patrice Tovar, City of Kirkland

ORDINANCE NO 4057

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO PLANNING, LAND USE, AND SHORELINES, AND REPEALING ORDINANCE NO. 3950 (FILE NO. ZON04-00004).

WHEREAS, following the receipt of a recommendation from the Planning Commission to amend certain sections of the Kirkland Shoreline Master Program, the City Council passed Ordinance No. 3950 on July 6, 2004, which included the proposed amendments; and

WHEREAS, under RCW 90.58.090, the State of Washington Department of Ecology (DOE) must approve proposed amendments to local governments' Shoreline Master Programs; and

WHEREAS, the City submitted the proposed Shoreline Master Program amendments to DOE for approval on July 16, 2004; and

WHEREAS, DOE concluded that the proposed 2004 amendments should be included for DOE review in the comprehensive Shoreline Master Program update that the City is currently undertaking;

NOW, THEREFORE, the City Council of the City of Kirkland do ordain as follows:

Section 1. Ordinance No. 3950, passed by the Kirkland City Council on July 6, 2004, is hereby repealed.

Section . This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2006..

Signed in authentication thereof this _____ day of _____, 2006.

_____
MAYOR

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: Stacey Rush, Surface Water Utility Engineer
Daryl Grigsby, Director of Public Works

Date: 08/29/06

Subject: Repeal of KMC 15.36.090

The attached ordinance repeals existing Kirkland Municipal Code (KMC) 15.36.090 (see text below):

> **KMC Title 15 Water and Sewage**
>
> **15.36.090 Drainage of hard surface or graded areas.**
> All hard surface or graded areas such as parking lots, service station yards, and roofs shall be drained in such manner as will protect adjacent public and private property from damage and such drainage shall enter the storm sewer or other outlet by way of an interceptor of such design as is approved by the city engineer. (Ord. 3086 § 31, 1988: Ord. 874 § 37.0, 1962)

The primary reason Public Works is requesting to repeal this ordinance is because the code is no longer needed or used. KMC15.36.090 is in an older section of code relating primarily to sanitary sewer and before storm water drainage was a separate utility (KMC 15.36 *Drainage and Discharge into Sewers Regulated*). It was in place prior to the addition of KMC Section 15.52 (*Storm Water Drainage*), which is the current storm water section of code used by the City. Section 15.52 contains adequate code enforcement procedures to address this issue.

Another reason to repeal 15.36.090 is because it is not specific, and it puts the city in the middle of private property disputes, even when no actual threat to either property exists. These cases would be better resolved through a civil litigation process.

cc: Rob Jammerman, Development Engineering Manager
Jenny Gaus, Senior Stormwater Utility Engineer

ORDINANCE NO. 4058

AN ORDINANCE OF THE CITY OF KIRKLAND REPEALING SECTION 15.36.090 OF THE KIRKLAND MUNICIPAL CODE RELATING TO DRAINAGE OF HARD SURFACE OR GRADED AREAS.

The City Council of the City of Kirkland do ordain as follows:

Section 1. Kirkland Municipal Code Section 15.36.090 is hereby repealed.

Section 2. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2006.

Signed in authentication thereof this _____ day of _____, 2006.

_____
MAYOR

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

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

MEMORANDUM

To: David Ramsay, City Manager

From: Eric R. Shields, AICP, Planning Director
Stacy Clauson, Associate Planner

Date: September 7, 2006

Subject: Slater Avenue NE Right-of-Way Vacation - Set Hearing Date
File No. VAC06-00002

RECOMMENDATION:
Adopt a resolution which establishes October 17, 2006 as the public hearing date for the Slater Avenue NE Right-of-Way Vacation.

BACKGROUND DISCUSSION:
Establishment of a public hearing date by City Council resolution is required by KMC 19.16.060.

ATTACHMENTS:
Vicinity Map
Resolution to Set Hearing Date

cc: Mary Mr. Murphy, 7350 Alonzo Avenue Northwest, Seattle, WA 98117
Michael R. Mastro, 510 Rainier S., Seattle, WA 98144

RESOLUTION R-4601

A RESOLUTION OF THE CITY OF KIRKLAND AND NOTICE OF HEARING FOR THE VACATION OF A PORTION OF THE SLATER AVE NE RIGHT-OF-WAY, (FILE NO. VAC06-00002).

WHEREAS, a petition has been filed with the City of Kirkland signed by the owners of real property representing more than two-thirds of the property abutting upon the hereinafter described portions of Slater Ave NE.

WHEREAS, it appears that the public interest of the City of Kirkland, Washington, would be served by holding a public hearing to consider the vacation of said portion of Slater Ave NE right-of-way.

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland:

1) That a public hearing be held to consider whether the public interest and general welfare of the City of Kirkland will be served by the vacation of Slater Ave NE right-of-way, situate in Kirkland, King County, Washington, and described as set forth in Exhibit A.

BE IT FURTHER RESOLVED AND NOTICE OF HEARING:

2) That said public hearing will be held before the Kirkland City Council in the Kirkland City Hall, 123 Fifth Avenue, on October 17, 2006, at 7:30 pm. Or as soon thereafter as possible.

PASSED by majority vote of the Kirkland City Council in open meeting on the _____ day of _____, 20___.

SIGNED IN AUTHENTICATION thereof on the _____ day of _____, 20___.

_____
Mayor

Attest:

_____
City Clerk

EXHIBIT A

STREET VACATION LEGAL DESRIPTION

That portion of unopened Right-Of Way known as Slater Avenue N.E. within a portion of the Northeast Quarter of the Northwest Quarter of Section 33, Township 26 North, Range 5 East, W.M., described as follows:

Beginning at the North Quarter Corner of said Section 33;
Thence North 88° 36' 29" West along the North line thereof, 384.65 feet;
Thence South 00° 51' 09" west parallel with the North-South centerline of said Section 33, 311.51 feet, more or less, to the South line of the North 311.5 feet of said subdivision and the beginning of a curve to the right having a radius of 78.00 feet;
Thence Southwesterly along said curve 73.67 feet through a central angle of 54° 06' 55";
Thence South 54° 58' 04" West 112.00 feet, more or less to the North line of Lot 1 in Short Plat No. 778140, according to the Short Plat survey recorded under King County Recording No. 7912100778;
Thence South 88° 36' 29" East, along said North line, 159.02 feet to the Westerly margin of Slater Avenue N.E. and the True Point Of Beginning;
Thence North 18° 12' 20" East along said Westerly margin, 2.57 feet, to the beginning of a curve to the right, having a radius of 1175.12 feet;
Thence along said curve and said Westerly margin 135.90 feet through a central angle of 06° 37' 34" to the South line of the North 311.5 feet of said subdivision;
Thence South 88° 36' 29" East along said South line and the South Margin of Vacated Slater Avenue N.E., recorded under King County Ordinance No. 8370, 32.78 feet to the Westerly margin of said Vacated Slater Avenue N.E. and the beginning of non-tangent curve to the left, having a radius of 1145.12 feet and a radial line through said point bearing North 64° 30' 57" West;
Thence along said curve and said Westerly margin 67.08 feet through a central angle of 03° 21' 23" to the North margin of N.E. 115th Place;
Thence South 88° 36° 29" East along said North margin 29.17 feet, to the beginning of a non-tangent curve to the left, having a radius of 100.00 feet and a radial line through said point bearing North 10° 05' 11" West;
Thence along said curve 107.70 feet through a central angle of 61° 42' 29";
Thence South 18° 12' 20" West 1.28 feet to the Northerly margin of Vacated Slater Avenue N.E., recorded under City of Kirkland Ordinance No. 3684A;
Thence North 71° 47' 40" West along said Vacated Slater Avenue N.E. 8.00 feet to the True Point Of Beginning.

Said Vacated Right-Of-Way contains
3,455 square feet, more or less.

Situate in City of Kirkland, King County, Washington

WILLIAM SHUPE HOMBERG
STATE OF WASHINGTON
11332
REGISTERED
PROFESSIONAL LAND SURVEYOR
EXPIRES 11/30/06

CITY OF KIRKLAND

123 FIFTH AVENUE • KIRKLAND, WASHINGTON 98033-6189 • (425) 587-3000

DEPARTMENT OF FINANCE AND ADMINISTRATION
MEMORANDUM

To: David Ramsay, City Manager

From: Kathi Anderson, City Clerk
Tracey Dunlap, Director, Finance and Administration

Date: September 12, 2006

Subject: Human Services Advisory Committee Youth Member Resignation

RECOMMENDATION**:**

That Council acknowledge the receipt of a resignation letter from Human Services Advisory Committee youth member Sethrina Dunlap and authorize the attached correspondence thanking her for her service.

BACKGROUND DISCUSSION:

Ms. Dunlap is resigning as she begins college this fall. Recruitment to fill this vacancy is underway.

-----Original Message-----
From: Sethrina Dunlap [mailto:sethrinad@hotmail.com]
Sent: Sunday, August 27, 2006 9:32 AM
To: Sharon Anderson
Subject: Resignation for HSC

Dear Kirkland City Council and Human Services Advisory Board,

For the past three years I have had the opportunity to be the Youth Advisory for the Human Services committee the experiences I have gained over the past three years are priceless and precious to me. Thus it is difficult for me to resign from the board due to a new and exciting experience: college.

The Human Services Committee has taught me to work better with others, yearn to help others in diverse and difficult situations and enjoy the generosity of our committee members, applicants and, of course, council.

Thank you Council for allowing me to grow and gain more compassion for others while serving on the committee. I will truly miss my committee members and the great work and friendship that they provide. Thank you again for your time and kindness.

Sincerely,

Sethrina Dunlap

Youth Advisory for the Human Services Committee

D R A F T

September 7, 2006

Sethrina Dunlap
12843 NE 95th
Kirkland, Washington 98033

Dear Ms. Dunlap:

We have regretfully received your letter of resignation as youth member on the Human Services Advisory Committee. The City Council appreciates your contributions to the Committee, and we thank you for volunteering your time and talents to serve our community

Your voice has been invaluable and we hope you have gained from your experience as much as you have given.

Best wishes in your current and future endeavors.

Sincerely,
Kirkland City Council

James L. Lauinger
Mayor

CITY OF KIRKLAND
Department of Finance & Administration
123 Fifth Avenue, Kirkland, WA 98033 425.587.3100
www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay

From: Tracey Dunlap, Director of Finance and Administration

Date: September 12, 2006

Subject: Cabaret Music License

RECOMMENDATION:

City Council authorizes the issuance of a Cabaret Music License to The Brickhouse Pub.

BACKGROUND DISCUSSION:

The request and recommended action being presented to the City Council is consistent with the Municipal Code and City Council practice.

BACKGROUND DISCUSSION:

The Brickhouse Pub, located at 9714 NE Juanita Drive, has made application for a Cabaret Music License. Staff has completed its review/investigation and the above referenced establishment has met the requirements of the Municipal Code. Staff recommends the issuance of a Cabaret Music License be granted.

The restrictions contained within KMC 7.20.030 are the standards by which the police department representatives reviewing applications are legally allowed to approve or deny the issuance of a license. The City's application form was last updated in 2006 and was updated to include a perjury statement and waiver to allow a more stringent background check. These checks are completed prior to approval by the police department representative assigned to complete the investigation. The application form was also updated to include wording allowing approval by the designee of the Chief of Police, as has been past practice.

CITY OF KIRKLAND

123 FIFTH AVENUE KIRKLAND, WASHINGTON 98033-6189 425.587.3140

LICENSE APPLICATION FOR CABARET, CELEBRATION, PUBLIC DANCE

This application may be used for the procurement of any of the following: **a Public Dance License** whereby a public dance shall include any dance to which the general public is admitted for which an attendance charge or donation is imposed as a condition of attendance; **a Celebration License** for a one-time event, **a Cabaret License** permitting music only, or permitting both music and dancing, in a place of business in which food or liquor is sold and consumed on the premises.

This license may be issued to the manager of the place of business or in the name of a corporation or partnership. Full information must be supplied with references to all of the partners, officers and directors of the corporation, as required by City ordinances. Upon report by the Chief of Police, this application will be referred to the City Council for final determination.

PLEASE PRINT OR TYPE

1. **CHECK ONE**

____	* Application for Public Dance License	$ 100.00	yearly
____	* Application for Public Dance Permit	$ 25.00	per dance
✓	** Application for Cabaret Music License	$ 100.00	yearly
____	** Application for Cabaret Dance License	$ 250.00	yearly
____	Application for Celebration License	$ 25.00	one day - one-time

Date of Event Only _____

(* Application must be submitted 48 hours prior to dance.)

(** $ 15.00 deposit for investigative costs required with application.)

2. Name of Applicant: Ronn Lolan Applicant's Telephone: (425) 442-2516
   Applicants Address: 4316 225th Ave LE Redmond, WA 98053
3. Name of Business: Brickhouse Pub Business Telephone: (425) 814-4606
4. Will any admission fee be charged for the listed activity? If so, how much? none
5. Name and address where event is to be held (if different from business address): N/A
6. Name of Manager: Amanda Morhead Manager's Telephone: (425) 501-2729
   Manager's Address: 3917 Lincoln way #B, Lynnwood, WA 98087
7. Name of person(s) or corporation to whom or which license is to be issued: D&R Lolan Investments Inc Brickhouse Pub
8. Qualifications of person signing this application:
   a. How long have you resided in King County? 54 yrs
   b. How long have you resided in the State of Washington? 54 yrs
   c. Previous address: Fordham Ct, Livermore, CA Dates at that address: 2/99 - 7/01
9. Have you ever been convicted of committing a felony? no

DECLARATION:

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

10. Signature and official capacity of applicant: Ronn Lolan President
11. Signature of person accepting fee: Gloria Martin Date: 8/23/2006

RETURN COMPLETED FORM AND PAYMENT TO:

City of Kirkland/Licensing
123 Fifth Avenue
Kirkland WA 98033
(425) 587-3140 or Fax (425)587-3110

H:\!DesignGroup\MMS\F&A\BL\Lic Appl-Dance.doc\04-03-06\GM:th

FOR OFFICIAL USE ONLY

Record of Report of Chief of Police/or his designee

I hereby recommend BRICKHOUSE PUB of license for which application has been made.

Remarks: BACKGROUND CHECK COMPLETED 8/25/06
NO DISQUALIFYING INFORMATION FOUND ON APPLICANT
OR BUSINESS.

Signature of the Chief of Police [signature] (DESIGNEE) Date: 8/25/06

Action of the Kirkland City Council (where applicable)

Application Approved by _____ Date: _____

Application Approved by _____ Date: _____

Reason for Disapproval _____

License No. _____ Date: _____

Receipt No. 122306 Date: 8/23/2006

Fee Amount: $50.00

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

MEMORANDUM

To: David Ramsay, City Manager

From: Eric Shields, Planning Director
Angela Ruggeri, Senior Planner

Date: September 7, 2006

Subject: Public hearing to extend the interim ordinance regulating uses in a study area within a PR 3.6 zone in the Market Neighborhood, File No. MIS05-00032

RECOMMENDATION

Hold public hearing to receive testimony on extending the interim ordinance as amended. Determine if the interim ordinance should be renewed for another six-month period. The ordinance would have the effect of:

- Allowing attached and detached residential development in the study area; but
- Not allowing commercial development, assisted living facilities, convalescent centers, nursing homes or stacked residential development in the study area.

BACKGROUND DISCUSSION

The Council adopted Ordinance No. 4039 in February of 2006. This ordinance was the first renewal of the previous interim ordinance as amended. The interim ordinance applies to the PR zone at 1230 and 1250 4th Street West. It allows detached or attached dwelling units, but suspends stacked dwelling units, commercial uses, assisted living facilities and convalescent centers or nursing homes in the designated area while the Market Neighborhood Plan is being studied. The owner has received approval to build a duplex and a single family home on the two properties in accordance with the interim ordinance.

Attachment: E-mail from property owner, Bill Anspach dated 8/24/06

-----Original Message-----
From: Bill Anspach [mailto:banspach@mindspring.com]
Sent: Thursday, August 24, 2006 9:18 PM
To: Angela Ruggeri
Subject: FW: Anspach Zoning Study Declaration

August 24, 2006

To: Angela Ruggeri
From: Bill Anspach
Re: Zone change study recommendation for Property at 1230/1250 4th St. West

Dear Angela,

It¹s been almost two years since I received notification that the City of Kirkland was considering a down zone for the subject property from PR 3.6 to RS 7.2 zone.

I am not going to recite the history of what has taken place relating to this study as this is of record but encourage you to bring closure to this matter now rather than at the end of the year.

I know that the interim ordinance extension period is about to expire and rather than go through another extension I ask that the staff draft a resolution that declares the ³study² is complete and that the final recommendation of staff, planning commission and legal council is to accept the PR 3.6 zoning and drop this matter from further study.

I trust that a motion will be made at the next council meeting so that the interim ordinance becomes void and the zoning remains PR 3.6.

Many thanks for your assistance.

Kindest regards,

Bill Anspach

ORDINANCE NO. 4059

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO THE SECOND RENEWAL OF THE INTERIM ORDINANCE AS AMENDED REGULATING USES IN A STUDY AREA WITHIN A PR 3.6 ZONE IN THE MARKET NEIGHBORHOOD UNDER CHAPTER 25 OF THE KIRKLAND ZONING CODE.

WHEREAS, the City has the authority to adopt interim zoning regulation ordinances pursuant to RCW 35A.63.220 and 36.70A.390; and

WHEREAS, the City is undertaking an update of the Market Neighborhood Plan to be completed in December 2006; and

WHEREAS, on August 2, 2005 the City determined that a study was needed to determine whether certain areas adjacent to Market Street should be rezoned; and

WHEREAS, one of those areas designated for study is located at 1230 and 1250 4th Street West ("the Study Area") and is currently zoned PR 3.6, which allows for certain uses; and

WHEREAS, the City would like to conduct further study to determine what is the appropriate zoning designation for the Study Area; and

WHEREAS, the City Council would like to insure that potentially inappropriate use of the Study Area does not occur before this Market Neighborhood Plan update can be completed and a decision made as to the appropriate zoning designation for the Study Area; and

WHEREAS, the Kirkland City Council at its September 6, 2005 Council meeting determined that there is a need for an interim zoning ordinance to modify the allowed uses in a study area within a PR 3.6 zone in the Market Neighborhood and adopted an interim zoning ordinance at said meeting by Ordinance No. 4006; and

WHEREAS, the Kirkland City Council at its November 15, 2005 Council meeting determined that Ordinance No. 4006 should be amended by Ordinance No. 4021 to allow detached and attached dwelling units in the study area; and

WHEREAS, the Kirkland City Council at its February 21, 2006 Council meeting extended the interim zoning ordinance as amended for an additional six month period by Ordinance No. 4039; and

WHEREAS, the Kirkland City Council desires to extend the interim zoning ordinance as amended for an additional six month period; and

WHEREAS, pursuant to RCW 35A.63.220 and 36.70A.390, a public hearing was held prior to the adoption of this Ordinance.

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

Section 1. The Kirkland City Council makes the following findings:

a. The purpose and intent of this Ordinance is to set forth an interim regulation temporarily suspending certain uses in the Study Area.

b. The City of Kirkland Zoning Code currently allows certain activity in PR 3.6 zones that may not be appropriate in the Study Area.

c. The City of Kirkland is diligently conducting a Market Neighborhood Plan update to determine the appropriate zoning classification for the Study Area.

d. Until this Market Neighborhood Plan update is completed, and a decision made as to the appropriate zoning designation for the Study Area, there is a need for an interim ordinance that would suspend these potentially inappropriate uses in the Study Area.

Section 2. Prohibition of Certain Development in the Study Area. To prevent the development of a potentially inappropriate use in the Study Area until a Market Neighborhood Plan Update can be completed to determine the appropriate zone designation, the uses authorized in a PR 3.6 zone under KZC 25.10.020, with the exception of detached and attached dwelling units, and the uses authorized in a PR 3.6 zone under KZC 25.10.30 through 25.10.070 and 25.10.110 and 25.10.120 are hereby temporarily suspended and disallowed in the Study Area. All other uses allowed in a PR 3.6 zone as authorized by KZC 25.10 remain available for use in the Study Area.

Section 3. Section 3 of Ordinance 4006 as amended is amended to renew its effect as an interim zoning ordinance for an additional six months. The interim zoning ordinance thereafter may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

Section 4. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 5. This Ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication, as required by law.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2006.

Signed in authentication thereof this _____ day of _____, 2006.

_____
MAYOR

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

CITY OF KIRKLAND
Department of Finance & Administration
123 Fifth Avenue, Kirkland, WA 98033 425.587.3100
www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: Tracey Dunlap, Director of Finance and Administration
Sandi Miller, Financial Planning Manager

Date: September 8, 2006

Subject: Public Hearing on Revenue Sources for the 2007-2008 Budget

RECOMMENDATION:

City Council hold a public hearing on September 19, 2006 on revenue sources for the 2007-2008 Budget.

BACKGROUND:

This is the first of two required public hearings on the budget. The second public hearing on the 2007-2008 Preliminary Budget will be held on November 21st.

General Fund Forecast

The City Council began their discussion of the 2007-2008 Budget at their mid-year budget review meeting held on June 15, 2006. At that time staff projected a General Fund deficit of $418,000 in 2007 and $1,539,000 in 2008 given the following revenue assumptions:

- 1% optional property tax taken in 2007 and 2008
- 2% annual growth in new construction (property tax)
- Sales tax lag of 1 year for 2007 – 2012
- 6% annual growth in sales tax
- 4% annual growth in utility taxes
- 2% annual growth in other taxes (including the revenue generating regulatory license)
- 5% annual growth in other revenues
- EMS levy maintained

The financial planning staff is currently engaged in balancing each operating fund's basic budget for 2007-2008. Though things are still in a state of flux, it appears that the strong growth in sales tax and development-related fees will help to close the projected General Fund deficit of $418,000 in 2007, although it is important to note that those revenue categories are cyclical in nature. However, a deficit is still projected for 2008 that will need to be addressed.

The General Fund Revenue Summary from the April 2006 Financial Management Report is included as Attachment A for reference as to the status of revenues in 2006.

One item that is expected to be discussed as part of the 2007-08 budget process is the potential impact of the pending Washington Supreme Court review of the constitutionality of Initiative 747. To provide an introduction to this issue, the summary contained in the "Budget Suggestions for 2007" published by MRSC in August 2006 is included as Attachment B.

Public Information and Process

In addition to the public hearing, information about the budget will be posted on the City's web page and an article will be prepared for the City Update.

Upcoming, significant dates in the budget process include the following:

- October 9th: Finance Committee review of budget issues and process
- October 20th: Submit 2007-2008 Preliminary Budget to the City Council
- November 2nd: First study session on budget
- November 8th & 9th: Additional study sessions on budget (tentative)
- November 21st: Second public hearing on the Preliminary 2007-2008 Budget as amended by the Council
- December Council Meeting (TBD): Anticipated date for adoption of budget and property tax levy

ATTACHMENT A

CITY OF KIRKLAND
RESOURCE REPORT: GENERAL FUND
For the Period Ending April 30, 2006

Resource Category	2006 Budgeted Revenues*	2006 Actual Revenues*	Amount Over/(Under) Budget	% of Budget	Target
Taxes:					
Retail Sales Tax: General	12,392,069	4,868,387	(7,523,682)	39.3%	33.0%
Retail Sales Tax: Criminal Justice	890,000	330,515	(559,485)	37.1%	33.0%
Property Tax	8,117,113	2,127,444	(5,989,669)	26.2%	25.0%
Utility Taxes	7,171,200	2,868,004	(4,303,196)	40.0%	35.0%
Rev Generating Regulatory License	900,000	357,466	(542,534)	39.7%	40.0%
Other Taxes	464,800	172,294	(292,506)	37.1%	33.0%
Total Taxes	**29,935,182**	**10,724,110**	**(19,211,072)**	**35.8%**	**33.0%**
Licenses & Permits:					
Building, Structural & Equipment Permits	1,850,742	867,076	(983,666)	46.9%	33.0%
Business Licenses/Franchise Fees	1,184,775	570,054	(614,721)	48.1%	40.0%
Other Licenses & Permits	128,020	44,803	(83,217)	35.0%	33.0%
Total Licenses & Permits	**3,163,537**	**1,481,933**	**(1,681,604)**	**46.8%**	**33.0%**
Intergovernmental:					
Grants	88,693	41,868	(46,825)	47.2%	N/A
State Shared Revenues & Entitlements	581,780	194,239	(387,541)	33.4%	40.0%
Fire District #41	3,141,052	0	(3,141,052)	0.0%	0.0%
EMS	489,685	0	(489,685)	0.0%	0.0%
Other Intergovernmental Services	438,539	331,987	(106,552)	75.7%	N/A
Total Intergovernmental	**4,739,749**	**568,094**	**(4,171,655)**	**12.0%**	**15.0%**
Charges for Services:					
Internal Charges	3,531,586	1,098,759	(2,432,827)	31.1%	30.0%
Engineering Services	400,000	180,871	(219,129)	45.2%	33.0%
Plan Check & Development Fees	2,021,836	562,316	(1,459,520)	27.8%	33.0%
Recreation	74,000	12,150	(61,850)	16.4%	20.0%
Other Charges for Services	599,898	145,200	(454,698)	24.2%	25.0%
Total Charges for Services	**6,627,320**	**1,999,296**	**(4,628,024)**	**30.2%**	**30.0%**
Fines & Forfeits	1,157,550	267,908	(889,642)	23.1%	25.0%
Miscellaneous	585,814	98,033	(487,781)	16.7%	N/A
Total Revenues	**46,209,152**	**15,139,374**	**(31,069,778)**	**32.8%**	**30.0%**
Other Financing Sources:					
Interfund Transfers	301,244	0	(301,244)	0.0%	N/A
Total Other Financing Sources	**301,244**	**0**	**(301,244)**	**0.0%**	**N/A**
Total Resources	**46,510,396**	**15,139,374**	**(31,371,022)**	**32.6%**	**N/A**

* Budgeted and actual revenues exclude resources forward.

I-747 Declared Unconstitutional

On June 13, 2006, Judge Mary Roberts ruled in King County Superior Court that Initiative 747, passed in November 2001, was unconstitutional. That initiative, as written, told voters that the amount that taxing jurisdictions could increase their property tax levy without a vote of the people would fall from two percent to one percent, if passed. However, the two percent limit from the passage of Initiative 722 (which reduced the increase in the levy limit from six to two percent) had been declared unconstitutional before Initiative 747 went to the voters.

Judge Roberts ruled that the voters in November 2001 were misled.

> When I-747 went to the voters on November 6, 2001, the voters were incorrectly led to believe they were voting to amend I-722. They were incorrectly led to believe they were voting on a change in the tax increase cap from two percent to one percent. Instead, they were voting on a change from six percent to one percent. The voters were misled as to the nature and content of the law to be amended, and the effect of the amendment upon it. The constitution forbids this.

She also enjoined the state from enforcing any of the provisions of I-747, which means the law is back to what was prior to November 2001. However, local jurisdictions should use caution in taking any action in reliance on the lower court decision.

Since the time of this ruling, Attorney General Rob McKenna has said that the state will be appealing the ruling to the Washington State Supreme Court. He has also stated the he will seek a "stay," which means that if it is granted, the maximum levy increase would remain at one percent – the I-747 limit – until the supreme court has ruled.

The governor and various legislators have also spoken out since the ruling came down. They will be looking at the "limit factor" during the 2007 legislative session and there could be legislation that would result in it being something different than six percent or one percent.

Q: What does this mean for our levy of taxes for 2007?

A: If a stay is granted or if there is a Supreme Court ruling by November 30, 2006, reversing the lower court decision, the maximum allowable increase will be the amount allowed by I-747 – one percent.

Assuming that there is no court decision by November 30, 2006 and no stay granted for the King County ruling, the levy increase limits in effect will be six percent for jurisdictions with a population under 10,000.

For jurisdictions with a population of 10,000 or more, the allowed increase will be the lesser of six percent or the increase in the implicit price deflator for personal consumption expenditures (IPD) for July as reported in the September issue of the *Survey of Current Business*. The lesser amount will surely be the IPD, given the information we have on it so far. (See page 15.) Those jurisdictions, however, have the opportunity to pass an ordinance or resolution making a finding of "substantial need" that would allow them to go to six percent.

Note, however, that if a supreme court decision after November 30, 2006 reverses the lower court ruling and finds that I-747 is constitutional or if the legislature in 2007 amends RCW 84.55.005 to specify some "limit factor" less than six percent, any jurisdiction that raised its levy by more than the new allowable amount may

have to refund the difference and also bear the costs of making the refund. Local governments should also be aware that any actions this year may have political consequences or impact future legislation and possible initiatives.

Q: I have heard that the Department of Revenue says we may be able to levy banked capacity we missed out on because of the one percent limit of I-776 in past years? Is that true?

Yes, in the June 2006 issue of *Property Tax Review*,[1] Peri Maxi, the retiring assistant director of the Property Tax Division, wrote:

> A preliminary legal analysis suggests that local taxing districts may be able to increase their tax levies by up to six percent in 2007, plus a certain amount of "banked capacity" that would be the difference between the 1 percent increase in taxes they levied under I-747 and what they could have levied under Referendum 47. For smaller districts this would be the difference between 1 percent and 6 percent, but for districts with populations of 10,000 or more, it would be the difference between 1 percent and the Implicit Price Deflator (IPD) a measure of inflation that averaged about 2 percent from 2002 through 2006.

From what we have heard, King County is presently calculating what the banked capacity would have been. We don't know about other counties. But, the same admonition given above holds. If a jurisdiction does a property tax levy for 2007 using banked capacity resulting from the recalculation, it still might have to refund the money. Banked capacity from years preceding the passage of I-747 or from legislative body decisions since its passage to increase levies by less than one percent are not affected by the current events.

Q: Can we do something to bank capacity for 2007?

A: We have been told by the Department of Revenue (DOR) that the following will happen if there has been has been no supreme court ruling reversing the superior court decision and/or if no stay of the superior court ruling has been granted by November 30, 2006.

If your jurisdiction has a population of less than 10,000, you will automatically have the difference between what you levy (one percent is safest) and six percent "banked" if you have complied with the requirement in RCW 84.55.120 to pass a resolution or ordinance stating your levy increase over the prior year in dollar and percentage amounts. (Of course, this increase must not push your tax rate over the maximum allowed.) This is nothing new. You have been required to pass this resolution this since the passage of Referendum 47 in 1997.

If your population is 10,000 or more, you should pass a resolution or ordinance making a finding of "future substantial need" for the difference between what you choose to levy (one percent is safest) and six percent, assuming that this does not require an increase in your tax rate above the statutory maximum. This resolution or ordinance would be in addition to your property tax levy ordinance and your resolution or ordinance to be in compliance with RCW 84.55.120, stating your levy increase in percentage or dollar amounts.

This would put you in a "wait and see" position. You would not be passing a levy for 2007 that could be reduced by a court ruling or legislative action and require you to amend your budget. But, you would be reserving this levy capacity for a future year if it turns out that it is possible to do that. This is the safest and most conservative thing to do.

Q: We have been thinking of doing a levy lid lift. How does this ruling on I-747 affect that?

---

[1] http://dor.wa.gov/Docs/Pubs/Prop_Tax/NewsletterSummer2006.pdf

While there is a scenario that might make such a lid lift unnecessary, we would suggest you continue with your plans. There is nothing in the ruling on I-747 that affects levy lid lifts.

CITY OF KIRKLAND

123 FIFTH AVENUE KIRKLAND, WASHINGTON 98033-6189 (425) 587-3030

CITY ATTORNEY'S OFFICE
MEMORANDUM

To: David Ramsay, City Manager

From: Robin S. Jenkinson, City Attorney

Date: September 1, 2006

Subject: Resolution Opposing Initiative 933

RECOMMENDATION:

That the Council consider the attached resolution following a public hearing.

BACKGROUND DISCUSSION:

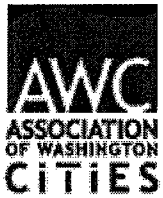
Initiative 933 (I-933) will be presented to the voters of the State of Washington at the general election on November 7, 2006. As described in the attached Advisory issued by the Association of Washington Cities (AWC), I-933, known as the "Property Fairness Initiative," reflects the "basic idea that government should not restrict the use of private property without paying for the decline in value of property resulting from governmental restrictions. …"

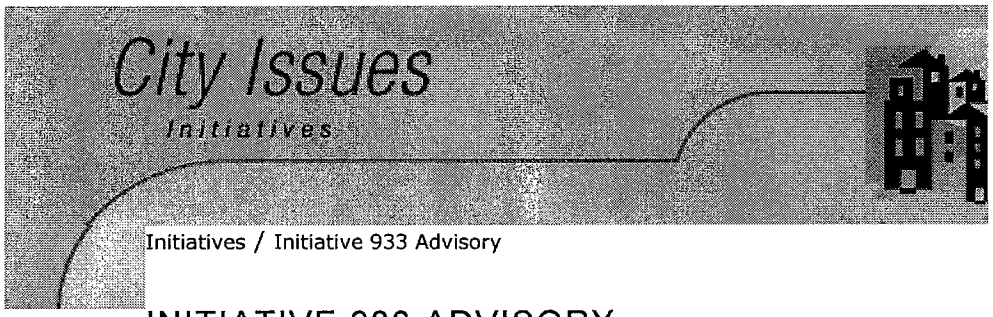
The AWC Initiative 933 Advisory is attached for your reference along with the AWC I-933 Fiscal Impact Estimates. You were previously provided, and for ease of reference a copy of the information developed at the request of AWC, about the estimated fiscal impacts of I-933 upon the City of Kirkland, is also attached.

The attached resolution expresses the Council's opposition to I-933. Under RCW 42.17.130, the Council may vote on a resolution to support or oppose a ballot proposition "so long as (a) any required notice of the meeting includes the title and number of the ballot proposition; and (b) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of any opposing view..."

The City Clerk published notice of the public hearing and included the ballot title and proposition number in the notice.

Attachments: AWC Imitative 933 Advisory
AWC I-933 Fiscal Impact Estimates
Estimated Fiscal Impacts of Initiative 933 Requested by the Association of Washington Cities





INITIATIVE 933 ADVISORY

On February 8 of this year, the Washington State Farm Bureau filed final language with the Secretary of State's office for their so-called "Property Fairness Initiative." (http://www.secstate.wa.gov/elections/initiatives/text/i93

The Initiative Title As It Would Appear On the Ballot:

"This measure would require compensation when government regulation damages the use or value of private property, would forbid regulations that prohibit existing legal uses of private property, and would provide exceptions or payments."

Proponents (http://www.propertyfairness.com/) are currently collecting signatures and are speaking and providing information to various groups and media outlets about what is contained within I-933 and what is driving them to promote it.

Opposition (http://www.protectcommunities.org/) has also formed and member interests are speaking and providing information to various groups and media outlets about why I-933 would be detrimental for communities, businesses and citizens.

This advisory was prepared to:

- Assist city and town officials in better understanding the possible interpretations of I-933; and
- Alert you to the need to begin considering how your city or town would comply if it qualifies for the ballot and became law.

What Does Initiative 933 Mean?

There is much disagreement about what it means, although the basic idea is that government should not restrict the use of private property without paying for the decline in value of property resulting from governmental restrictions, no matter how small that decline in value might be. Proponents and opponents have already begun to portray its scope and impacts differently. Because of what

many consider to be vague and ambiguous language, it is likely that, should the initiative become law, its scope will be defined by the courts. What seems to be clear, however, is that the initiative, if passed, will have a fundamental impact on how the state and cities, towns and counties regulate land use.

The following is intended to present possible interpretations of the initiative, with the understanding that additional interpretations are likely to emerge over the coming months.

Overview of Initiative 933

- **Section 1 (Purpose and Findings)** is a statement of intent. It should have no operative effect, but it may be used to assist in interpreting the remaining provisions in the initiative.
- **Section 2 (Consideration of Impact and Definitions)**
    - **Subsection (1)** of this section establishes a process requiring agencies, "prior to enacting or adopting any ordinance, regulation or rule which may damage the use or value of private property," to consider and document many issues, including the governmental purpose of the proposed action, the connection between the purpose and the action, the potential impacts of the proposed action on the uses of private property, less restrictive alternatives, and the estimated compensation that may need to be paid.
    - **Subsection (2)** defines key terms: "private property," which is defined broadly as all real and personal property; "damaging the use or value"; and "compensation."
- **Section 3 (Compensation or Waiver):** This section would require that any governmental agency seeking to enforce or apply a regulation of private property that would result in "damaging the use or value" of such property must pay compensation for that damage in advance. In the alternative, the state or local governmental agency may, where it already has authority to do so, simply refrain from taking such action and thereby avoid liability.
- **Section 4 (No Fee for Seeking Waiver):** State or local governmental agencies are not permitted to charge any fee for considering whether to waive or grant a variance from a regulation to avoid liability for compensation.
- **Section 5 (GMA Amendments):** Development regulations adopted under provisions of the Growth Management Act (GMA) can't prohibit uses legally existing prior to their

adoption.

- **The remaining provisions (Sections 6 through 10)** are miscellaneous provisions concerning interpretation and effect.

Answers or potential answers to some of the questions being raised about I-933's impacts on cities and towns. ***Such answers are based upon discussions with a variety of technical and legal experts and a review of a number of I-933 analyses available to AWC staff by early May 2006.***

Section 2: Consideration of Impact and Definitions

Q1: How does I-933 affect critical areas regulations that *all* cities and towns were required by the GMA to adopt and implement? *(For how it impacts zoning and other regulations, please see Q 3-4.)*

A: I-933 appears to affect adoption of critical areas regulations in two ways. First, by defining "damaging the use or value" to specifically include "[p]rohibiting or restricting any use, or size, scope, or intensity of any use legally existing or permitted as of January 1, 1996" - cities and counties will not be able to apply or enforce critical area provisions adopted or amended since 1/1/96 that impose greater restrictions on the use of property without *first* compensating property owners for *any* decline in property value.

Second, it defines "damaging the use or value" to include "[r]equiring *a portion of property* to be left in its natural state or without beneficial use to its owner, unless necessary to prevent immediate harm to human health and safety." (Emphasis added.) Many critical areas regulations prohibit development in certain environmentally sensitive areas, such as steep slopes or wetlands or in buffer areas around streams. Consequently, local governments will be required to compensate property owners before applying or enforcing such regulations, *regardless of when they were adopted*, or they would have to waive such regulations (if they have the authority to do so). While these types of regulations, required by the GMA, are based on long-term public health and safety concerns such as preventing landslides or protecting the critical ecological functions of wetlands and streams, it is unlikely that they would be considered "necessary to prevent *immediate* harm to human health and safety."

Q2: All cities and towns are required by the GMA to review and update, if necessary, their required GMA plans and regulations every 7 years. Does revisiting them trigger new obligations under I-933?

A: At least for the GMA review process, that is not likely. Section 2 (1) requires an agency to consider and document a series of listed factors "prior to enacting or adopting" an ordinance or regulation that may damage the use or value of private property. That section does not require a city or town to engage in that process prior to "reviewing" or "considering" whether to amend a plan or regulation. A city or town should be free, under this language, to review whether comprehensive plan or development regulation amendments are needed, without engaging in I-933's study requirements.

Also, since a comprehensive plan, unlike the development regulations that implement it, does not itself regulate the use of property, actions to review and amend a plan would not trigger I-933 requirements.

However, if a city or town decides to proceed with amending its development regulations in response to its GMA-mandated review, then it would need to follow the "consider and document" requirements in section 2(1).

Q3: What impacts will I-933 have on basic land use regulations in cities, either adopted prior to or since 1/1/96?

A: Those regulations that prohibit or restrict "any use or size, scope, or intensity of any use legally existing or permitted as of January 1, 1996" may be applied and enforced *only* with compensation to affected property owners for any reduction in property value. So, I-933 will affect not only how cities might regulate land use in the future, it will also directly affect how and to what extent they will enforce land use laws they have already adopted.

Other specified types of land use restrictions that may require compensation are not subject to the January 1, 1996 limitation, such as requiring any portion of property to be left in its natural state and prohibiting the maintenance or removal of trees or vegetation.

The scope of other land use restrictions subject to the pay or waive requirement is less clear. For example, a local government cannot, without compensation, prohibit "actions by a private property owner reasonably necessary to prevent or mitigate harm from fire, flooding, erosion, or other natural disasters or conditions that would impair the use or value of private property." See Section 2 (b)(iv). How will it be determined what actions are "reasonably necessary" to prevent or mitigate those disasters or conditions?

Q4: Is there agreement on what land use actions by local governments are exempt from the compensation or waive requirements?

A: No, there is much room for interpretation as to what is exempt under Section 2(2)(c), and the exemptions raise additional questions as to the initiative's scope. This exemption section states that "damaging the use or value" of property does not include "restrictions that apply equally to all property subject to the agency's jurisdiction." However, that section then includes specific examples of restrictions that are exempt, even though cities might *not* apply them equally to all property within a jurisdiction. For example, the exemptions include those that limit "the location or operation of sex offender housing or adult entertainment." Cities that regulate adult entertainment generally limit them to certain zones, so it would appear that those restrictions don't "apply equally" to all property within those cities.

So, this raises the issue of what is meant by "apply equally." Building height restrictions aren't normally the same in residentially and commercially zoned areas and may vary within each. Do they have to be the same everywhere in a city to avoid compensation for greater restrictions enacted after 1/1/96? It would appear so.

The initiative exempts regulations that restrict the use of property "when necessary to prevent an immediate threat to human health and safety," yet it does not define what is meant by "immediate." Does this mean that cities cannot regulate common nuisances such as junk vehicles, which may not present such an "immediate" threat to public health and safety, without compensation?

The exemptions also include matters that do not affect the use of private property, such as "worker health and safety laws" and "wage and hour laws," and regulations adopted by the federal government, such as "chemical use restrictions that have been adopted by the United States environmental protection agency." Such exemptions suggest a very broad scope to the initiative.

In short, the exemptions identified in Section 2(2)(c) raise many questions as to what regulation I-933 applies to.

Q5: What local ordinances, regulations or rules may damage the use or value of private property?

A: It appears that the list of regulations, beyond those specifically identified, that "may" damage the use or value of private property would be very broad. Because the specific list of laws identified in

section 2(2)(b) as "damaging the use or value" is not exclusive, property owners clearly may claim that regulations in addition to those specifically listed require compensation (or waiver) if such regulations fit this narrative definition. Since the definition of "damaging the use or value" includes subjective language such as "the cost of which in all fairness and justice should be borne by the public as a whole," it is difficult to identify specific examples of regulations that may meet this definition.

Q6: Eight new cities have incorporated in Washington since 1/1/96 – Edgewood, Lakewood, Maple Valley, Covington, Kenmore, Sammamish, Liberty Lake, and Spokane Valley. Does I-933 impact planning and zoning in new cities any differently from other cities?

A: Cities that incorporated after January 1, 1996 will be impacted differently than other cities by section 2(2)(b)(i), because that provision exempts regulations that prohibit or restrict "any use, or size, scope, or intensity of any use legally existing or permitted as of January 1, 1996." *All* of these eight cities' land use regulations were enacted after that date, so, to the extent that those cities' regulations are more restrictive than their counties' regulations that were in effect on that date, they cannot be enforced or applied without compensation

Q7: In addition to cities, towns and counties, what other "agencies" would be required to consider and document various factors before "enacting or adopting any ordinance, regulation or rule which may damage the use or value of private property" within cities and towns? For instance, is the state legislature included? Individual state agencies?

A: Most certainly, individual state agencies that adopt regulations or rules impacting private property would be required to adhere to these requirements.

As with many of the questions raised by I-933, arguments could be made on both sides of the issue on whether it applies to certain actions of the Legislature. The answer likely depends on whether a court determines (1) that the legislature is an "agency," and (2) that the legislature adopts "ordinances, regulations, or rules."

Q8: How does I-933 affect a city or town's obligations to adopt and enforce Shorelines Management Act (SMA) plans and regulations as mandated by state law?

A: A local government cannot, without compensation, enforce an SMA regulation that falls within the "damage" definition of section 2(2)(b)(ii). This definition specifically includes matters within the

purview of SMA regulations – "[p]rohibiting the continued operation, maintenance, replacement, or repair of existing tidegates, bulkheads, revetments, or other infrastructure reasonably necessary for the protection of the use or value of private property." This appears to apply regardless of how long ago prohibitions were enacted. Other matters within SMA jurisdiction, beyond those specifically identified, may also require compensation to enforce.

However, absent court interpretation or legislative clarification, it isn't clear whether a local government would have the option to waive enforcement of state-mandated and approved regulations like those adopted under the SMA.

Q9: Would I-933 affect the authority of local governments to impose temporary moratoria ("time outs") on land use actions?

A: I-933 is unclear on this point. Section 5 prohibits a local government from adopting GMA regulations that "prohibit uses legally existing on any parcel prior to their adoption." While a moratorium does not strictly prohibit any uses, it may prevent property owners for a period of time from applying for a permitted use. A property may claim that the effect is the same, albeit temporary, and that a moratorium may not be adopted.

With respect to moratoria adopted under laws other than the GMA, I-933's compensation provisions do not specify that the prohibitions must be permanent. As such, courts might determine that temporary moratoria are allowed, but would likely have to specify under what circumstances.

Q10: Section 2(2)(c)(i) includes in the list of regulations that are exempt from the compensation requirement regulations "[r]estricting the use of property when necessary to prevent an immediate threat to human health and safety." What is an "immediate" threat?

A: The answer is not clear. If a court were to use the dictionary definition, then this exemption would only narrowly apply to regulations necessary to prevent a threat to human health and safety that was occurring or was about to occur in the very near future. Regulations to prevent a direct discharge of contamination into a drinking water source, for example, would probably qualify. But whether regulations concerning longer-term threats, such as regulations for septic systems or the siting and operation of a landfill, would be exempt is unclear.

Q11: Section 2(2)(c)(ii) exempts regulations "[r]equiring

compliance with structural standards for buildings in building or fire codes to prevent harm from earthquakes, flooding, fire, or other natural disasters." Does this mean that any building code regulation that does not have to do with preventing "harm from earthquakes, flooding, fire, or other natural disasters" and that was not in place on January 1, 1996, cannot be enforced unless a city pays to do so?

A: The answer to this question will depend on how the courts interpret the "apply equally" criterion, as discussed in **Q4** above. If section 2(2)(c) is interpreted to exempt from the compensation requirements *all* regulations that "apply equally to all property subject to the agency's jurisdiction," not just the ones listed; and if "apply equally" is interpreted to mean treating similarly-situated property equally, then cities and town may still be able to apply equally post-1996 structural standards in building or fire codes that are not designed to prevent harm from natural disasters. Of course, since the state building code *requires* cities to enforce these codes, they may have no choice but to enforce them.

Section 3 – Compensation and Waiver

Q1: When does the compensation requirement in section 3 apply? What does it mean for a city or town to "decide to enforce or apply" a regulation?

A: Compensation is required under section 3 of I-933 if an agency "decides to enforce or apply" a regulation that would result in damaging the use or value of private property. If the agency "chooses not to take action," it is not liable for compensation. This language appears to give agencies the option to "waive," or not apply, the offending regulation and thereby avoid compensation. However, unlike Oregon's Measure 37, which clearly provides agencies with authority to waive laws (no compensation has been paid in Oregon on any claim to date), I-933 is ambiguous as to whether it provides waiver authority or whether it simply acknowledges that an agency may already have waiver authority in the laws it administers.

Q2: Would compensation be required under section 3 whether or not a development permit is being sought for a specific piece of property?

A: Yes, if the city or town is affirmatively choosing to "enforce or apply" the law. Section 3's compensation requirement is triggered if an agency "decides to enforce or apply" an offending regulation. If a property owner does not apply for a permit, and the agency does not seek to enforce the law, the compensation requirement is

not triggered.

Q3: When would the state or other agencies be liable for compensation for regulations applicable in cities?

A: If the regulation is purely local, that is, it is not adopted pursuant to state statute or regulation, the state or state agencies would likely not be liable for compensation. What is not clear, however, is whether the state bears some responsibility for compensation if the local law is adopted pursuant to a state law requirement.

For example, many cities and towns are required to adopt and enforce plans and regulations under the Shorelines Management Act (SMA). Those plans and regulations must be reviewed and approved by the Department of Ecology prior to local implementation. GMA plans and regulations are required at the local level, but aren't reviewed and approved by the state. Whether those differences are significant enough to make a case for a finding of an agency relationship is unknown.

Q4: What liability might a city incur if it decides to waive (not enforce) a regulation mandated by the state or federal governments in order to avoid compensation?

A: Good question! Again, we are not sure.

Q5: What liability might a city incur if it waives a regulation and the activity resulting from that waiver damages adjoining property?

A: This gets into areas of law dealing with negligence. It isn't clear how this would sort out and it likely depends on how courts ultimately interpret the so-called "pay or waive" provisions of I-933, should it be enacted.

Q6: If needed, how is the amount of compensation determined?

Section 2(2)(d) of I-993 defines "compensation" as "remuneration equal to the amount the fair market value of the affected property has been decreased by the application or enforcement of the ordinance, regulation, or rule." Therefore, governments will have to pay for the decrease in fair market value caused by the regulation. It also includes attorneys' fees reasonably incurred by the property owner in seeking to enforce I-933. How one determines whether, and to what extent, a land use regulation decreases fair market value is a complex matter.

Further, section 2(2)(d) states that to the extent any *portion* of the

property is required to be left in its natural state or without beneficial use by its owner, the amount of compensation due would be the fair market value of the portion of property required to be left in its natural state.

Section 5 - GMA AMENDMENTS

Q1: Section 5 is the only part of I-933 that specifically amends the Growth Management Act. What does this section mean and how does it differ from section 2(2)(b)(i) (requiring compensation for post-January 1, 1996 regulations)?

A: Section 5 of I-933 prohibits the adoption of any *new* GMA development regulations that prohibit uses that legally existed prior to the adoption of the regulation. Section 5 differs from section 2(2)(b)(i) in that it does not allow a local government to adopt such a regulation and then pay to apply it. Rather, it prohibits the adoption of any new regulation that prohibits an existing, legal use.

Q2: Does section 5 prohibit GMA cities or towns from making a use nonconforming—allowing its continuation but subjecting it to nonconforming use rules? If not, are legally existing uses then legal in perpetuity?

A: I-933 appears to prevent the creation of nonconforming uses. It prohibits changes to GMA regulations that would prohibit existing, legal uses. Since a nonconforming use is only created by virtue of regulations that otherwise prohibit that use, section 5 seems to limit a GMA city or town from creating any new nonconforming uses. Current legal uses would be legal in perpetuity.

General Questions

Q: Does I-933 affect a city's eminent domain authority?

No. Although Section 1, the purpose and intent section, discusses the power of eminent domain, the operative sections do not mention eminent domain authority. Curiously and despite this fact, the proponent's web site identifies three eminent domain actions (one by the state, one by a city, and one by the Seattle Monorail Authority) as the first three examples of "excessive regulations" that have damaged property.

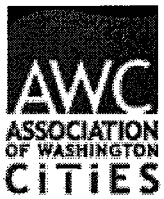
Note that the Washington State Constitution does not authorize condemnation of private property for economic development, as was determined by the U.S. Supreme Court in *Kelo v. New London* to be authorized in certain circumstances under the federal constitution. The *Kelo* decision has been widely criticized by property rights organizations.

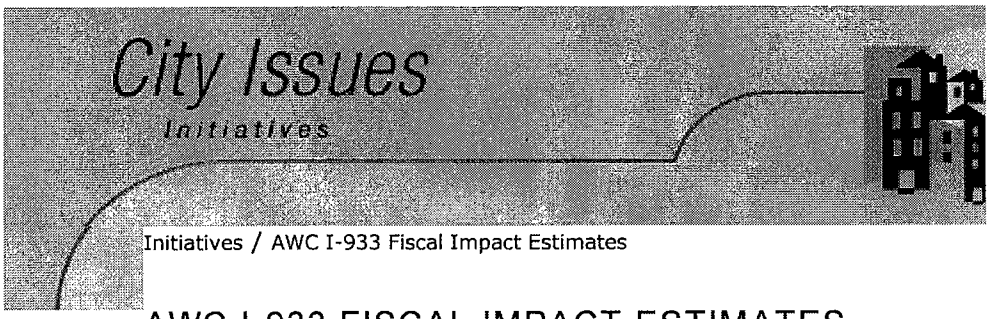
In closing...

As more information becomes available about I-933 – including how individual cities or others are interpreting its provisions, AWC will provide updates to cities and towns through our regularly scheduled publications and on our website.

If you have questions or comments on this topic, please feel free to contact AWC's Dave Williams at either (360) 753-4137 ext. 142 or (e-mail) davew@awcnet.org.

8/18/06





AWC I-933 FISCAL IMPACT ESTIMATES

Background

A state law passed in 2004 requires the Office of Financial Management (OFM) to provide citizens with a fiscal analysis of the potential state and local government revenue and expenditure implications of Initiatives on the ballot. The analysis is to be summarized in the Voter's Pamphlet and posted on the Secretary of State's website.

On July 20, 2006, OFM asked AWC for city and town fiscal impact estimates for the additional requirements and compensation that could be required to implement Initiative 933. We were asked to provide estimates by August 1st and nearly met that tight timeline (pegged to Voter Pamphlet printing deadlines).

The estimate provided to OFM by AWC is a statewide estimate. AWC does not have estimates for individual cities. We encourage cities to conduct there own impact estimates to help prepare their city and community in the event it passes and to help educate citizens about potential impacts. Cities should determine whether or not to use a similar methodology as is provided below.

Statewide Estimates of Impacts on Cities

AWC provided to OFM a **Compensation** (pdf, 7 kb) estimate of between $3.5 and $4.5 billion, and an **Administrative Costs** (pdf, 7 kb) estimate of between $60 and $76 million per year. These are statewide estimates – AWC does not have estimates for individual cities.

We encourage individual cities and towns to consider the potential fiscal impacts of I-933 on their own budgets. If the Initiative passes, it becomes law on December 7, 2006 – 30 days after the election. We can provide more information to interested cities and towns about the methodology we used to calculate our estimates, as well as sample methodologies used by some of those

who responded to our survey. Contact Dave Williams at davew@awcnet.org or Tim Gugerty at timg@awcnet.org.

How Did We Estimate Impacts?

We sent surveys to a number of cities that reflected diversity of geographic region and population size.

The survey asked cities to estimate the impact of I-933 in four possible categories:

- **Compensation** resulting from actions/conditions impacting land in cities between 1996 and 2006;
- **Costs to analyze claims** under current, previous or proposed regulations;
- **Potential appraisal costs** (for determining compensation values); and
- **Potential additional litigation costs** for claims and appeals.

The information request AWC sent to cities did not include direction on how to calculate impacts. At the direction of and in consultation with OFM, AWC did ask cities to consider the following assumptions: assume current state requirements and regulations would remain in place, reflect costs for past city regulatory actions, and assume cities may only "waive" regulations if expressly authorized to do so in statute.

City responses reflected a variety of methods for arriving at an impact estimate, including consideration of developed and undeveloped parcels, building permit activity levels, valuation of land under critical areas or shorelines regulations, and calculations of assessed values.

AWC projected a statewide estimate by determining population growth rates in cities over the last 10 years, grouping them into five impact categories by growth rates and applying a different average assessed value impact factor to each grouping for an estimated compensation liability for regulations in place between 1996 and the present.

What Did We Find?

Our Compensation estimate for all cities and towns is between $3.5 and $4.5 billion. This estimate is expressed in a range because responding cities identified a wide array of potential impacts. Our Compensation estimate may be conservative in that it only totals approximately 1% of overall statewide city assessed value and does not take into account such factors as:

- The estimate is provided for current liability since 1996 only.

- This estimate is based on current city regulations and state mandates and current levels of population growth.
- The estimate does not reflect potential claims resulting from impacts to value of land for property adjacent to parcels on which reduced enforcement of regulations may be deemed to damage the rights or values of such parcels.
- The estimate is not adjusted for inflation.

Our Administrative Costs estimate for all cities and towns is between $60 and $76 million per year. This takes into account the estimated costs to analyze current and future land use plans and regulations to evaluate impacts from I-933 compensation claims, the costs to conduct appraisals based on OFM's estimate of appraisal costs, and the costs for associated litigation.

Unlike the Compensation estimate, which is a cumulative total for years 1996-2006, the estimated Administrative Costs are projected annually into the future beginning after December 2006.

Now What?

OFM will determine how they will include and characterize our estimates in what they submit to the Secretary of State. They will also submit an estimate for state and county fiscal impacts.

We have heard that an independent fiscal analysis is being developed, but have not had contact with those conducting it. Clearly, that analysis won't be included in anything provided in the Voter's Pamphlet but is likely to be available during public consideration and debate about I-933 prior to the November 7th election.

Again, we encourage cities and towns to conduct their own impact estimates to be better prepared if Initiative 933 passes, and to help educate citizens about potential impacts.

While local governments can not use public funds to advance or oppose ballot propositions, cities are able to share factual information with their citizens. More information about what cities may or may not do regarding ballot initiatives can be found on AWC's PDC & AGO resources page.

8/18/06

CITY OF KIRKLAND
Department of Finance & Administration
123 Fifth Avenue, Kirkland, WA 98033 425.587.3100
www.ci.kirkland.wa.us

MEMORANDUM

To: City Council

From: Tracey Dunlap, Director of Finance & Administration

Date: August 16, 2006

Subject: Estimated Fiscal Impacts of Initiative 933 Requested by the Association of Washington Cities

BACKGROUND DISCUSSION:

On July 27, 2006, the Association of Washington Cities requested that the City of Kirkland provide estimates of the fiscal impacts of Initiative 933 by August 3. Kirkland was one of several jurisdictions selected because of the City's participation on the AWC Board. The Governor's Budget Office (Office of Financial Management, OFM) had asked AWC and the Washington State Association of Counties to help them collect data on the fiscal impacts of Initiative 933 on cities and counties to assist OFM in preparing fiscal impact statements on the state and local governments for the voters' pamphlet.

As described in the advisory issued by AWC (www.awcnet.org/933advisory), I-933 (known as the "Property Fairness Initiative") reflects the "basic idea that government should not restrict the use of private property without paying for the decline in value of property resulting from governmental restrictions...". The title of the Initiative reads: "This measure would require compensation when government regulation damages the use or value of private property, would forbid regulations that prohibit existing legal uses of private property, and would provide exceptions or payments".

The memorandum submitted by the City to AWC is attached for your reference. Given the limited time frame to prepare the estimate, a number of broad assumptions regarding the impact of selected changes in regulations were developed, as documented in the attached materials. The City's GIS system proved to be the critical tool in completing the exercise. The resulting estimates represent only a rough order of magnitude of the potential impacts on the City. If the initiative passes, I am sure that much more in-depth planning, legal, and financial analysis will be required to respond to its requirements.

The information that AWC submitted to OFM is also attached. I want to take this opportunity to acknowledge the contributions of Xiaoning Jiang (GIS Administrator), Eric Shields, and Robin Jenkinson in generating the ideas, assumptions, and the supporting information required to respond to this request and Anja Mullin for her assistance in pulling the summary together.

cc: David Ramsay, City Manager

Attachments:
August 3, 2006 Memorandum to AWC – Estimated Fiscal Impact of Initiative 933 (2 pages)
August 10, 2006 E-mail from AWC – Fiscal Impact Estimates (4 pages)

CITY OF KIRKLAND
Department of Finance & Administration
123 Fifth Avenue, Kirkland, WA 98033 425.587.3100
www.ci.kirkland.wa.us

MEMORANDUM

To: Association of Washington Cities

From: Tracey Dunlap, P.E., Director of Finance & Administration

Date: August 3, 2006

Subject: Estimated Fiscal Impact of Initiative 933

DISCLAIMER:

These estimates were prepared in response to a request from the Office of Financial Management for purposes of completing a fiscal analysis of the impacts of I-933. These estimates are preliminary only. The assumptions used to obtain the estimates may change depending on court or other interpretations of I-933, should it pass. This information is offered for informational purposes only. It is not intended as an expression of support or opposition to the initiative.

BACKGROUND DISCUSSION:

In response to the AWC request on July 27, 2006 for an I-933 Fiscal Impact Analysis, the City of Kirkland has prepared the following broad estimates of potential impacts to the City. Four major areas were identified where "new or amended designations or regulations" may have been enacted during the period 1996-2006. These areas are:

- Increases in Sensitive Area Buffers: The estimated impacts requested are contained in the attached table.
- Change of Use/"Downzoning": There has been little to no significant "downzoning" within the City boundaries during the period, therefore no impacts were estimated.
- Area Specific Regulations: The Houghton Community Council, a community municipal corporation created under Ch. 35.10 RCW, has the ability to disapprove zoning ordinances and other land use controls that would otherwise apply throughout the City. As a result, certain land use controls which are effect elsewhere in the City may not apply within the Houghton Community Council jurisdiction. However, the land use controls within the Houghton Community Council jurisdiction are uniformly applied. Therefore, no impacts were estimated.
- Tree Ordinance: Due to the difficulty in estimating the change in fair market value (FMV), the impact for this regulation could not be estimated.
- Estimates do not reflect changes in regulation that may be considered in the future, such as changes in Floor Area Ratio (FAR) or updates to Shoreline Restrictions, or changes that would apply if the City of Kirkland annexed its Potential Annexation Area (PAA).

The results and major assumptions used in estimating impacts are summarized in the attached table. I can be reached at (425) 587-3101.

cc: David Ramsay, City Manager

I-933 Fiscal Impact Estimate
City of Kirkland

8/3/2006 17:23

These estimates were prepared in response to a request from the Office of Financial Management for purposes of completing a fiscal analysis of the impacts of I-933. These estimates are preliminary only. The assumptions used to obtain the estimates may change depending on court or other interpretations of I-933, should it pass. This information is offered for informational purposes only. It is not intended as an expression of support or opposition to the initiative.

Assumptions:			**Source:**
Cost per Appraisal	$	7,500	provided by AWC
Cost for Property Rights Analyses	$	3,000	Assumes 20 Planning staff hours per claim at fully loaded rate of $150/hour
Change in FMV/sq. ft. - Subdivide	$	28	See Note 1
Change in FMV/sq. ft. - Redevelopment		20%	Assumed percentage increase in A/V by redevelopment
Claims Litigated		6%	Based on Oregon Measure 37 experience cited by AWC
Legal Cost	$	20,000	per litigated Claim (pre-Appellate)

Changes 96-06	Potential $ Impact	# of Potential Claims (Parcels)	Exp. # of Claims Litigated	Prop. Rights Analyses Cost	Appraisal Cost	Legal Cost
Impacts of Increase in Buffer (see Note 2)						
Potential to Subdivide	$ 18,487,392	40	2	$ 120,000	$ 300,000	$ 40,000
Potential Redevelopment	$ 36,565,960	243	15	$ 729,000	$ 1,822,500	$ 300,000
Total	**$ 55,053,352**	**283**	**17**	**$ 849,000**	**$ 2,122,500**	**$ 340,000**

Note 1: Change in FMV is calculated based on assumed average unimproved lot value of $200,000 for 7,200 sq. ft. lot, or approximately $28 per square foot.
Note 2: Potential $ Impact calculated based on GIS parcel information and the following assumptions:

Subdivision Impact	Parcels	Total Sq. Footage	less: Assumed Exist. Dev. Area @ 7,200 sf	Net Sq. Footage	Change in FMV
Impacted Single Family Lots >=14,400 sq. ft.	24	571,896	(172,800)	399,096	$ 11,174,688
Impacted Vacant parcels	16	261,168	-	261,168	$ 7,312,704
Total Potential to Subdivide	**40**	**833,064**	**(172,800)**	**660,264**	**$ 18,487,392**

Redevelopment Impact	Parcels	Current Assessed Value	20% Change in FMV
Impacted Single Family Lots <14,400 sq. ft.	189	$ 80,421,400	$ 16,084,280
Impacted Non SF Lots	54	$ 102,408,400	$ 20,481,680
Total Potential to Redevelop	**243**	**$ 182,829,800**	**$ 36,565,960**

Tracey Dunlap

From: Dave Williams [davew@awcnet.org]

Sent: Thursday, August 10, 2006 12:17 PM

To: Rose Feliciano; Mark Madsen; Tracey Dunlap; Fran Harrigan; Steve Worthington; Scott Staples; John Hawley; Ramras, Natasha; Sherman, John; Dave Fonfara; malcolm@cob.org; Douglas A. Merriman; townofharrah@bentonrea.com; Toni Zunker; Iwen.Wang@cityoffederalway.com; smukerje@ci.olympia.wa.us; slancaster@ci.tukwila.wa.us; dsmith@libertylakewa.gov; crutchfieldg@ci.pasco.wa.us; chelanmayor@nwi.net; mark.brown@ci.vancouver.wa.us; khaines@ci.lake-forest-park.wa.us; pdugan@ci.lynnwood.wa.us; levy4@msn.com; cathy.rosen@oakharbor.org; dlittle@cob.org; Tracy Burrows; David Ramsay; citymanager@cityofpa.us

Cc: Tim Gugerty; Sheila Gall; Sheri Sawyer; Jim Justin

Subject: fiscal impact estimates

Attachments: Dave Williams.vcf; AWC I-933 Fiscal Impact Estimate_Comp and Admin_080909.doc; AWC I-933 Fiscal Impact Estimate_Avg Annual Additional Cost_080909.doc

A HUGE **thank you** for taking the time last week to produce estimates of the fiscal impacts of I-933 on your city. The estimates you provided, including your approaches, methodologies and comments, were invaluable in allowing us to sift, sort and ultimately compile a statewide fiscal impact estimates for cities.

Attached, please find a copy of the estimates we provided to the Office of Financial Management.

In summary –

- In our first attached chart, we estimate the CURRENT liability for compensation resulting from actions/conditions impacting land in cities between 1996 and 2006 **totals from $3.5 to $4.5 Billion.**
  - We provided a RANGE in recognition of the fact that information provided by cities revealed a wide range of projected impacts.
  - We ended up calculating our statewide estimates by determining population growth rates in cities over the last 10 years, grouping them by growth rates and applying a different average assessed value impact factor to each grouping. The larger and faster growing the city, the higher the impact factor. Our chosen Assessed Value impact factors ranged from a low of 0.13% to a high of 2.6%. PLEASE NOTE that these impact factors are lower than many cities indicated in their estimates so our estimates to OFM may be quite conservative.
  - STATEWIDE, the estimated current liability for compensation represents from 0.9% to 1.1% of the TOTAL AMOUNT OF ASSESSED VALUATION in cities.
- We are not suggesting that the Office of Financial Management include an estimate of FUTURE compensation liability in cities, but if they wanted to include that to coincide with their own future 6-year projection, we offered an idea. As shown in the second attached chart, we calculated the average annual growth in assessed value over the last 10 years in cities grouped by population increase groupings. We then applied this factor to both the low and high estimates for compensation for each of the population growths groups. **This results in a potential FUTURE compensation liability estimate for cities ranging from $463 - $590 Million annually.**
- Finally, as shown in our first chart, we estimate a statewide range of ANNUAL costs to administer I-933 that range from $60 - $77 Million/year. These estimates take into account the estimated costs to analyze current and future land use plans and regulations to evaluate impacts from I-933 compensation claims, the costs to conduct appraisals based on OFM's estimate of appraisal costs, and costs for associated litigation.

If you have any questions, please don't hesitate to contact me at davew@awcnet.org or 1-800-562-8981.

Again, thank your taking the time to complete this challenging task. We were heartened by the number and quality of responses from cities.

Dave Williams
Association of Washington Cities
360-753-4137 ext. 142

AWC I-933 Fiscal Impact Estimates - Compensation & Administration

Compensation

City Groups by % Population Change 1996-2006	% Assessed Valuation (AV) by Group - Low Range Estimate	% AV by Group –High Range Estimate	Sub Total - Low Range Estimate	Sub Total – High Range Estimate
-37.45 - 0	0.13%	0.17%	$14,091,075	$17,993,218
0 - 14.9	0.46%	0.58%	$1,129,033,093	$1,441,688,411
15 - 35	0.78%	1.00%	$880,739,226	$1,124,636,243
36 - 49	1.30%	1.66%	$409,626,270	$523,061,237
50 - 100	2.60%	3.32%	$1,103,493,321	$1,409,076,087
		Total Compensation Liability for Regulations/Conditions Imposed in Cities 1996-2006	**$3,536,982,985**	**$4,516,455,197**

Administrative Costs - ANNUAL

	Analysis	Appraisals	Litigation	Total
Low	$14,963,000	$21,772,530	$23,354,500	**$60,090,030**
High	$19,106,600	$27,801,846	$29,821,900	**$76,730,346**

AWC I-933 Fiscal Impact Estimates – Estimated Additional Compensation Based on Average Assessed Value Growth

City Groups by % Pop. Change 1996-2006	Avg Annual AV Growth	Low Range 1996-2006 Compensation Liability Estimate	Additional Annual AV Impact Based on Avg AV Growth	High Range 1996-2006 Compensation Liability Estimate	Additional Annual AV Impact Based on Avg AV Growth
"-37.45 - 0"	10%	**$14,091,075**	$ 1,419,521	**$ 17,993,218**	$ 1,812,620
0 - 14.9	11%	**$1,129,033,093**	$ 124,714,179	**$ 1,441,688,411**	$ 159,250,414
15 - 35	10%	**$880,739,226**	$ 91,745,515	**$ 1,124,636,243**	$ 117,151,965
36 - 49	12%	**$409,626,270**	$ 48,261,425	**$ 523,061,237**	$ 61,626,127
50 - 100	18%	**$1,103,493,321**	$ 196,575,820	**$ 1,409,076,087**	$ 251,012,200
	Total Compensation	**$3,536,982,985**	**$ 462,716,460**	**$ 4,516,455,197**	**$ 590,853,326**
	% Total City AV	0.9%	0.1%	1.1%	0.1%

RESOLUTION R-4602

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND STATING THE CITY COUNCIL'S OPPOSITION TO INITITIATIVE 933.

WHEREAS, Initiative 933 (I-933) will be presented to the voters of the State of Washington at the general election on November 7, 2006, with the following official Ballot Title:

> Statement of the Subject: Initiative Measure 933 concerns government regulation of private property.
> Concise Description: This measure would require compensation when government regulation damages the use or value of private property, would forbid regulations that prohibit existing legal uses of private property, and would provide exceptions or payments.
> Should this measure be enacted into law? Yes [ ] No [ ];

and

WHEREAS, I-933 would require an agency, including a city government, that "decides" to "enforce or apply" any "ordinance, regulation, or rule" to private property which would result in "damaging the use or value of private property" to first "pay compensation," as those phrases are defined and used in I-933; and

WHEREAS, I-933's definition of "damaging the use or value" would dramatically lower the threshold for compensation far below constitutional limits; and

WHEREAS, I-933's definition of "private property" includes virtually all interests in real as well as personal property; and

WHEREAS, because I-933's definition of "damaging the use or value" or private property includes no minimum threshold for the reduction of use or value, virtually any limitation on the use of private property creates a cause for a compensation claim for "damages" within the meaning of I-933, regardless of the importance of the public protection achieved by such limitation; and

WHEREAS, by its terms, the provisions of I-933 are to be "liberally construed" (Section 6) and its exceptions listed in Section (2)(c) do not list nuisance uses that typically would be precluded from residential neighborhoods, and thus I-933 would authorize claims for payment or waiver

for City regulations that prohibit a wide variety of detrimental and incompatible land uses and activities that would seriously degrade the quality of life and property values of such residential neighborhoods; and

WHEREAS, I-933 would deprive local jurisdictions, including the City of Kirkland, of the ability to adopt and enforce reasonable land use development standards to mitigate traffic impacts, assure appropriate building heights, setbacks and lot coverages, provide for the protection and preservation of trees and vegetation, open spaces and environmentally sensitive areas; and other general development regulations necessary to promote the public health, safety and welfare; and

WHEREAS, I-933 erroneously assumes that local jurisdictions have authority to "decide" not to enforce or apply duly enacted ordinances, regulations, and rules, without granting express authority to pay compensation or waive the enforcement or application thereof; and

WHEREAS, the Association of Washington Cities has estimated that the statewide annual administrative costs to cities alone would be between $60 million and $76 million, while the statewide annual cost to cities for paying claims is estimated to be between $3.5 billion and $4.5 billion; and

WHEREAS, the cost of processing and paying compensation for the enforcement of reasonable development regulations under I-933 would far exceed the requirements of both the federal and state constitutions and cripple the fiscal ability of the City to provided needed public safety, infrastructure and other public services; and

WHEREAS, as provided in RCW 42.17.130, the City Council of the City of Kirkland desires to show its opposition to I-933;

NOW, THEREFORE, be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Council, after considering testimony at a duly noticed public hearing, hereby opposes Initiative 933.

Section 2. The City Council hereby urges citizens to vote no on Initiative 933 on November 7, 2006.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2006.

Signed in authentication thereof this _____ day of _____, 2006.

_____
MAYOR

Attest:

_____
City Clerk

CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Elaine Borjeson, Solid Waste Coordinator
Daryl Grigsby, Public Works Director

Date: September 7, 2006

Subject: CITYWIDE COMMERCIAL ORGANICS PROGRAM PROPOSAL

RECOMMENDATION

Staff requests that Council provide direction on a funding method for a new citywide commercial organics program. The proposed options are: embed the costs in the commercial rate structure or establish a fee-for-service charge. Staff recommends that the costs be embedded in the commercial rate (Option 1).

Implementation of a commercial organics program is dependent upon Council budget approval during the 2007-2008 Budget process. Council direction at this time will assist with the Solid Waste Rates that will be proposed.

BACKGROUND

In November, 2004, Council approved the City's participation in a yearlong pilot program to recycle commercial organics (food, food-soiled paper, plant material, etc.) in coordination with the King County Solid Waste Division and Waste Management. The program began in March, 2005 and continued until March, 2006 with 28 participating businesses in the Totem Lake area. These businesses recycled nearly 100 tons (97.69 tons) of organic material. Instead of being thrown into the garbage and ending up at the landfill, the material was diverted to the Cedar Grove Composting Facility where it became compost. In turn, this compost was then sold for residential and commercial landscaping in the Puget Sound region.

The goal of the pilot program was to:

- Gain information on the level of interest in the targeted business community for organics recycling;
- Determine the amount of material that would be diverted from the landfill;
- Gauge the ability of businesses to reduce their garbage costs;
- Discover barriers to commercial organics recycling; and,
- Develop a citywide program including costs and incentives for businesses to participate when the pilot ended.

A report on these goals was submitted to Council on February 21, 2006 (Attachment 1). The purpose of this memorandum is to provide options for a full-scale program utilizing data from the pilot along with additional information from a survey conducted at the conclusion of the project (Attachment 2).

The need for a commercial organics program is evident by King County data from 2005 indicating that 26% (by weight) of all material currently disposed by businesses is foodwaste and food-soiled paper. Under current conditions, the landfill is expected to reach permitted capacity and close in 2015. Sixty-five percent of the respondents to the survey conducted at the end of the pilot program noticed a reduction in the amount of garbage they produced. Sixty-five percent of respondents also thought they would decrease the size of their garbage container if the program became permanent. A commercial organics recycling program may also have a positive impact on wastewater infrastructure and treatment because 45% of the pilot program participants noticed they used their garbage disposal less frequently and 3% observed fewer clogged drains.

The region is beginning to respond to the need for commercial organics recycling. King County has identified organics as a key target for achieving waste reduction and recycling goals. The neighboring jurisdictions of Redmond and Issaquah began offering citywide programs this year, and Seattle has had a program since July, 2005. These programs have had a slower rollout than is proposed for Kirkland and are described in a later section of this memorandum.

PROPOSED COMMERCIAL ORGANICS PROGRAM

The proposed structure for a citywide commercial organics program is based on data from the pilot projects conducted in the cities of Kirkland, Redmond and Bellevue as well as the survey given to participants at the conclusion of Kirkland's pilot program. It is also based on input from the Seattle-King County Public Health Department, Waste Management, King County and their consultants.

The results show that twice per week collection frequency is sufficient for most, if not all, businesses (Kirkland's pilot program had three times per week collection, but Bellevue's was twice per week). The proposed program would have participating businesses place their organic material into 64 or 96 gallon carts which Waste Management drivers will line with biodegradable bags each time the cart is emptied. Initially, this program will focus on approximately 240 businesses which include restaurants, delis, coffee stands, hotels, grocery stores, florists, the technical college and hospital. Waste Management's proposed collection fees are shown in Table 1.

Table 1: Commercial Organics Collection Fee

Monthly Fee	**Once Per Week Collection**		**Twice Per Week Collection**	
	64 Gallon Cart	96 Gallon Cart	64 Gallon Cart	96 Gallon Cart
One Cart	$14.85	$18.43	$27.55	$34.70
Biodegradable Bags	$3.49	$3.49	$6.98	$6.98
Total	$18.34	$21.92	$34.53	$41.69
Each Additional Cart	$8.34	$11.43	$16.27	$22.47
Additional Bags	$3.49	$3.49	$6.98	$6.98
Additional Cart Cost	$11.83	$14.92	$23.25	$29.45
Total w/two Carts	$30.17	$36.84	$57.78	$71.14

Participating businesses will receive technical assistance throughout the program which is an important component of the overall system. Unlike basic recyclables such as paper, cardboard and glass, organics recycling is new, and employees do not know intuitively which materials are acceptable in the program. Recycling organics requires a change in the flow of materials in the kitchen, and adequate training and support will help ensure that the organic material is handled properly and that businesses use the program

efficiently and successfully. The proposed program budgets $20,000 per year for technical assistance that will be heavily weighted toward onsite outreach and education.

If approved by Council, the program will be implemented through a contract amendment to the existing Comprehensive Garbage, Recyclables and Organics (Yard Debris + Food Waste) Collection Contract with Waste Management. Because this is a relatively new area of recycling, there is no standard among other cities in the region that have implemented similar programs. For that reason, the City and Waste Management will meet again prior to the next biennial budget cycle to evaluate program costs and options based on information gained from implementation of Kirkland's citywide program and make adjustments as necessary.

OPTIONS FOR FINANCING COMMERCIAL ORGANICS PROGRAM

There are two basic methods for financing a commercial organics program: embedding the costs into the commercial garbage collection rate structure as is done with other residential and commercial recycling collection programs or establishing a fee-for-service charge directly to program participants. These options are described below along with the perceived advantages and disadvantages:

- Option 1: Proposed Program with Embedded Rate Structure:
    - All commercial accounts pay program costs whether or not they participate (currently 671 accounts representing 2,290 non-home based businesses)
    - Cost is estimated at 3.3% of commercial rate base or an increase of about $10.20/month on an average $295/month solid waste fee
    - Program will provide each participating business with up to two 64-gallon carts or one 96-gallon cart for organics collection twice per week, additional carts can be ordered at business' own expense; this level of service provides adequate coverage to nearly 90% of organics-generating businesses
    - Approximately 240 businesses will be the focus for the first two years
    - Estimate 80 businesses will participate in Year 1 (0.33% of 240), and an additional 53 businesses will participant in Year 2 (0.33% of 160)
    - Program goal is to recycle 465 tons of organic material by the end of Year 2 and annually thereafter
    - Advantages:
        - Greater participation from eligible businesses because no additional direct costs are incurred
            - 75% of participants in the pilot program indicated they would not continue recycling organics if the program became fee based
            - At the conclusion of the yearlong pilot, only two of 28 (7%) businesses continued the program when charged a fee
        - Ensures program funding is available and stable
    - Disadvantages:
        - Businesses that do not produce organic material are required to subsidize the organics recycling program

- Option 2: Proposed Program with Fee-for-Service Charge:
    - Each participating commercial account is charged a fee for organics recycling plus technical assistance

- Expect 24 businesses to participate in Year 1 (0.10% of 240), and an additional 22 businesses to participate in Year 2 (0.10% of 216)
- Program goal is 160 tons of organic material recycled annually by end of Year 2
- Advantage:
  - Only subscribing businesses pay the costs of service
- Disadvantages:
  - Lower participation rate
  - Difficult for small to medium sized businesses to realize cost savings from recycling organics
  - Unstable funding for technical assistance (dependent on size of participant pool)
  - Organics recycling would be funded differently than other City recycling programs
  - Decreased ability of many organics-generating businesses that are part of a property managed complex to sign up for a fee based program if the increased costs impact all of the businesses in the complex

COMMERCIAL ORGANICS RECYCLING PROGRAMS IN NEIGHBORING JURISDICTIONS

Seattle, Issaquah and Redmond started citywide commercial organics programs within the last year. Seattle's program involves both of the region's haulers – Waste Management and Allied Waste Services. It began in July, 2005 with Allied Waste Services and in August, 2005 with Waste Management. About 370 accounts out of an estimated 3,500 food generating business accounts are currently signed up for service. Seattle has approximately 10,000 commercial accounts. Commercial recycling in Seattle (including organics) is a fee-for-service program.

Issaquah's program is also based on fee-for-service and was implemented by a contract amendment with Waste Management at the end of May, 2006. Issaquah plans to sign up approximately 30 businesses per year, but the rollout has been very slow so far, and they plan to meet again with Waste Management and then go back to the business community to generate renewed interest in organics recycling.

Redmond's City Council authorized their citywide program in August, 2006 for a trial period of one year. The City of Redmond will fund the costs for the program through their solid waste reserve fund. They plan to re-open their contract with Waste Management after one year when the costs and benefits of the trial year have been evaluated. Current enrollees in Redmond's program are the 28 businesses that participated in their pilot program.

CONCLUSION

The City of Kirkland has been successful at increasing recycling rates since Council set recycling goals in 2002. Development of new recycling programs will ensure that Kirkland remains an area leader in waste reduction and diversion. Organic materials are the largest component of the commercial waste stream that can be diverted from the landfill but continue to be thrown into the garbage. A program to remove this reusable resource from the landfill is consistent with the US Mayor's Climate Protection Agreement, the Final 2001 King County Comprehensive Solid Waste Management Plan approved by the Kirkland City Council and Council's own environmental stewardship goals.

Attachments: 1 – Council Memorandum, Update on Pilot Commercial Organics Program
2 – Kirkland Commercial Food Recycling Pilot Program Survey

Attachment 1

CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Elaine Borjeson, Solid Waste Coordinator
Daryl Grigsby, Public Works Director

Date: February 21, 2006

Subject: UPDATE ON PILOT COMMERCIAL ORGANICS PROGRAM

At the December 14, 2004 Council meeting, the Kirkland City Council authorized the City's participation in a yearlong pilot program to recycle commercial organics in partnership with the King County Solid Waste Division (Division) and Waste Management. The program began in the Totem Lake area in mid-March 2005 and is scheduled to end on February 28, 2006. As of mid-January, ten months into the program, participating Kirkland businesses diverted 83.93 tons of organic material from the landfill. The material is delivered by Waste Management to the Cedar Grove Composting facility in Maple Valley or Everett where it is turned into a valuable soil amendment which is then sold to Puget Sound area consumers.

The structure of the pilot program requires the City to pay Waste Management's additional route collection costs. In 2005, the City paid $19,785.78 for the program (of which $10,000 was reimbursed by grant funds from the Division). Invoices average $2,083 per month. The Division pays for all promotional materials, training, technical assistance, biodegradable bags, container costs, monitoring and evaluation. Waste Management is responsible for all of its incidental expenses including but not limited to driver orientation, calls to the call center and data logging.

The overall purpose of the pilot program is to divert foodwaste from the landfill and recycle it as compost while at the same time determining the:

- level of interest in participation among the business community,
- ability of businesses to decrease their garbage costs,
- amount of foodwaste that is diverted from transfer stations and the landfill,
- barriers to foodwaste collection at businesses, and
- development of a model for cities to determine collection costs and business incentives to continue the program after the pilot ends.

<u>Level of Interest in the Business Community:</u> The pilot program primarily targeted small and medium sized businesses that generate foodwaste. Letters were sent to 71 businesses in the Totem Lake area on February 7, 2005 explaining the program and inviting them to participate. The Division's consultant contacted these businesses during the following three weeks, and foodwaste recycling began with 19 participants on March 14, 2005. The program quickly grew to include 26 businesses. Over the course of

the year, one business was dropped for not participating and three more establishments were added for a total of 28 participants, including grocery stores, delis, restaurants, espresso stands, a daycare, technical college and hospital. This met the original program goal which was to include approximately 30 businesses in the pilot. Similar ongoing pilot programs in Redmond and Bellevue have 30 and 37 participants, respectively.

Ability of Businesses to Decrease Garbage Costs: The small to medium sized businesses that are participating in the program have not downsized their garbage containers due to the temporary nature of this project as a pilot program and the accompanying uncertainty that they might need to reinstate their former level of service once the pilot ends. Larger businesses have been able to save costs by decreasing the number of times their compacters are emptied.

The ability of businesses to decrease costs on a more permanent basis is discussed in more detail in the section on developing a model for an ongoing program.

Amount of Foodwaste Diverted from the Landfill: The 28 businesses in the Kirkland program diverted nearly 84 tons (83.93 tons) of organic material from the transfer station and the landfill during the first ten months of the program. Collectively, the pilot programs in Kirkland, Bellevue and Redmond have diverted 465 tons of organic material over the course of 18 months as shown in Table 1.

Table1: Pilot Commercial Organic Programs in Three Eastside Cities:

City	***Start Date***	***End Date***	***# of Customers***	***Tons Collected as of 1/13/06***
Bellevue	6/17/04	4/30/06	37	167
Kirkland	3/14/05	2/28/06	28	83
Redmond	7/2/04	5/31/06	30	215
		Total:	95	465

Barriers to Foodwaste Collection: Foodwaste recycling was well received by businesses and only one Kirkland establishment was dropped for non-participation (four businesses were dropped from the combined three-city total of 99 participants over the course of the pilot). Few problems were reported with contamination from non-organic products, and cart cleanliness was acceptable with only occasional cart washing required.

Despite the popularity of the program, the major barrier to commercial foodwaste collection involves issues with the cost and distribution of the bags used to collect the organic material. The original program requires participants to place all recyclable material in biodegradable bags in the kitchen. Kirkland's 28 businesses used over 21,000 bags in ten months at a cost of approximately $0.40 - $0.50 per bag. Bags were distributed free of charge on a bi-weekly schedule to each establishment by the Division's consultant who also provided technical assistance when needed. These costs were paid by the Division for the pilot project but are unsustainable for an expanded ongoing program.

In an effort to reduce the cost of biodegradable bags, the program was reassessed and in December, 2005 the Bellevue and Redmond programs added several new participants who were instructed to use biodegradable cart liners for the 64-gallon container located outdoors instead of using individual

biodegradable bags in the kitchen. In this way, one $1.00 cart liner replaced 5 -10 individual bags which cost $0.40 - $0.50 each. Initial results are encouraging, and compliance is high among businesses participating in this alternative program. The Health Department is closely monitoring both programs.

Development of a Model Program for Full Scale Implementation: The development of a model for full scale implementation must account for the fact that garbage collection rates are currently based on container size and not container weight – in effect producers of heavy waste (i.e. food establishments) are subsidized by producers of lighter waste (i.e. retail). Customers only receive cost savings if they are able to downsize their garbage container or decrease the number of times it is collected in a week and/or month. This has the following effect:

- No economic incentive exists for small to medium-sized businesses to participate in foodwaste recycling because the costs of added collection, purchasing and distributing bags, and technical assistance to participants exceed the savings for these establishments
- Larger businesses using drop-box services have a greater ability to establish cost effective foodwaste recycling programs because they have direct access to disposal cost savings (currently $82.50/ton for garbage vs. $35/ton for organics)

Potential solutions for widespread program implementation involve (1) removing the garbage subsidies for heavy (foodwaste) generators and/or (2) embedding foodwaste collection throughout the commercial garbage rate base.

1. Removing garbage subsidies – This approach would require a two-tiered commercial rate base wherein businesses would be classified as standard or heavy (foodwaste) garbage generators. Food service establishments would be placed in the "heavy" classification unless they participated in foodwaste recycling. The additional revenue generated by the "heavy" classification would pay for the foodwaste collection program up until the point that participation increased to a level where the excess revenue stream would begin to decline as the foodwaste collection expenses increased. At that point, another subsidy would be required to maintain the program.
2. Embedded foodwaste collection – The total cost of foodwaste collection would require a commercial rate increase across all detachable container customers to fund the program. The scope of this increase is currently being evaluated.

The City of Seattle and the City of Issaquah are launching full-scale commercial organics recycling programs in 2006. Kirkland is working in conjunction with Issaquah, the Division and other cities in the region to determine the best way to have a successful program.

Conclusion/Recommendation

The information gathered during this pilot project and a continued regional effort will be very valuable for development of an ongoing commercial organics recycling program. At this time, staff recommends ending the pilot at the end of February and proceeding with development of a program and rate structure, in time for the 2007-2008 Budget cycle, if possible. Staff will write letters to those businesses who participated in the pilot program thanking them and providing options for the interim period until a full-scale program is developed.

Kirkland Commercial Food Recycling Pilot Program
Survey results as of 6-5-06

Attachment 2

20 out of 28 were returned (71%).

Employees know what can be recycled in the Food+ Recycling Program.

65% responded that they could “strongly agree” with the statement (13 out of 20)
30% responded that they could “somewhat agree” with the statement (6 out of 20)
5% responded that they could “strongly disagree” with the statement (1 out of 20)

This program has been easy to start and maintain.

70% responded that they could “strongly agree” with the statement (14 out of 20)
30% responded that they could “somewhat agree” with the statement (4 out of 20)
5% responded that they could “neither” agree or disagree (1 out of 20)
5% responded that they could “strongly disagree” with the statement (1 out of 20)

All the materials we need, such as containers and signs are provided.

85% responded that they could “strongly agree” with the statement (17 out of 20)
10% responded that they could “somewhat agree” with the statement (2 out of 20)
5% responded that they could “somewhat disagree” with the statement (1 out of 20)

We received all the assistance we needed to start the program.

85% responded that they could “strongly agree” with the statement (17 out of 20)
15% responded that they could “somewhat agree” with the statement (3 out of 20)

We continue to receive assistance when needed.

80% responded that they could “strongly agree” with the statement (16 out of 20)
15% responded that they could “somewhat agree” with the statement (3 out of 20)
5% responded that they could “strongly disagree” with the statement (1 out of 20)

Outdoor Food+ Recycling containers are picked up frequently enough.

80% responded that they could “strongly agree” with the statement (16 out of 20)
15% responded that they could “somewhat agree” with the statement (3 out of 20)
5% responded that they could “strongly disagree” with the statement (1 out of 20)

The biodegradable bags work as well as regular plastic bags.

55% responded that they could “strongly agree” with the statement (9 out of 20)
20% responded that they could “somewhat agree” with the statement (4 out of 20)
10% responded that they could “neither” disagree or agree (2 out of 20)
10% responded they could “somewhat disagree” with the statement (2 out of 20)
5% responded that they did not use bags (1 out of 20)

The kitchen containers that were provided are the right size for our business

65% responded that they could “strongly agree” with the statement (13 out of 20)
30% responded that they could “somewhat agree” with the statement (6 out of 20)
5% responded that they could “strongly disagree” with the statement (1 out of 20)

Our garbage has decreased as a result of this program.

65% responded that they could “strongly agree” with the statement (13 out of 20)
10% responded that they could “somewhat agree” with the statement (2 out of 20)
15% responded that they could “neither agree or disagree” with the statement (3 out of 20)
5% responded that they could “somewhat disagree” with the statement (1 out of 20)
5% responded that they could “strongly disagree” with the statement (1 out of 20)

1. Have you had any of the following issues with biodegradable bags?

35% responded that “Bags tore or broke open” (7 out of 20)
10% responded that “Bags did not hold enough materials” (2 out of 20)
10% responded that “Bags were difficult to tie off” (2 out of 20)
10% responded that they “ran out of bags before more were delivered” (2 out of 20)
5% responded that “Bags were difficult to remove from containers” (1 out of 20)
5% responded “Bags were difficult to tear off role” (1 out of 20)
5% responded that they did not use bags (1 out of 20)
35% did not have problems (7 out of 20)

One business noted that “bags leaked”; another noted “bags are too saggy”

2. How do you purchase your regular plastic garbage bags that you normally buy?

20% responded that they “Purchase through our company regionally or nationally.” (4 out of 20)
45% responded that they “Purchase from a retail store” (9 out of 20)
25% responded that they “Purchase from a distributor” (5 out of 20)

Listed stores for distributors or businesses that order through their company:
Golden State Foods (1)
Food Services(1)
Cash and Carry (1)
Costco (1)
Fikes (1)

10% said “other” (2 out of 20)

3. What is the cost you currently pay for your regular plastic bags?

10 businesses did not respond

Quantity	Cost per quantity	Cost per bag
90	**$15.00**	**.16**
90	**$8.00**	**.09**
100	**$19.00**	**.19**
100	**$20.00**	**.20**
200	**$11.99**	**.06**
200	**$10.00**	**.05**
220	**$15.00**	**.07**
250	**$29.41**	**.12**
500	**$17.98**	**.04**

4. Why did you agree to participate in this program?

Note: most respondents checked off more than one of the following:

25% responded "To save money in garbage disposal costs." (5 out of 20)
80% responded "For environmental reasons." (15 out of 20)
60% responded "Because the program was free." (11 out of 20)
15% responded "other" and wrote "County introduction.", "educational value for our kids", "convenient" (3 out of 20)

5. What is the biggest difficulty your business has had with the program?

Note: most respondents checked off more than one of the following:

25% responded "Employee training." (5 out of 20)
25% responded "Employee participation." (5 out of 20)
20% responded "Keeping containers clean." (4 out of 20)
5% responded "bags." (1 out of 20)
0 responded "messiness"
15% responded "other" and wrote "outsiders dumping their trash in our containers", "Not having proper sized cans and bags" and "kid training" (3 out of 20)

6. Have you downsized your garbage container or decreased garbage pickups since your business started to participate in the Food+ Recycling Program?

50% responded "Yes." (10 out of 20)
50% responded "No." (10 out of 20)
Written comments included "My business increased, so I can't tell" and "no, but it is no longer overflowing."

7. If the pilot became a permanent program, do you think you could decrease the size of your garbage container?

65% responded "Yes." (13 out of 20)
35% responded "No." (7 out of 20)

Reasons noted for why garbage cannot be decreased:

- *We have a lot of food and makes it easy to work.*
- *Small percentage of our overall waste was recycled.*
- *Employees are not dedicated to the program.*

8. WM will continue this service for a fee. Do you plan to participate in the Food+ Recycling program if you have to pay for the service, but pay a rate lower than current garbage disposal?

15% responded "Yes." (3 out of 20)
75% responded "No." (14 out of 20)
10% of businesses did not respond (2 out of 20)

Reasons noted for why businesses would not participate:

- *Depends on the money I save on garbage with less pickups.*
- *My service is free*
- *Has to be OK'd through the corporate officer*
- *Depends on the fee; I'd buy bags but it seems ridiculous to charge more than that to help the state decrease the amount of garbage going to it's landfills.*
- *Depends on how much.*
- *Yes if it is a lower rate.*

- *Corporate office won't approve at this time.*
- *Because the bags are expensive.*
- *Additional costs to the business.*
- *Any program involving cash needs to have corporate approval.*
- *No noticeable decrease in garbage*
- *It costs money.*

9. The City and County may publicize the Food+ Recycling program and recognize businesses that participate. Would you like your business to be recognized with this type of publicity?

80% responded "Yes." (16 out of 20)
20% responded "No." (4 out of 20)

10. Do you use your garbage disposal less since you started participating in the Food+ Recycling Pilot?

45% responded "Yes." (9 out of 18) ; 3% who responded yes- said they noticed less clogged drains (9 out of 20).
40% responded "No." (8 out of 20)
10% responded that they did not have one (2 out of 20)
5% did not respond (1 out of 20)

11. How much food waste and paper do you estimate is still being thrown away in the regular garbage?

60% responded "25% or less." (45 out of 20)
25% responded "50%." (5 out of 20)
15% responded "75% or more." (3 out of 20)

12. Are there additional materials or types of assistance that we could provide to help with the Food+ Recycling program?

1 businesses responded with a suggestion, others left it blank or said "no":

- *Lock on the outside toter*
- *The bags should have strings to tie off. It'd be easier to lift them.*
- *Proper bags and cans*

Additional Comments?

6 businesses responded:

- *Does the regular residential recycling program charge a fee for the use of the glass, paper bins they provide to them for recycling?*
- *Thanks Sam! We had fun with this!*
- *We are sorry, but we were lazy as a company to fully train, encourage and enforce the use of this program.*

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

MEMORANDUM

QUASI JUDICIAL

To: David Ramsay, City Manager

From: Eric Shields, Planning Director
Stacy Clauson, Project Planner

Date: September 6, 2006

Subject: Yarrow Bay Marina/Marina Suites LLC
SHR06-00001, ZON06-00001, and APL06-00010

RECOMMENDATION

Consider the Zoning and Shoreline Permit applications and the challenge and responses to the Hearing Examiner recommendation. Pursuant to Zoning Code Section 152.90.2, the City Council shall take one of the following actions.

- Grant the application as recommended by the Hearing Examiner and Houghton Community Council; or
- Modify and grant the application; or
- Deny the application; or
- If the City Council concludes, based on the challenge or review of the recommendation, that the record compiled by the Hearing Examiner is incomplete or inadequate, they may by motion remand the matter to the Hearing Examiner to reopen the hearing. The Council may limit the scope of issues to be considered at the rehearing.

Please note that a motion to take any of these actions is required to be approved by the majority of the total membership.

The City Council may, by a vote of at least five members, suspend the rule to vote on the matter at the next meeting and vote on the application at this meeting. A resolution reflecting the recommendation of the Hearing Examiner is enclosed (see Enclosure 6). Otherwise, the City Council could direct staff to return to the October 3, 2006 City Council meeting with a resolution.

RULES FOR CITY COUNCIL CONSIDERATION

The City Council shall consider the Zoning and Shoreline Permit applications based on the record before the Hearing Examiner and Houghton Community Council, the recommendation of the Hearing Examiner, the challenge to the recommendation and the responses to the challenge to the recommendation. Process IIB does not provide for testimony and oral arguments. However, the City Council in its discretion may ask questions of the applicant, the challengers, the challenge responders and the staff regarding facts in the record, and may request oral argument on legal issues.

Please note that this transmittal contains selected exhibits from the record before the Hearing Examiner and Houghton Community Council. The entire record is available for City Council member review in the Council Study Room.

BACKGROUND DISCUSSION

Proposal

Marina Suites LLC is proposing to extend a pier and redevelop the upland portion of the Yarrow Bay marina site located at 5207 Lake Washington Blvd NE (see Enclosure 1). The applicant is requesting approval for the following (see Enclosure 2):

- Demolish the existing marina services building and accessory structures;
- Relocate the existing underground fuel tanks;
- Construct a new 53,000 square foot office building. The building would contain three floors of office space and two levels of parking;
- Construct a new 6,980 square foot marina services building to be used as office space related to marina operations as well as boat repair and service;
- Site improvements consisting of a new access driveway and parking for 214 vehicles (including enclosed, subterranean and surface parking), a pedestrian walkway system, new utility connections, grading and installation of retaining walls and landscaping;
- Extend an existing pier by 66 feet to provide for six additional uncovered moorage spaces;
- Removal of two existing buoys and three existing floats;
- Install new walkway to covered moorage located south of existing bulkhead; and
- Offsite work includes frontage improvements along Lake Washington Blvd NE

The proposal requires the following review:

- Development of an office development in a PLA 15A zone, requiring a Process IIB review;
- Modification to a general moorage facility in the PLA 15A zone, requiring a Process IIB review;
- Development of an office development and associated improvements within the shoreline jurisdiction, a Substantial Development Permit requiring a Process I review; and

- Modification to a general moorage facility, a Substantial Development Permit requiring a Process I review.

  Pursuant to KZC 145.10 and KMC 24.06.040(b)(1), if the use or activity that requires approval through Process I is part of a proposal that requires additional approval through Process IIB, the entire proposal is reviewed using Process IIB.

SEPA Review (see Enclosure 4):

A Mitigated Determination of Nonsignificance (DNS) was issued on May 9, 2006. A timely appeal of the SEPA Determination was filed on May 23, 2006 by the Board of Directors for the Breakwater Condominium, which is located next to the project at 4823 Lake Washington Blvd NE. The SEPA appeal hearing was held as part of the Hearing Examiner's public hearing on July 31, 2006.

The SEPA letter of appeal disputed the City's issuance of a DNS for the project. More specifically, the appellant believed that the impacts relating to transportation, trees, parking, lighting, pedestrian walkways, vegetation borders and view corridors, and the marina dock expansion were not adequately addressed in the mitigated DNS. A copy of the DNS and SEPA appeal is included in Enclosure 4.

The Hearing Examiner affirmed the SEPA determination on August 9, 2006 stating that the application had not shown the mitigated DNS to be in error (see Enclosure 4). The decision of the Hearing Examiner regarding the SEPA appeal is the final decision of the City on this matter.

Public Comments, Public Hearing, Public Meeting and Challenges

Houghton Community Council held a joint public hearing with the Hearing Examiner on this application on July 31, 2006. Their deliberations were continued to a public meeting on August 2, 2006. The Houghton Community Council concurred with the staff analysis and staff recommendation of approval, with some additional or amended conditions of approval (see Enclosure 3.b). On August 9, 2006, the Hearing Examiner subsequently recommended approval of the application with conditions, including those recommended by the Houghton Community Council, and added one statement of clarification to one of the conditions regarding the maintenance agreement for vegetation. A copy of the Hearing Examiner's Recommendation, is included as Enclosure 3.a.

Challenge and Responses

One challenge to the Hearing Examiner's recommendation was filed in a timely manner on August 21, 2006. The challenge was filed by J. Richard Aramburu on behalf of the Breakwater Condominium Association (File No. APL06-00010) (see Enclosure 5). The challenge asserts that the Hearing Examiner did not adequately discuss and evaluate concerns raised in the July 31, 2006 letter submitted on behalf of the Breakwater Condominium Association. The July 31 letter referenced is included as Exhibit E of the Hearing Examiner's report and is also included as an attachment to Enclosure 3.e. Issues raised in this letter included excessive fill, parking quantity,

parking location, Yarrow Bay boat parking, moorage extension, public access trail, buffer area between commercial and residential use, public park area, dangerous and congested roadway conditions, and the view corridor. Mr. Aramburu requests that the City Council deny, revise and modify as appropriate, the proposal based upon those matters raised in the July 31, 2006 letter.

Both the applicant and the City Planning Department filed a timely response to the Breakwater Condominium Association challenge (see Enclosure 5).

Procedural Issue

The Breakwater Condominium Association has raised a procedural issue in a letter from Mr. Aramburu dated September 5, 2006, and addressed to the City Council (see Enclosure 5.d). Mr. Aramburu requests that the City Council not consider a request included in applicant's August 28, 2006, response to the Breakwater Association Challenge (Enclosure 5.b). Specifically, the first full paragraph of page four of the letter filed by Roger Pearce on behalf of the applicant, requests Council clarification "that city staff has the discretion to modify the shared parking requirement during the winter months. . ." The Breakwater Condominium Association takes the position that the applicant should have filed a challenge to the Hearing Examiner's recommendation in order to make this request and that the request should not be considered by the Council. In response, the applicant has withdrawn its request for a clarification (see Enclosure 5.e). As a result, staff believes that this procedural issue has been satisfactorily addressed.

ENCLOSURES

1. Vicinity Map
2. Key Project Drawings
    a. Upland Improvements
    b. Shoreline Improvements
    c. Section Drawings
    d. Design Studies of Building
    e. View Study
3. Hearing Examiner Recommendation and Key Exhibits
    a. Hearing Examiner Recommendation
    b. Houghton Community Council Recommendation
    c. Staff Advisory Report
    d. Development Standards
    e. Public Comment Letters

i. E-mail from Helen Rogers
ii. Letter from Joan Schmidt
iii. Letter from John Barnett
iv. Letter from Fred and LouAnn Freeburg
v. E-mail from Fred and LouAnn Freeburg
vi. Letter from J. Richard Aramburu, attorney for the Breakwater Condominium Association, dated July 31, 2006
vii. Letter from LouAnn Freeburg, dated July 31, 2006
viii. Copies of 7/28/06 emails between Stacy Clauson, PCD, and Karen Walter, Muckleshoot Tribe and 7/25/06 email from Sharon Shelton to Stacy Clauson

f. Applicant Design Narrative and Criteria Analysis

g. Notice of Application and Summary Notice

i. Notice of Application and Summary Notice

ii. Letter from J. Richard Aramburu addressing Notice of Application
iii. Outline of Comments on Project Notice, submitted by Roger Pearce, attorney for applicant

4. SEPA Decision
   a. SEPA Appeal Decision
   b. SEPA Determination
   c. SEPA Appeal Letter

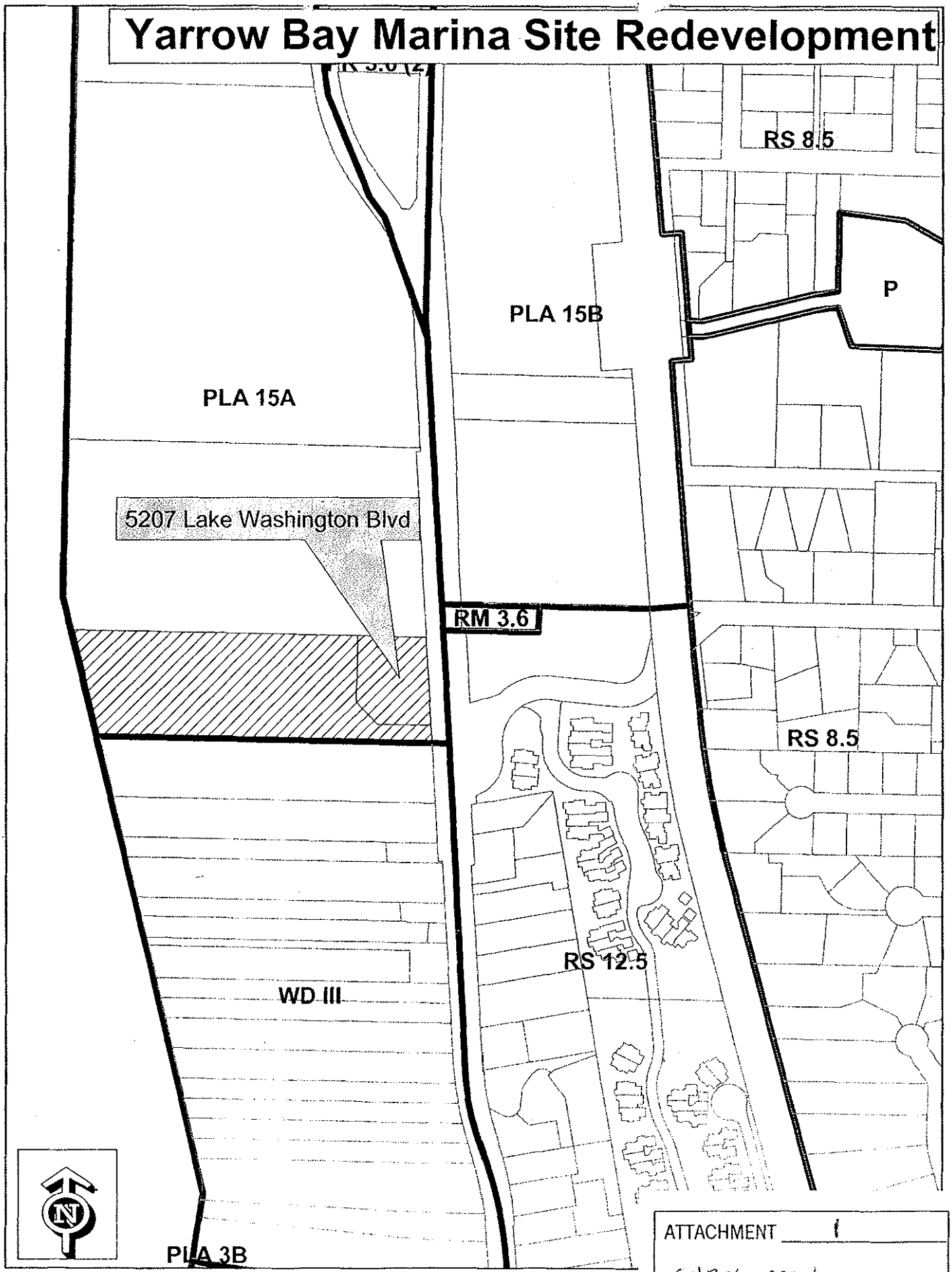
   d. SEPA Comments

      i. Letter from LouAnn Freeburg

      ii. E-mail from Karen Walter, Muckleshoot Indian Tribe Fisheries Division

5. Challenge to Hearing Examiner Recommendation and Responses
   a. Breakwater Condominium Association Challenge
   b. Applicant (Roger Pearce of Foster Pepper PLLC) Response Letter
   c. Planning Department Response Memorandum
   d. Breakwater Condominium Association Procedural Issue
   e. Reply to Breakwater Condominium Association Procedural Issue
6. Resolution

Yarrow Bay Marina Site Redevelopment



ATTACHMENT 1

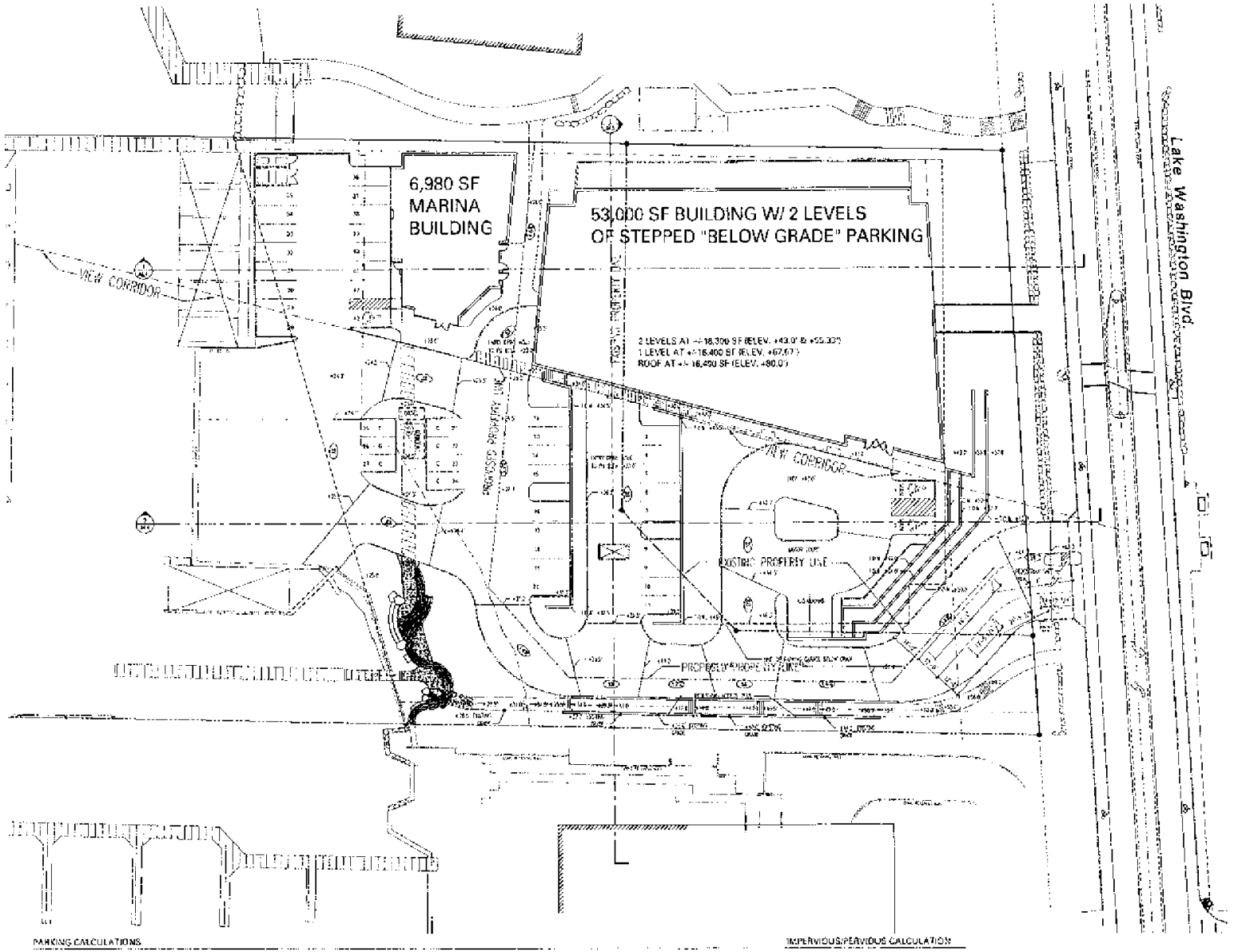
S11R06-00001

Landscape Plan

Marina Suites

Landscape Plan

Date: June 16, 2006



PARKING CALCULATIONS

REQUIRED PARKING STALLS PER CODE 1/300 SF @ 53,000 SF = 177 STALLS
REQUIRED MARINA PARKING STALLS (1/8 FOR 74 SLIPS) 74 STALLS
TOTAL REQUIRED PARKING STALLS 251 STALLS

SITE STALLS = 40 STALLS (0 ARE COMPACT)
PARKING LEVEL 2 STALLS = 73 STALLS (37 ARE COMPACT)
PARKING LEVEL 1 STALLS = 98 STALLS (38 ARE COMPACT)
TOTAL PARKING STALLS 211 STALLS (75% COMPACT 158)

REQUIRED ADA STALLS = 7 (2 OF 7 MUST BE VAN STALLS)
PROVIDED ADA STALLS = 7 (2 ARE VAN STALLS)
REQUIRED LOADING STALLS = 2
PROVIDED LOADING STALLS = 2

IMPERVIOUS/PERVIOUS CALCULATION

SITE AREA PER SURVEY = 52,065 SF
TOTAL IMPERVIOUS AREA = 33,024 SF
TOTAL IMPERVIOUS AREA = 29,338
(REDUCED IMPERVIOUS LESS TIDAL AREA)

1 SITE PLAN
1/32" = 1'-0"

WOLLINS COERMAN

YARROW BAY
MARINA SUITES
KIRKLAND,
WASHINGTON

RECEIVED
JUN 14 2006
AM PM
PLANNING DEPARTMENT
BY

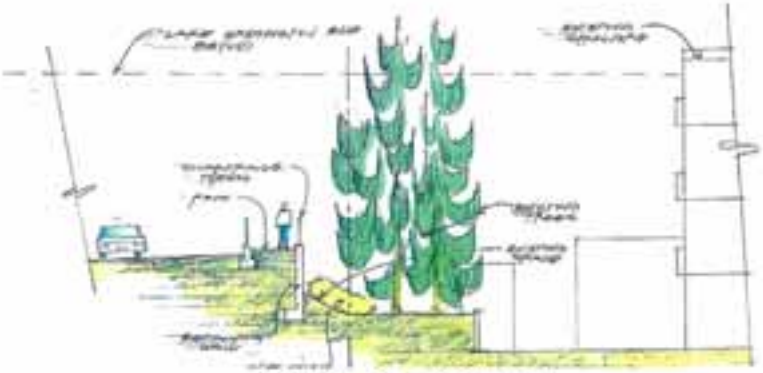
ISSUED

ATTACHMENT 2-a
SHEET 1 OF 1

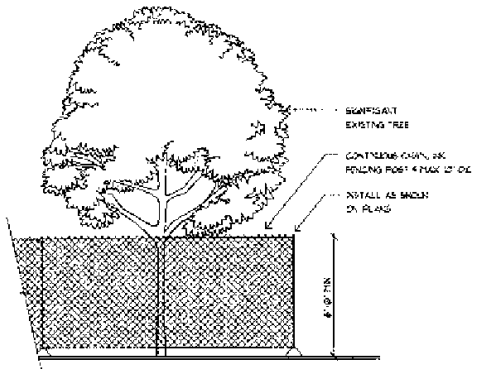
A1.1

Plaza Perspective

Plaza Plan and Section

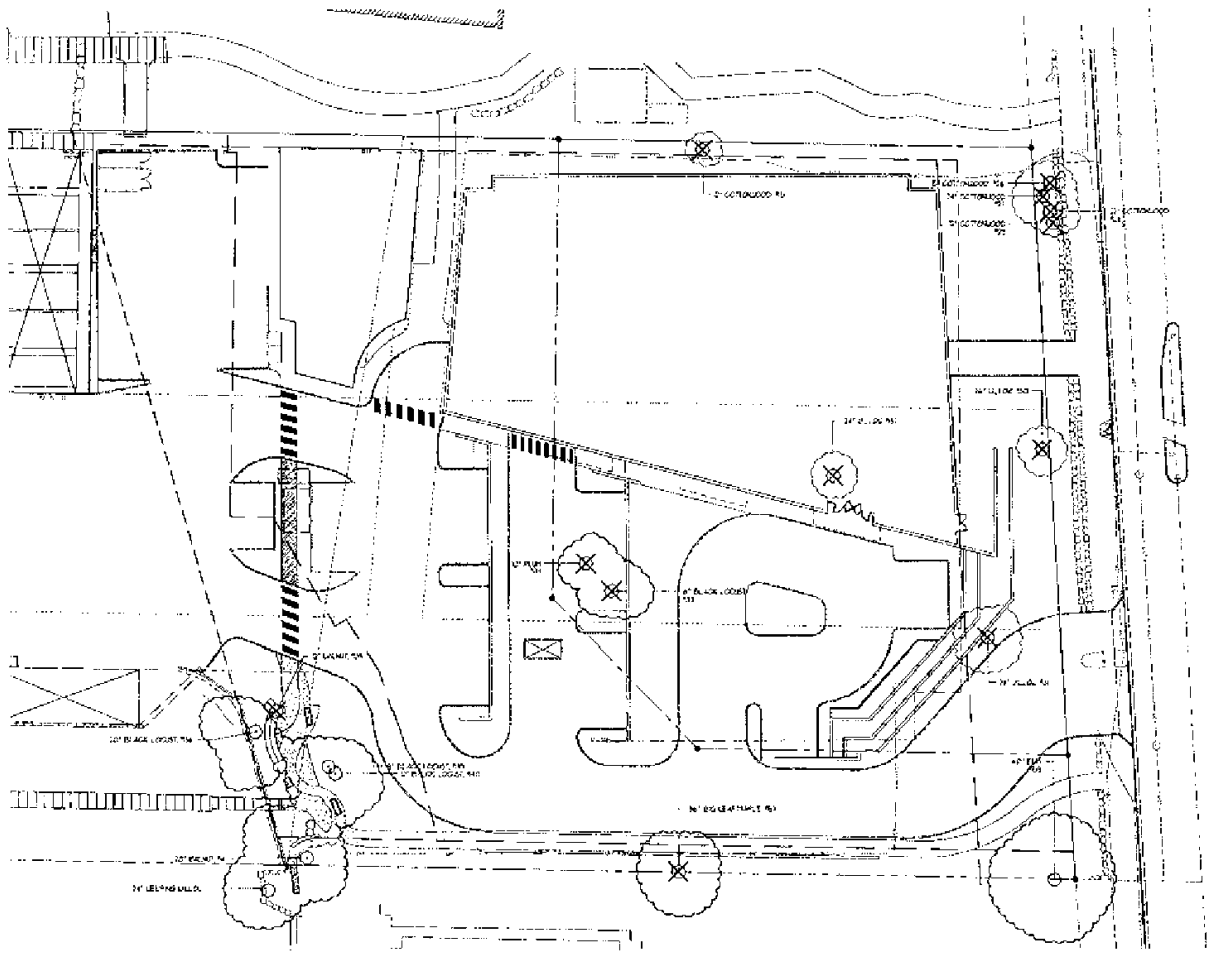


Trail Section '1'



1. 6' X POST MIN TEMPORARY CHAIN LINK FENCE SHALL BE PLACED AS SHOWN ON PLANS. FENCE SHALL COMPLETELY ENCIRCLE TREE(S). INSTALL FENCE POSTS USING PIER BLOCKS ONLY. AVOID DRIVING POSTS OR STAKES INTO MAJOR ROOTS.
2. TREATMENT OF ROOTS EXPOSED DURING CONSTRUCTION: FOR ROOTS OVER 1" IN DIAMETER EXPOSED DURING CONSTRUCTION, MAKE A CLEAN, STRAIGHT CUT TO REMOVE DAMAGED PORTION OF ROOT. ALL EXPOSED ROOTS SHALL BE TEMPORARILY COVERED WITH DAMP BURLAP TO PREVENT DRYING AND COVERED WITH SOIL AS SOON AS POSSIBLE.
3. WORK WITHIN PROTECTION FENCE SHALL BE DONE MANUALLY. NO STOCKPILING OF MATERIALS, VEHICULAR TRAFFIC OR STORAGE OF EQUIPMENT OR MACHINERY SHALL BE ALLOWED WITHIN THE LIMIT OF THE FENCING.

1 TREE PROTECTION DETAIL
NTS



LEGEND

SIGNIFICANT TREE TO REMAIN	TOTAL EXISTING SIGNIFICANT TREES: 11 QTY. SIGNIFICANT TREES TO BE REMOVED: 2 QTY. SIGNIFICANT TREES TO BE SAVED: 9 QTY.
SIGNIFICANT TREE TO BE REMOVED	

Brumbaugh & Associates
LANDSCAPE ARCHITECTURE

DATE	ISSUE
10/26/06	ADDENDUM NO. OF LAND U
6/19/06	CITY COMMENTS

DESIGNED SC
DRAWN SC
CHECKED RB
DATE 10/26/06

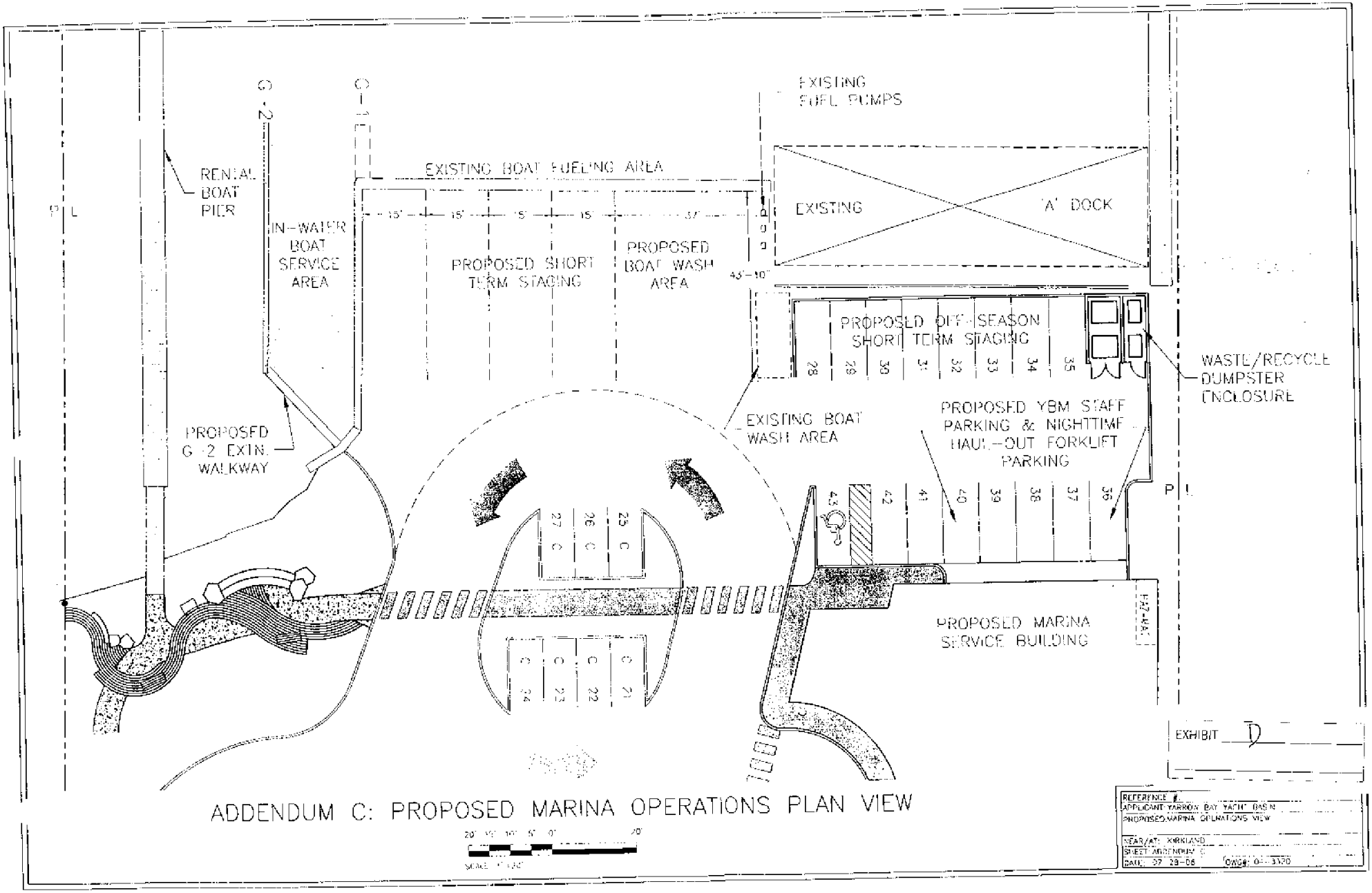
STATE OF WASHINGTON REGISTERED LANDSCAPE ARCHITECT
MARK H. BRAUNAGEL
CERTIFICATE NO. 434

TREE PLAN

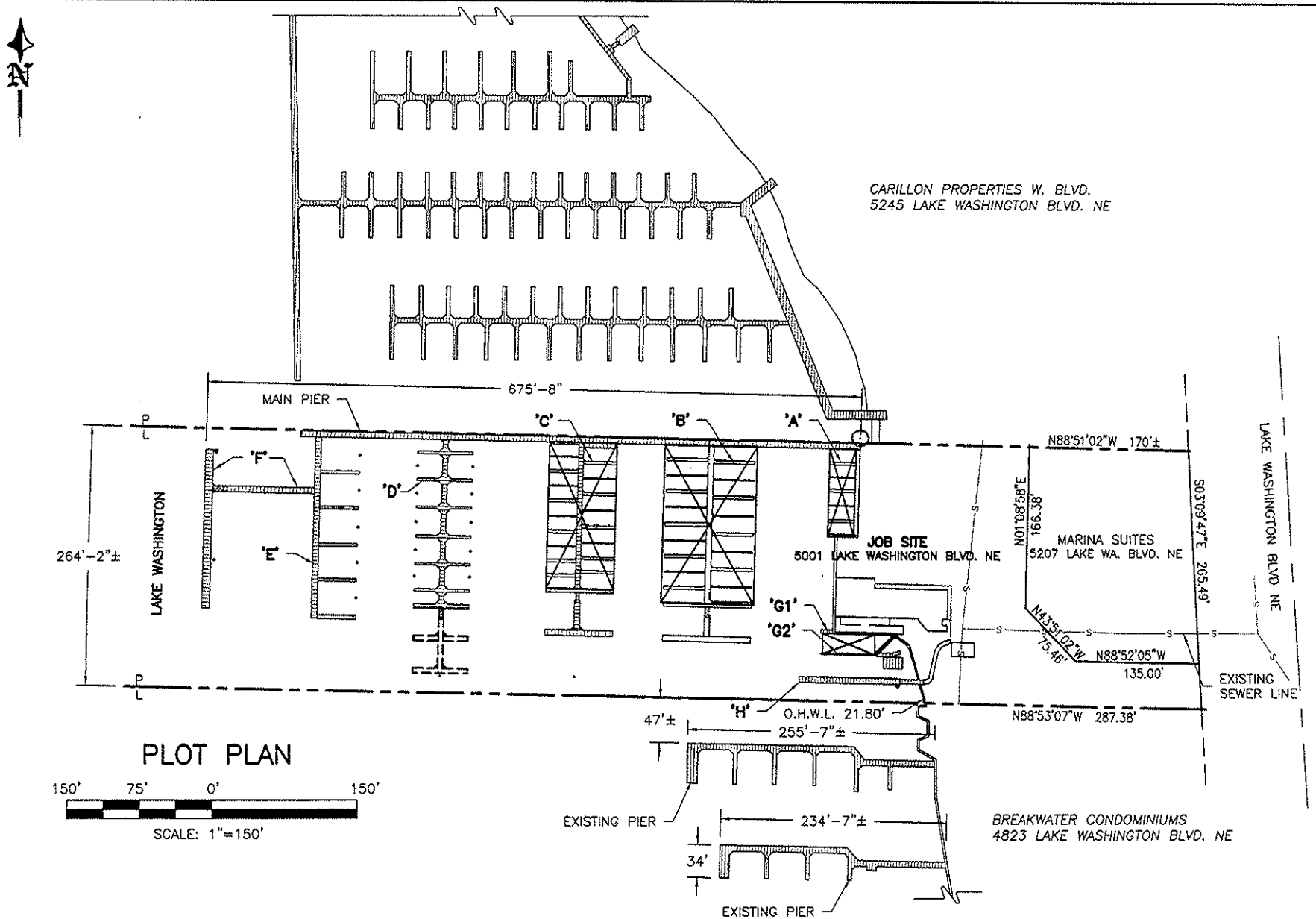
MARINA SUITES
LAKE WASHINGTON BLVD.
KIRKLAND, WASHINGTON

L-1

2006-01



ADDENDUM C: PROPOSED MARINA OPERATIONS PLAN VIEW

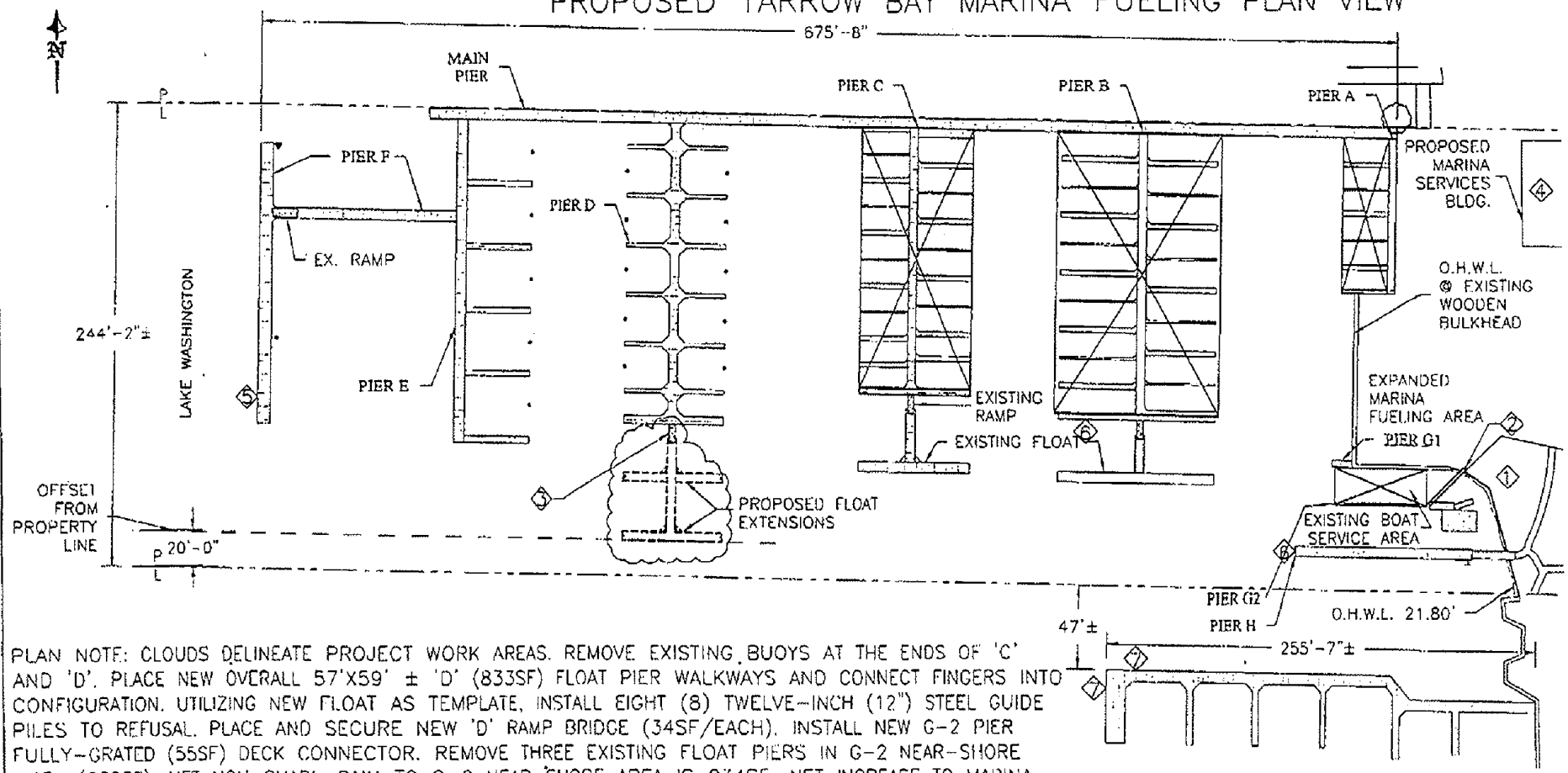


PLOT PLAN

REVISED
1-19-06

REFERENCE #:	
APPLICANT: YARROW BAY YACHT BASIN	
PROPOSED: EXPAND PUBLIC MOORAGE AVAILABILITY. INSTALL FLOATING PVC BOOM.	
NEAR/AT: KIRKLAND	
SHEET: 2 OF: 9	
DATE: 1-12-05	DWG#: 04-3320-A.2-1

PROPOSED YARROW BAY MARINA FUELING PLAN VIEW



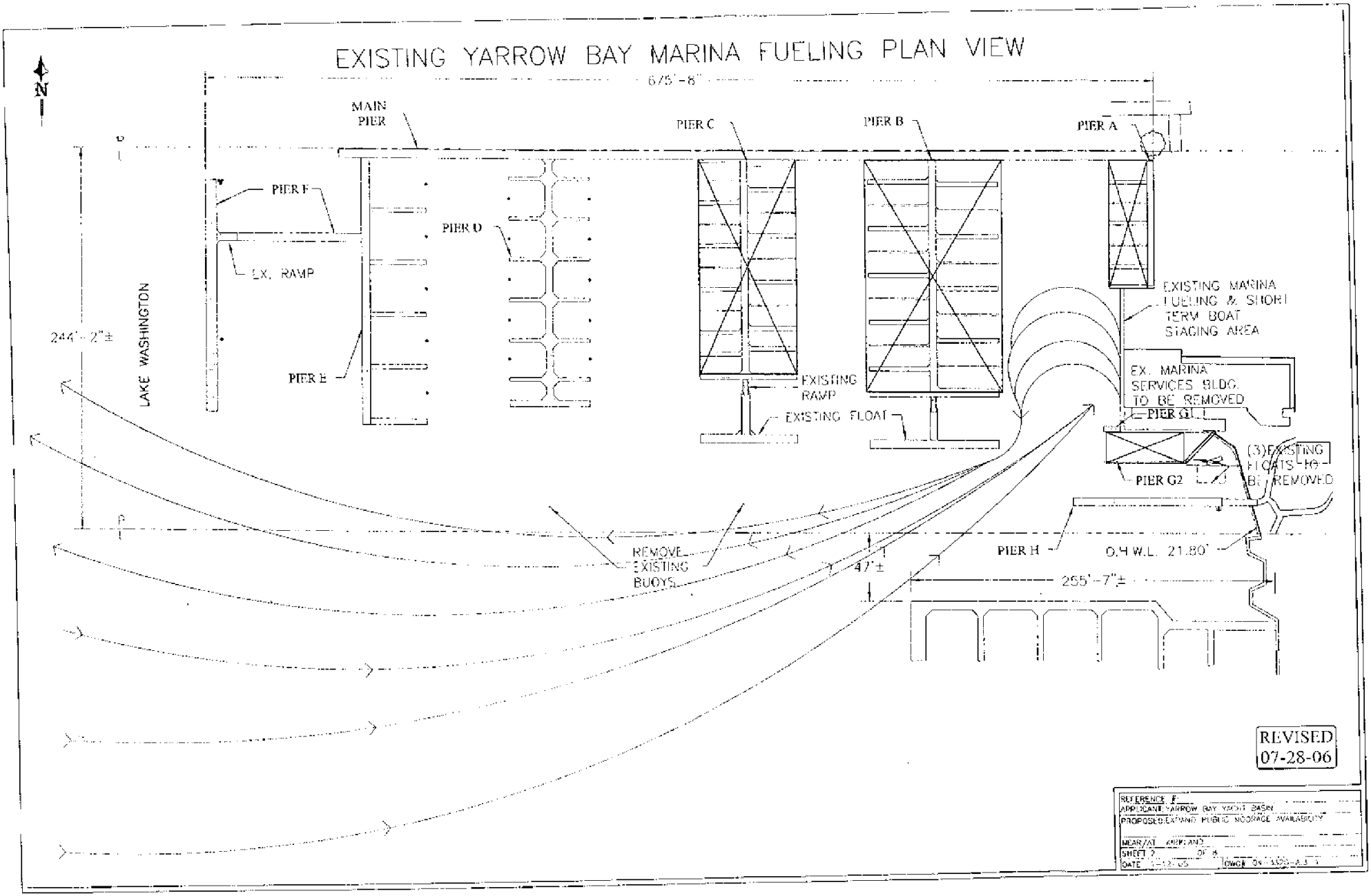
PLAN NOTE: CLOUDS DELINEATE PROJECT WORK AREAS. REMOVE EXISTING BUOYS AT THE ENDS OF 'C' AND 'D'. PLACE NEW OVERALL 57'X59' ± 'D' (833SF) FLOAT PIER WALKWAYS AND CONNECT FINGERS INTO CONFIGURATION. UTILIZING NEW FLOAT AS TEMPLATE, INSTALL EIGHT (8) TWELVE-INCH (12") STEEL GUIDE PILES TO REFUSAL. PLACE AND SECURE NEW 'D' RAMP BRIDGE (34SF/EACH). INSTALL NEW G-2 PIER FULLY-GRATED (55SF) DECK CONNECTOR. REMOVE THREE EXISTING FLOAT PIERS IN G-2 NEAR-SHORE AREA (289SF). NET NON-SHADE GAIN TO G-2 NEAR-SHORE AREA IS 234SF. NET INCREASE TO MARINA DECKING IS 1184SF.

1. SEE: PLANTING PLAN ADDENDUM B
2. PROPOSED G-2 WALKWAY
3. NEW RAMP TO PROPOSED 'D' FLOAT PIER
4. SEE: ADDENDUM D
5. PROPOSED SIGN: SLOW TO 5 MPH: NO WAKE. STAY NORTH OF BUOYS.
6. PROPOSED SIGN: BOATS FOR FUELING SHALL NOT TIE TO NEIGHBORING DOCKS. YARROW BAY MARINA STAFF WILL ENFORCE.
7. PROPOSED SIGN: ABSOLUTELY NO PUBLIC BOATING TIE-UPS TO THIS PRIVATE PIER. TRESPASSERS WILL BE REFUSED FUELING SERVICE.

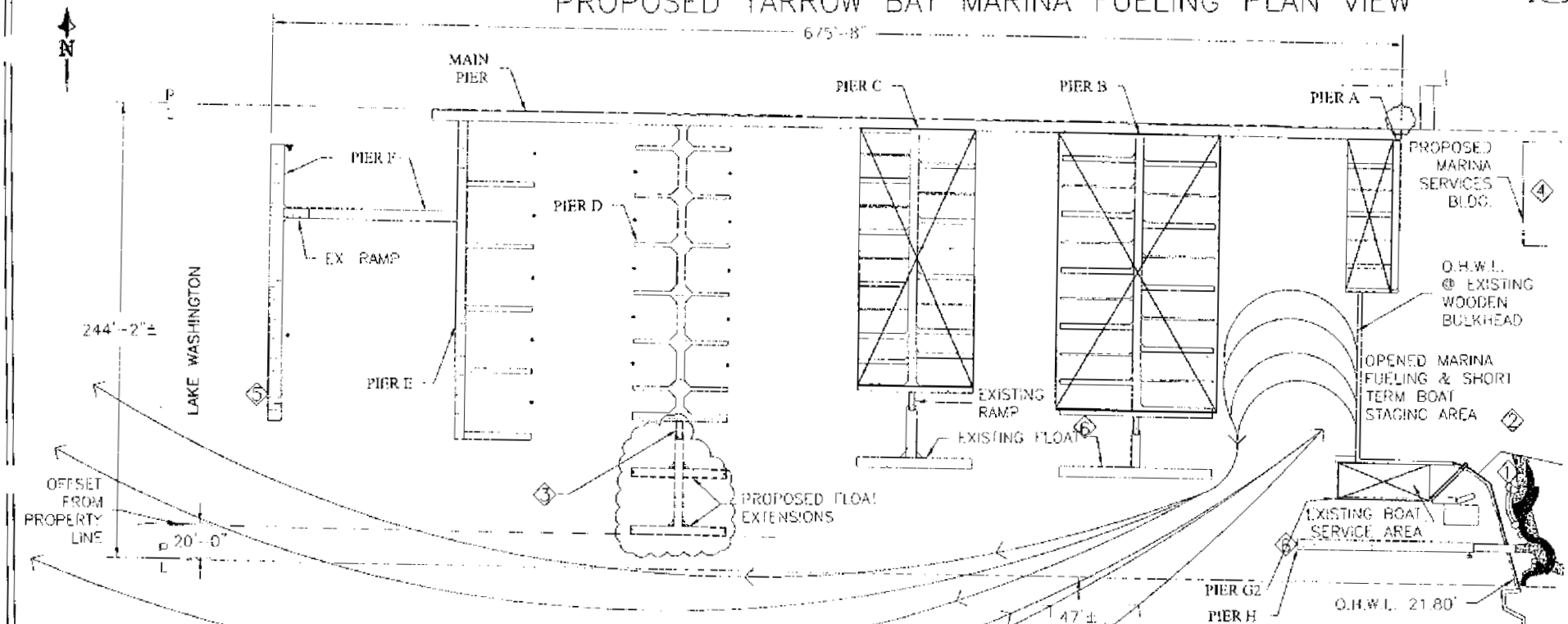
REVISED 5-26-06

REFERENCE #:
APPLICANT: YARROW BAY YACHT BASIN
PROPOSED: EXPAND PUBLIC MOORAGE AVAILABILITY.
NEAR/AT: KIRKLAND
SHEET: 3 OF: 8
DATE: 1-12-05 DWG#: 01-3370-A.1-1

EXISTING YARROW BAY MARINA FUELING PLAN VIEW



PROPOSED YARROW BAY MARINA FUELING PLAN VIEW

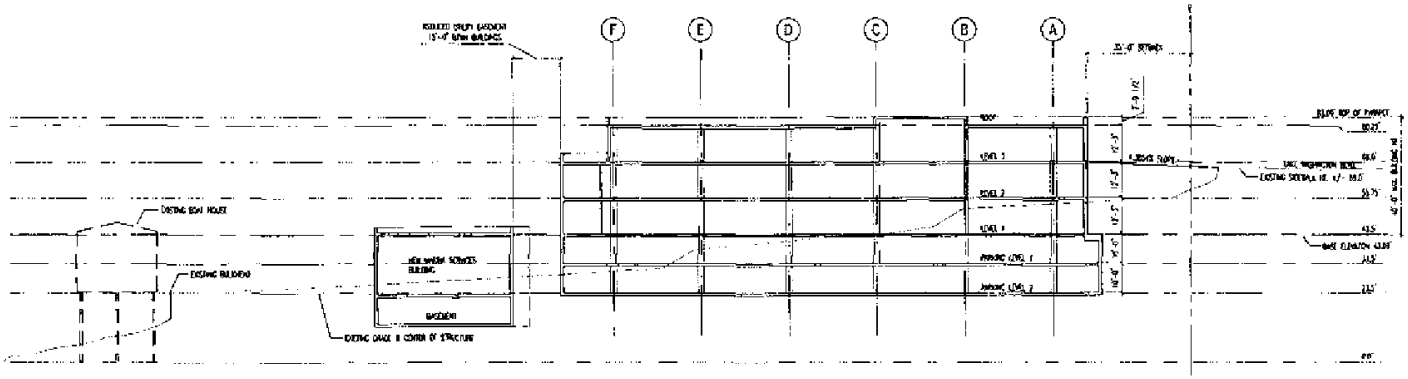


PLAN NOTE: CLOUDS DELINEATE PROJECT WORK AREAS. REMOVE EXISTING BUOYS AT THE ENDS OF 'C' AND 'D'. PLACE NEW OVERALL 57'X59' 'C' 'D' (8335SF) FLOAT PIER WALKWAYS AND CONNECT FINGERS INTO CONFIGURATION, UTILIZING NEW FLOAT AS TEMPLATE. INSTALL EIGHT (8) TWELVE-INCH (12") STEEL GUIDE PILES TO REFUSAL. PLACE AND SECURE NEW 'D' RAMP BRIDGE (34SF/EACH). INSTALL NEW G-2 PIER FULLY-GRATED (55SF) DECK CONNECTOR. REMOVE THREE EXISTING FLOAT PIERS IN G-2 NEAR-SHORE AREA (289SF). NET NON-SHADE GAIN TO G-2 NEAR-SHORE AREA IS 234SF. NET INCREASE TO MARINA DECKING IS 1184SF.

1. SEE PLANTING PLAN ADDENDUM B
2. PROPOSED G-2 WALKWAY
3. NEW RAMP TO PROPOSED 'D' FLOAT PIER
4. SEE ADDENDUM D
5. PROPOSED SIGN: SLOW TO 5 MPH - NO WAKE - STAY NORTH OF BUOYS.
6. PROPOSED SIGN: BOATS FOR FUELING SHALL NOT TIE TO NEIGHBORING DOCKS. YARROW BAY MARINA STAFF WILL ENFORCE.
7. PROPOSED SIGN: ABSOLUTELY NO PUBLIC BOATING TIE-UPS TO THIS PRIVATE PIER. TRESPASSERS WILL BE REFUSED FUELING SERVICE.

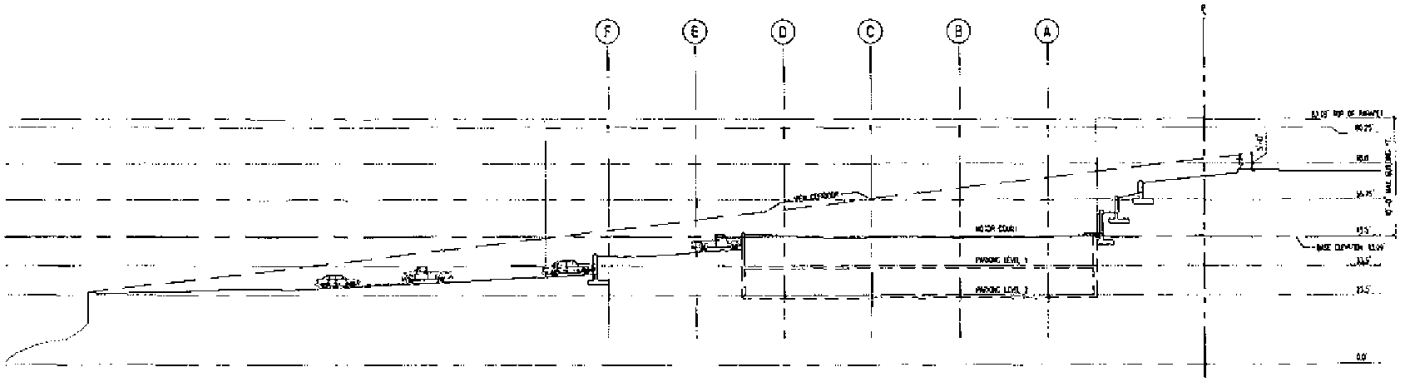
REVISED 07-28-06

REFERENCE #:
APPLICANT: YARROW BAY YACHT BASIN
PROPOSED: EXPAND PUBLIC MOORAGE FACILITY
NEAR/AT: KIRKLAND
SHEET 3 OF 5
DATE: 1-12-06 DRAWN BY: [illegible]



A SECTION A

1" = 40' 0"



B SECTION B

1" = 40'-0"

MARINA SUITES
KIRKLAND, WASHINGTON

COLLINS CUERMAN
510 SECOND AVENUE
SUITE 1400
SEATTLE WASHINGTON 98104-1710
T: 206.343.0100 F: 206.343.0101
COLLINSCUERMAN.COM

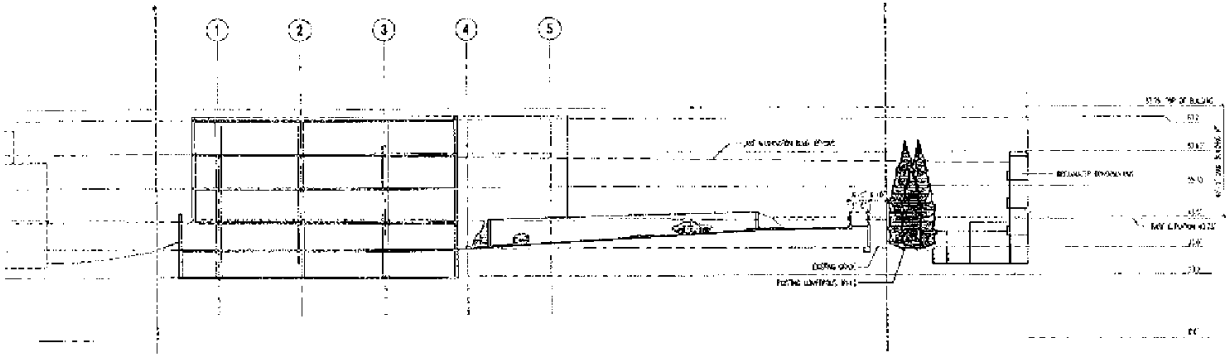
SITE SECTIONS

40' 20' 0' 40' 80'
10'

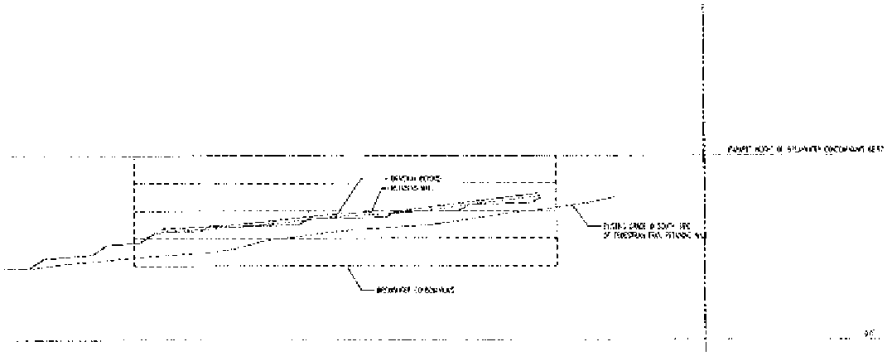
SCALE 1"=40'-0"

PROJECT NUMBER 03001
ISSUE DATE JAN 20, 2006

KEYNOTES



1 NORTH-SOUTH SITE SECTION



2 PEDESTRIAN WALK SECTION/ELEVATION @ PROP. LINE

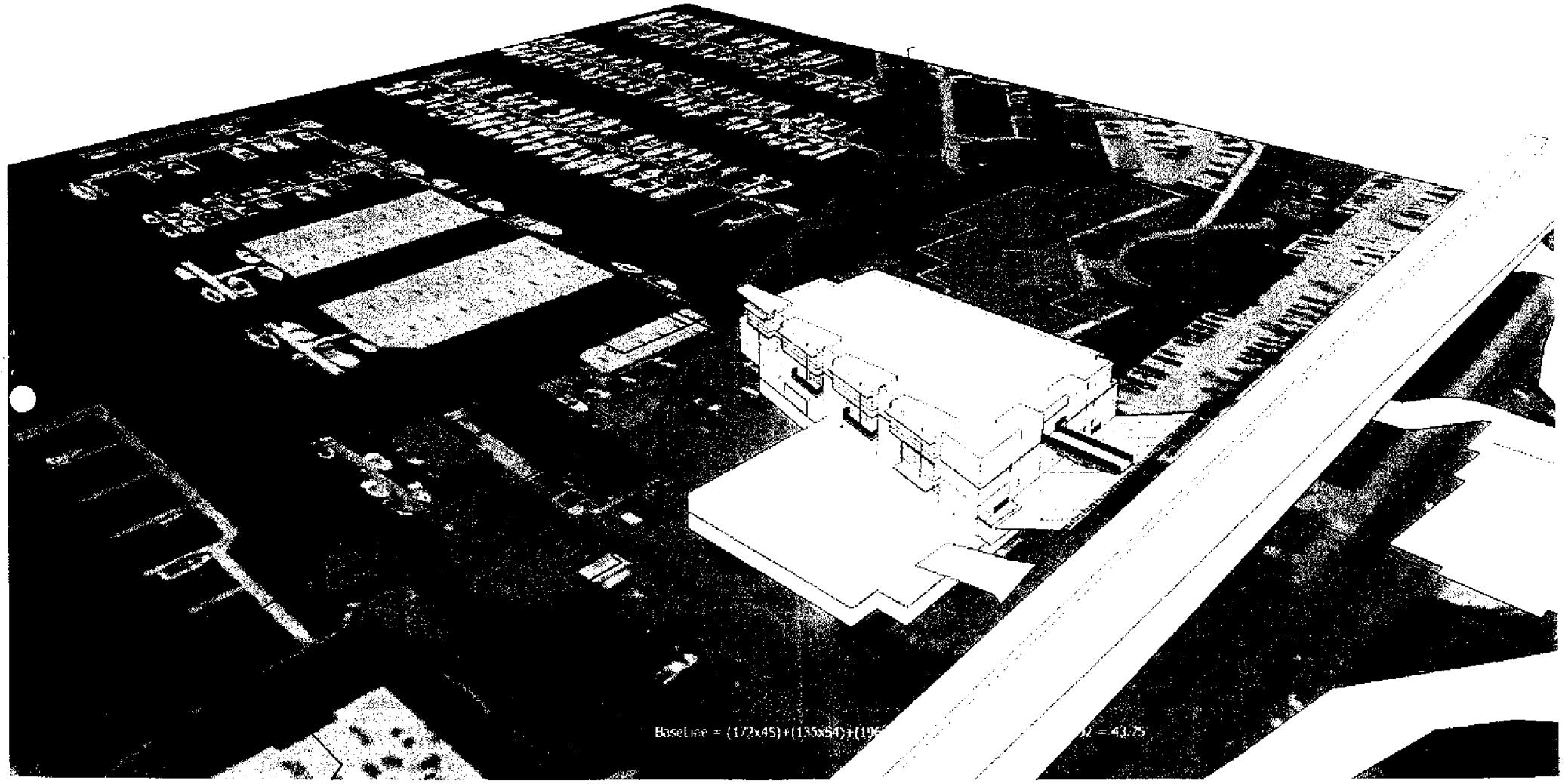
COLLINS WOERMAN

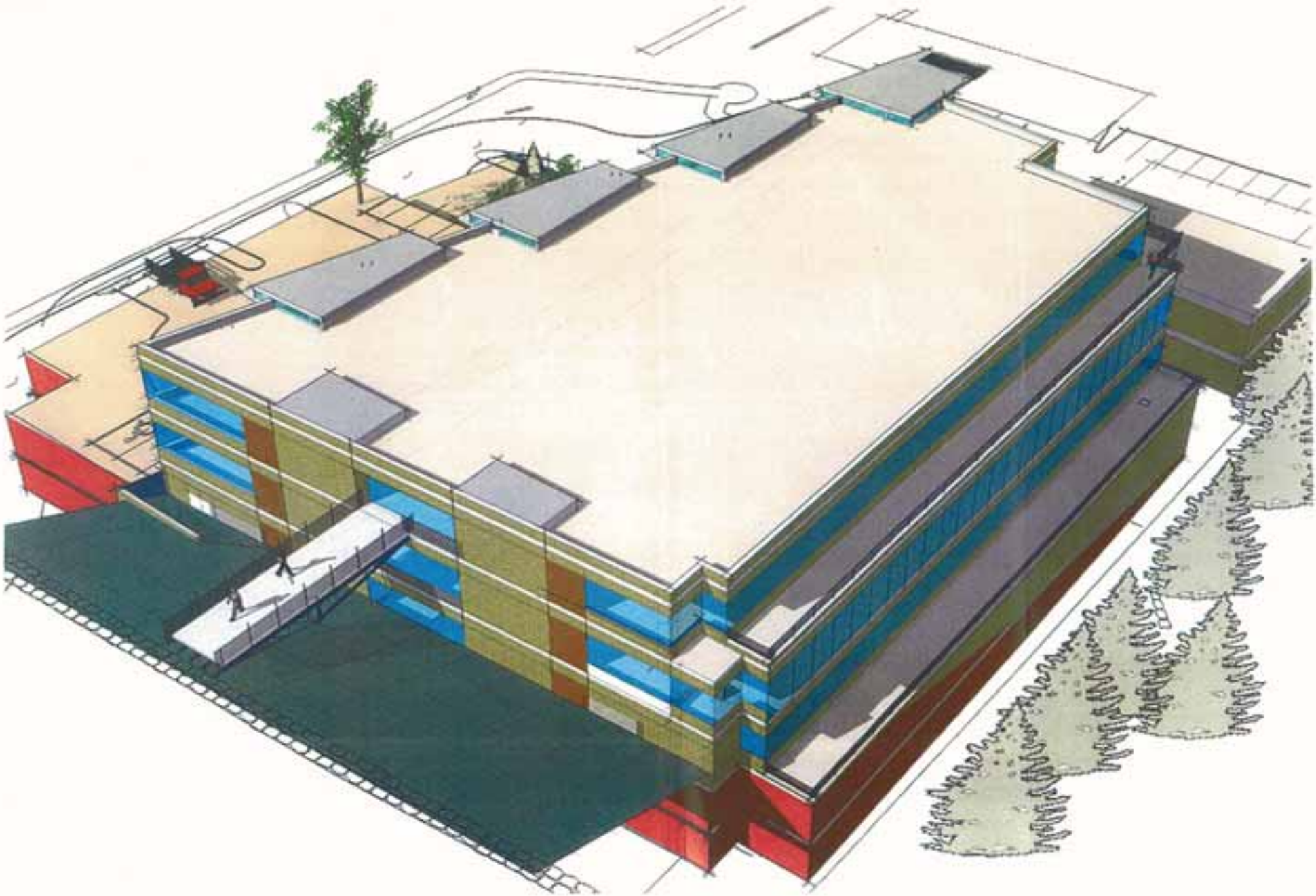
YARROW BAY
MARINA SUITES
KIRKLAND,
WASHINGTON

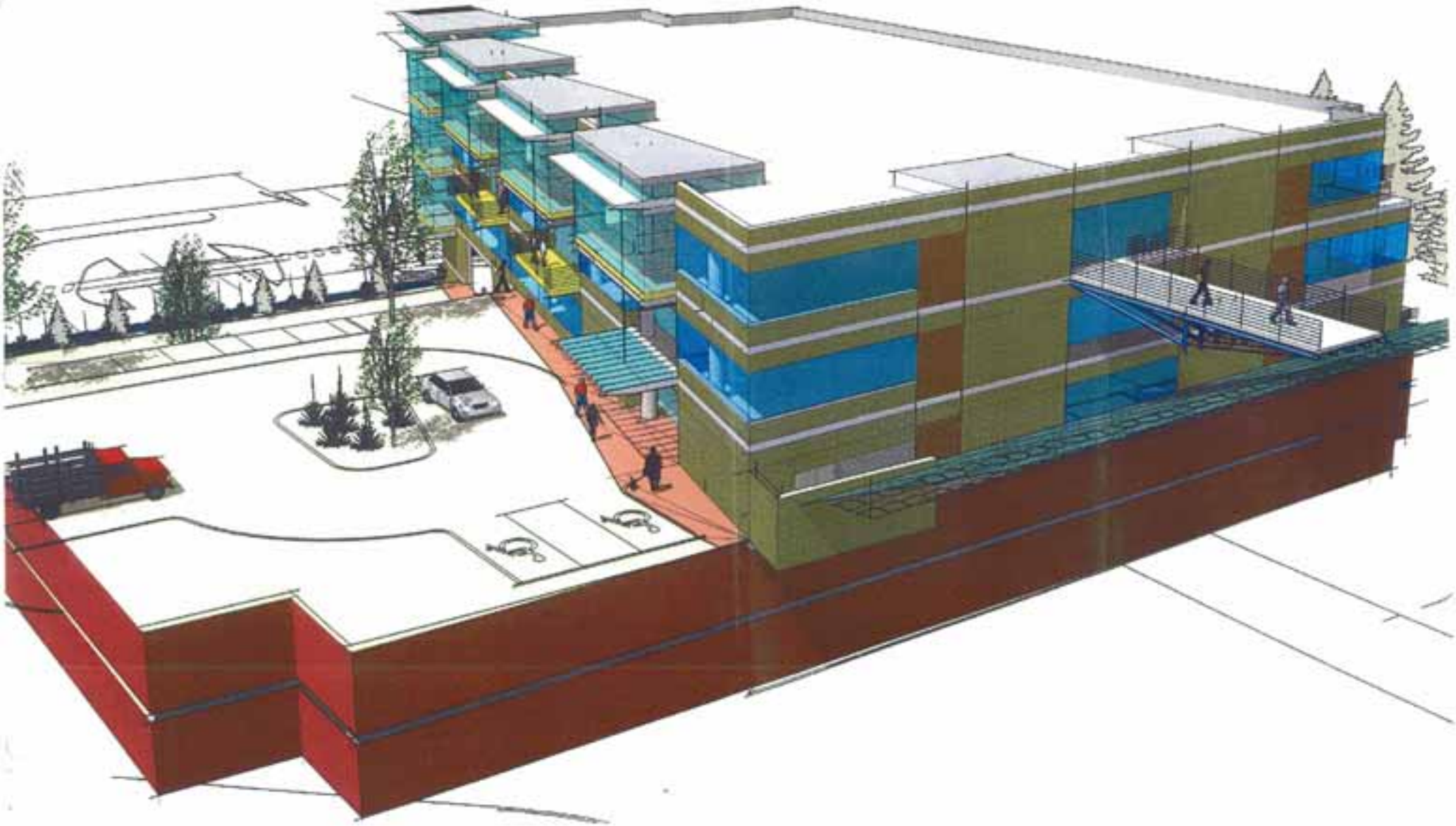
ISSUED

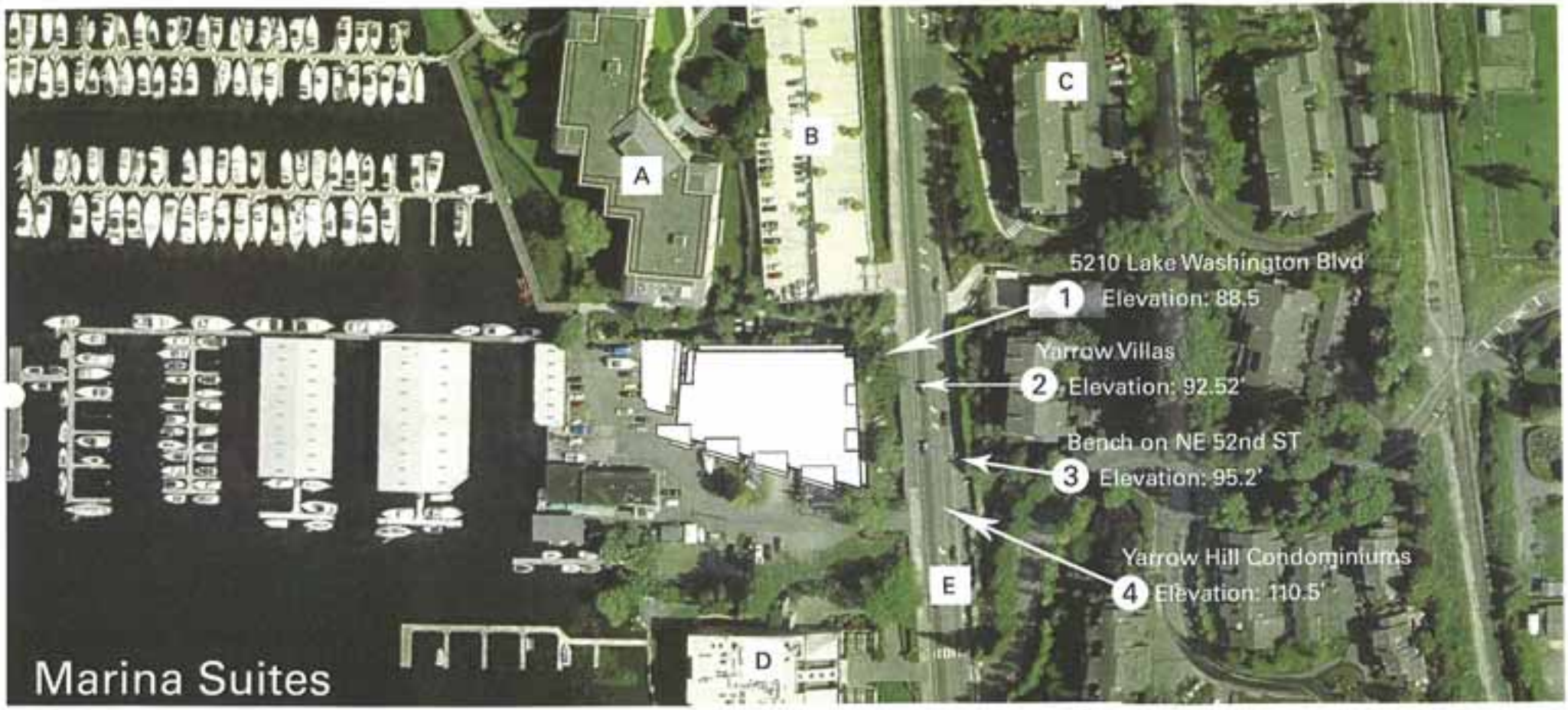
SITE SECTIONS

A4.5


BaseLine = (172x45)+(135x54)+(10
2 = 43.75



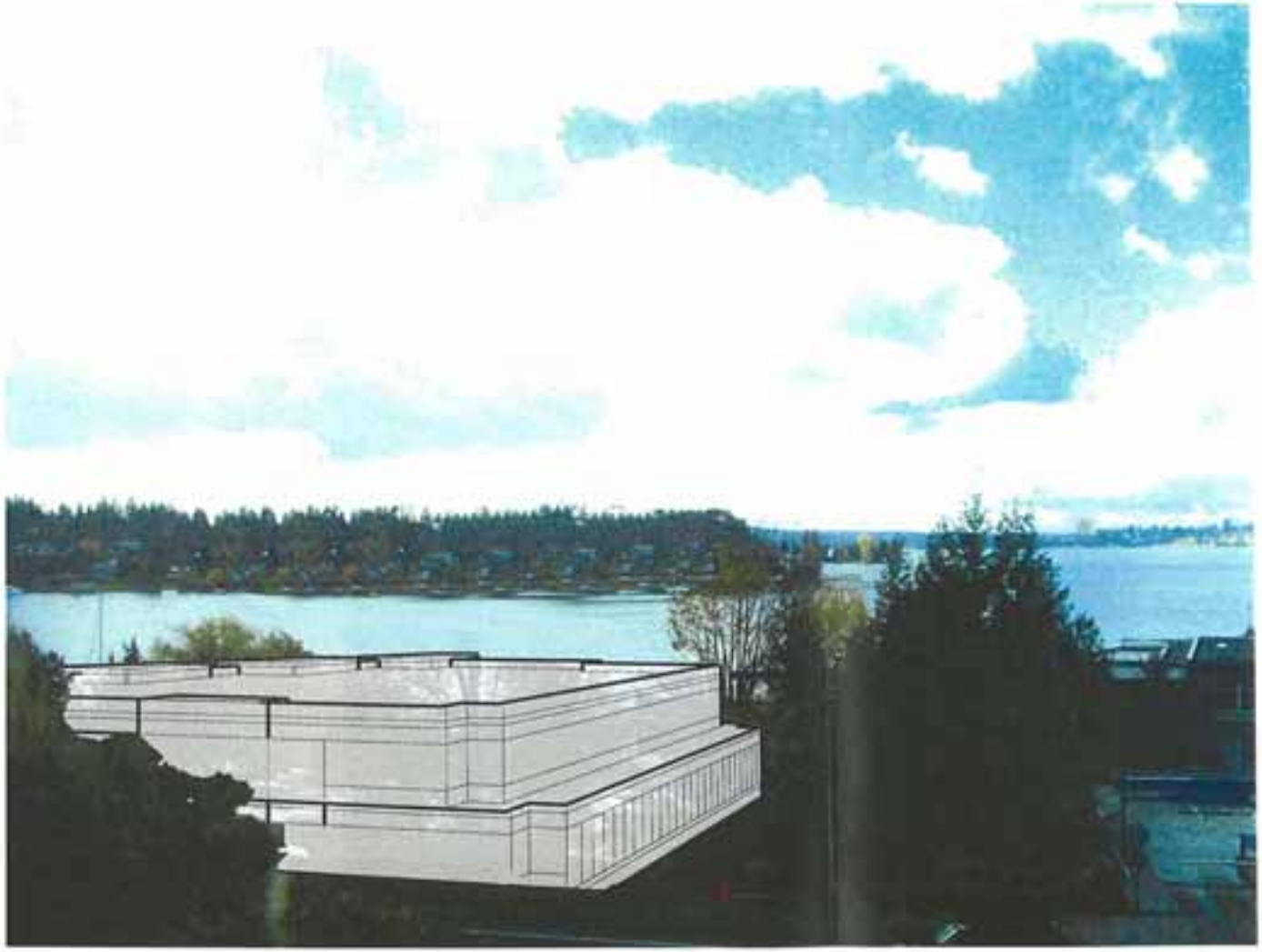




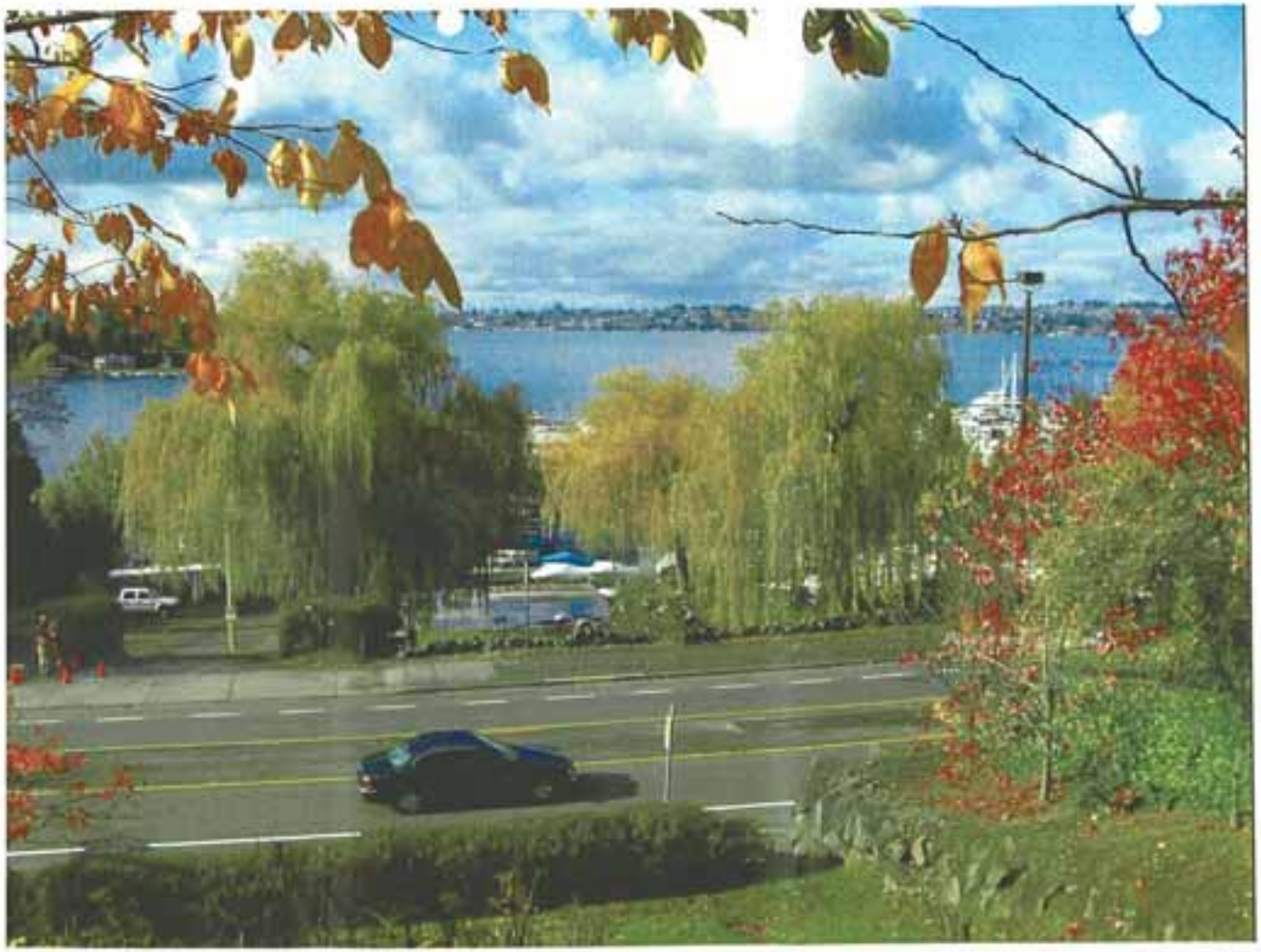
Key to View Locations

A. Carillon Point Office Building
B. Carillon Point Parking Garage
C. Yarrow Hill Condominiums
D. Breakwater Condominiums
E. Lake Washington Boulevard

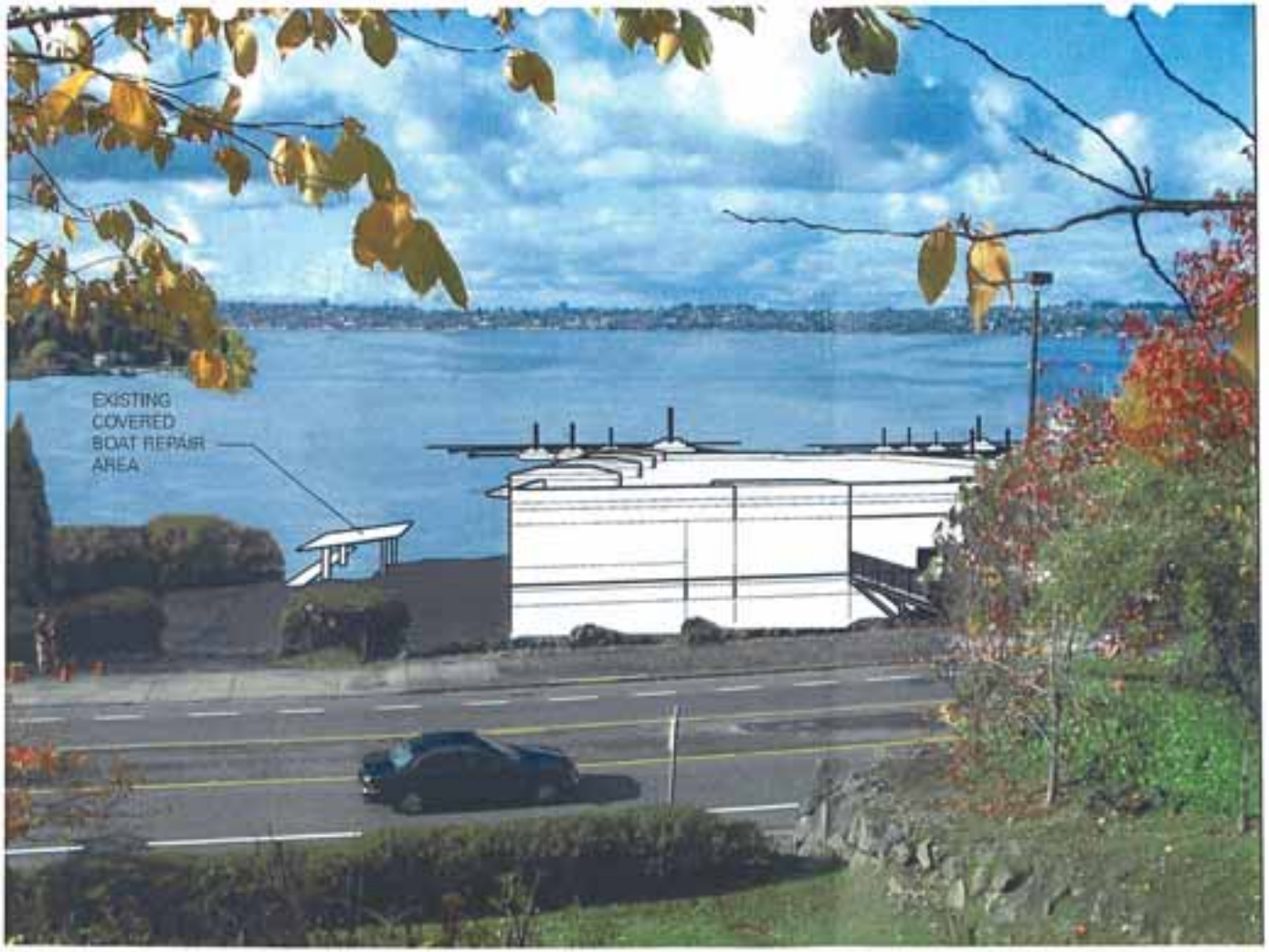
View 1 : From 5210 Lake Washington Blvd



View 1 : From 5210 Lake Washington Blvd



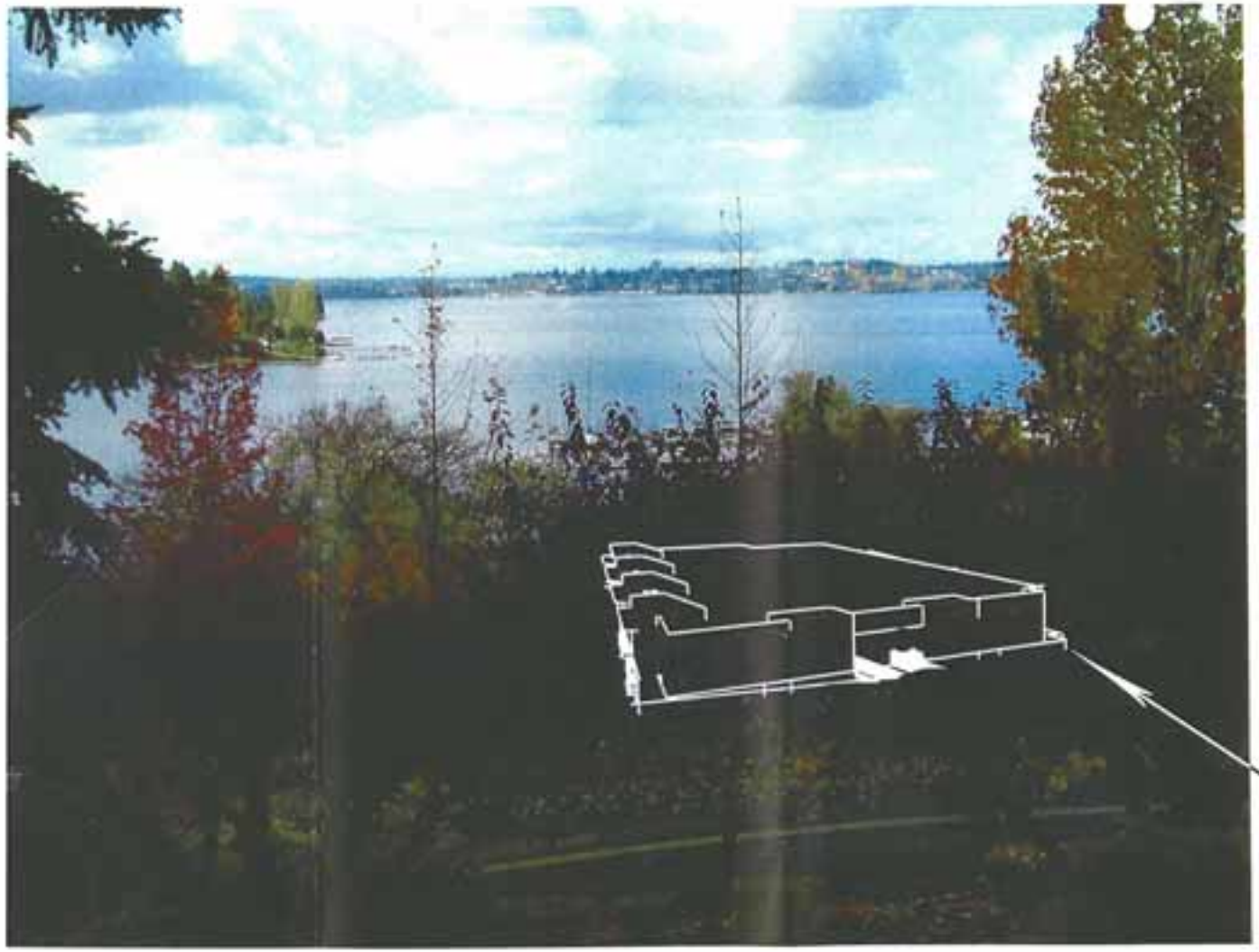
View 2 : From Yarrow Villas



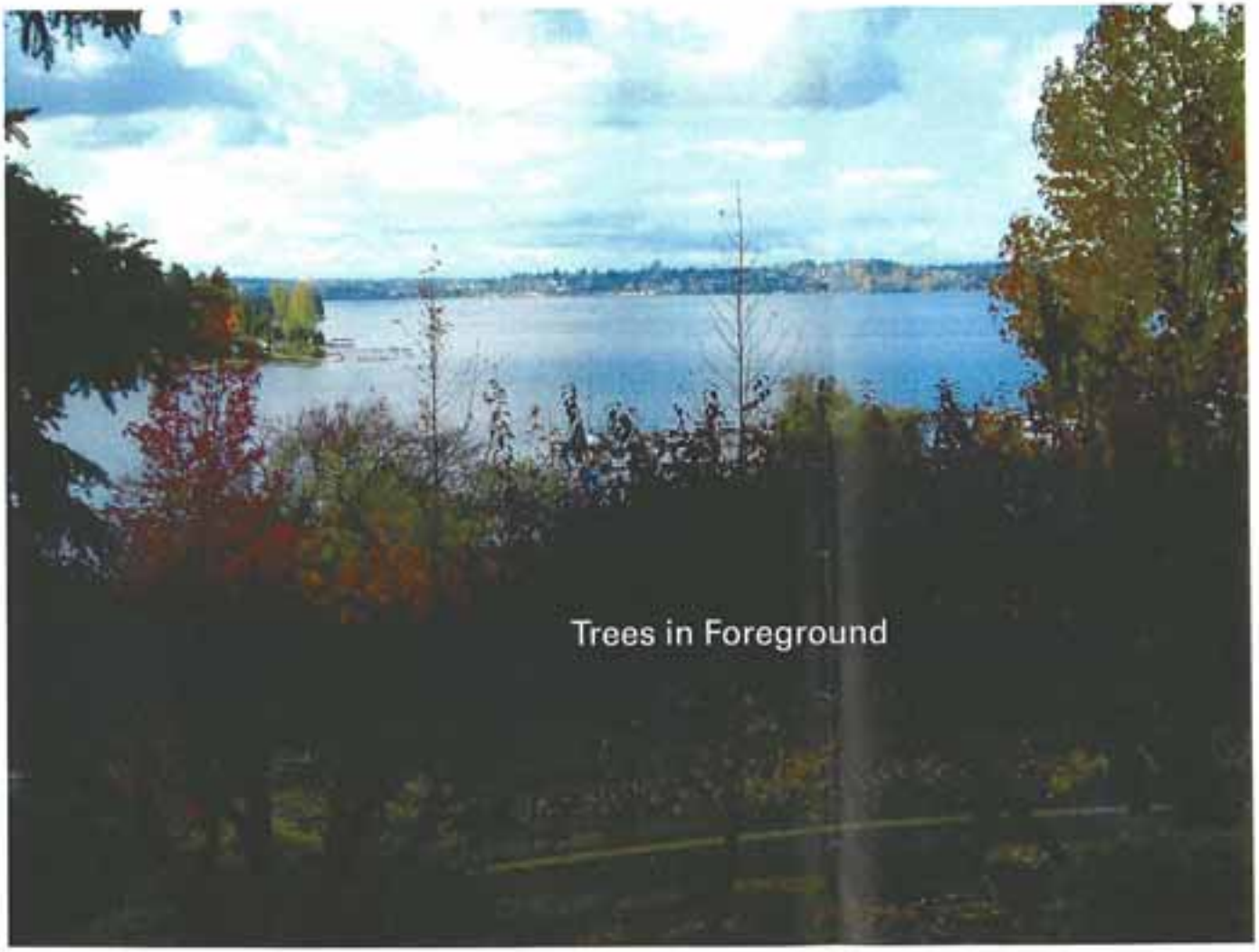
View 2 : From Yarrow Villas

View 3 : From Bench Viewpoint

View 3 : From Bench Viewpoint



View 4 : From Yarrow Hill Condominiums



View 4 : Yarrow Hill Condominiums

CITY OF KIRKLAND
HEARING EXAMINER FINDINGS, CONCLUSIONS AND RECOMMENDATION

APPLICANT: Marina Suites LLC and Yarrow Bay Yacht Basin & Marina LLC

FILE NO.: SHR06-00001, ZON06-00001

SITE LOCATION: 5207 Lake Washington Blvd NE

APPLICATION: The applicant proposes to extend a pier and redevelop the upland portion of the Yarrow Bay Marina site located at 5207 Lake Washington Blvd NE. The application includes construction of a new 53,200 square foot office building with parking, construction of a new 6,930 square foot marina services building, site improvements including a new driveway and parking for 214 vehicles, pedestrian walkway, installation of retaining walls and landscaping, extension of an existing pier by 66 feet to provide for six additional uncovered moorage spaces, and other improvements.

REVIEW PROCESS: Process IIB, Hearing Examiner conducts public hearing on the application for zoning and shoreline substantial development permit approval, and makes recommendation to City Council. The Houghton Community Council has approval/disapproval jurisdiction over the land use proposal.

SUMMARY OF KEY ISSUES: Compliance with the requirements of the Kirkland Zoning Code and Shoreline Master Program for construction of marinas and office uses. Transportation, landscaping and trees, parking, lighting, public pedestrian access, and the dock expansion

SUMMARY OF RECOMMENDATIONS:

Department of Planning and Community Development:	Approve with conditions
Hearing Examiner:	Approve with conditions
Houghton Community Council:	Approve with conditions

PUBLIC HEARING:

The Hearing Examiner and the Houghton Community Council held a joint public hearing on July 31, 2006, on the application for Zoning and Shoreline Substantial Development Permit. The hearing was held in City Council Chambers, City Hall, 123 Fifth Avenue, Kirkland, Washington. A verbatim recording of the hearing is available in the City Clerk's Office. The minutes of the hearing and the exhibits are available for public inspection in the Department of Planning and Community Development. Immediately following the public hearing, the Hearing Examiner heard a SEPA appeal of the Determination of Nonsignificance for the project, which was brought by the Board of Directors of the Breakwater Condominium Association; a separate decision has been issued by the Hearing Examiner on that appeal.

PUBLIC COMMENT

The following persons spoke at the public hearing:

From the City:
Stacy Clauson, PCD Project Planner

From the Applicant:
Roger Pearce, Foster Pepper LLC, attorney for applicant
Paul Wilcox, property owner
James Walker, project architect
William Popp, transportation engineer
Phil Goldenman, Waterfront Construction, project permit coordinator

From the Community:
John R. Barnett
Paul Friedrich
Gary Shelton
LouAnn Freeburg
Fred Freeburg
Ronald Weinstein
J. Richard Aramburu, attorney for Breakwater Condominium Association

Correspondence

The following persons submitted written comments on this application:
Helen Rogers
Joan Schmidt
John Barnett
Fred and LouAnn Freeburg
J. Richard Aramburu

FINDINGS, CONCLUSIONS AND RECOMMENDATION

A. Findings of Fact

The Facts set forth in the Department's Advisory Report (Exhibit A) are supported by the record, and are adopted by reference herein.

B. Conclusions

1. The conclusions set forth in the Department's Advisory Report are adopted by reference herein.

2. The Breakwater Condominium Association (BCA) requested that the application not be considered because of lack of proper notice. The notice of application issued on March 9, 2006, identified the request as being for a "Process IIB Permit," rather than a shoreline substantial development permit, and did not reference the right to appeal to the Shoreline Hearings Board.

3. The notice described the project and its shoreline location, stated that the proposal would be evaluated against the Shoreline Master Program, and explained how to obtain more information about the project from the City. The notice was issued approximately one month prior to the close of the application comment period, and the Breakwater Condominium owners were given actual notice of the permit application. BCA has submitted comments and testimony on the application, and there is no evidence that the BCA was unable to fully participate in the public process because of the notice. On this record, the notice was shown to be adequate, and does not provide a basis for denying or remanding the application to the Department for additional notice.

4. The BCA has also identified other concerns with the proposal. These include potential impacts from the project with regard to fill, parking quantity, parking for boats, traffic conditions and impacts to views. Other objections relate to the expansion of the moorage use at the site, the location of parking at the site, the proposed public access and park, the need for additional buffering between the project and the Breakwater Condominiums, and the effect of the existing covered moorage on the view corridor.

5. The record shows that the application as conditioned would meet all relevant Codes, Plans and policies, including the City's Shoreline Master Program, and applicable state laws and regulations, including WAC 173-27. Some of the BCA's concerns may be at least partially addressed by the recommended conditions (including those recommended by the Houghton Community Council).

6. The Houghton Community Council has concurred in the staff analysis and recommendation of approval, with certain additions and changes noted in its memorandum to the Hearing Examiner dated August 3, 2006. One of the Council's recommendations is to amend Condition 2.d(1) as noted in its Memorandum. The

Council's recommendation should be modified to clarify that the vegetation in the buffer area along the driveway is not restricted to three feet in height above finished grade. The staff report (at page 20), correctly notes that there are opportunities to permit vegetation along the driveway that would exceed three feet above finished grade, but which would not obscure views from Lake Washington Boulevard. This taller vegetation would also provide greater buffering for the property to the south. The amended language is set out below.

C. Recommendation

Based on the foregoing Findings of Fact and Conclusions, the Hearing Examiner recommends approval of the application, subject to the conditions set forth in Exhibit A, Section I.B, except that Condition 2.d(1) is amended to read as follows:

> Condition 2.d(1): The applicant shall submit a perpetual maintenance agreement, to be recorded with King County, to maintain the vegetation within the view corridor, except in the buffer for the access driveway, to a height no greater than three feet above finished grade. The agreement shall require maintenance of the vegetation within the buffer for the access driveway in accordance with Condition 2.d(2).

The following conditions of approval are also recommended:

1. The applicant shall install a security gate on the waterfront trail at the southwest corner of the subject property. The applicant shall ensure that the gate is open and unlocked during the hours the trail is required to be open and closed and locked during all other hours. The exact hours during which the trail shall be open, shall be specified by the Department.

2. Tie-up points shall be provided on the end of the pier extension and made available for boats waiting for fuel. In addition, the applicant shall install signage to describe the use of the outside of the pier.

3. The vegetation provided in the five-foot wide buffer for the driveway (see Condition 2.d(2)) shall be evergreen.

4. Street trees shall only be planted in front of the office building. The street trees planted in front of the building shall be carefully selected to not block views from properties to the east when fully mature.

5. The rock retaining wall along Lake Washington Boulevard NE sidewalk shall be retained, provided it is structurally sound.

6. The applicant is encouraged to consider moving the trail to the west side of the marina service building, if it is subsequently determined

by the applicant and the Department that this can be safely accomplished in light of marina operations.

EXHIBITS

The following exhibits were offered and entered into the record:

Exhibit A:	Planning and Community Development Advisory Report and Attachments 1-30
Exhibit B:	Copies of 7/28/06 emails between Stacy Clauson, PCD, and Karen Walter, Muckleshoot Tribe and 7/25/06 email from Sharon Shelton to Stacy Clauson
Exhibit C:	Copy of applicant's PowerPoint presentation, "Yarrow Bay Marina Suites"
Exhibit D:	Drawings (3 pages) showing proposed marina fueling and operations and existing fueling plan
Exhibit E:	Letter from J. Richard Aramburu, attorney for the Breakwater Condominium Association, dated July 31, 2006
Exhibit F:	Letter from LouAnn Freeburg, dated July 31, 2006
Exhibit G:	Outline of Comments on Project Notice, submitted by Roger Pearce, attorney for applicant
Exhibit H:	Declaration of Phil Goldenman Regarding Project Notice
Exhibit I:	Resume of Favero Greenforest, arborist
Exhibit J:	Resume of Dan Nickel, environmental engineer
Exhibit K:	Resume of William Popp, Jr., transportation engineer
Exhibit L:	Resume of James Walker, project architect
Exhibit M:	Recommendation of Houghton Community Council to Hearing Examiner, dated August 3, 2006

PARTIES OF RECORD

Applicant, Phil Goldenman, Waterfront Construction, 205 NE Northlake Way, Suite 230, Seattle, WA 98105
Fred and LouAnn Freeburg, 4823 Lake Washington Blvd NE #6, Kirkland, WA 98033
John Barnett, 4823 Lake Washington Blvd NE #5, Kirkland, WA 98033
Joan Schmidt, 4823 Lake Washington Blvd NE #7, Kirkland, WA 98033
Helen Rogers, 4823 Lake Washington Blvd NE #8, Kirkland WA 98033
Board of Directors, Breakwater Condominium Association, 4823 Lake Washington Blvd NE, Kirkland, WA 98033
Muckleshoot Indian Tribe Fisheries Division, 39015 172nd Ave SE, Auburn, WA 98092, attn: Karen Walter
J. Richard Aramburu, Suite 209, College Club Building, 505 Madison Street, Seattle, WA 98104 (on behalf of Breakwater Condominium Association)

Department of Planning and Community Development
Department of Public Works
Department of Building and Fire Services

Entered this 9th day of August, 2006, per authority granted by KZC 152.70. A final decision on this application will be made by the City Council.

Anne Watanabe
Hearing Examiner

CHALLENGES AND JUDICIAL REVIEW

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

CHALLENGE

Section 152.85 of the Zoning Code allows the Hearing Examiner's recommendation to be challenged by the applicant or any person who submitted written or oral comments or testimony to the Hearing Examiner. A party who signed a petition may not challenge unless such party also submitted independent written comments or information. The challenge must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5:00 p.m., 8-21-06, seven (7) calendar days following distribution of the Hearing Examiner's written recommendation on the application. Within this same time period, the person making the challenge must also mail or personally deliver to the applicant and all other people who submitted comments or testimony to the Hearing Examiner, a copy of the challenge together with notice of the deadline and procedures for responding to the challenge.

Any response to the challenge must be delivered to the Planning Department within seven (7) calendar days after the challenge letter was filed with the Planning Department. Within the same time period, the person making the response must deliver a copy of the response to the applicant and all other people who submitted comments or testimony to the Hearing Examiner.

Proof of such mail or personal delivery must be made by affidavit, available from the Planning Department. The affidavit must be attached to the challenge and response letters, and delivered to the Planning Department. The challenge will be considered by the City Council at the time it acts upon the recommendation of the Hearing Examiner.

APPEAL TO SHORELINE HEARINGS BOARD

Pursuant to RCW 90.58.180 and WAC 173-27-220, any person aggrieved by the City's final decision on the Shoreline Substantial Development Permit may seek appeal to the State Shorelines Hearing Board. All petitions for review shall be filed with the Shoreline Hearings Board within twenty-one (21) calendar days of the date the Department of Ecology receives the City's decision. Within seven (7) calendar days of filing any petition for review with the Shoreline Hearings Board, the petitioner shall serve copies of the petition for review on the Department of Ecology, the State Attorney General and the City of Kirkland. The petition for review must contain items required by WAC 461-08-055.

JUDICIAL REVIEW

Section 152.110 of the Zoning Code allows the action of the City in granting or denying this zoning permit to be reviewed in King County Superior Court. The petition for review must be filed within twenty-one (21) calendar days of the issuance of the final land use decision by the City.

LAPSE OF APPROVAL

Under Section 152.115 of the Zoning Code, the applicant must submit to the City a complete building permit application approved under Chapter 152, within four (4) years after the final approval on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per Section 152.110, the running of the four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the required development activity, use of land, or other actions. Furthermore, the applicant must substantially complete construction approved under Chapter 152 and complete the applicable conditions listed on the Notice of Approval within six (6) years after the final approval on the matter, or the decision becomes void.

Pursuant to RCW 90.58.200 and WAC 173-27-090, construction or substantial progress toward construction of a project for which a Substantial Development Permit has been granted pursuant to the Shoreline Management Act must be undertaken within two (2) years after the date of approval. The project must be completed within five (5) years and a one(1) year extension may be considered. "Date of approval" means the date of approval by the City of Kirkland, or the termination of review proceedings if such proceedings were initiated pursuant to RCW 90.58.180 and WAC 173-27-220.

Houghton Community Council
CITY OF KIRKLAND
123 Fifth Avenue, Kirkland, WA 98033 425.587-3225
www.ci.kirkland.wa.us

RECEIVED
AUG - 7 2006
AM PM
PLANNING DEPARTMENT
BY

MEMORANDUM

To: Anne Watanabe, Hearing Examiner

From: Rick Whitney, Chair, Houghton Community Council

Date: August 3, 2006

Subject: YARROW BAY MARINA – MARINA SUITES, FILE NO. SHR06-00001 AND ZON06-00001
RECOMMENDATION OF HOUGHTON COMMUNITY COUNCIL

Recommendation to the Hearing Examiner:

After consideration of the testimony and record presented at the public hearing on File SHR06-00001 and ZON06-00001 held on July 31, 2006, the Houghton Community Council (HCC) concurs with the staff analysis and recommendation of approval, with the following additional or amended conditions of approval:

1. The applicant shall install a security gate on the waterfront trail at the southwest corner of the subject property. The applicant shall ensure that the gate is open and unlocked during the hours the trail is required to be open and closed and locked during all other hours.

2. Tie up points shall be provided on the end of the pier extension and made available for boats waiting for fuel. In addition, the applicant shall install signage to describe the use of the outside of the pier.

3. Condition 2.d(2) shall be revised as follows: ~~Within the view corridor, except along the buffering for the access driveway, the plans shall either be revised to include only those shrubs that would not exceed 3 feet above finished grade or~~ The applicant shall submit a perpetual maintenance agreement, to be recorded with King County, to maintain the vegetation within the view corridor to a height no greater than three feet above finished grade.

4. The vegetation provided in the 5-foot wide landscape buffer for the driveway required under KZC 95.40.7.b shall be evergreen.

5. Street trees shall only be planted in front of the office building. The street trees planted in front of the building shall be carefully selected to not block views from properties to the east when fully mature.

6. The rock retaining wall along the Lake Washington Blvd. NE sidewalk shall be retained provided it is structurally sound.

In addition, the HCC recommends that the applicant consider moving the trail to the west side of the marina service building if possible given the marina operation.

EXHIBIT K

Summary of HCC Deliberation:

The HCC identified the following issues for discussion:

Waterfront access trail location

The Community Council discussed the location of the trail at length and expressed concern about precedent if the trail runs behind the Marina Service building. However, they also discussed concern over safety issues due to the industrial nature of the project if the trail runs in front of the bay doors. The consensus is to request the applicant to carefully review the possibility of moving the trail to the west side of the building.

Motion: The HCC approves the trail system as proposed by applicant and recommends that the applicant consider moving the trail to the west side of the marina service building if possible given the marina operation.

Access Gate

The Community Council discussed gating the public trail and determined that it would be advisable only where it connects to the adjoining residential building. The purpose of the gate is to provide some added security for the residents to the south.

The Community Council recommends adding one gate on the waterfront trail at the southwest corner of the subject property. The applicant shall ensure that the gate is open during the hours the trail is required to be open.

Pier Extension

The Community Council discussed where boats will queue for fuel. The HCC recommends that tie up points located on the end of the pier extension be available for boats waiting for fuel. In addition, the applicant should consider installing a sign to describe the use of the outside of the pier. The purpose of the tie ups is to help address the concerns of the neighbors to the south about boats waiting at their pier.

Landscaping along the south property line

Motion: The HCC recommends that a Perpetual Maintenance Agreement be required to be recorded with King County to maintain the height of the landscaping in the view corridor to 3 feet (see condition 2.d.1).

The HCC concurs with the staff recommendation with the addition that the vegetation shall be evergreen in the portion of the buffer next to the drive (see condition 2.d.2).

Street Trees

The HCC discussed that street trees might block the views from the Boulevard and properties to the east. The HCC recommends that street trees only be planted in front of the office building. The street trees planted in front of the building shall be carefully selected to not block views from properties to the east. The HCC recommends that the rock retaining wall along the sidewalk be retained provided it is structurally sound. The wall is desirable because it is of historical significance, continues from Carillon Point, and is aesthetically pleasing.

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

ADVISORY REPORT
FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

To: Kirkland Hearing Examiner
Houghton Community Council

From: Stacy Clauson, Project Planner
Eric R. Shields, AICP, Planning Director

Date: July 19, 2006

File: SHR06-00001, ZON06-00001, and APL06-00007
Yarrow Bay Marina

Hearing Date and Place: Monday, July 31, 2006 at 7:00 pm
City Hall Council Chamber
123 Fifth Avenue, Kirkland

TABLE OF CONTENTS

Section **Page**
I. INTRODUCTION 2
A. APPLICATION 2
B. RECOMMENDATIONS 3
II. FINDINGS OF FACT AND CONCLUSIONS 6
A. SITE DESCRIPTION 6
B. HISTORY 9
C. PUBLIC COMMENT 9
D. STATE ENVIRONMENTAL POLICY ACT (SEPA) 12
E. CONCURRENCY 15
F. APPROVAL CRITERIA 15
G. ZONING CODE REGULATIONS 18
H. SHORELINE MASTER PROGRAM (SMP) 36
I. COMPREHENSIVE PLAN 36
III. SUBSEQUENT MODIFICATIONS 41
IV. CHALLENGES, / APPEALS AND JUDICIAL REVIEW 41
E. CHALLENGE 41
F. APPEAL 42
G. JUDICIAL REVIEW 42
V. LAPSE OF APPROVAL 42
VI. APPENDICES 43
VII. PARTIES OF RECORD 44

I. INTRODUCTION

A. APPLICATION

1. Applicant: Phil Goldenman representing Marina Suites LLC

2. Site Location: 5207 Lake Washington Blvd NE (see Attachment 1)

3. Request: Marina Suites LLC is proposing to extend a pier and redevelop the upland portion of the Yarrow Bay marina site located at 5207 Lake Washington Blvd NE (see Attachment 2). The applicant is requesting approval for the following :

   - Demolish the existing marina services building and accessory structures;
   - Relocate the existing underground fuel tanks;
   - Construct a new 53,000 square foot office building. The building would contain three floors of office space and two levels of parking;
   - Construct a new 6,980 square foot marina services building to be used as office space related to marina operations as well as boat repair and service;
   - Site improvements consisting of a new access driveway and parking for 214 vehicles (including enclosed, subterranean and surface parking), a pedestrian walkway system, new utility connections, grading and installation of retaining walls and landscaping;
   - Extend an existing pier by 66 feet to provide for six additional uncovered moorage spaces;
   - Removal of two existing buoys and three existing floats;
   - Install new walkway to covered moorage located south of existing bulkhead; and
   - Offsite work includes frontage improvements along Lake Washington Blvd NE.

4. Review Process: The proposal requires the following review:

   a. Development of an office development in a PLA 15A zone, requiring a Process IIB review (see Section II.G.4);

   b. Modification to a general moorage facility in the PLA 15A zone, requiring a Process IIB review (see Section II.G.5);

   c. Development of an office development and associated improvements within the shoreline jurisdiction, a Substantial Development Permit requiring a Process I review (see Section II.H.3); and

   d. Modification to a general moorage facility, a Substantial Development Permit requiring a Process I review (see Section II.H.2).

   Pursuant to KZC 145.10 and KMC 24.06.040(b)(1), if the use or activity that requires approval through Process I is part of a proposal that requires additional approval through Process IIB, the entire proposal is reviewed using Process IIB.

   Process IIB, Hearing Examiner conducts public hearing and makes recommendation; City Council makes final decision. The Houghton Community Council has approval/disapproval jurisdiction over the land use proposal.

   e. SEPA Appeal: Pursuant to Kirkland Municipal Code Section 24.02.105 the SEPA appeal hearing will be conducted by the Hearing Examiner and combined

with the public hearing for the Process IIB Zoning Permit for the project. The Hearing Examiner will make the final decision on the SEPA appeal.

5. Summary of Key Issues:

a. Zoning and Shoreline Permit: Key issues are compliance with detailed requirements for construction of marinas and office uses as set forth in the Kirkland Zoning Code and Shoreline Master Program. Issues of transportation, trees and landscaping, parking, lighting, public pedestrian access, and the marina dock expansion as impacts to the adjoining condominium development to the south have been identified in the correspondence. These issues have been addressed through project design and recommended conditions of approval.

It should be noted that the applicant would be agreeable to eliminating the pedestrian pathway and providing additional buffering on the south side of the project. The Zoning Code does provide the potential for the access from the right-of-way to be eliminated, because the waterfront on the subject property can be reached from the Carillon Point property to the north. In evaluating this issue, staff has recommended that the public pedestrian access be provided from the right-of-way to the waterfront in order to provide access to the marina, a water dependent use, and to the waterfront use area that the applicant is proposing to develop in association with the request for increased height of the office building, as provided for under the zoning regulations (see Section II.G.4.b(3) and (4) on pages 28-29 for additional information).

It also should be noted that there is a conflict between the driveway buffering regulations and the view corridor regulations. The landscape buffering that could be provided along the south property line would be located within the view corridor, where the Zoning Code presently restricts vegetation height to three feet above finished grade in order to insure the long-term preservation of views across the property (see Section II.G.1.a on pages 18-20 for additional information). Increases in the allowable vegetation height would provide enhanced buffering for the adjoining development and, because of the grade change across the site, could be installed in a way that would not further obscure the view from Lake Washington Boulevard to and beyond Lake Washington. As a result, staff is recommending that additional flexibility for vegetation height for the driveway be granted, with the condition that the applicant submit a site section through the landscape buffer demonstrating that the landscaping (at mature height) would not project into the line of sight from Lake Washington Boulevard to the high water line.

b. SEPA Appeal: Does the appeal of the issuance of a determination of nonsignificance for this project have merit (see section II.D)? In answering this question, the Hearing Examiner will either: Affirm the decision being appealed; reverse the decision being appealed; or modify the decision being appealed.

B. RECOMMENDATIONS

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

1. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the

applicant to ensure compliance with the various provisions contained in these ordinances. Attachment 3, Development Standards, is provided in this report to familiarize the applicant with some of the additional development regulations. This attachment does not include all of the additional regulations. When a condition of approval conflicts with a development regulation in Attachment 3, the condition of approval shall be followed (see Conclusion II.J).

2. Prior to issuance of a grading or building permit, the applicant shall submit:

   a. Plans consistent with the geotechnical recommendations contained in the reports by Associated Earth Sciences dated January 19, 2006 and June 24, 2002 (see Conclusion II.A.1.b(2)).

   b. A copy of the approved Tree Plan II (see Conclusion II.A.1.b(3)).

   c. A report from a certified arborist providing special instructions for work within the limits of disturbance of those trees shown to be retained along the waterfront area (see Conclusion II.A.1.b(4)). The recommendations shall be incorporated into the plan sets.

   d. Final landscape plans, in compliance with the following requirements:

      (1) Within the view corridor, except along the buffering for the access driveway, the plans shall either be revised to include only those shrubs that would not exceed 3 feet above finished grade or the applicant shall submit a perpetual maintenance agreement, to be recorded with King County, to maintain the vegetation within the view corridor to a height no greater than three feet above finished grade (see Conclusion II.G.1.a(2)(d)).

      (2) The plans shall provide the 5-foot wide buffer for the driveway required under KZC 95.40.7.b (see Conclusion II.G.3.b(2)). The applicant shall submit a site section through the landscape strip demonstrating that the landscaping (at mature height) would not project into the line of sight from Lake Washington Boulevard to the high water line (see Conclusion II.G.1.a(2)(e)).

   e. Final plans for construction of the retaining wall located near the south property line, consistent with the following requirements:

      (1) Soil disturbance is limited to a cut no closer than five feet (5') north of the property line (see Conclusion II.G.4.a(4)(e)).

      (2) A solid wall shall be incorporated into the restraint system on the south side of the pedestrian trail. The wall shall be of sufficient height to block the headlights from vehicles exiting the parking garage (see Conclusion II.G.4.a(4)(d)).

      (3) The south face of the retaining wall shall be treated, either with forms that contain a decorative pattern, or by planting climbing vegetation with some sort of support or trellis system that will allow the vegetation to cover the wall (see Conclusion II.G.4.a(4)(c)).

   f. Final plans for public pedestrian access and the waterfront use area, consistent with the approved plans (II.G.4.b(4)(d)).

3. Moorage is not permitted on the outside of the floating pier addition (see Conclusion II.G.5.b(10) and II.H.2.d).

4. As part of the application for a Building Permit for the floating pier addition, the applicant shall submit plans consistent with the following standards:

   a. Moorage structures may not be treated with toxic substances. The marina must provide at least two covered and secured waste receptacles. All utility lines must be under the pier decks. Piers must be adequately lit and the source of the light shall not be visible from off the subject property. The street address must be displayed on the moorage structure, visible from the lake, with letters and numbers at least 4" high. Covered aircraft moorage is not permitted. No additional covered moorage is permitted. The marina services building should contain restrooms that are available to the public. (see Conclusion II.G.5.b(14)).

   b. The plans shall include the location and design of signage posted to prohibit moorage on the outside of the proposed floating pier addition (see Conclusion II.G.5.b(10) and II.H.2.d).

5. The subject property is subject to the following parking requirements:

   a. Use of the marina is limited to 110 moorage slips (see Conclusion II.G.2.b).

   b. The marina services building shall be limited to service of up to four boats at one time, unless additional storage area on the site is provided (see Conclusion II.G.5.b(8))

   c. No boat trailer storage in designated parking stalls is permitted (see Conclusion II.G.2.b).

   d. Parking in front of the service bay doors shall be limited to marina staff (see Conclusion II.G.2.b).

   e. The parking within the parking garage shall be made available to marina customers during nights and weekends in order to meet the peak parking demand for the marina (see Conclusion II.G.2.b).

   f. The applicant shall demonstrate that the parallel parking stalls located in the parking garage levels are functional (see Conclusion II.G.2.b).

   Failure to meet these requirements shall result in restrictions in the number of moorages or other measures consistent with the Zoning Code and approved by the Planning Official to accommodate the difference in required parking (see Conclusion II.G.2.b).

6. Prior to issuance of a final inspection:

   a. Submit for recording with King County a signed and notarized public access easement establishing the right of the public to the pedestrian access from the right-of-way to and along the entire waterfront of the subject property, the location to be determined through this review process. Sign(s) shall be installed, obtained from the City, designating the public pedestrian access (see Conclusion II.G.4.b(2)(c) and II.G.5.b(4)).

   b. The public plaza shall be completed. A public use easement document shall be provided to the City for the public use area. Sign(s) are required to be installed,

obtained from the City, designating the public access to the plaza area (see Conclusion II.G.4.b(4)(d)).

c. Submit a reciprocal parking agreement in a form acceptable to the City Attorney, stating that the marina parking and office parking may be used for parking by the other property. The applicant must file this statement with the King County Bureau of Elections and Records to run with the properties (see Conclusion II.G.2.b).

d. Submit a completed Transportation Management Program (TMP) approved by the City and METRO for the office building. The applicant must file this statement with the King County Bureau of Elections and Records to run with the properties (see Conclusion II.G.4.b(5)(b) and II.I.2.b).

e. Provide an easement to the City for a bus shelter footing (see Conclusion II.G.4.b(5)(b).

f. Install the required improvements as described in Attachment 3. In lieu of completing any required improvements, a security device to cover the cost of installing the improvements may be submitted if the criteria in Zoning Code Section 175.10.2 are met (see Conclusion II.G.6.b(1))).

g. Install notice signs at the end of the proposed floating pier noting moorage is not permitted (see Conclusion II.G.5.b(10) and II.H.2.d).

h. Install notice signs in the surface parking areas indicating that boat trailer parking is prohibited on designated parking stalls and that parking in front of the service bay doors is limited to marina staff (see Conclusion II.G.2.b).

i. Submit a covenant restricting rooftop appurtenances. The applicant must file this statement with the King County Bureau of Elections and Records to run with the properties (see Conclusion II.G.4.b(4)).

7. The applicant is required to submit a lot line adjustment application in order to adjust the property lines as indicated in the proposal drawings (see Conclusion II.A.1.b).

II. FINDINGS OF FACT AND CONCLUSIONS

A. SITE DESCRIPTION

1. Site Development and Zoning:

a. Facts:

(1) Size: The subject property contains 92,048 square feet of land area, located above the ordinary high water mark. The site consists of two separate parcels and the proposal would include adjustment of the existing lot lines.

(2) Land Use: The upland parcel has previously been used for dry dock boat storage and the lower property is associated with the marina activities. The existing marina services include moorage, boat sales, boat rentals, parts, accessories, and marine repair. The site contains:

- 104 moorage slips,

- A 6,878 square foot building consisting of a marine service shop, retail services, office, storage, and apartment office
- A fueling facility,
- A boat haul-out; and
- A boat rentals dock.

(3) Zoning: PLA 15A

(4) Shoreline Designation: Urban Mixed 2

(5) Terrain The property slopes downhill from Lake Washington Blvd NE to Lake Washington, with an elevation change of approximately 32 feet. An 8-foot high rockery wall is located on the east side of the property, providing grade separation between Lake Washington Blvd NE and the subject property. A series of gravel drive areas cross the site, creating level benches for boat and trailer parking.

The Kirkland Sensitive Area Maps identify a seismic hazard area on the upland portion of the site. A preliminary geotechnical feasibility report has been completed by Associated Earth Sciences, Inc. (see Enclosure 9 of Attachment 5). In this report, Associated Earth Sciences has noted that, from a geological standpoint, the parcel is suitable for the proposed development provided that the recommendations established within the report are properly followed.

(6) Vegetation:

(a) Pursuant to requirements of KZC 95.35.2.b)2), the applicant is required to submit a Tree Plan II. To fulfill this requirement, the applicant has submitted a tree plan (see Sheet L-1 of Attachment 2.a) and the results of an arborist report completed by Greenforest, Inc. (see Enclosure 10 of Attachment 5). A tree survey completed as part of this report identified 19 trees on the Marina property or abutting right-of-way. The arborist provided an assessment of the viability and health of these trees, together with 40 trees located on the adjacent properties to the north and south whose canopy overhang onto the site. The arborist also established the location of limits of disturbance around all of the trees.

(b) Based on this information, the City's urban forester has rated each of the trees located on the subject property under the provisions of KZC 95.35.4.A.1)A) (see Attachment 8). Only one tree, the 36" Big Leaf Maple tree located along the south property line (Tree #152) has been designated as a Type I tree.

(c) On the tree plan, the applicant has indicated which trees are proposed for retention and removal. Tree #152 has been proposed for removal and work is proposed within the limits of disturbance as established by the arborist, associated with the retaining wall to be installed offset from the south property line to retain the fill needed to raise the elevation of the access roadway.

(d) The applicant's arborist has evaluated the impacts of this retaining wall on trees along the south property line and has determined that Tree #152 will not survive the proposed construction (see Attachment 9).

(e) Several other trees, including trees located near the waterfront area, have been proposed for retention, though work associated with completed of the waterfront access trail are shown occurring within the limits of disturbance established by the arborist for these trees.

b. Conclusions:

(1) A lot line adjustment is required to modify the existing lot lines.

(2) Land use and shoreline issues are relevant factors to be considered in this application and are further addressed in Sections II.F, II.G and II.H below.

(3) The recommendations of the report from Associated Earth Sciences should be followed.

(4) The submitted tree plan is consistent with the requirements of Tree Plan II and should be included in future development permit applications. Given the degree of construction related impacts to Tree 152, which has been characterized as a Type I tree, retention of this tree is not feasible.

(5) Prior to issuance of a grading or building permit, the applicant should consult with an arborist to provide special instructions for work within the limits of disturbance of those trees shown to be retained along the waterfront area.

2. Neighboring Development and Zoning:

a. Facts: The subject property is surrounded by the following zones and uses:

North: Properties to the north are also located within the PLA 15A zone and UM 2 shoreline environment. The upland portion of the site is bordered by the Carillon Point development, a mixed-used development containing office, retail, hotel and restaurant uses. The waterward portion of the site is bordered by the marina at Carillon Point.

South: Properties to the south are located in the WD III zone and UR 2 shoreline environment. The upland portion of the site is bordered by the Breakwater Condominiums, an 8-unit condominium building. The waterward portion of the site is bordered by the moorage facility for the Breakwater Condominium residents.

East: Property to the east is zoned RS 12.5 and is outside shoreline jurisdiction. The site abuts the Lake Washington Blvd NE right-of-way. Property across the street is developed with residential uses, including the 9-unit Yarrow Hill Villas Condominiums and the Yarrow Hill Development.

West: Lake Washington

b. Conclusion: The project is located in a transition area along the shoreline, where uses shift from urban mixed uses to high density residential uses. The site has been designed to be sensitive to this transition, with the view corridor located on the south and the buildings located on the north side of the property.

B. HISTORY

1. Facts: The marina has been in existence since the 1950s, prior to Houghton consolidation with the City of Kirkland in 1968.

As part of the 2001 Comprehensive Plan Amendment process and related Comprehensive Plan and Zoning Map changes, the zoning for the property was amended to permit office on the existing marina site as a separate use from the Carillon Point Master Plan site. The applicant requested the amendment in order to retain the marina and construct an office building on the vacant portion of the site. At the time, the city regulations were not written to allow an office use outside of an approved master plan without a five acre minimum lot size. Since the marina site was not part of the Carillon Point master plan and did not contain five acres, the property could not be developed for office uses. In evaluating the proposed amendment, the owner hired a consulting architect that designed a potential site plan to illustrate the concepts being reviewed, such as view corridors, lot coverage and height (see Attachment 15). These drawings depict a new office building on the north side of the site, with access along the south, both for pedestrians and vehicles, as well as retention of the existing marina services building. Both the Planning Commission and Houghton Community Council recommended amending the Comprehensive Plan and Zoning Code to allow office uses on the site with the following provisions:

a. Maximum building height of 40 feet, but no rooftop appurtenances allowed if built to this height

b. The view corridor would increase in width if built to the higher height limit

c. A maximum 50 percent building footprint

d. Public use area required at the shoreline

e. Vehicular and pedestrian circulation plan to provide safe access to and from the Boulevard

The amendment was noticed to the public, with notices posted on City notice boards installed at the site. Residents from the condominiums east of the site participated in the process and provided written and oral comments. Their concerns were view blockage from their units and additional traffic. No additional neighboring residents participated in the Comprehensive Plan amendment process. The City Council approved the amendment, including a requirement for a Transportation Demand Management Plan. Retention of the marina was expressed as a policy goal for the site.

2. Conclusion: The current proposal is substantially consistent with the concept drawings evaluated as part of the 2001 Comprehensive Plan amendment process. The one new aspect, relocation of the marina services building to the north portion of the site, will open up the view corridor as part of the redevelopment process. The proposed development includes retention of the existing marina, with redevelopment of the upland piece occurring in a way that is integrated and planned around the marina use. The proposal opens up a view corridor and provides pedestrian access to a waterfront recreational use, both features that currently do not exist at the site. Compliance with

the zoning code provisions established as part of the 2001 amendment process are further detailed in Section II.G and II.H below.

C. PUBLIC COMMENT

1. Facts: The City has received 5 comment letters and e-mails from residents of the Breakwater Condominiums to the south regarding the proposal to date. An additional letter has been received from legal counsel representing the condominium association to the south. Correspondence is included as Attachments 4.a-f. Comments are summarized as follows, with a brief staff analysis where appropriate in italics.

   Helen Rogers (see Attachment 4.a) – expressed concern about the proposed expansion of the marina docking facilities and recommends that with the redevelopment the entry to the fueling area be relocated to the north side of the property to minimize further intrusion on the Breakwater condominium property. If the entry is not relocated, recommends that the marina configure and identify a route into their facility which will make it clear that the Breakwater dock should not be used; also requested penalties to be put in place.

   Staff is not aware of any restrictions on use of public waters that would preclude access across the waters in front of the Breakwater Condominiums. The applicant has submitted a plan that shows the existing and anticipated boat access to the fueling facility (see Attachment 10). Access across the public waters in front of the Breakwater site to reach the marina facilities, including the fueling facilities, would continue, but the separation between the proposed float pier addition and the Breakwater Condominium dock is sufficient to insure that boats can maneuver around the edge of the moorage facility without further impact to the use and enjoyment of the Breakwater Condominium dock. The applicant has also submitted a proposal (see Attachment 11) to include wayfinding and warning signage for customers advising them not to tie up to the private pier of the Breakwater Condominiums. The applicant would need to obtain permission from the residents of the Breakwater Condominiums before placing any signage on their property.

   Joan Schmidt (see Attachment 4.b) – expressed concerns about the project on the following issues:

   - Recommends relocating driveway further to the north and installation of a traffic signal, based on following concerns:

     - Relocation of driveway closer to the Breakwater Condominium site with resulting noise and glare impacts from headlights.

       To address the concerns about vehicle lights, staff has recommended that the open guardrail located along the pedestrian pathway to be replaced with a solid railing, which would act to deflect vehicle lights.

     - Traffic impacts and increase in number of cars on Lake Washington Blvd NE making it more difficult for residents of the Breakwater Condominiums to enter or leave the property.

       The City's Traffic Engineer has addressed this concern in Enclosure 7 of Attachment 5 and Attachment 13.

- Recommends project to be reduced in size so that the project complies with parking standards.

  Parking is addressed in Section II.G.2 below.

- Requested a 6-foot high solid fence to protect the residents of the Breakwater Condominiums from noise pollution and headlights.

  The proposal does not currently include a fence. As designed, a fence installed at the property line would be at a lower elevation than the driveway and would not function to minimize noise or glare from headlights. See section above concerning staff recommendation for a solid restraint system along the south side of the public walkway to address these concerns.

- Requested that both street and water entrances to the marina be relocated to the far north of the marina where they would not disrupt adjoining residential building.

  The City's Traffic Engineer has addressed the recommended location for the vehicular access in Enclosure 7 of Attachment 5. Access to the marina from the water is existing and it not proposed to be relocated.

- Opposed to dock expansion unless it is moved northward. Concerned about view obstruction and increased potential for trespass associated with proposed dock expansion.

  The Breakwater Condominiums are located on the waterfront and currently enjoy expansive views of Lake Washington. The units currently view the Breakwater dock, which is located on the Breakwater property. The extension would be located 20 feet north of the Breakwater north property line and would comply with established setback yards. The pier extension is proposed to serve small boats. See comments above concerning increased potential for trespass.

- Opposed to installation of public walkway along the south side of the subject property connecting Lake Washington Blvd. NE to the waterfront.

  The public pathway is a desired public amenity at this location. It will provide enhanced access to the marina, which is a water dependent recreational use, and will also connect to a waterfront use area proposed as part of the development. The Breakwater Condominium property would be adequately buffered from the walkway by an existing vegetation buffer along the north portion of the Breakwater Condominium site.

John Burnett (see Attachment 4.c) – expressed similar concerns as Joan Schmidt

Fred and LouAnn Freeburg (see Attachment 4.d) - expressed similar concerns as Joan Schmidt and John Burnett, together with the following (see Attachment 4.e):

- Concerned about additional ground and surface water coming onto Breakwater property as a result of the proposed development.

  All site drainage (roof, parking, and footings) will be collected and conveyed to the lake. No drainage will be routed toward the Breakwater Condominiums.

- Concerned about additional pressure applied to Breakwater bulkhead from fill on marina property.

  There is no fill proposed in the area located along the shoreline near the Breakwater bulkhead. As part of the construction of the proposed retaining wall system designed to retain the fill associated with the driveway, the applicant will need to submit structural drawings and will need to comply with recommendations established through the geotechnical review of the proposal.

J. Richard Aramburu (see Attachment 4.f) – indicated that there were defects in the notice and project description and requested that the public comment period for the proposal be reopened and that no public hearings be held until after a new comment period has expired.

Notice of application and the summary notice mailed to the property owners within 300 feet of the proposal site are included as Attachment 30.

2. Conclusions: The concerns expressed prior to issuance of this staff advisory report are from residents adjoining to the property to the south. The proposal does represent the introduction of a new use on the site (office use) and a slight increase in the number of boats to be moored (104 existing and 110 proposed), with associated impacts including an increase in traffic. However, as addressed in this report and with the recommended conditions of approval, the project complies with applicable City regulations and has been appropriately evaluated and mitigated for any potential significant adverse environmental impacts.

   Staff believes that appropriate notice of the application has been given.

D. STATE ENVIRONMENTAL POLICY ACT (SEPA)

1. SEPA Threshold Determination

   a. Facts:

      (1) A Mitigated Determination of Nonsignificance (DNS) was issued on May 9, 2006. The Environmental Checklist, Determination, and additional environmental information are included as Attachment 5.

      (2) A timely appeal of the SEPA Determination was filed on May 23, 2006 by the Board of Directors for the Breakwater Condominium, which is located next to the project at 4823 Lake Washington Blvd NE (see Attachment 6).

      (3) In addition to the written appeal, two written comments of the SEPA Determination were submitted to the Planning Department (see Attachment 7.a and b).

      (4) The Hearing Examiner will conduct a public hearing on the SEPA appeal concurrently with the public hearing for this permit application on July 31, 2006. A separate decision on the SEPA appeal hearing will be issued within two weeks of the close of the office public record hearing.

b. Conclusion: Once the Hearing Examiner issues a decision of the appeal of SEPA determination of Non-Significance, the City and the applicant will have satisfied the requirements of SEPA.

2. SEPA Appeal

a. Summary of Specific Issues Raised in the Appeal: The appeal included the issues listed below. Staff's analysis of the specific factual findings and conclusions disputed in the letter of appeal is also included.

(1) Transportation: The applicant's response is in Attachment 12. The City's response is included in Attachment 13, prepared by Thang Nguyen, Transportation Engineer for the City of Kirkland.

(2) Trees: The applicant has revised the plans to provide a 6-foot wide separation between the retaining wall to be installed at the edge of the pedestrian walkway and the common property line with the Breakwater Condominiums (see Sheet A4.5 of Attachment 2.a). The applicant has also provided the results of an arborist report (see Enclosure 10 of Attachment 5 and Attachment 9). The arborist has evaluated the trees on the adjoining Breakwater Condominium project in relationship to the proposed retaining wall and has determined that the roots for these trees are at a distance where they will not be affected by the proposed trail construction (see Attachment 9).

(3) Parking: See Section II.G.2 of this staff report.

(4) Lighting. The SEPA determination contained mitigation measures addressing potential lighting impacts, including glare, light trespass, and sky glow. The mitigation measures required use of full-cutoff light fixtures in order to conceal the light bulb from adjoining residential properties and limit glare. This standard will ensure that the lights do not allow any light dispersion or direct glare to shine above a 90 degree, horizontal plane from the base of the fixture. The mitigation measures also required that the lights be turned off after 10 pm in order to discourage excessive lighting at nighttime and limit any light trespass onto neighboring properties. After the hours of 10 pm, lighting is restricted to security lighting that would be lower in profile and have a uniform luminance across the site in order to discourage use of excessively bright or high wattage bulbs. In addition to these requirements, the applicant is required to meet the Kirkland Zoning Code requirements in KZC Section 115.85 relating to light and glare, which states that the applicant shall select, place and direct light sources so that the glare produced by any light source, to the maximum extent possible, does not extend to adjacent properties or to the right-of-way.

The applicant has also submitted the results of a preliminary lighting plan (see Attachment 14) which includes a photometric site plan showing the locations of light fixtures and fixture type and luminance levels of the lighting in footcandle measurements. The preliminary plan shows that the lighting has been designed so that it does not extend to adjacent properties.

(5) Walkway. Because the Kirkland Zoning Code and Shoreline Master Program contain specific requirements for public access, the effects of the walkway are more appropriately addressed and evaluated through the zoning and shoreline permit process. See Section II.G.4.b(1) and (2), II.G.5.b(3) and (4), and II.H.4 of this report.

(6) Vegetation Border and View Corridors. Because the Kirkland Zoning Code and Shoreline Master Program contain specific requirements for landscaping and view corridors, these requirements are more appropriately addressed and evaluated through the zoning and shoreline permit process. See Section II.G.1.a, II.G.3, and II.H.3 of this report.

(7) Marina Dock Expansion. In considering the impacts of the proposed marina expansion, the City's authority is limited to considering those environmental impacts caused by a proposal. The covered moorage structures and fueling facility are currently existing and, as a result, it is not appropriate for the City to consider environmental impacts from the existing facility.

The Zoning Code establishes a 10 foot minimum setback from the south property line with which the proposed pier extension would comply. In addition, the applicant has submitted a plan that shows the existing and anticipated boat access to the fueling facility (see Attachment 10). Access across the public waters in front of the Breakwater site to reach the marina facilities, including the fueling facilities, would continue, but the separation between the proposed float pier addition and the Breakwater Condominium dock is sufficient to insure that boats can maneuver around the edge of the moorage facility without further impact to the use and enjoyment of the Breakwater Condominium dock. The applicant has also submitted a proposal (see Attachment 11) to include wayfinding and warning signage for customers advising them not to tie up to the private pier of the Breakwater Condominiums.

The applicant has submitted the results of a qualified professional assessment of probable environmental impacts to water quality and habitat associated with the proposed expansion (see Enclosure 8 of Attachment 5). The report identifies potential direct and indirect effects on species of concern, including salmonids and Bald Eagles and establishes mitigations for these potential impacts, including:

- Removal of existing floats that are located over nearshore habitat.
- Minimization of pier width to 5 feet.
- Use of full deck grating and narrow width (22 inches) for nearshore walkway.
- Use of durable and non-toxic materials.
- Construction of project within established work windows for Lake Washington.
- Hand removal of any non-native vegetation that colonizes the nearshore area between a depth of 0 and 2 feet.
- Installation of native plantings along the shoreline edge in the southwest corner of project, together with a monitoring and maintenance plan for these activities.

The Planning Department has reviewed this information and determined that the applicant has satisfactorily addressed impacts to water quality and habitat.

b. Standards of Review:

(1) KMC Section 24.02.105.b establishes the following parties as able to appeal the SEPA determination: The applicant or proponent; any agency with jurisdiction, any individual or other entity who is specifically and directly affected by the proposed action.

(2) KMC Section 24.02.105.g.2 states that only those persons entitled to appeal the threshold determination may participate in the appeal.

(3) KMC Section 24.02.105.i of the Kirkland Municipal Code relating to SEPA states that:

(a) The matters to be considered and decided upon in the appeal are limited to the matters raised in the notice of appeal.

(b) The decision of the responsible official shall be accorded substantial weight.

(c) All testimony will be taken under oath.

(d) The decision of the hearing body hearing the appeal shall be the final decision on any appeal of a threshold determination including a mitigated determination of nonsignificance (see Attachment 26).

3. Conclusions: Although the appeal includes a number of concerns, none of them represent significant environmental impacts. Therefore, the decision by the responsible official to issue a DNS was appropriate. The Hearing Examiner will consider these issues and the testimony received during the public hearing in making her decision to either: affirm the decision being appealed; reverse the decision being appealed; or modify the decision being appealed.

E. CONCURRENCY

1. Facts: The Public Works Department has reviewed the application for concurrency. A concurrency test was passed for traffic on August 2, 2005 (see Enclosure 4 of Attachment 5) and for water and sewer on March 10, 2006 (see Attachment 3).

2. Conclusion: The proposal meets the City's concurrency requirements.

F. APPROVAL CRITERIA

1. GENERAL ZONING CODE CRITERIA

a. Fact: Zoning Code section 152.70.3 states that a Process IIB application may be approved if:

(1) It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and

(2) It is consistent with the public health, safety, and welfare.

The applicant has addressed compliance with this approval criteria in Attachment 17.

b. Conclusion: The proposal complies with the criteria in section 152.70.3. It is consistent with all applicable development regulations (see Sections II.G) and the Comprehensive Plan (see Section II.I). The expansion of the marina is consistent with the public health, safety, and welfare because it promotes public access to the shoreline and recreational activities for Kirkland residents while complying with applicable City regulations. The office development is consistent with the public health, safety, and welfare because it will provide benefits to the public of shoreline access and a waterfront use area, visual access to the Lake through the property, and redevelopment of the upland piece of the property that might otherwise not occur and in a way that is integrated with the marina use, while complying with applicable City regulations. The development of the waterfront access trail also completes a key link, connecting the waterfront trail that extends to the south with the trail system at Carillon Point.

2. SHORELINE SUBSTANTIAL DEVELOPMENT

a. Facts:

(1) WAC 173-27-140 establishes that no permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

(2) The applicant is proposing to construct an office building that would be more than thirty-five feet above average grade level.

(3) The proposal includes establishment of a view corridor across the south portion of the site.

(4) Properties to the north and south have frontage on Lake Washington and their view of the water will not be impacted by the proposed construction. Properties to the east, across Lake Washington Blvd. NE, are developed with residential uses, including the 9-unit Yarrow Hill Villas Condominiums, the 8-unit Freshwinds Apartments, and the Yarrow Hill Development.

(5) The office building is proposed to extend approximately 17 feet above the elevation of the sidewalk along Lake Washington Blvd. NE, with a rooftop elevation of approximately 83 feet. On the east side of Lake Washington Blvd. the topography rises steeply uphill. The applicant has submitted results of survey information from adjoining development to the east, which shows that the 1st floor decks of the most westerly units of the residential building at 5210 Lake Washington Blvd. NE (Freshwinds Apartment complex) are at an elevation of 88.49, the first floor deck at the most westerly units at Yarrow Villas is at an elevation of 92.25, and the first floor deck of the most westerly units at the Yarrow Hill Villas buildings directly across the street is at an elevation of 110.15 (see Attachment 16).

(6) The applicant has prepared a view analysis of the proposed development (see Enclosure 11 of Attachment 5). The view analysis was prepared by taking photographs of the site as viewed from four different reference points depicted in the view study. Survey information (e.g. elevation) at each of the reference points is also taken to help ensure accurate depiction. A model of the building is then superimposed into the photograph to depict the project's impact on neighboring properties' views.

b. Conclusions:

(1) More than 25 residences adjoin the property directly to the east.

(2) The proposed redevelopment will create a view corridor across the property which does not currently exist, opening up views to the lake from the east. The creation of a new view corridor will open views to the lake and beyond to both adjoining private properties and to the general public. This, in addition to the creation of public access and a public waterfront use area, are in the public interest and override any view impacts to the public.

(3) The first floor deck elevations of the adjoining developments to the west are all at a higher elevation than the top of the proposed building.

(4) The view analysis prepared by the applicant demonstrates that the proposal will not obstruct views from existing development lying east of Lake Washington Boulevard. Presently, several large Willow trees partially obstruct views of the residents at Yarrow Villas and Freshwinds Apartments. These trees are not proposed to be retained in the development, opening up larger portions of the Lake to be viewed from the adjoining properties. The depictions of the proposed development further show that the lake continues to be clearly visible beyond and to either side of the office building. The view of the most westerly units in the Yarrow Hill development, whose views are potentially most impacted by the proposed development, are currently obstructed by trees on the Yarrow Hill property.

c. Fact: WAC 173-27-150 establishes that a Substantial Development Permit may only be granted when the proposed development is consistent with all of the following:

(1) The policies and procedures of the Shoreline Management Act.

(2) The provisions of WAC Chapter 173-27.

(3) Chapter 24.05 of the Kirkland Municipal Code.

The applicant has addressed compliance with these approval criteria in Attachment 17.

d. Conclusion: The proposal complies with WAC 173-27-150. The expansion of the marina is consistent with the policies and procedures of the Shoreline Management Act because it represents a water dependent use of the shoreline that encourages public and recreation use of the waterfront. The modifications requested also result in additional protection for the resources and ecology of the shoreline, with the removal of overwater structures and improvements to the nearshore habitat. The office development is consistent with the policies and

procedures of the Shoreline Management Act because it supports and is integrated to the marina use, allowing retention of this water dependent use. Further, the office development increases public access and recreational opportunities for the public in the shoreline, with the creation of pedestrian access walkways through the site and a waterfront use area. The development also would results in the creation of a view corridor across a significant portion of the property, opening up public views to the lake. The development of the waterfront access trail also completes a key link, connecting the waterfront trail that extends to the south with the trail system at Carillon Point.The expansion of the marina and office are consistent with the provisions of WAC 173-27 because a complete application for a Substantial Development Permit has been submitted by the proponent and appropriate notice of the application has been given. As discussed in sections II.H, it is consistent with Chapter 24.05 of the Kirkland Municipal Code.

G. ZONING CODE REGULATIONS

1. Applicable General Regulations

a. View Corridor

(1) Facts:

(a) General Regulation #2 of Section 60.170 establishes the requirement for a view corridor along Lake Washington Blvd NE of 30 percent of the average parcel width, which is required to be increased 2.5 feet for each foot, or portion thereof, that any building exceeds 30 feet above average building elevation. The regulation also establishes a view corridor of seventy percent of the high water line if the height of any building is greater than 35 feet above average building elevation. The following standards apply to the view corridor:

- Structures, parking areas and landscaping will be allowed, provided that they do not obscure the view from Lake Washington Boulevard to and beyond Lake Washington.
- Trees or shrubs that mature to a height of greater than three feet above average grade may not be placed in the required view corridor.
- Parking stalls or loading areas are not permitted in the required view corridor that would result in vehicles obscuring the line of sight from Lake Washington Boulevard to the high water line
- The view corridor must be adjacent to either the north or south property line, whichever will result in the widest view corridor given development on adjacent properties.

(b) The applicant is proposing to construct a building that would be 40 feet above average building elevation.

(c) The proposal includes a view corridor across the south portion of the property that would connect the following points:

104'7¾" north of the south property line along Lake Washington Blvd. NE (30% of 265.49 (average parcel width) + (2.5 x 10) = 104'7¾") with 194'3" north of the south property line along the high water line (40% of 277'0 5/8")

(d) The view corridor is proposed to be located adjacent to the south property line. This would align with the view corridor established as part of the permitting for the Breakwater Condominium property to the south, which was approved adjacent to the north property line and encompasses 30 percent of the average parcel width of the Breakwater site, or approximately 45 feet. The view corridor established as part of the permitting for the Carillon Point development is located adjacent to the north property line of the Carillon Point development.

(e) The site contains covered moorage along the north portion of the site, with a smaller covered slip located south of the fueling dock.

(f) Within the view corridor, the applicant has proposed to locate retaining walls, parking and landscaping and to remove existing structures located near the waterfront. The applicant has submitted a section drawing of the site (see Sheet A1.1 of Attachment 2.a) that represents the view of a pedestrian along Lake Washington Blvd NE to the shoreline within the view corridor, showing the relative heights of the proposed vehicles and retaining wall heights.

(g) The applicant has submitted a landscape plan (see Sheets L-2 and L-3 of Attachment 2.a) that provides information on the proposed landscaping, including proposed placement and species of plant materials, as well as the mature height of proposed species. Within the view corridor, the applicant has proposed to install a variety of shrub species and has indicated that the shrubs to be installed would have a maximum mature height of 36 inches. According to the information in *Sunset Western Garden Book*, some of the species (e.g. Berberis thunbergii 'gentry', Otto Luyken Laurel, etc.) would require sheering or pruning to maintain the mature height of 36 inches.

(h) The residents of the Breakwater Condominiums adjoining the south property line have requested that the vegetation buffer between the properties be allowed to increase in height (greater than 3 feet above finished grade) in order to provide a taller screen for the proposed development. The applicant has expressed their willingness to install taller vegetation in this area.

(i) The property slopes downhill significantly from the sidewalk elevation along Lake Washington Blvd NE (from an elevation of 66 to 28 feet) as represented on the section drawing of the site (see Sheet A1.1 of Attachment 2.a). A large elm tree is also located at the southeast corner to the site, an existing intrusion into the view corridor along the south property line. In addition,

several trees are located near the shoreline edge along the south portion of the site, further intrusions into the view corridor along the south property line.

(2) Conclusions:

(a) The proposal is consistent with the dimensional requirements for the view corridor.

(b) Given the placement of existing covered moorage on the site and the location of the view corridors on the Breakwater Condominium and Carillon Point sites, the placement of the view corridor adjacent to the south property line would provide the widest view corridor.

(c) The removal of the existing structures located near the waterfront area will open up views of the lake from Lake Washington Blvd NE. The section drawing provided by the applicant satisfactorily demonstrates that the vehicles and parking areas within the view corridor have been designed so that they will not impede views to the lake.

(d) Some of the proposed shrubs would exceed the maximum allowed mature height of three feet above average grade. As a result, the planting plan should either be revised to include only those shrubs that would not exceed 3 feet above finished grade or the applicant should submit a perpetual maintenance agreement, to be recorded with King County, to maintain the vegetation within the view corridor to a height no greater than three feet above finished grade.

(e) The vegetation along the south property line is located within the view corridor and therefore is subject to the height limit of three feet above average grade. However, due to the grade change across the property and the existing intrusions into the view corridor by the several trees, there are opportunities to permit vegetation that would be taller than 3 feet above finished grade and still not further obscure the view from Lake Washington Boulevard to and beyond Lake Washington. As a result, staff recommends that the vegetation along the south property line buffering the driveway be permitted to exceed three feet above finished grade. To insure that the views are not further impacted, staff recommends that the applicant submit a site section through the landscape buffer demonstrating that the landscaping (at mature height) would not project into the line of sight from Lake Washington Boulevard to the high water line.

b. Vegetation Height

(1) Facts

(a) General Regulation #5 of KZC 60.170 states that trees or shrubs that mature to a height that would exceed the height of the primary structure are not permitted to be placed on the subject property.

(b) The structure would exceed the height of the Lake Washington Blvd. NE by approximately 17 feet.

(c) The vegetation to be planted in the area located between the building and the street, which is the highest finished grade on the site, would be planted at a lower elevation than the street, varying between approximately 8 to 23 feet below the elevation of the sidewalk.

(d) The applicant has submitted a landscape plan (see Sheets L-2 and L-3 of Attachment 2.a) that provides information on the proposed landscaping, including proposed placement and species of plant materials, as well as the mature height of proposed species.

(2) Conclusions:

(a) Given the grade of the sidewalk and grade in front of the building, the trees planted in this area should not exceed 25 to 40 feet in height to ensure that they do not exceed the height of the building. The selected trees comply with this requirement.

2. Parking Requirements

a. Facts:

(1) The PLA 15A zone establishes the following parking requirements for the uses on the subject property:

(a) Office = 1 stall per 300 square feet for general office
(b) General Moorage Facility = 1 stall per every two slips

(2) Based on the proposed office square footage and number of slips, the project would need to provide 232 parking stalls, 177 stalls required for the office use and 55 stalls required for the marina use.

(3) KZC 105.45 establishes that two or more uses may share a parking area if the number of parking spaces provided is equal to the greatest number of required spaces for uses operating at the same time.

(4) The applicant has submitted a parking study (see Enclosure 5 of Attachment 5) which included a parking count of the existing marina operations.

This study also analyzed the shared parking use characteristics of the existing and proposed uses. The study notes that the marina use and the office use have different peak parking characteristics. For example, the peak parking demand for the marina during the weekday occurs at the 6 PM hour, which on average was determined to be 24 vehicles. The parking associated with the office use will largely vacate the site by the 6 PM hour. Given the characteristics of the uses, the peak parking

demand occurs at 11:00 AM when the parking associated with the office is at maximum capacity (based upon the distribution of parking demand for office uses by hour of weekday as established by the Urban Land Institute publication Shared Parking) and some marina patrons are at the site (based upon the distribution of parking demand as evaluated in the parking count completed at the existing marina). The peak parking analysis, based on the code requirements for the existing and proposed uses, can be summarized as follows:

Use	Size	Code rate	Requirement	Percent demand at 11:00 am	# stalls at 11:00 am
Office	53,000 s.f.	1/300 s.f.	176.67 stalls	100%	176.67 stalls
Marina	110 slips	1 stall/2 slips	55 stalls	63%	34.65 stalls
			Total = 232 stalls		**Total = 212 stalls**

(5) The proposal includes parking for 214 vehicles (81 stalls on Parking Level 2, 88 stalls on Parking Level 1, and 43 surface stalls, as well as two additional loading stalls).

(a) Two of the spaces within the garage parking levels are parallel spaces.

(b) Four of the surface stalls are proposed to be placed in front of the marina service building service bay doors. The applicant has proposed that these spaces be dedicated to Yarrow Bay Marina staff parking only.

(6) The design of the proposed floating pier presents to possibility that boats could moor to the outside of the pier, thereby increasing the number of boats beyond that specified in the application.

(7) The applicant is also required to complete a Transportation Management Program (see Section II.G.4.b(5)).

b. Conclusions:

(1) With adherence to the following conditions of approval, the applicant has demonstrated that the site contains sufficient parking to meet the greatest number of required spaces for the office and marina use operating at the same time, consistent with the provisions addressed in KZC 105.45:

(a) Use of the marina should be limited to the 110 moorage slips requested.

(b) No boat trailer storage on designated parking stalls should occur.

(c) The applicant should install appropriate signage identifying the staff parking stalls in front of the service bay doors.

(d) The parking within the parking garage should be made available to marina customers during nights and weekends in order to meet the peak parking demand for the marina.

(e) The applicant should demonstrate that the parallel parking is maneuverable so that these stalls are functional.

(f) The applicant should prohibit moorage on the outside of the proposed floating pier, or insure that there is sufficient parking to meet this additional moorage.

Failure to meet these requirements should result in restrictions in the number of moorages to accommodate the difference in required parking or other measures consistent with the Zoning Code and approved by the Planning Official.

(2) To insure that a parking area is shared, the applicant should submit a reciprocal parking agreement in a form acceptable to the City Attorney, stating that the marina parking and office parking may be used for parking by the other property.

3. Landscaping Requirements

a. Facts:

(1) Zoning Code section 60.172.025 requires office uses in a PLA 15A zone to comply with Landscape Category D. Section 95.40 lists the applicable regulations for Landscape Category D. Given the adjoining uses, the office use is not required to provide a landscape buffer under the provisions of KZC 90.40.

(2) Zoning Code section 60.172.050 requires general moorage facilities in a PLA 15A zone to comply with Landscape Category B. Section 95.40 lists the applicable regulations for Landscape Category B. Because the marina property is adjacent to medium and high density uses to the south, Section 95.40 (6)(a) (Buffering Standard 1) applies. Buffering Standard 1 requires that the applicant provide a 15-foot-wide landscaped strip with a six-foot-high solid screening fence or wall along the south property line. The land use buffer must be planted with trees planted at the rate of one tree per 20 linear feet of land use buffer, and large shrubs or a mix of shrubs planted to attain coverage of at least 60 percent of the land use buffer area within two years.

(3) The south 15 feet of the marina property is currently covered with gravel and grass and contains three mature trees (see Attachment 16). The area has been used for storage, including dry dock boat storage. An overhead power line runs through this area. There is currently no continuous wall or fence along the south property line.

(4) KZC 95.40.8 establishes that land use buffers must only be brought into conformance with the requirements of KZC 95.40.6 in either of the following situations:

(a) An increase in gross floor area of any structure (the requirement to provide conforming buffers applies only where new gross floor area impacts adjoining property); or

(b) A change in use on the subject property and the new use requires larger buffers than the former use.

(5) KZC 95.40.7.b requires the applicant to buffer all parking areas and driveways from the right-of-way and from adjacent property with a five-foot-wide strip along the perimeter of the parking areas and driveways planted with one row of trees planted 30 feet on center along the entire length of the strip and living groundcover planted to attain coverage of at least 60 percent of the strip area within two years.

b. Conclusions:

(1) The nonconforming land use buffer for the general moorage facility on the south side of the site is not required to be brought into compliance under the provisions of KZC 95.40.8, based on the following:

(a) The existing conditions along the south property line for the general moorage facility do not comply with the requirements for buffering standard 1 established in KZC 95.40.6.

(b) The new use on the property, the office use, does not require a land use buffer.

(c) There is no increase in gross floor area for the marina that impacts the adjoining property.

(2) The applicant should provide the 5-foot wide buffer for the driveway required under KZC 95.40.7.b. Since this buffer would be located within the required view corridor, it is subject to the vegetation height restrictions discussed under Section II.G.1.a.

4. Office Use Regulations

a. Use Zone Chart

(1) Facts.

(a) The subject property is located in the PLA 15A zone. The PLA 15A zone allows for an office use if reviewed through Process IIB and subject to the regulations of Section 60.172.025 (see Attachment 19).

(b) A summary of the regulations contained in KZC 60.172.025 and the relationship of the proposal to them is contained in Attachment 19.

(2) Conclusions. The proposal complies with the development regulations contained in Attachment 18, with recommended modifications addressed below.

(3) Facts:

(a) The south property line has a required yard of 10 feet. Section 115.115.3.g allows rockeries and retaining walls to be a maximum of four feet high in a required yard. The combined height of fences and retaining walls within five feet of each other in a required yard may be a maximum of six feet.

(b) The proposal includes a retaining wall to be installed offset from the south property line by approximately 6 feet in order to retain the fill needed to raise the elevation of the access roadway. The retaining wall would vary in height from approximately 4 to 9 feet above the grade at the south property line. An open guardrail is proposed to be located on top of the retaining wall.

(c) KZC 115.115..3.g establishes that the Planning Official may approve a modification to the retaining wall height limit if it is necessary because of the size, configuration, topography or location of the subject property, and either:

- The design of the rockery or retaining wall includes terraces deep enough to incorporate vegetation, or other techniques that reduce the visual mass of the wall; or
- The modification will not have any substantial detrimental effect on abutting properties or the City as a whole.

It also permits the Planning Official authority to approve a modification to the combined height limit for fences and retaining walls if:

- An open guard railing is required by the Building Code and the height of the guard railing does not exceed the minimum required; or
- The modification is necessary because of the size, configuration, topography or location of the subject property, and either:
    - The design of the rockery or retaining wall includes terraces deep enough to incorporate vegetation or other techniques that reduce the visual mass of the wall, and the fence is designed to be no more than 50 percent solid; or
    - The modification will not have any substantial detrimental effect on abutting properties or the City as a whole.

(d) KZC Section 105.12 establishes that the slope of entrance and exit driveways shall not exceed 15 percent. A majority of the site access has been designed with a slope of 14 percent.

(e) The property slopes downhill significantly from the sidewalk elevation along Lake Washington Blvd NE (from an elevation of

66 to 28 feet) as represented on the section drawing of the site (see Sheet A1.1 of Attachment 2.a).

(f) A restraint system is needed at the top of the retaining wall for pedestrian safety.

(g) The Breakwater Condominium building is built 45 feet offset from the north property line. Within this existing yard, the site contains a series of retaining walls that retain the finished grade at the property line.

(h) The neighboring property to the south has been developed with a densely planted landscape buffer that is between 10 and 15+ feet in width and planted with Leyland Cypress, Pine, Douglas Fir and Western Red Cedar trees, together with screening shrubs, such as Photinia. The height of the trees within this buffer is equal to the height of the upper story of the Breakwater Condominium building. The buffer is generally continuous across the property line, with some gaps where trees taper near the top or where branches do not overlap.

(i) The applicant has submitted a section drawing (see sheet A4.5 of Attachment 2.a) that depicts the height of the retaining wall relative to existing grade and the Breakwater Condominiums.

(j) The area between the pathway and the property line is required to be planted with a minimum 5 foot wide landscape buffer to fulfill the requirements for buffering access driveways under KZC 95.40.7.b. The applicant has proposed to meet this requirement by placing a 6-foot wide landscape strip along the south property line, between the Breakwater Condominium site and the retaining wall system.

(k) The neighboring residents to the south have raised an issue about the potential for glare from headlights of vehicles as they exit the parking garage. The parking layout is designed so that vehicles exiting the garage would face the Breakwater building. The drive aisles are sloped downhill to the north, so that vehicles will be driving slightly uphill to exit the garage.

(4) <u>Conclusions</u>:

(a) The topography along the driveway has been raised in order to meet the requirements of KZC 105.12, necessitating the retaining wall height within the south required yard.

(b) Given where the retaining wall is located in relative height to the floors of the Breakwater Condominiums and the height of the treed buffer at the Breakwater Condominiums, the trees would extend higher than the retaining wall to form a visual screen. This existing screen, together with proposed landscaping at the base of the wall, and the distance between the wall and adjoining development, effectively minimize impacts associated with the retaining wall height on the property to the south.

(c) To minimize the appearance of a blank wall for those portions of the wall that will be visible to the residents of the Breakwater Condominiums, the south face of the retaining wall should be treated, either with forms that contain a decorative pattern, or by planting climbing vegetation with some sort of support or trellis system that will allow the vegetation to cover the wall.

(d) The applicant has proposed an open rail guardrail to meet the requirements for a restraint system along the edge of the pedestrian walkway, consistent with the modification criteria. However, use of a solid wall in place of an open guardrail should be provided in order to provide additional protection to neighboring residents to the south from any potential glare coming from vehicle lights exiting the parking garage, provided that the wall surface is appropriately treated. The wall should be of sufficient height to deflect headlights.

(e) To ensure that the existing landscaping is not damaged during construction activities, the applicant should comply with the tree protection standards established by the arborist.

b. Applicable Special Regulations

(1) Facts:

(a) Special Regulation #2 of Section 60.172.025 states that the applicant must provide public pedestrian access from the right-of-way to and along the entire waterfront of the subject property within the high waterline yard. Access to the waterfront may be waived by the City if public access along the waterfront of the subject property can be reached from adjoining property. The City shall require signs designating the public pedestrian access and public use areas.

(b) The project includes a 6-foot wide sidewalk extending from Lake Washington Blvd NE near the south property to the waterfront area and extending across the western portion of the subject property to connect to an existing pedestrian walkway located on the Carillon Point property to the north. The walkway also is shown connecting to the waterfront access trail located on the Breakwater Condominium project to the south.

(c) A portion of the trail is proposed to extend between the marina service and office building and therefore would not be located within the high waterline yard. The applicant has requested this location in order to minimize conflicts between pedestrian traffic and the marina service operations, which would include boat fueling and haul-out facilities.

(d) The area adjoining the waterfront in front of the proposed service building contains covered moorage, limiting visual access to the lake.

(e) Access from the right-of-way to the waterfront area can currently be reached from the south portion of the Carillon development

site and from the north portion of the Yarrow Cove Condominiums, located two properties to the south of the subject property. There is currently over 420 feet separating these access points to the waterfront from Lake Washington Blvd. NE.

(f) Waterfront access is also addressed in Special Regulation #5 (see below). As discussed in the following section, the applicant is required to develop a waterfront area open for public use.

(g) The residents of the Breakwater Condominiums adjoining the south property line have requested that the pedestrian access connecting the right-of-way to the waterfront area be eliminated, given the proximity of nearby walkways and impact to their property. The applicant has indicated their willingness to remove this pedestrian connection from the proposal.

(2) Conclusions:

(a) The proposal should include public pedestrian access from the right-of-way to and along the entire waterfront. Access from the street to the lake should be provided at this site in order to maximize access to the public waterfront use area proposed to be developed as well as to the marina, a water dependent use which provides recreational opportunities.

(b) The proposed location of the waterfront trail between the marina services and office buildings should be evaluated to determine if the trail location is situated appropriately to maximum public access to and use of the waterfront, while minimizing potential conflicts with the existing marina operations.

(c) Prior to issuance of a final inspection, the applicant should submit for recording with King County a signed and notarized public access easement establishing the right of the public to the pedestrian access from the right-of-way to and along the entire waterfront of the subject property, the location to be determined through this review process. Sign(s) should be installed, obtained from the City, designating the public pedestrian access.

(3) Facts:

(a) Special Regulation #5 of Section 60.172.025 states that structure height may be increased to 40 feet above average building elevation if:

- Obstruction of views from existing development lying east of Lake Washington Boulevard is minimized; and
- Maximum lot coverage is 80 percent, but shall not include any structure allowed within the required front yard under the General Regulations in KZC 60.170; and
- Maximum building coverage is 50 percent, but shall not include any structure allowed within the required front yard

under the General Regulations in KZC 60.170 or any structure below finished grade; and

- A waterfront area developed and open for public use shall be provided with the location and design specifically approved by the City. Public amenities shall be provided, such as non-motorized watercraft access or a public pier. A public use easement document shall be provided to the City for the public use area, in a form acceptable to the City. The City shall require signs designating the public use area; and
- The required public pedestrian access trail from Lake Washington Boulevard to the shoreline shall have a trail width of at least six feet and shall have a grade separation from the access driveway; and
- No roof top appurtenances, including elevator shafts, roof decks or plantings, with the exception of ground cover material on the roof not to exceed four inches in height, shall be on the roof of the building or within the required view corridors.

(b) The applicant is proposing to build to a maximum 40 feet above average building elevation.

(c) The applicant has submitted a view analysis (see Section II.F.2.a).

(d) The overall lot coverage proposed is 79.33 percent of the subject property (see Sheet A1.11 of Attachment 2.a). The lot coverage on the office property alone would be approximately 76 percent.

(e) The total building footprint is 24,170 square feet, not including the parking garage levels, except where those project above finished grade. This equals approximately 26.3 percent of the total lot size. The building footprint for the office building is 20,535 square feet, or approximately 38 percent the size of the lot on which the office building would be located.

(f) The applicant has proposed to develop a public plaza adjacent to the natural shoreline area that would contain decorative paving, seating areas (benches and stone slabs), stone outcroppings, native plantings, and an interpretative display (see L sheets of Attachment 2.a). The plaza is located at the connection of the two major pedestrian corridors through the site, between the waterfront access trail and the trail connecting to Lake Washington Blvd. NE. The plaza has been oriented to take advantage of the open water views of Lake Washington from this corner of the site.

(g) The public pedestrian trail has been designed to be a minimum of 6 feet in width and is separated from the driveway by a vertical curb.

(h) No rooftop units are proposed. The Parking Level 2 Floor Plan contains space for the mechanical equipment (see Attachment 2.a).

(4) Conclusions: The proposal is consistent with the standards established for the structure height to be increased to 40 feet above average building elevation as follows:

(a) The view analysis prepared by the applicant demonstrates that obstruction of views from existing development lying east of Lake Washington Boulevard has been minimized. Presently, several large Willow trees partially obstruct views of properties lying east of Lake Washington Blvd. These trees are not proposed to be retained in the development, opening up larger portions of the Lake to be viewed from the adjoining properties. The depictions of the proposed development further show that the lake continues to be clearly visible beyond and to either side of the office building.

(b) The building footprint and lot coverage are consistent with the maximum 50 percent and 80 percent.

(c) The public plaza has been designed to provide public use and enjoyment of the waterfront.

(d) The public plaza should be installed as part of the office building development and completed prior to final inspection. A public use easement document should be provided to the City for the public use area. Sign(s) should be installed, obtained from the City, designating the public access to the plaza area.

(e) The waterfront access trail has been designed consistent with requirements for width and separation from the access drive.

(f) The building has been designed with space for mechanical equipment to be housed in the garage levels. No rooftop units are proposed or approved and a covenant should be recorded with King County noticing future owners of this restriction.

(5) Facts:

(a) Special Regulation #6 of KZC 60.172.025 states that a transportation demand management plan shall be provided and implemented for the subject property, including provisions for safe pedestrian crossing and vehicle turning movements to and from the subject property to Lake Washington Boulevard, and bus stop improvements if determined to be needed by METRO. The City shall review and approve the plan.

(b) A transportation demand management plan has been prepared by METRO and reviewed by the City for the property (see Attachment 20). The program includes such elements as: designation of a Building Transportation Coordinator, annual information distribution and promotional events, free one-zone peak transit passes, preferential parking stalls for

carpool/vanpools, an easement for a bus shelter, and biennial employee surveys.

(6) Conclusions: Prior to issuance of Certificate of Occupancy, the applicant should execute the Transportation Management Program (TMP) approved by the City and METRO and submit the completed document for recording with King County. Prior to issuance of a building permit for the office, the owner should provide an easement to the City for a bus shelter footing. Issues of pedestrian crossings and vehicular turn movements have been addressed through the SEPA review.

(7) Facts:

(a) Special Regulation #7 of KZC 60.172.025 states that the design of the site must be compatible with the scenic nature of the waterfront.

(b) The site has been designed to contain a wide view corridor on the south portion of the site and includes landscaping, both within the parking lot, near the building, and at the shoreline, with a public plaza area proposed at the waterfront near the southwest corner. Pedestrian walkway systems are proposed, connecting Lake Washington Blvd. NE to the waterfront and across the site.

(c) The building is proposed to be constructed of both brick and glass, with large glass bays and decks along the south façade. All sides of the building contain windows and additional decks are proposed along the west and north facades.

(8) Conclusions: The site is proposed to be enhanced with a number of features, including pedestrian access, landscaping, and creation of a public plaza that will be compatible with the scenic nature of the shoreline and encourage public use and enjoyment of the shoreline area. The building has been designed with elements, including balconies and glass bays, which orient and allow visual access to the water. These features also introduce human scale elements and break down the scale of the building, which allow the building design to be compatible with the scenic nature of the shoreline.

5. General Moorage Facility Regulations

a. Use Zone Chart

(1) Facts:

(a) The subject property is located in the PLA 15A zone. The PLA 15A zone allows for a General Moorage Facility if reviewed through Process IIB and subject to the regulations of Section 60.172.050 (see Attachment 21).

(b) A summary of the regulations contained in KZC 60.172.050 and the relationship of the proposal to them is contained in Attachment 22.

(2) Conclusions: The proposal complies with the regulations of the PLA 15A use zone chart, except for the nonconforming landscaping addressed in Section II.G.3 above and nonconforming covered moorage (see Section II.G.5.b(16) and overwater repair, (see Section II.G.5.b(21), both existing nonconforming uses at the site.

b. Applicable Special Regulations:

(1) Fact: Special Regulation #1 of Section 60.172.050 states that except as permitted by Special Regulation 17, no structures, other than moorage structures or public access piers, may be waterward of the high waterline.

(2) Conclusion: No structures, other than moorage structures, are proposed to be located waterward of the high waterline.

(3) Facts:

(a) Special Regulation #2 of Section 60.172.050 outlines requirements for provide public pedestrian access.

(b) Access to and along the waterfront is addressed in Section II.G.4.b(1) above.

(4) Conclusions: The conclusions presented in Section II.G.4.b(2) are applicable in response to this special regulation.

(5) Facts:

(a) Special Regulation #5 of Section 60.172.050 states that the design of the site must be compatible with the scenic nature of the waterfront. If the development will result in the isolation of a detached dwelling unit, site design, building design and landscaping must mitigate the impacts of that isolation.

(b) The site is not located near an existing detached dwelling unit.

(c) As part of the proposed redevelopment, the dry dock boat yard storage on the site will be removed. The existing access, which is narrow and very steep, will be widened and the slope will be lessened. The parking facilities will be reconstructed to include internal landscaping. Pedestrian walkway systems are proposed, connecting Lake Washington Blvd. NE to the waterfront and across the site. A view corridor will encompass a large section along the southern edge of the site and the marina services building will be relocated out of this view corridor. The existing aging marina services building will be replaced with a new building that would match the design and materials proposed as part of the office development.

(6) Conclusions: The site is proposed to be enhanced with a number of features, including improved vehicular access, pedestrian access, a view corridor, and landscaping that will be compatible with the scenic nature of the shoreline and encourage public use and enjoyment of the shoreline area. The redevelopment of the upland piece will eliminate

the storage activities which have previously cluttered the site. The marina services building will be integrated with the office development.

(7) Facts: Special Regulation #6 of Section 60.172.050 states that the City will determine the maximum allowable number of moorages based on the following factors:

- The ability of the land landward of the high waterline to accommodate the necessary support facilities;
- The potential for traffic congestion; and
- The effect on existing habitat.

(a) The application requests 6 additional moorage slips. The existing marina contains 104 slips.

(b) The proposal complies with the parking requirements as set forth in Section II.G.2 above. The applicant has submitted turning radius studies that show that the driveway configuration will adequately serve vehicle and boat trailer traffic. The site includes a new marina services building which will continue to provide support services, including boat service and repair, as well as hazardous material storage.

(c) The marina services building has been designed to accommodate up to four boats at one time for service or repair.

(d) Traffic impacts were evaluated through the SEPA review of the project. The proposal includes the addition of only six new moorage slips which will add a limited number of new daily trips, with only two trips projected to occur within the critical PM peak period.

(e) The effect on existing habitat was also reviewed through SEPA and mitigating measures were identified to ensure that the proposal does not have significant adverse impacts on existing habitat.

(8) Conclusions: The proposed 6 additional moorage slips are appropriate given the criteria outlined in Special Regulation #1. To insure that required parking for the office and marina users is not occupied by boats or trailers awaiting repair or service, the marina services building shall be limited to service of up to four boats at one time, unless additional storage area on the site is provided. With this condition of approval, the ability of land landward of the high waterline, traffic congestion, and habitat would not be constraining factors.

(9) Facts:

(a) Special Regulation #7 states that moorage structures may not be larger than reasonably necessary to provide safe and reasonable moorage for the boats to be moored. The City will specifically review the size and configuration of moorage structures to insure that:

- The moorage structures do not extend waterward of the point necessary to provide reasonable draft for the boats to be moored, but not beyond the outer harbor line; and

- The moorage structures are not larger than is necessary to moor the specified number of boats; and

- The moorage structures will not interfere with the public use and enjoyment of the water or create a hazard to navigation; and

- The moorage structures will not adversely affect nearby uses; and

- The moorage structures will not have a significant long-term adverse effect on aquatic habitats.

(b) The marina, with the proposed addition of 6 slips, would contain 110 slips. Other marinas in the nearby vicinity include the neighboring Carillon Point marina, which contains 200 slips, and the Kirkland Yacht Club Marina in the downtown, which contains approximately 120 slips.

(c) The moorage slips are being proposed to accommodate additional demand for moorage serving small boats. The slips would be 26 feet in length and approximately 13 to 15 feet in width. The design of the proposed floating pier presents to possibility that boats could moor to the outside of the pier, thereby increasing the number of boats beyond that specified in the application.

(d) Draft for the boats is not a factor in the lateral extension of the proposal and the proposed floating pier addition does not go beyond the outer harbor line.

(e) The proposed structures are five-foot wide piers for the main access piers, three-foot five-inch wide ramp, and one-foot ten-inch wide walkway.

(f) The residents of the Breakwater Condominiums have expressed concern about the pier extension and the potential for further intrusion of marina customers onto their property. The proposed floating pier will be setback approximately 20' from the south property line. The floating pier addition is also located over 150 feet further waterward than the Breakwater pier. The applicant has submitted a plan that shows the existing and anticipated boat access to the fueling facility with the proposed pier extension (see Attachment 10). The plan shows that boats accessing the fuel facility have adequate space to maneuver around the edge of the proposed float extension and that access to the Breakwater dock to the south will not be impaired. Boats have not been shown to moor on the outside of the floating pier extension.

(10) Conclusions: The proposed facility is not larger than reasonably necessary and complies with Special Regulation #2. The facility is smaller in size than neighboring facilities in the City of Kirkland. The proposed structures meet industry standards and are reasonably sized for the proposed facility and for use by small boats. Compliance with requirements for lighting will ensure that the facility does not create any hazards to navigation. The proposed floating pier addition exceeds minimum setback standards. Access across the public waters in front of the Breakwater site to reach the marina facilities, including the fueling facilities, would continue, but the separation between the proposed float pier addition and the Breakwater Condominium dock is sufficient to insure that boats can maneuver around the edge of the moorage facility without further impact to the use and enjoyment of the Breakwater Condominium dock. Moorage on the outside of the pier should not be permitted, consistent with the exhibits provided. The effect on existing habitat was reviewed through SEPA and mitigating measures were identified to ensure that the proposal does not have significant adverse impacts on existing habitat.

(11) Fact: Special Regulation #8 states that if the moorage structure will extend waterward of the Inner Harbor Line, the applicant must obtain a lease from the Washington State Department of Natural Resources prior to submittal of a Building Permit for this use.

(12) Conclusions: The proposed pier float would not extend beyond the inner harbor line.

(13) Facts: Special regulations #9-14 specify standards for construction of the marina.

(14) Conclusions: Moorage structures may not be treated with toxic substances. The marina must provide at covered and secured waste receptacles on all piers. All utility lines must be under the pier decks. Piers must be adequately lit and the source of the light shall not be visible from off the subject property. The street address must be displayed on the moorage structure, visible from the lake, with letters and numbers at least 4" high. The marina services building should contain restrooms that are available to the public.

(15) Facts:

(a) Special Regulation #14 prohibits covered moorage.

(b) The existing marina contains covered moorage on Piers A, B, C, and G2. The proposed pier addition would not be covered.

(c) KZC 162.35.9 states that any nonconformance must be brought into conformance if the applicant is making any alteration or change or doing any other work in a consecutive 12 month period to an improvement that is nonconforming or houses, supports or is supported by the nonconformance, and the cost of the alteration, change or other work exceeds 50% of the replacement cost of the improvement.

(16) Conclusions: The existing marina does contain covered moorage, which is prohibited. Since the cost of the extension would not exceed 50% of the replacement cost of the existing marina, the covered moorage would not be required to be brought into conformance with the provisions of KZC 60.172.050, Special Regulation 14 at this time.

(17) Fact: Special Regulation #15 prohibits aircraft moorage.

(18) Conclusion: Aircraft moorage is not permittec.

(19) Fact: Special Regulation #17 establishes accessory components allowed if approved through Process IIB, Chapter 152 KZC:

(a) The site presently contains boat rentals off of Pier H, which are proposed to continue at the site.

(b) Boat repair and service is currently occurring over the water for large boats on Pier G2, though it is not proposed to be expanded under the proposal.

(c) Small boat repair and service is proposed to occur within the new marina services building. Dry land motor testing is proposed to occur inside the new marina service building.

(d) The existing dry land storage activities would be eliminated with the construction of the proposed office building.

(e) The site presently contains facilities for gas and oil sales. The proposal includes installation of new underground fuel tanks within the landscape island located near the marina services building.

(f) The marina services building would contain facilities to clean-up and contain gas and oil spills.

(20) Conclusions:

(a) The proposed new fuel tanks are consistent with the standards contained in Special Regulation #17. The remainder of the existing facilities would not be impacted by the proposed development.

6. Bonds and Securities

a. Facts:

(1) Zoning Code section 175.10.2 establishes the circumstances under which the City may consider the use of a performance security in lieu of completion of certain site work prior to occupancy.

b. Conclusions:

(1) In order to ensure timely completion of all required site and right-of-way improvements, such improvements should be completed prior to

occupancy, unless the applicant can demonstrate compliance with the criteria in Zoning Code section 175.10.2.

H. SHORELINE MASTER PROGRAM (SMP)

1. General

a. Fact: The subject property is located within the jurisdiction of the City's Shoreline Master Program (KMC Chapter 24.05) and is in the Urban Mixed Use 2 (UM 2) Shoreline Environment. The UM 2 Shoreline Environment allows both Office and Moorage Structures and Facilities subject to approval of a Substantial Development Permit. The regulations for Moorage Facilities and Office uses are contained in Attachments 23 and 24, respectively.

b. Fact: KMC Section 24.06.040 establishes that if the proposal that requires a Substantial Development Permit (SDP) also requires approval through Chapter 152 (Process IIB) of the Zoning Code, then the SDP will be reviewed through Process IB as well.

2. Moorage Structures and Facilities:

a. Facts:

(1) Section 24.05.165 allows certain accessory uses, structures, and facilities as part of the moorage use.

(2) Section 24.05.165 states that there is no minimum lot size for this use; provided, however, that the subject property must be large enough and be of sufficient dimensions to comply with the site design and other requirements of this chapter.

b. Conclusion: The proposal is consistent with the standards concerning accessory uses, as described in Section II.G.5.b.(19) and (20) above. The subject property complies with site design and other requirements of Section 24.05.165.

c. Facts:

(1) Section 24.05.165 states that moorage structures may not be larger than is necessary to provide safe and reasonable moorage for the boats to be moored. The City will specifically review the size and configuration of each proposed moorage structure to help ensure that:

(a) The moorage structure does not extend waterward beyond the point necessary to provide reasonable draft for the boats to be moored, but not beyond the outer harbor line;

(b) The moorage structure is not larger than is necessary to moor the specified number of boats; and

(c) The moorage structure will not interfere with the public use and enjoyment of the water or create a hazard to navigation; and

(d) The moorage structure will not adversely affect nearby uses; and

(e) The moorage structure will not have a significant long-term adverse effect on aquatic habitats.

(2) The size of moorage facilities is addressed in Section II.G.5.b(9) and (10) above.

d. Conclusions: The conclusions presented in Section II.G.5.b(10) are applicable in response to this regulation.

e. Fact: Section 24.05.165 establishes the setbacks for this use. Waterward of the high waterline, the required setbacks are as follows:

(1) No moorage structure on private property may be within one hundred feet of a public park.

(2) No moorage structure may be within fifty feet of an abutting lot that contains a detached dwelling unit.

(3) No moorage structure may be within twenty-five feet of another moorage structure not on the subject property.

The side property line setback is ten feet.

f. Conclusion: The proposal complies with the required setbacks.

g. Fact: Section 24.05.165 establishes that waterward of the high waterline, pier and dock decks may not exceed a height of twenty-four feet above mean sea level.

h. Conclusion: The maximum height of proposed structures is twenty-four feet above mean sea level.

i. Facts:

(1) Section 24.05.165 prohibits covered and aircraft moorage.

(2) The existing marina contains covered moorage on Piers A, B, C, and G2. No additional covered or aircraft moorage is proposed.

(3) KMC Section 24.05.210 states that nonconforming development may be continued provided that it is not enlarged, intensified, increased or altered in any way which increases its nonconformity.

(4) KMC Section 24.05.210 states that a nonconforming development which is moved any distance must be brought into conformance with the applicable master program and the act.

j. Conclusion: No additional covered or aircraft moorage is proposed or approved. The existing dock does contain covered moorage. Since the covered moorage is not being altered in any way, it is not required to be brought into conformance with the provisions of KMC Section 24.05.165(i) at this time.

3. Office Uses

a. Fact: KMC 24.05.160 establishes that a minimum view corridor of thirty percent of the average parcel width must be maintained. The view corridor must be in one continuous piece. Within the view corridor, structures, parking areas and landscaping will be allowed, provided that they do not obscure the view from these rights-of-way to and beyond Lake Washington.

b. Conclusion: The proposal includes a view corridor that exceeds this requirement.

c. Facts:

(1) The use regulations established in KMC 24.05.160 for office uses in the Urban Mixed Use 2 Shoreline Environment refer to KMC Section 24.05.205 for standards addressing lot size, required yards, and height.

(2) KMC 24.05.205 establishes that the city will determine setbacks, lot coverage, structure heights, landscaping and all other bulk and site design elements of the development based on the compatibility of the development with adjacent uses and the degree to which public access, use and views are provided in the proposed development.

d. Conclusion: The proposed office building has been sited on the north portion of the site, closer to the existing commercial development of Carillon Point. The building design, including its height, bulk and setbacks is compatible with the existing commercial development. The southern portion of the site has been designed as a view corridor, with parking, a public pedestrian walkway, the access drive, a waterfront access area, and landscaping. A six-foot wide landscape strip is proposed to be installed along the south edge of the site, to provide a transition to the residential development to the south.

e. Fact: KMC 24.05.205 establishes that the development must be approved as part of a master plan which encompasses the entire contiguous ownership of the applicant.

f. Conclusion: The subject property includes the entire contiguous ownership of the applicant.

4. Public Access.

a. Facts:

(1) KMC 24.05.065 establishes that public pedestrian access along the water's edge of all shoreline development, other than single-family residential or where unique and fragile shoreline areas would be adversely affected, should be required of all developments. All developments required to provide public pedestrian access along the water's edge should connect this access to the right-of-way unless access to the water's edge can easily be gained via existing access points.

(2) KMC 24.05.065 establishes that all developments required to provide public pedestrian access should be designed to visually and physically separate the public pedestrian access from adjacent private spaces. The separation may be accomplished vertically, horizontally, or by placing an intervening structural or landscape buffer.

(3) The proposal public pedestrian trail is proposed to be vertically separated from adjacent private spaces. In addition, the pathway would be separated by a landscape buffer and rockeries located on the adjoining property to the south, as well as a proposed 6-foot wide landscape strip located on the subject property.

(4) Access to and along the waterfront is addressed in Section II.G.4.b(4) above.

b. Conclusions: The conclusions presented in Section II.G.4.b(4) are applicable in response to these regulations. The proposed public pedestrian trail design is consistent with the criterion related to separation from adjacent private spaces.

I. COMPREHENSIVE PLAN

1. Land Use

a. Fact: The subject property is located within the Lakeview neighborhood. Figure L-1 on page XV.A-2 designates the subject property for commercial development in Planned Area 15A (see Attachment 25).

b. Conclusion: The proposal is consistent with the land use designation indicated in the Comprehensive Plan.

2. Neighborhood Plan Policies

a. Facts:

(1) The subject property is located in Planned Area 15A of the Lakeview Neighborhood. The Lakeview Neighborhood Plan contains several policy statements concerning the marina property. The applicant has addressed project compliance with these provision in Attachment 26). These policy statements are included below, together with a brief staff analysis where appropriate in italics.

(a) The primary objectives for development in PLA 15 are to maximum public access, use, and visual access to the lake...

The site contains a marina, which offers recreational use opportunities of the lake. The site has been designed to include pedestrian access from Lake Washington Blvd NE to and along the waterfront area of the property, connecting to existing pedestrian walkway systems to the north and south. The site has also been designed to include a public plaza at the waterfront area. The site would contain a wide view corridor on the south portion of the site.

(b) Subarea A should be developed with a mixture of uses.

(c) 'Water dependent' and 'water oriented' commercial uses should be included.

The site contains the marina, which is a water-dependent use. The marina currently provides boat rental operations open to the public. With the proposed redevelopment, the site would

also be opened up for more public access to the shoreline area, including a public plaza area that would contain seating and interpretative signs at the waterfront. The proposed development would include an office use which would provide opportunities for greater use and enjoyment of the waterfront.

(d) Public access to and along the water's edge and waterfront public use areas should be developed.

A public trail has been provided long the west portion of the site with a connection to Lake Washington Boulevard at the south end and at the Carillon Point development to the north. The proposal also includes a public plaza area which would be which are available for other public waterfront activities.

(e) Public improvements adjacent to Lake Washington Blvd are also desirable.

The Public Works Department has recommended that the proposal be required to install a new 10-ft wide sidewalk with street trees in tree grates 30 ft on-center along Lake Washington Blvd NE in order to accommodate pedestrian traffic. The street improvements presently contain a bicycle lane.

(f) Visual access to Lake Washington from Lake Washington Blvd should be maintained. To achieve greater visual access, building height, setback, and view corridor requirements may be varied. Views from existing developments should be protected.

The proposal includes a wider view corridor in exchange for greater building height, yet it has been demonstrated that the taller building will not significantly impair views from existing development to the east of Planned Area 15.

(g) Traffic impacts to Lake Washington Blvd should be considered. Access points should be limited.

The proposal redevelopment contains only one access point onto Lake Washington Boulevard. Traffic impacts have been analyzed (see Section II.D above). A transportation demand management plan has been designed for the site and should be implemented as part of the redevelopment.

(h) The existing marina in Subarea A and south of Carillon Point should be retained.

The proposed redevelopment plans include retention of the marina use.

b. Conclusion: The proposal is consistent with the policies statements addressing development in Planned Area 15A.

J. DEVELOPMENT STANDARDS

1. Fact: Additional comments and requirements placed on the project are found on the Development Standards, Attachment 3.

2. Conclusion: The applicant should follow the requirements set forth in Attachment 3.

III. SUBSEQUENT MODIFICATIONS

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

IV. CHALLENGES, APPEALS AND JUDICIAL REVIEW FOR ZONING AND SHORELINE PERMITS

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

A. CHALLENGE

Section 152.85 of the Zoning Code allows the Hearing Examiner's recommendation to be challenged by the applicant or any person who submitted written or oral comments or testimony to the Hearing Examiner. A party who signed a petition may not challenge unless such party also submitted independent written comments or information. The challenge must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5:00 p.m., _____, seven (7) calendar days following distribution of the Hearing Examiner's written recommendation on the application. Within this same time period, the person making the challenge must also mail or personally deliver to the applicant and all other people who submitted comments or testimony to the Hearing Examiner, a copy of the challenge together with notice of the deadline and procedures for responding to the challenge.

Any response to the challenge must be delivered to the Planning Department within seven (7) calendar days after the challenge letter was filed with the Planning Department. Within the same time period, the person making the response must deliver a copy of the response to the applicant and all other people who submitted comments or testimony to the Hearing Examiner.

Proof of such mail or personal delivery must be made by affidavit, available from the Planning Department. The affidavit must be attached to the challenge and response letters, and delivered to the Planning Department. The challenge will be considered by the City Council at the time it acts upon the recommendation of the Hearing Examiner.

B. APPEAL

Appeal to Shoreline Hearings Board:

Pursuant to RCW 90.58.180 and WAC 173-27-220 any person aggrieved by the City's final decision on the Shoreline Substantial Development Permit may seek appeal to the State Shoreline Hearings Board. All petitions for review shall be filed with the Shoreline Hearings Board within twenty-one (21) calendar days of the date the Department of Ecology receives the City's decision. Within seven (7) calendar days of filing any petition for review with the Shoreline Hearings Board, the petitioner shall serve copies of the petition for review on the Department of Ecology, the State Attorney General and the City of Kirkland. The petition for review must contain items required by WAC 461-08-055.

C. JUDICIAL REVIEW

Section 152.110 of the Zoning Code allows the action of the City in granting or denying this zoning permit to be reviewed in King County Superior Court. The petition for review must be filed within twenty-one (21) calendar days of the issuance of the final land use decision by the City.

V. LAPSE OF APPROVAL

Under Section 152.115 of the Zoning Code, the applicant must submit to the City a complete building permit application approved under Chapter 152, within four (4) years after the final approval on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per Section 152.110, the running of the four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the required development activity, use of land, or other actions. Furthermore, the applicant must substantially complete construction approved under Chapter 152 and complete the applicable conditions listed on the Notice of Approval within six (6) years after the final approval on the matter, or the decision becomes void.

Pursuant to RCW 90.58.200 and WAC 173-27-090, construction or substantial progress toward construction of a project for which a Substantial Development Permit has been granted pursuant to the Shoreline Management Act must be undertaken within two (2) years after the date of approval. The project must be completed within five (5) years and a one (1) year extension may be considered.

"Date of approval" means the date of approval by the City of Kirkland, or the termination of review proceedings if such proceedings were initiated pursuant to RCW 90.58.180 and WAC 173-27-220.

VI. APPENDICES

Attachments 1 through 29 are attached.

1. Vicinity Map
2. Project Drawings
    a. Upland Improvements
    b. Shoreline Improvements
3. Development Standards
4. Public Comment Letters
    a. E-mail from Helen Rogers
    b. Letter from Joan Schmidt
    c. Letter from John Barnett
    d. Letter from Fred and LouAnn Freeburg
    e. E-mail from Fred and LouAnn Freeburg
    f. Letter from J. Richard Aramburu
5. SEPA Determination and Enclosures
    - Enclosure 1: Vicinity Map
    - Enclosure 2: Project Drawings
    - Enclosure 3: Environmental Checklist
    - Enclosure 4: Concurrency Test Notice, August 2, 2005. Thang Nguyen, City of Kirkland Transportation Engineer, Traffic Analysis
    - Enclosure 5: Traffic Impact Analysis, William Popp Associates, January 20, 2005
    - Enclosure 6: Traffic Review Memo. February 21, 2006. Thang Nguyen, City of Kirkland Transportation Engineer, Traffic Analysis
    - Enclosure 7: Memo, April 14, 2006. Thang Nguyen, City of Kirkland Transportation Engineer, Traffic Analysis
    - Enclosure 8: Biological Evaluation, The Watershed Company, April, 2005.

- Enclosure 9: Preliminary Geotechnical Feasibility Report, Associated Earth Sciences, Inc. dated January 19, 2006
- Enclosure 10: Arborist Report, Greenforest, Inc., December 2005
- Enclosure 11: View Study
- Enclosure 12: Public Comment Letters

6. SEPA Appeal
7. SEPA Comments
    a. Letter from LouAnn Freeburg
    b. E-mail from Karen Walter, Muckleshoot Indian Tribe Fisheries Division
8. Tree Ratings completed by Elizabeth Walker, Urban Forester
9. Letter from Greenforest Incorporated dated July 5, 2006
10. Yarrow Bay Marina Fueling Plan
11. Yarrow Bay Marina Fueling Signage Plan
12. Letter from Bill Popp, Jr. dated June 11, 2006
13. Memo from Thang Nguyen dated June 14, 2006
14. Preliminary Site Lighting Calculations completed by Candela
15. 2001 Comprehensive Plan Amendment Materials
16. Boundary and Topographic Survey completed by PACE
17. Applicant Design Narrative and Criteria Analysis
18. KZC Section 60.172.025
19. Use Zone Chart Compliance KZC 60.172.025
20. Transportation Management Plan
21. KZC Section 60.172.050
22. Use Zone Chart Compliance KZC 60.172.050
23. KMC Section 24.05.165
24. KMC Section 24.05.160
25. Comprehensive Plan, Figure L-2 on page XV-A.2
26. Comprehensive Plan, pages XV-A.8 through XV.A-11
27. Dedication of Public Access Easement Area
28. Geologically Hazardous Areas Covenant
29. Maintenance Agreement – Landscape Strip and Sidewalk
30. Notice of Application and Summary Notice

VII. PARTIES OF RECORD

Applicant, Phil Goldenman, Waterfront Construction, 205 NE Northlake Way, Suite 230, Seattle, WA 98105
Fred and LouAnn Freeburg, 4823 Lake Washington Blvd NE #6,, Kirkland, WA 98033
John Burnett, 4823 Lake Washington Blvd NE #5, Kirkland, WA 98033

Joan Schmidt, 4823 Lake Washington Blvd NE #7, Kirkland, WA 98033
Helen Rodgers, 4823 Lake Washington Blvd NE #8, Kirkland, WA 98033
BOARD OF DIRECTORS, BREAKWATER CONDOMINIUM ASSOCIATION, 4823 LAKE WA BLVD NE, KIRKLAND WA 98033
Muckleshoot Indian Tribe Fisheries Division, 39015 172nd Ave SE, Auburn WA 98092, ATTN: Karen Walter
J. Richard Aramburu, Suite 209, College Club Building, 505 Madison Street, Seattle, WA 98104
Department of Planning and Community Development
Department of Public Works
Department of Building and Fire Services

HOUGHTON COMMUNITY COUNCIL

A written recommendation will be forwarded to the Hearing Examiner within 10 days of the close of the public hearing, unless additional time is needed to receive further written testimony.

HEARING EXAMINER

A written recommendation on the shoreline and zoning permit applications and a written decision on the SEPA appeal will be issued by the Hearing Examiner within eight calendar days of the date of the open record hearing.

CITY OF KIRKLAND
123 FIFTH AVENUE, KIRKLAND, WASHINGTON 98033-6189 (425) 587-3225

Date: 7/17/2006

DEVELOPMENT STANDARDS
CASE NO.: SHR06-00001
PCD FILE NO.:SHR06-00001

FIRE DEPARTMENT CONDITIONS

1) ***FIRE DEPARTMENT CONDITIONS***
Based on the site plan submitted, it appears that Fire Department requirements for access (wwidth, turning radii,gradient) are met.
2) The additional hydrants shown on the plan will be adequate for hydrant coverage. All shall be equipped with 5" Stortz fittings.
3) A fire sprinkler system is required in both buildings.
4) A standpipe system is also required in the larger building. The standpipe system may be incorporated into the sprinkler system.
5) A fire alarm system is required in both buildings.
6) Fire extinguishers are required throughout the buildings.
7) A key box is required for fire department access.
8) Any activities involving underground tanks, fuel dispensing, boat/vehicle repair and/or other activities involving flammable/combustible or hazardous liquids shall meet the applicable requirements of the International Fire Code. The following IFC chapters may need to be consulted: Chapter 22 "Motor Vehicle Fuel-Dispensing Facilities and Repair Garages"; Chapter 34 "Flammable and Combustible Liquids"; Chapter 26 "Welding and Other Hot Work"; Chapter 27 "Hazardous Materials - General Provisions." In addition, all requirements of the Washington State Department of Ecology shall be met.

PUBLIC WORKS CONDITIONS

General Conditions:

1. All public improvements associated with this project including street and utility improvements, must meet the City of Kirkland Public Works Pre-Approved Plans and Policies Manual. A Public Works Pre-Approved Plans and Policies manual can be purchased from the Public Works Department, or it may be retrieved from the Public Works Department's page at the City of Kirkland's web site at www.ci.kirkland.wa.us.

2. This project will be subject to Public Works Permit and Connection Fees. At the pre-application stage, the fees can only be estimated. It is the applicant's responsibility to contact the Public Works Department by phone or in person to determine the fees. The fees can also be review the City of Kirkland web site at www.ci.kirkland.wa.us. The applicant should anticipate the following fees:
- o Water and Sewer connection Fees (paid with the issuance of a Building Permit)
- o Side Sewer Inspection Fee (paid with the issuance of a Building Permit)
- o Water Meter Fee (paid with the issuance of a Building Permit)
- o Right-of-way Fee
- o Review and Inspection Fee (for utilities and street improvements).
- o Traffic Impact Fee (paid with the issuance of Building Permit). For additional information, see notes below.

3. A Concurrency Test Notice has been issued by the City's Transportation E

ATTACHMENT 3
SHR06-00001

See Planning staff report for a copy of the test notice.

4. Building Permits associated with this proposed project will be subject to the traffic impact fees per Chapter 27.04 of the Kirkland Municipal Code. The impact fees shall be paid prior to issuance of the Building Permit(s).

5. Any building that is demolished will receive a Traffic Impact Fee credit. This credit will be applied to the new Building Permit

6. All civil engineering plans which are submitted in conjunction with a building, grading, or right-of-way permit must conform to the Public Works Policy titled ENGINEERING PLAN REQUIREMENTS. This policy is contained in the Public Works Pre-Approved Plans and Policies manual.

7. All street improvements and underground utility improvements (storm, sewer, and water) must be designed by a Washington State Licensed Engineer; all drawings shall bear the engineers stamp.

8. All plans submitted in conjunction with a building, grading or right-of-way permit must have elevations which are based on the King County datum only (NAVD 88).

9. A completeness check meeting is required prior to submittal of any Building Permit applications.

10. Prior to issuance of any commercial or multifamily Building Permit, the applicant shall provide a plan for garbage storage and pickup. The plan shall be approved by Waste Management and the City.

Sanitary Sewer Conditions:

1. The new building (including the parking garage drains), shall be connected to the City sewer main. The side sewer size shall be at least 6-inch diameter and shall connect to a sewer manhole

2. In regards to the existing sewer main that runs north/south through the site, the following conditions shall be met:
" The existing City sewer mains on the property shall be encompassed in a public utility easement. The sewer main that runs between the Marina Services Building and the Office Building can be encompassed in a 15 ft. wide easement; all other sewer main easements shall be 20 feet wide.
" The footings for the Marina Services Building and the Office Building shall be equal or deeper in depth to the sewer main elevation.
" No trees shall be planted in the sewer easement.
" A 12 ft wide paved access road shall be provided between the Marina Services Building and the Office Building for access to the existing manhole at the north property line. The access road can also serve as the pedestrian path connection. Removable bollards shall be used to deter unauthorized vehicles from using the access road/pathway.

Water System Conditions:

1. The existing water main in the public right-of-way along the front of the subject property is adequate to serve this proposed development.

2. Extend a 16-inch water main to the new on-site hydrant. The final location of the hydrant will be determined by the Fire Department.

3. Provide separate domestic and irrigation water services sized per the plumbing code. These new services will be tapped off of the water main in Lake Washington Blvd.; the new water meters will be in the Lake Washington Blvd right-of-way.

4. The existing water service(s) may be used provided that it is in the right location, is not galvanized, and is sized adequately to serve the building or the irrigation (per the Plumbing Code). If it is not used, it shall be abandoned at the water main.

Surface Water Conditions:

1. Currently the City uses the 1998 King County Surface Water Design Manual for storm water control regulations. Due to the proximity to the lake, a detention system will not be required.

2. For new or reconstructed impervious areas, subject to vehicular use, provide storm water quality treatment per the 1998 King Surface Water Manual.

3. When applicable, structural source control measures, such as car wash pads or dumpster area roofing, shall be shown on the site improvement plans submitted for engineering review and approval. Refer to King County Storm water Pollution Control Manual and the 2006 Department of Ecology Storm water Management Manual for Western Washington for further information.

4. The National Pollutant Discharge Elimination System (NPDES) Phase II Final Rule requires operators of small construction sites (disturbing between 1 and 5 acres of land) to obtain a Construction Storm water General Permit through the Washington State Department of Ecology. Information about the permit can be obtained at:
Washington State Department of Ecology http://www.ecy.wa.gov/programs/wq/stormwater/construction/
U.S. EPA Office of Wastewater Management http://cfpub.epa.gov/npdes/stormwater/const.cfm
Specific question can be directed to:
Jeff Killelea
PO Box 47600
Olympia, WA 98504-7600
(360) 407-6127
jkil461@ecy.wa.gov

5. If on-site fueling is provided, a spill control plan shall be submitted. Impervious areas around fueling islands shall be covered and shall drain to the sanitary sewer.

6. Provide an erosion control plan with Building or Land Surface Modification Permit application. The plan shall be in accordance with the 1998 or 2005 King County Surface Water Design Manual (whichever one is in place at the time of Building Permit submittal).

7. Construction drainage control shall be maintained by the developer and will be subject to periodic inspections. During the period from April 1 to October 31, all denuded soils must be covered within 15 days; between November 1 and March 31, all denuded soils must be covered within 12 hours. If an erosion problem already exists on the site, other cover protection and erosion control will be required.

Street and Pedestrian Improvement Conditions:

1. The subject property abuts Lake Washington Blvd. This street is an Arterial type street. Zoning Code sections 110.10 and 110.25 require the applicant to make half-street improvements in rights-of-way abutting the subject property. Section 110.30-110.50 establishes that this street must be improved with the following:

A. Remove and replace any cracked curb and gutter.
B. Remove the entire existing concrete and asphalt sidewalk and install a new 10-ft wide sidewalk with street trees in tree grates 30 ft on-center.
C. The existing rockery may remain, provided that a geotechnical engineer inspects the rockery and certifies that it is stable and in good condition.
D. The proposed 3-lane driveway with the center island has been reviewed and approved by Public Works.

2. A pedestrian path and easement is required along the lake is required. The Planning Dept. will give input on path location and improvements.

3. A 2-inch asphalt street overlay will be required where more than three utility trench crossings occur with 150 lineal ft. of street length or where utility trenches parallel the street centerline. Grinding of the existing asphalt to blend in the overlay will be required along all match lines.

4. It shall be the responsibility of the applicant to relocate any above-ground or below-ground utilities which conflict with the project associated street or utility improvements.

5. Underground all new and existing on-site utility lines and overhead transmission lines.

Building Department Comments

Buildings must comply with 2003 editions of the International Building, Mechanical, and Fire Codes and the 2003 Uniform Plumbing Code as adopted and amended by the State of Washington and the City of Kirkland.

Structure must comply with Washington State Energy Code (WAC 51-11); and the Washington State Ventilation and Indoor Air Quality Code (WAC 51-13).

Structures must be designed for seismic design category D, wind speed of 85 miles per hour and exposure C.

Geotechnical report required to address development activity. Recommendations contained within the report shall be incorporated into the design of the subsequent structures.

Prior to issuance of Building, Demolition or Landsurface Modification permit applicant must submit a proposed rat baiting program for review and approval. Kirkland Municipal Ordinance 9.04.050

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

DEVELOPMENT STANDARDS LIST

File: Marina Suites LLC, Yarrow Bay Marina Redevelopment, File No. SHR06-00001

Shoreline Master Program Standards

24.05.165.5 Size of Moorage Structures. Moorage structures may not be larger than is necessary to provide safe and reasonable moorage for the boats to be moored.
24.05.165.9 Prohibited Substances. No part of moorage structures or other components that may come into contact with the lake may be treated with or consist of creosote, oil base, toxic, or other substances that would be harmful to the aquatic environment.
24.05.165.10 Prohibited Moorages. Covered moorage is prohibited. Aircraft moorage is prohibited.
WAC173-27-190 Substantial development, conditional use, or variance permits. Construction pursuant to a substantial development, conditional use, or variance permit shall not begin and is not authorized until 21 days from the date of filing, or until all review proceedings initiated within 20 days from the date of filing have been terminated, except as provided in RCW90.58.140(5)(a) & (b).

Prior to occupancy:

24.05.135 Public Access. Project must provide public pedestrian access from the right-of-way to and along the entire waterfront of the subject property at or close to the high waterline. Developments should be designed to visually and physically separate the public pedestrian access from adjacent private spaces.
24.05.135.6 Public Access Easements. All owners of the subject property must record an easement approved by the City Attorney establishing the right of the public to the pedestrian access (see Attachment 27).
24.05.135.7 Public Access Signs. Sign(s) shall be installed, obtained from the City, designating the public pedestrian access.

Zoning Code Standards

85.25.1 Geotechnical Report Recommendations. The geotechnical recommendations contained in the report by Associated Earth Sciences dated January 19, 2006 and June 24, 2002 shall be implemented.
85.25.3 Geotechnical Professional On-Site. A qualified geotechnical professional shall be present on site during land surface modification and foundation installation activities.

95.50 Plant Replacement. The applicant shall replace any plants required by this Code that are unhealthy or dead for a period of five years after initial planting.
100.25 Sign Permits. Separate sign permit(s) are required.
105.18 Pedestrian Walkways. All uses, except single family dwelling units and duplex structures, must provide pedestrian walkways designed to minimize walking distances from the building entrance to the right of way and adjacent transit facilities.
105.18 Bicycle Parking. All uses, except single family dwelling units and duplex structures, must provide covered bicycle parking within 50 feet of an entrance to the building.
105.18 Entrance Walkways. All uses, except single family dwellings and duplex structures, must provide pedestrian walkways between the principal entrances to all businesses, uses, and/or buildings on the subject property.
105.18 Service Bay Locations. All uses, except single family dwellings and multifamily structures, must locate service bays away from pedestrian areas.
105.18 Overhead Weather Protection. All uses, except single family dwellings, multifamily, and industrial uses, must provide overhead weather protection along any portion of the building, which is adjacent to a pedestrian walkway.
105.18.2 Walkway Standards. Pedestrian walkways must be at least 5' wide; must be distinguishable from traffic lanes by pavement texture or elevation; must have adequate lighting for security and safety. Lights must be non-glare and mounted no more than 20' above the ground.
105.18.2 Weather Protection Standards. Overhead weather protection may be composed of awnings, marquees, canopies or building overhangs; must cover at least 3' of the width of the adjacent walkway; and must be at least 8 feet above the ground immediately below it.
105.65 Compact Parking Stalls. Up to 50% of the number of parking spaces may be designated for compact cars.
105.60.2 Parking Area Driveways. Driveways which are not driving aisles within a parking area shall be a minimum width of 20 feet.
105.60.3 Wheelstops. Parking areas must be constructed so that car wheels are kept at least 2' from pedestrian and landscape areas.
105.60.4 Parking Lot Walkways. All parking lots which contain more than 25 stalls must include pedestrian walkways through the parking lot to the main building entrance or a central location.
105.75 Landscape Islands. Landscape islands must be included in parking areas as provided in this Section.
105.77 Parking Area Curbing. All parking areas and driveways, for uses other than detached dwelling units must be surrounded by a 6" high vertical concrete curb.
105.80 Parking Area Buffers. Applicant shall buffer all parking areas and driveways from the right-of-way and from adjacent property with a 5-foot wide strip as provided in this section.
110.60.2 Public Pedestrian Walkways. The height of solid (blocking visibility) fences along pedestrian pathways that are not directly adjacent a public or private street right-of-way shall be limited to 42 inches unless otherwise approved by the Planning or Public Works Directors. All new building structures shall be setback a minimum of five feet from any pedestrian access right-of-way, tract, or easement that is not directly adjacent a public or private street right-of-way.
110.60.8 Street Trees. All trees planted in the right-of-way must be approved as to species by the City. All trees must be two inches in diameter at the time of planting as measured using the standards of the American Association of Nurserymen with a canopy that starts at least six feet above finished grade and does not obstruct any adjoining sidewalks or driving lanes.

115.25 Work Hours. It is a violation of this Code to engage in any development activity or to operate any heavy equipment before 7:00 am. or after 8:00 pm Monday through Friday, or before 9:00 am or after 6:00 pm Saturday. No development activity or use of heavy equipment may occur on Sundays or on the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas Day. The applicant will be required to comply with these regulations and any violation of this section will result in enforcement action, unless written permission is obtained from the Planning official.

115.45 Dumpster Screening. For uses other than detached dwelling units, duplexes, moorage facilities, parks, and construction sites, all garbage receptacles and dumpsters must be screened from view from the street and from adjacent properties by a solid sight-obscuring enclosure.

115.75.2 Fill Material. All materials used as fill must be non-dissolving and non-decomposing. Fill material must not contain organic or inorganic material that would be detrimental to the water quality, or existing habitat, or create any other significant adverse impacts to the environment.

115.90 Calculating Lot Coverage. The total area of all structures and pavement and any other impervious surface on the subject property is limited to a maximum percentage of total lot area. See the Use Zone charts for maximum lot coverage percentages allowed. Section 115.90 lists exceptions to total lot coverage calculations including: wood decks; access easements or tracts serving more than one lot that does not abut a right-of-way; detached dwelling unit driveways that are outside the required front yard; grass grid pavers; outdoor swimming pools; and pedestrian walkways. See Section 115.90 for a more detailed explanation of these exceptions.

115.95 Noise Standards. The City of Kirkland adopts by reference the Maximum Environmental Noise Levels established pursuant to the Noise Control Act of 1974, RCW 70.107. See Chapter 173-60 WAC. Any noise, which injures, endangers the comfort, repose, health or safety of persons, or in any way renders persons insecure in life, or in the use of property is a violation of this Code.

115.115.3.g Rockeries and Retaining Walls. Rockeries and retaining walls are limited to a maximum height of four feet in a required yard unless certain modification criteria in this section are met. The combined height of fences and retaining walls within five feet of each other in a required yard is limited to a maximum height of 6 feet, unless certain modification criteria in this section are met.

115.115.d Driveway Setbacks. Parking areas and driveways for uses other than detached dwelling units, attached and stacked dwelling units in residential zones, or schools and day-cares with more than 12 students, may be located within required setback yards, but, except for the portion of any driveway which connects with an adjacent street, not closer than 5 feet to any property line.

115.120 Rooftop Appurtenance Screening. Vents, mechanical penthouses, elevator equipment and similar appurtenances that extend above the roofline must be surrounded by a solid sight obscuring screen, unless certain conditions are met.

115.135 Sight Distance at Intersection. Areas around all intersections, including the entrance of driveways onto streets, must be kept clear of sight obstruction as described in this section.

152.22.2 Public Notice Signs. Within seven (7) calendar days after the end of the 21-day period following the City's final decision on the permit, the applicant shall remove all public notice signs.

Prior to issuance of a grading or building permit:

85.25.1 Geotechnical Report Recommendations. A written acknowledgment must be added to the face of the plans signed by the architect, engineer, and/or designer that he/she has reviewed the geotechnical recommendations and incorporated these recommendations into the plans.
85.45 Liability. The applicant shall enter into an agreement with the City, which runs with the property, in a form acceptable to the City Attorney, indemnifying the City for any damage resulting from development activity on the subject property which is related to the physical condition of the property (see Attachment *28*).

Prior to occupancy:
85.25.3 Geotechnical Professional On-Site. The geotechnical engineer shall submit a final report certifying substantial compliance with the geotechnical recommendations and geotechnical related permit requirements.
107.90 Maintenance Bonds. The applicant shall establish a two-year maintenance bond to ensure maintenance of the storm water system.
110.60.5 Landscape Maintenance Agreement. The owner of the subject property shall sign a landscape maintenance agreement, in a form acceptable to the City Attorney, to run with the subject property to maintain landscaping within the landscape strip and landscape island portions of the right-of-way (see Attachment 29). It is a violation to pave or cover the landscape strip with impervious material or to park motor vehicles on this strip.
110.60.6 Mailboxes. Mailboxes shall be installed in the development in a location approved by the Postal Service and the Planning Official. The applicant shall, to the maximum extent possible, group mailboxes for units or uses in the development.
110.75 Bonds. The City may require or permit a bond to ensure compliance with any of the requirements of the Required Public Improvements chapter.

F:\Templates\Pcd-Plnr\Development Standards.doc 7/12/2006

Stacy Clauson

From: Hhrodgers@aol.com
Sent: Monday, April 10, 2006 2:49 PM
To: Stacy Clauson
Subject: Yarrow Bay Marina Project

Stacy, I'd like to go on record with the following comments regarding the Yarrow Bay Marina Project. Would you tell me if this e-mail will do that, or should I send a written letter? Thanks . . . Helen Rodgers

YARROW BAY MARINA PROJECT:

As an owner of one of the Breakwater condominiums directly adjacent to the proposed re-development of the Yarrow Bay Marina, I'd like to go on record with some comments and questions. While it is irrefutable that the owners of the marina have the right to develop their property in a way that benefits their business plan, I think it is incumbent on the city of Kirkland to do everything in its power to make sure these changes do not unreasonably affect and irreparably harm the quality of life of its immediate neighboring properties.

As a relative newcomer to the Breakwater, I would like to know more about the details of their plan regarding lot coverage, planning of building vs. parking space allotment and, most specifically, the exact nature of the proposed expansion of their docking facilities. In the one summer I've been here I've seen the abuse and wear-and-tear on our facility, the loss of reasonably expected privacy, the damage to our dock and the assumption of their customers that they can use our private dock for partying and loud behavior. They seem to feel they have the right to use the amenities they find there and it is not unusual to see Marina customers plugging into our electricity and using our hoses to wash their boats as they wait to purchase gas. The Marina staff has been made aware of this but, as far as I can see, they have done absolutely nothing to discourage this.

Since the project will change many aspects of the existing business, I would suggest that this would be the ideal time to address a way to mitigate this frequent and predictable infringement on the Breakwater residents' private property. I realize that open water is not considered private property but the configuration of their docking facilities as they exist guarantee the almost implied encouragement of their customers to feel that they are entitled to use our dock. Instead of extending a seemingly open invitation to intrude on private property, why can't this time of disrupted operation be used to relocate the entry to their gas dock to the north side of the property where it would co-exist with a like business and where the behavior of their customers is to be expected and can be managed without intruding on our private dock?

As I understand it, promises of mitigation have been made for years with no follow-through whatever, leading us to expect that the current protestations of planned mitigation will result in the same lack of attention and action even as they encroach ever further into our lives. I would ask that the city of Kirkland take these points under serious consideration and require a relocation of the entry to the Marina's gas dock to the north side of their property.

In the event that this does not happen, I think it is entirely reasonable to require that the proposed dock extension be configured that there will not seem to be a perceived connection to our private dock, as there seems to be now even with the current, smaller configuration.

Finally, I would ask that if the entry is not to be relocated, that the Marina be required to configure and identify a route into their facility which will make it clear that our dock is not part of the Marina entrance and not a logical and legal stopping off place for boats and their passengers as they wait in the gas line. I would ask specifically that there be serious and enforcible penalties written into place in the event that our current problems worsen.

We are taxpayers, too, and I think these legitimate concerns should be taken into account as plans are developed and considered.

Helen Rodgers
4823 Lake Washington Blvd. N.E.
The Breakwater, #8

ATTACHMENT 4.a
SHR06-00001

RECEIVED
MAR 23 2006
_____AM _____PM
PLANNING DEPARTMENT
BY_____

Joan Schmidt
Breakwater Condominiums
4823 Lake Washington Blvd. NE, #7
Kirkland, WA 98033-7600

March 20, 2006

Stacy Clauson, Project Planner
City of Kirkland Department of Planning & Community Development
123 – 5th Avenue
Kirkland, WA 98033

RE: File Number SHR06-00001

To the Kirkland Department of Planning & Community Development:

As an owner of a condominium unit in the Breakwater, immediately south of the proposed developments for the Yarrow Bay Marina, I have several concerns:

1) – **The relocation of the marina's driveway.** Planned to be only 10 feet from our northern property line, the exiting and entrancing of hundreds of vehicles per day will cause **major traffic tie-ups, as we try to enter or leave our own property**. Lake Washington Blvd. is already difficult to negotiate into and out of our driveway with the current traffic! **Noise from that driveway** and **headlights shining into our building** are two more unimaginable concerns. Poor access devalues our property, not to mention our peace while we live here.

   SUGGESTION: Please relocate the new marina driveway/road further north of our property line than proposed, in order to reduce the negative noise and traffic impact of hundreds of cars per day impeding the use of our own driveway. A traffic signal will definitely become necessary also.

2) – **The Parking variance requested.** An inadequate number of parking spaces, both underground and surface, will create a much greater negative impact on our property than should ever be allowed by the city in a residential area. Yarrow Bay Marina boasts of the dual use of spaces, since "the office will need the parking during the week days and the marina will only need the parking on nights and weekends". From experience, having lived next door for 7-1/2 years, that idealistic notion will not be the case. The marina parking is packed during the spring, summer, and fall with boat repairs as well as boaters, day and night. We are talking about a commercial property bordering a residential one, with (again) headlights shining into our windows at night, dusk, and dawn. I refer to the exit pattern requested, from the parking garage, the surface parking, and the circle drive in front of the office building. Where will the "overflow" park? We have already had a problem with marina clients taking our few "visitor" parking spaces in front of our building.

   SUGGESTION: Please do not allow the requested variance. Instead, the project should be reduced in size so it can accommodate one hundred percent parking code requirements.

ATTACHMENT 4.b
SHR06-00001

3) - **<u>The proposed 3-foot hedge-fence on our northern property line</u>.** Not good enough! **We <u>NEED</u> a 6-foot high <u>solid fence</u> to protect us from the noise pollution and headlights shining into our property!! This would be our only relief.**

4) – **<u>The proposed entrance/exit for boaters to the marina's fuel and repair docks.</u>** As with the proposed driveway, the proposed boater's marina entrance places the major activity of that commercial property immediately next to our quiet residential property. Both proposals are unfair to the Breakwater owners and guests.

> **<u>SUGGESTION</u>: Logically, the placement of both street and water entrances/exits to the marina businesses should be placed to the far north of the marina property, which borders another commercial marina and business site, not where they disturb a residential building.**
>
> **If the boat marina entrance is not repositioned to the north, then permits <u>must</u> be issued for the south side water barrier, to protect the Breakwater from the trespassers, waiting in fuel lines, from using and further damaging our dock!**

5) -- **<u>The S.W. dock additions and expansions -- another big problem</u>**. The additional boat slips will not only block access to the proposed fueling area, but it forces them onto our side and encourages trespass use and damage to our dock. The yachts and boats moored further to the south and west will destroy our views of the lake and all areas to the west.

> **<u>SUGGESTION</u>: If the dock extensions cannot be moved northward, no expansions should be permitted in this residential neighborhood. The lake and mountain views invited us to move here in the first place. Our escalating property values and resales are dependent on those views!**

6) – **<u>The public walkway from Lake Washington Blvd. to the lakefront</u>.** The Breakwater has enough public "lookie-loos" from the street-to-lake access on our south side. We do not want further access on our north side, which creates increased crime concerns for us. Further, because of the sloping grade, people walking to and from the lake would be able to look directly into our windows.

In conclusion, the entire Breakwater property will be gravely impacted by the Yarrow Bay Marina development as proposed. My fellow residents and I urge you to reconsider the plans for the good of us all. Happy neighbors make good neighbors.

Sincerely,

Joan Schmidt

Mrs. Joan Schmidt

John Barnett
4823 Lake Washington Blvd NE, #5
Kirkland, WA 98033
425-889-0207
March 17, 2006

RECEIVED
MAR 17 2006
_____AM_____PM
PLANNING DEPARTMENT
BY_____

Stacy Clauson
Planning & Community Development Dept.
City of Kirkland
123 Fifth Ave.
Kirkland, WA 98033

Dear Stacy,

Subject: Yarrow Bay Marina development proposal

We met on January 11, 2006, at the Yarrow Bay Marina (YBM) development explanation. I write as the president of the Breakwater Condo Homeowners' Association which is located at the above address.

Our property is immediately adjacent on the south to the YBM. Therefore, ours is more than a casual interest and concern. The following is a list of some of the ways this development will negatively impact our property:

[1] The increased traffic and parking will have the greatest negative impact on our property. This is the only area of the development where any type of variance is requested. The project should be reduced in size so it can accommodate one hundred percent parking code requirements. The plan includes 211 underground parking spaces and 45 surface parking spaces. They want to have a building and marina larger than the parking spaces they will have available. So if they follow present city zoning for the number of parking spaces required for building size, they will have to either have the marina or the office building or both smaller than planned. A certain number of parking spaces are required for the size of the office building and the size of the marina. They are trying to say they can dual use the spaces since the office will need the parking during the week days and they are saying the marina only needs the parking on weekends and nights. Since this is an area that will so negatively impact our property, the city should never allow any type of variance in this area. This is a situation of commercial property bordering residential property and the city should not allow any variances that would produce more of a negative impact upon the residential property. The traffic and parking are our greatest concern.

The plan includes 211 underground and 45 surface parking spaces. The office building would potentially be used for businesses with each of the businesses having approximately ten to

ATTACHMENT 4. C
SAR06-00001

twenty clients per day. Thus there could be hundreds or more cars a day coming and going on a driveway ten feet from our property line.

When exiting the planned parking garage the cars will face directly south and thus the head lights will shine directly at our building. When using the circle drive in front of the office building, the car lights will shine directly into our building. When cars exit the surface parking again the lights will shine directly into our building.

[2] The plan for the development relocates the marina driveway connecting to Lake Washington Blvd. moving it to within ten feet of our northern property border, which is considerably closer to our border than it is presently. With hundreds of cars in and out the driveway ten feet from our property line the noise factor is unimaginable. Locating the driveway/road further to the north of our property line would ease some of the negative impact of the hundreds of cars per day driving within ten feet of our property line.

[3] The development will have a public walkway from Lake Washington Blvd to the lake. This walkway will touch upon our northern property line. This would be a further problem to us as the result of the grade/slope, public walking to and from the lake would be able to look directly into our windows.

[4] No matter how the development goes, they should include a six foot solid fence on our northern property border. We will be so negatively impacted by the increased traffic and car lights, etc., the fence is the only way we can have some relief.

[5] The marina expansion is an opportunity for us to request the access to the fueling and repair dock of the marina be changed. Presently the marina is accessed from the south, our side, the residential side. We have all experienced the extreme problems this has caused to our dock etc. This is an opportunity to request the marina be accessed from their northern side which borders another business, the Carillon Point Marina.

The YBM say they cannot do this. However, we all know anything can be engineered and done.

The YBM has agreed to request a permit for a rope type barrier in the water going westward along their southern water border to extend out well beyond the end of our dock. This could ease the pressure of boats coming to our dock while awaiting the line up for fuel at the marina. This may or may not occur depending if permits can be obtained. Although this a small remedy to our dock encroachment problem, our first priority request would be for the marina to use their northern border for an entrance.

[6] The proposal calls for additions to the present docks. Primarily the southwest portion of their present docks would be expanded. The addition of boats docked in this area would block the access for boats to go into the fueling area, and thus forcing the boat traffic more onto our side. Also additional boats moored in this area would block our views of the lake and all areas to the west.

[7] In addition to the increased traffic in and out of the YBM, there will be increased difficultly in exiting our property by car onto Lake Washington Blvd., and entering it. Even without greater numbers of cars using the YBM entrance, I have counted as many as 50 automobiles passing in front of our driveway exit as I waited for a clear spot to enter the street.

These are some of the problems we foresee. We ask that they be properly addressed and your decision communicated to us before construction is started.

Sincerely,

John Barnett

John Barnett
President, Breakwater Condo

RECEIVED
MAR 17 2006
_____AM _____PM
PLANNING DEPARTMENT
BY_____

Fred and LouAnn Freeburg
Breakwater Condominium
4823 Lake Washington Blvd. N.E. #6
Kirkland, WA 98033
March 15, 2006

Stacy Clauson
City of Kirkland Department of Planning and Community Development
123 5th Avenue
Kirkland, WA 98033

Re: file number SHR06-00001

After visiting the city planning department and attending a informational meeting, we have come to some conclusions regarding the impact of the Yarrow Bay Marina expansion will have on our property.

The following is a list of some of the ways this development will negatively impact our property:

[1] The increased traffic and parking will have the greatest negative impact on our property. We understand from the city this is the only area of the development where any type of variance is requested. The project should be reduced in size so it can accommodate one hundred percent parking code requirements. The plan includes 211 underground parking spaces and 45 surface parking spaces. YBM want to have a building and marina larger than the parking spaces they will have available. So if they follow present city zoning for the number of parking spaces required for building size, they will have to either have the marina or the office building or both smaller than planned. A certain number of parking spaces are required for the size of the office building and the size of the marina. YBM is trying to say they can dual use the spaces since the office will need the parking during the week days and they are saying the marina only needs the parking on weekends and nights. After living next door to the marina for a number of years we know that there ~~is~~ are active cars and trucks coming and going for the marina during the day and during the night every day and this usage is intensified beginning with opening day May one and continuing throughout the summer months. YBM cannot defend the dual use proposal for the parking.
Since this is an area that will so negatively impact our property, the city should never allow any type of variance in this area. This is a situation of commercial property bordering residential property and the city should not allow any variances that would produce more of a negative impact upon the residential property. The traffic and parking are our greatest concern.

The plan includes 211 underground and 45 surface parking spaces. The office building would potentially be used for businesses with each of the businesses having approximately ten to twenty clients per day. Thus there could be hundreds or more cars a day coming and going on a driveway ten feet from our property

When exiting the planned parking garage the cars will face directly south and thus the head lights will shine directly at our building. When using the circle drive in front of

ATTACHMENT 4.d
SHR06-00001

the office building, the car lights will shine directly into our building. When cars exit the surface parking again the lights will shine directly into our building.

[2] The plan for the development relocates the marina driveway connecting to Lake Washington Blvd. moving it to within ten feet of our northern property border, which is considerably closer to our border than it is presently. The plans indicate the drive would be at higher elevation than it is presently. This elevation would further intensify the problems. With hundreds of cars in and out the driveway ten feet from our property line the noise factor is unimaginable. Locating the driveway/road further to the north of our property line would ease some of the negative impact of the hundreds of cars per day driving within ten feet of our property line.

[3] The YBM development road entering Lake Washington Blvd. is going to negatively impact Lake Washington Blvd., a street that is already extremely difficult for car traffic to enter or exit. This proposed drive way is less than 300 feet to the north from a large office driveway that dumps traffic onto Lake Wa. Blvd. Presently it is difficult to enter or exit to our condominium driveway from the Boulevard. There are many walkers and joggers who use the side walk. For a driver to watch for the pedestrians and to find and opening in the traffic pattern to be able to drive on to the street is challenging. Sometimes we have counted as many as fifty cars going by before there is an opening in traffic only to find that a person walking their dog is now in front of the car walking on the sidewalk and we have to wait for another fifty cars to go by before entering the street. The same is true when exiting the boulevard and attempting to turn into our driveway. To add hundreds of cars going and coming on the Lake Washington Blvd. from a driveway a few feet from our present driveway will certainly make the situation much worse.

[4] The development will have a public walkway from Lake Washington Blvd to the lake. This walkway will touch upon our northern property line. This would be a further problem to us as the result of the grade/slope. The public walking to and from the lake would be able to look directly into our windows. Our building presently has a public walkway on its southern border. If this was done our building would have two public walkways to the lake closer to our building than any other similar building along the Boulevard. Two public walkways this close together seem unfair to our property.

[5] No matter how the development goes, they should include a six foot solid fence on our northern property border. We will be so negatively impacted by the increased traffic and car lights, etc., the fence is the only way we can have some relief.

[6] The marina expansion is an opportunity for us to request the access to the fueling and repair dock of the marina be changed. Presently the marina is accessed from the south, our side, the residential side. All of the Breakwater residents have experienced the extreme problems this has caused to our dock and front yard by marina fuel dock traffic. It is always a problem, but unbearable on heavy boat usage days. People park their boats on our dock while waiting to be served at the marina. While they are parked on our dock they do such things as: hook to our hose and wash their boats, pee on our dock from various positions, go back and forth from our dock thru our gate to the marina and then back to their boat on our dock, regularly damage our lights, our stand pipe, our water connection, subject us to obscenities, loud music, yelling and provide a great danger to us when we attempt to us the water or our own boats and dock during this time. During these days, it is impossible to get in or out of our dock and we certainly do not allow our

children or even teens to use the beach or dock area. This is an opportunity to request the marina be accessed from their northern side which borders another business, the Carrillon Point Marina.

The YBM say they cannot do this. However, we all know anything can be engineered and this can be done. This is the time to correct this injustice. The two marinas, Carrillon Point and Yarrow Bay, should accept the inconvenience since they are the ones profiting from it.

The YBM has agreed to request a permit for a rope type barrier in the water going westward along their southern water border to extend out well beyond the end of our dock. It is hoped this could ease the pressure of boats coming to our dock while awaiting the line up for fuel at the marina. We cannot be sure that there wouldn't be so many boats waiting to fuel that even with this barrier we would continue to have the same problems on our dock. Also this barrier may or may not occur depending if permits can be obtained. Although this a small remedy to our dock encroachment problem, our first priority request would be for the marina to use their northern border for an entrance.

[7] The proposal calls for additions to the present docks. Primarily the southwest portion of their present docks would be expanded. The addition of boats docked in this area would block the access for boats to go into the fueling area, and thus forcing the boat traffic more onto our side. Also additional boats moored in this area would block our views of the lake and all areas to the west.

In conclusion these seem to be our major concerns. Certainly the affect and impact of this proposed development on the residential neighbors, The Breakwater Condominium, needs to be considered. We trust the city will take our concerns into consideration when making decisions regarding our neighborhood.

Sincerely,

Fred L Freeburg LouAnn Freeburg

Fred Freeburg LouAnn Freeburg

From: NEWACRES@comcast.net
Sent: Friday, April 28, 2006 8:51 PM
To: Stacy Clauson
Subject: Yarrow Bay Marina Proposed development
Re: file number SHR06-00001

Dear Stacy,
We have some additional concerns regarding the impact of the YBM proposed developement on our property, The Breakwater Condominium, located to the south of the marina project.
1] Drainage: We are concerned about the additional ground and surface water coming on to our property as the result of the proposed development.
2] Bulk Heads: If the property to the north of us (YBM) is elevated by fill, additional pressure would be applied to our bulk heads.
Thank you for your consideration.
Sincerely,
Fred and LouAnn Freeburg
Breakwater Condominium
4823 LK WA BLVD NE #6
Kirkland, WA 98033
ph: 425-739-9806

ATTACHMENT 4.e
SHR06-00001

J. RICHARD ARAMBURU
ATTORNEY AT LAW
SUITE 209, COLLEGE CLUB BUILDING
505 MADISON STREET
SEATTLE, WASHINGTON 98104
(206) 625-9515 · FAX (206) 682-1376

J. RICHARD ARAMBURU
JEFFREY M. EUSTIS

July 31, 2006

Anne Watanabe
Hearing Examiner Pro Tem
City of Kirkland
123 - 5th Avenue
Kirkland WA 98033

Houghton City Council
123 - 5th Avenue
Kirkland WA 98033

Houghton Community Council
City of Kirkland Hearing Examiner
123 - 5th Avenue
Kirkland WA 98033

RE: Yarrow Bay Marina, Marina Suites proposal SHR06-0001

Dear Houghton Community Council and Hearing Examiner :

This office represents the Breakwater Condominium Association (BCA), owners and residents of the property immediately south of the subject proposal. Breakwater has asked me to provide you with comments and concerns relative to the Yarrow Bay Marina (YBM) proposal, consisting of a new 55,000 square foot office building, 7,000 square foot relocated marina building, a public access trail, dock extension and a waterside pocket park.

The subject property has been historically used as a marina, with upland boat and trailer parking as a part of the YBM use. The current marina is nonconforming as a substantial number of moorage slips are covered contrary to the terms of the Kirkland Zoning Code and Shoreline Master Program.

Breakwater believes that the subject proposal cannot be approved in its present form for the following reasons. Breakwater asks that the proposal be modified or denied outright.

EXHIBIT E

1. EXCESSIVE FILL.

The proposal involves significant fill to be placed on the mid to western side of the project, causing an increase in grade of between five and nine feet. As a result, a retaining wall will be placed immediately adjacent to the Breakwater property along the south side of the YBM project. This will elevate the property adjacent to the Breakwater Condominium, causing aesthetic, light and noise impacts.

Under the Kirkland Shoreline Master Program, land surface modification or fill activity is permitted only if it is "necessary for the approved development" under Kirkland municipal code (KMC) section 24.05.140(c). The BCA believes there is no reason for the landfill to be put on the western portion of the site and that the project can proceed without it. Accordingly, the project should be re-designed to eliminate such fill.

2. PARKING QUANTITY.

The subject proposal consists of several different uses, including a 55,000 square foot office building, a 7,000 square foot marina services building, various existing and expanded moorage facilities and public trail and park facilities. Parking calculations presented on the most recent site plan and staff report (page 22) show parking spaces calculated only for the office building (1/300 s.f.) and the moorage (1 stall/2 slips). However, no vehicular parking is provided for the marina services building which will be relocated to the north side of the lot. The current marina building contains various uses including boat repair, boat sales, boat rentals and other retail type uses which have employees and retail trade, all of which generate additional parking requirements and are unrelated to the recreational moorage slips. Parking is a critical issue here because there is essentially no street parking in the vicinity of the project (no parking is available along Lake Washington Boulevard.)

The parking requirements for the proposal should be redrawn and recalculated and parking sufficient to meet the demand should be located on site.

3. PARKING LOCATION.

The most recent site plan proposal includes multiple (43 or more) surface parking areas located between the office building and Lake Washington. A large number of parking spaces are located immediately adjacent to the shoreline.

The Kirkland Shoreline Master Program specifies that parking should not be located between the buildings on the property and Lake Washington. KMC

24.05.130. ("Wherever possible, parking should be located out of the shoreline area and should not be located between the building or buildings on the subject property and Lake Washington"). The unsightly surface parking areas proposed here should be eliminated pursuant to the Shoreline Master Program. Parking for all facilities may be easily accommodated in a third level of underground parking in the office building. As indicated previously, parking for the marina building must be included in any calculations.

4. YARROW BAY BOAT PARKING.

Yarrow Bay Marina maintains an active boat repair and overhaul facility which results in a significant number of boats being stored on site. The shoreline permit application does not indicate where such boat storage facilities will be located on the site, but it is expected that such uses will remain. If boat parking area is to be relocated at the site of the demolished current marina building, serious issues of aesthetics and other such impacts need to be explored. It is noted that there is a large open area shown on the plans immediately adjacent to the water, but there is indication of the uses proposed for this area.

The plans should be revised to accommodate both boat parking and storage, as well as defining on the site plan the location for such use.

5. MOORAGE EXTENSION.

The proposal requests the extension of the "D" dock moorage further to the south towards the Breakwater Condominium. Breakwater is the owner of second class tidelands in this area which extend to the inner harbour line.

No expansion of moorages should be permitted at this location. The Yarrow Bay Marina has a number of covered moorages which are not permitted under the current Shoreline Master Program and PLA15A rules (Special Regulation 15), but YBM does not propose to eliminate that non-conformity. The staff report at page 35-36 states that this nonconformity may remain because the cost of on site work does not exceed 50 percent of the replacement cost of the improvement. However, the applicant is demolishing and rebuilding the marina services building and constructing a new office building which is clearly more than 50 percent of the replacement cost of the covered moorage. Accordingly, if the proposal proceeds, the applicant should be required to bring the marina facility into conformance with the code by removing the structures that cover the moorages, though the moorage themselves may remain.

The moorage extension proposed would also narrow the passage on the south side of the Yarrow Bay Marina site between it and the Breakwater property. Because there is no access to the marina from the north side of the YBM property, this is the only area available for passage of boats to the majority of the marina slips. More importantly, this is the only area for passage to the refueling docks at YBM as well as the boat repair facility. In the past, there have been numerous instances of trespassing onto the property of the Breakwater Condominiums, including boats near the Breakwater dock or actually tying to it while waiting for space at the YBM fuel dock. Photos 1 and 2 attached hereto show boats waiting for fueling - even one moored at the Breakwater dock while waiting. On occasion, there have been 10 or more boats waiting to be refueled at YBM, which is one of the few refueling facilities that exist on Lake Washington. See Photo 1 attached. In fact, the drawings provided show that numerous boats will transit the Breakwater property for these commercial uses which will interfere with uses on my clients' property including boating, swimming and other water dependent uses. Such contemplated useage is *inconsistent with PLA15A Special Regulation 7(d) which provides that "the moorage* structures will not adversely affect nearby uses . . ."

The moorage extension should be denied because it will decrease the available maneuvering area between the Breakwater property and the moorages and create interference with the Breakwater property.

6. PUBLIC ACCESS TRAIL.

The applicant proposes a public access trail located on the south side of its property adjacent to the Breakwater Condominiums. This will allow access from sidewalks along Lake Washington Boulevard to the lake. Under the code, Breakwater believes this trail should be deleted from the plan for several reasons.

a. First, adequate public access to the waterfront in this location is available within the immediate vicinity of the project. There is a public access trail just to the north of the Yarrow Bay property, developed in connection with the Carillon Point project. It accesses significant public walkway and other public facilities at the Carillon Point project. There is another public access pathway just to the south of the Breakwater Condominium which also accesses the water and a lineal trail running along the lake in this location. In fact, the shoreline trail that traverses the Breakwater property ends just to the south of the property, meaning there is limited available use of the trail in this location. It makes no sense whatsoever to have three public access trails within the space of a little over 500 feet on Lake Washington Boulevard.

b. While public access is a preferred use within the Shoreline Master Program, under KMC 24.05.135(1)(a), "access to the waterfront may be waived by the city if public access along the waterfront of the subject property can be reached from adjacent property." As demonstrated above, there is plentiful access to the water in these locations and adding a third access is not appropriate.

c. There is very little use of the public access facilities in this area. There is no parking nearby to allow persons to access these facilities, and users are limited to those walking along the sidewalk on Lake Washington Boulevard.

d. Further, the visual access to the water in this location is limited by the existing covered moorages and open moorage adjacent to the trail area. Photos 3,4 and 5 show the limited views available on the YBM pry at its southwest corner. Use of canoes or other small craft, as well as swimming, is problematic in this area due to the presence of the moorage and boat traffic using the fuel dock. See Photo3 attached. Far more attractive public access area is available at the commercial Carillon Point property without the need of further impacting residential properties in the area.

7. BUFFER AREA BETWEEN COMMERCIAL AND RESIDENTIAL USE.

The subject proposal is a commercial use that proposes significant fill and a parking lot next to the residential use at the Breakwater. The proposal includes only a minimal buffer to separate the uses (5-6 feet). If the proposal proceeds, the size and nature of this buffer area should be substantially increased.

First, the applicant proposes to remove a large maple tree as a part of the construction. This is a substantial and attractive tree providing buffering, shade and separation between these uses. In addition, this tree is on, or very near the property line and thus cannot be removed without the permission of BCA.

Second, the buffer area should be widened to 15 feet and include substantial vegetation to increase the buffer between the new use and the Breakwater property. The YBM proposal includes a 4-9 foot high retaining wall and an elevated parking area which would cause lights from vehicles to be directed at the residential units on the northside of the Breakwater building. Indeed the staff report (page 26)indicates that: "The parking layout is designed so that vehicles exiting the garage would face the Breakwater building." In addition, though BCA recommends its deletion, there is a public access pathway along the south side of the YBM property that suggests the need for a substantial buffering element. These impacts clearly call for additional separation between the new parking and office use and the Breakwater. The revised area can be easily provided by a minor reconfiguration of access and parking

facilities if they are permitted despite the provisions of the shoreline master program. See section 3 hereof.

Third, it may be asserted that the additional landscaping is contrary to view corridor requirements. However, the view corridor requirements on this property are a result of the applicant wishing to exceed the maximum height requirement. See Staff Report, page 18. As such, Breakwater should not suffer less than appropriate buffering and separation simply because the applicant's proposal exceeds 35 feet requiring a larger view corridor.

Additional landscaping and buffering as described above should be required adjacent to the Breakwater property.

8. PUBLIC PARK AREA.

Apparently the City now proposes to create a pocket park on the Yarrow Bay Marina site to enhance further public access. However, as indicated above, significant public access already exists at Carillon Point and there is no demonstration that even these public access facilities are overused or that there is a need for such additional facilities. Again, there is no public parking in the area and most users would be from the already developed residential uses in the vicinity.

Further, the park area is visually cut off from the water by moored boats close to shore, covered moorage to the west and boating traffic using the fueling facilities. See Photos 3,4 and 5. In short, no new or additional public park area should be required in this location beyond the provision for a trail across the YBM property.

In short, the public park area should be deleted from the plans and access in the area should be limited to maintenance of a lineal trail parallel to the shoreline.

8. DANGEROUS AND CONGESTED ROADWAY CONDITIONS.

The Marina Suites project will greatly increase turning movements on and off Lake Washington Boulevard in the location of this proposal. As the city is aware, Lake Washington Boulevard is already a highly congested two lane street with very few breaks in traffic.

The new proposal will create additional demand for a left turn lane, creating the strong potential for queuing back for northbound left turns into the Marina Suites site, which may block the access to the Breakwater Condominium site and disrupt turning movements to NE 52nd Street.

No solutions to these impacts are proposed and this proposal should be remanded to the city for the development of traffic and transportation solutions that resolve these impacts.

9. VIEW CORRIDOR.

As noted above, the applicant must provide a 70 percent view corridor because the proposal exceeded 35 feet in height. However, a substantial amount of the view corridor is taken up with covered moorage, an illegal use under the Kirkland zoning code. Under the Kirkland Zoning Code a view corridor is defined as follows:

> 5.10.974 View Corridor – An open area that provides an unobstructed view across the subject property to and beyond Lake Washington from the adjacent right-of-way.

(Emphasis supplied.) A significant part of the view corridor is obstructed by the covered moorage structures presently on the site. As such, the applicant's proposal is inconsistent with view corridor requirements and cannot be permitted.

As may be seen from the foregoing, the present proposal is inconsistent with a variety of city codes, goals, plans and programs. As such it cannot be approved in its present form and must be modified to conform with those standards specified herein.

Sincerely yours,

J. Richard Aramburu

JRA:py
cc: Breakwater Condominium Association

1.

2.

3.

4.

5.

July 31, 2006

Houghton Community Council
City of Kirkland Hearing Examiner
123-5th Avenue
Kirkland, WA 98033

RE: Yarrow Bay Marina, Marina Suites proposal SHR06-0001

Dear Houghton Community Council and Hearing Examiner:

I live directly to the south of the proposed project. I am generally concerned about the adverse effects the development as it is proposed will have in my neighborhood and on the lake.

1] **Buffer area between Yarrow Bay Marina and The Breakwater Condominiums**

Yarrow Bay Marina is zoned commercial and The BWC is zoned residential. Presently we have a row of trees situated on our northern border. Any kind of construction work near the roots of these trees will be detrimental to them and possibly kill them. As the result of the fill areas in the project there is to be a retaining wall along our northern border. This wall will range in height from 4 feet to 9 feet high. Then at the height of the top of the retaining wall is a proposed pathway to the lake. This pathway has a wall in place of a railing system. The drawings show this to be an additional four feet. Then on top of that height will be additional wall height to keep the auto lights from shining into our windows. Consequently in some places the wall will be upwards of fifteen feet high. Such a high wall needs a buffer area. I am asking for a buffer of fifteen feet in order to protect our tree roots and save our trees and in order to minimize to a small extent the height of the wall. Of course the added traffic in and out of the proposed development will be noisier especially as cars go up the grade or hill to reach Lake Washington Blvd. This buffer will help to shield us from some of the increased noise.
I am asking for a required buffer large enough to give us adequate protection.

2] **Public Pathway from Lake Washington Blvd. to the lake**

The project proposes a pathway located along our northern border from Lake Washington Blvd. to the lake. There is a public pathway on our southern border. There is a public pathway on the northern border of the YBM. There are three public pathways from Lake WA Blvd to the lake in the Carillon Point development. The pathway on our southern border is used very little. There is no need to put another pathway particularly when the public lake walkway through the marina property goes to the north inland away from the lake and between the two new buildings and comes out high into the Carillon Point southern walkway. If this pathway on our northern border were omitted, then there would be more room for the much needed buffer area between our property and the YBM proposed development.

3] **Proposed Plaza**

EXHIBIT F

This area was was described differently just a few days ago -

~~The~~ development presently calls for a plaza where the pathway meets the lake. It is our understanding this plaza is to be used for people putting nonmotorcraft into the lake and as an area where the public can access the lake. The area suggested is too dangerous to use for swimming or for nonmotorized boats and the view of the lake is hindered. There is a long pier about mid point in the plaza. This is where all the rental boats are kept - moored to both sides of the pier. This area is also used by the marina for boat storage. A sail boat has been sitting there for months. The north side of this area has a large covered moorage area. Looking straight out one views docks, piers, boats and covered moorages.
There is no parking in the area ~~for people to come with canoes or kyacks to access this area.~~ The nearest public parking is at Carillon Point. If a person was going to park at Carillon Point, it seems reasonable they would just ~~put their boat in there rather than carrying it across Carillon Point to the southern part of the YBM.~~ use that area The whole concept just doesn't make sense.

4] Moorage Expansion

The YBM project calls for the expansion of one of their present docks enlarging it to the south by 66 feet. One of the drawings submitted for this expansion by the YBM shows how boats will be able to come into the YBM fueling docks and repair. It shows the boats coming in side by side which is not how the boats enter or leave this facility. But most importantly it shows the boats coming across into our dock and residential water area. It shows boats using the water in front of our property rather than the water in front of the marina property. On nice days there are lots of boats coming into the marina and when there are more than one or two, they tend to tie up to our dock while they wait to get service at the marina. So what I am saying is when boats use the marina today as it stands, they come across the area near our dock or onto our dock. If the moorage is allowed to increase so that it impacts the traffic lane even more, we will suffer even more as the boats will have to come yet closer to us. It doesn't seem right that the marina should be able to increase their moorage at the expense of the neighbors. We are zoned residential. The city would not allow us to use that water for commercial purposes. But they are allowing the marina to increase the amount of commercial usage on our residential property.

20' from water property line to our property line. Boats move out now, so would move out more with dock extension

5] Traffic

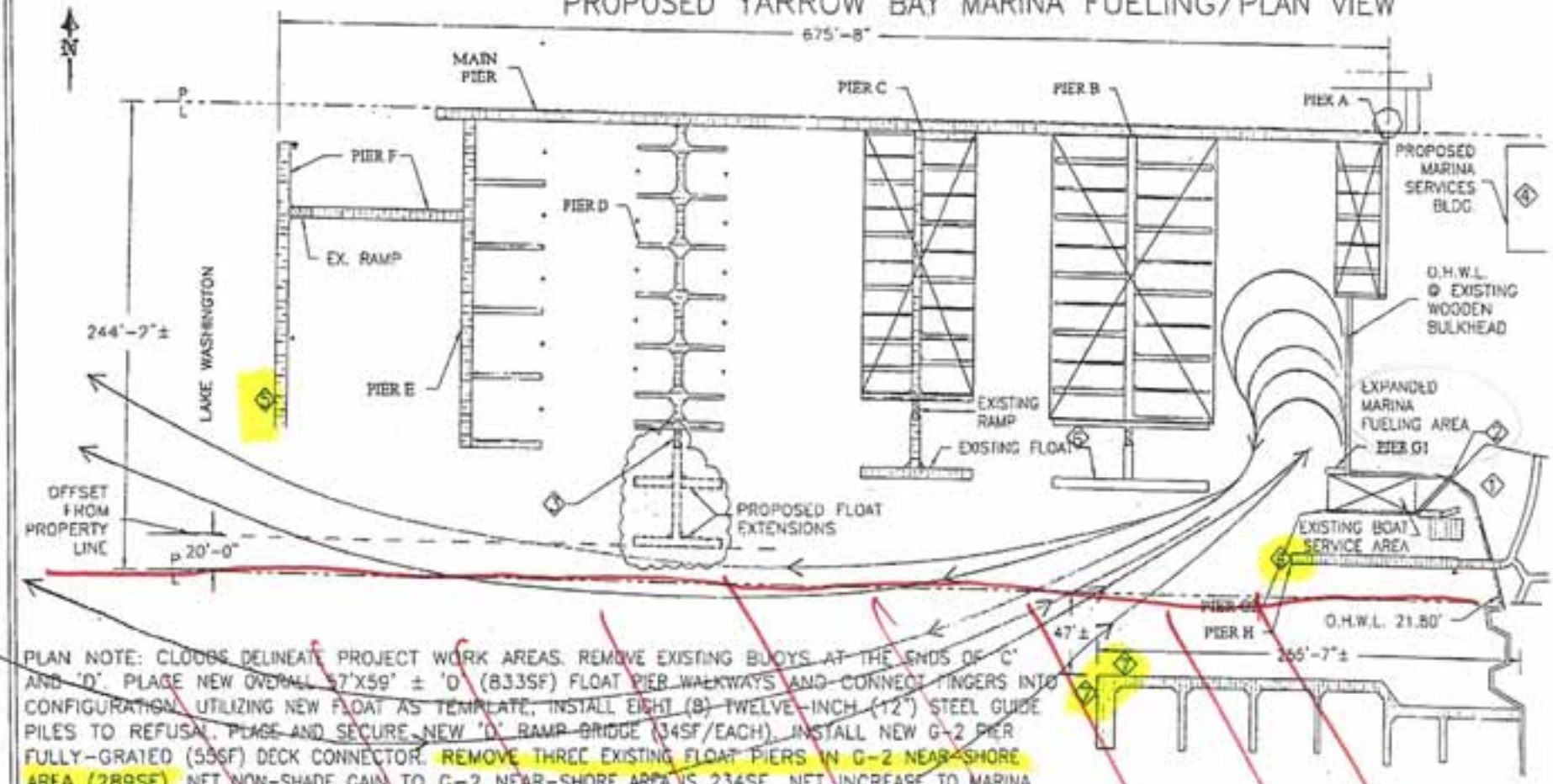
The traffic on Lake WA Blvd. is a problem. It is presently extremely difficult to enter or to exit our driveway. It is next to impossible in the five to six pm time and in the mornings 8:30 to 9:30am. We have to go across a very busy pedestrian sidewalk, then a bike lane, then the south bound lane, then the left turn lane, and finally we are in the northbound lane. Sometimes during the day the light at Carillon Point will help us with cars, but not with the pedestrians or the bikers. To add to the complications here, our driveway is offset from the road way across Lake WA Blvd. which is 52nd Street. If a car is in the left turn lane headed south and you are in the left turn lane headed north [to turn into the Breakwater Driveway] you cannot turn until the car in the left turn lane headed south towards you moves. This is because if a car is in the left turn lane you cannot see if it is clear to turn across traffic until that car moves.
This is how it is now, with the additional cars into and out of the YBM project, it will only be worse particularly if they line up very many cars in the left turn lane to get into the YBM, then the left turn lane que will be across our driveway entrance.

This may all seem like "no problem" on paper, but until you experience this first hand you cannot fully understand the situation we experience each time we attempt to enter or leave our driveway.

I hope you will give these areas of concern further evaluation and will not approve the proposal as it presently stands.

LouAnn Freeburg
4823 Lk WA Blvd NE # 6
Kirkland,WA 98033

PROPOSED YARROW BAY MARINA FUELING/PLAN VIEW



PLAN NOTE: CLOUDS DELINEATE PROJECT WORK AREAS. REMOVE EXISTING BUOYS AT THE ENDS OF 'C' AND 'D'. PLACE NEW OVERALL 57'X59' ± 'D' (833SF) FLOAT PIER WALKWAYS AND CONNECT FINGERS INTO CONFIGURATION, UTILIZING NEW FLOAT AS TEMPLATE; INSTALL EIGHT (8) TWELVE-INCH (12") STEEL GUIDE PILES TO REFUSAL. PLACE AND SECURE NEW 'D' RAMP BRIDGE (34SF/EACH). INSTALL NEW G-2 PIER FULLY-GRATED (55SF) DECK CONNECTOR. REMOVE THREE EXISTING FLOAT PIERS IN G-2 NEAR-SHORE AREA (289SF). NET NON-SHADE GAIN TO G-2 NEAR-SHORE AREA IS 234SF. NET INCREASE TO MARINA DECKING IS 1184SF.

1. SEE: PLANTING PLAN ADDENDUM B
2. PROPOSED G-2 WALKWAY
3. NEW RAMP TO PROPOSED 'D' FLOAT PIER
4. SEE: ADDENDUM D
5. PROPOSED SIGN: SLOW TO 5 MPH; NO WAKE. STAY NORTH OF BUOYS.
6. PROPOSED SIGN: BOATS FOR FUELING SHALL NOT TIE TO NEIGHBORING DOCKS. YARROW BAY MARINA STAFF WILL ENFORCE.
7. PROPOSED SIGN: ABSOLUTELY NO PUBLIC BOATING TIE-UPS TO THIS PRIVATE PIER. TRESPASSERS WILL BE REFUSED FUELING SERVICE.

REVISED 5-26-06

Note Boats using Residential property to access fueling.

Residential Property

Stacy Clauson

From: Karen Walter [Karen.Walter@muckleshoot.nsn.us]
Sent: Friday, July 28, 2006 2:09 PM
To: Stacy Clauson
Subject: RE: Yarrow Bay Marina[Scanned]

Yes you are correct. I was confusing the upland area with the waterfront area. I can see by looking closer at the proposed planting schedule for the waterfront area they are proposing to plant native species and the non-natives are on the upland portion. Please note that there would be more biological benefit if they were to change the proposed nootka rose, Oregon grape, and kinnikinnick as shown with native willows to provide additional overhanging vegetation than what currently exists.

Karen

From: Stacy Clauson [mailto:SClauson@ci.kirkland.wa.us]
Sent: Friday, July 28, 2006 1:38 PM
To: Karen Walter
Subject: RE: Yarrow Bay Marina[Scanned]

Karen,

I want to make sure that I understand your comment. The waterfront area has a separate landscape plan than the other upland areas and contains native species. The landscaping in the parking area and around the office building is where some of the non-natives species come in. Does your comment address the landscaping along the shoreline area, or near the office building and within the landscape islands for the parking?

Stacy Clauson
Planner
City of Kirkland
Planning and Community Development
123 Fifth Avenue
Kirkland, WA 98033
425-587-3248
sclauson@ci.kirkland.wa.us

From: Karen Walter [mailto:Karen.Walter@muckleshoot.nsn.us]
Sent: Friday, July 28, 2006 1:34 PM
To: Stacy Clauson
Subject: RE: Yarrow Bay Marina[Scanned]

Stacy,
Again, thank you for the updated information. According to what is proposed to be planted, it seems that several of the shrubs in particular are non-native plants, such Korean Boxwood.

The applicant should be required to plant only native plants and should seek to include more overwater coverage from shrubs and trees than what is proposed.

A list of native plants can be found at http://dnr.metrokc.gov/wlr/PI/Go-Native/FindPlant.aspx

Thanks,
Karen

EXHIBIT B

From: Stacy Clauson [mailto:SClauson@ci.kirkland.wa.us]
Sent: Friday, July 28, 2006 1:18 PM
To: Karen Walter
Subject: RE: Yarrow Bay Marina[Scanned]

Karen,

I have attached the original planting plan for your review. It looks like the flowering currant were eliminated and salal introduced. Other than that, the plan quantities indicated on the plant schedule remain the same. Please let me know if you have any comments. Thanks,

Stacy Clauson
Planner
City of Kirkland
Planning and Community Development
123 Fifth Avenue
Kirkland, WA 98033
425-587-3248
sclauson@ci.kirkland.wa.us

From: Karen Walter [mailto:Karen.Walter@muckleshoot.nsn.us]
Sent: Friday, July 28, 2006 12:48 PM
To: Stacy Clauson
Subject: RE: Yarrow Bay Marina[Scanned]

Stacy,
Thank for sending this updated information. It appears that there is a reduction in the amount of trees to be planted from the proposal that we saw in May. Do you know how many trees and of what species were removed from the original planting plan when the proposal was modified to include the paver sidewalk and benches were proposed?

Karen Walter
MITFD

From: Stacy Clauson [mailto:SClauson@ci.kirkland.wa.us]
Sent: Friday, July 28, 2006 10:41 AM
To: Karen Walter
Subject: Yarrow Bay Marina[Scanned]

Karen,

Attached is a copy of the current landscape plans that show tree retention and the waterfront plaza design. Also enclosed is a copy of the staff report for this project. Please let me know if you have any questions. Thank you,

Stacy Clauson
Planner
City of Kirkland
Planning and Community Development
123 Fifth Avenue
Kirkland, WA 98033
425-587-3248
sclauson@ci.kirkland.wa.us

Stacy Clauson

From: Sharon Shelton [Sharon_Shelton@fsafood.com]
Sent: Tuesday, July 25, 2006 8:48 PM
To: Stacy Clauson
Subject: file no SHR06-00001

Dear Stacy,
The owners of Yarrow Cove condominium have concerns as to the amount of foot traffic on the public pedestrian access , the boat traffic to and from the fuel docks, and our view of the marina in general if the current trees are removed. It is our understanding that the floating tie up for the boats waiting to enter the fuel dock is no longer part of the plans. That is a serious problem for us. If the fuel dock traffic can not be controlled then the fuel dock should be removed.
We plan to attend the hearing on July 31 st..

Yarrow Cove Condominium Managers,
Sharon & Gary Shelton

Design Narrative Statement for
Proposed Marina Suites Office and Marina Services Buildings

RECEIVED
JAN 20 2006
AM PM
PLANNING DEPARTMENT
BY

Date: January 18, 2006

Project Address: 5001 & 5207 Lake Washington Blvd. NE
Kirkland, WA

1. 2002 Comprehensive Plan Amendment

   a. General, PLA 15 Zoning

Response: Primary city objectives have been achieved through continuation of the existing marina use for the community and current patrons. Public access, use, and visual access to the lake have been incorporated into the overall project design.

This project is a mixed use of existing marina/marina service operations and new office space. As such, the proposed office building does not detract from the public orientation to the waterfront through its proximity to the marina and location on the site. Through its proximity to the marina and site location, the proposed office building does not detract from the public's orientation to the waterfront.

The existing use and character of this site is being upgraded and improved by:
a) the removal of existing dry dock boat storage;
b) site landscaping and beautification;
c) public access amenities such as walkways and sitting areas ;
d) removal of existing marina services building and construction of new outside
e) shoreline view corridor created through site from boulevard;
f) construction of Class 'A' commercial office building

The existing site is being enlivened through these proposed improvements and the streetscape will be enhanced. The proposed driveway access into the site will be approximately where the existing driveway entrance is located. Currently the project is planning to include a wider driveway, one (1) inbound lane and two (2) outbound lanes with a driveway median pedestrian crosswalk island, so as to better accommodate the expected traffic volume entering and leaving the site.

Enhancements to the View Corridor, Line-of-Sight Corridor, and Public Access are further described in the text below.

   b. View Corridors

Response: The project has been designed to comply with the city's criteria to afford sidewalk pedestrians, boulevard traffic and residences to the east improved views of the lake by locating the proposed Marina Suites Office and Yarrow Bay Marina Services Buildings into the northerly portion of the site. The existing Yarrow Bay Marina Services Building is proposed for removal from the view corridor to be created through the site. See the *Project Summary* for view corridor width calculations.

ATTACHMENT 17
SH2006-00001

Along with meeting the city's required 35' setback, the proposed Marina Suites Office Building will comply with the city's 40' maximum height guidelines. The result will be a building only 17' +/- above the existing sidewalk elevation along this high point of Kirkland's Lake Washington Boulevard.

c. Line of Sight Corridor

Response: The project has been designed to ensure that neither parked vehicles nor landscaping will obstruct the line-of-sight to the lake's shoreline from the boulevard or adjacent residences east of the view corridor.

d. Public Access

Response: The project has been designed to afford the public access down to the shoreline from Lake Washington Boulevard westerly via a walkway adjacent to the southern property line. The site's design proposes to connect north-south portions of the Kirkland Shoreline Pedestrian Access Trail already existing at Carillon Point and the Breakwater Condominiums. The proposed north/south walkway has been intentionally located to the east of the proposed Marina Services Building for public safety. This is because of the light industrial nature of the marina operations' fueling area, boat washing and fork-lift haul-outs for boat yard repairs. During the 2002 Comprehensive Plan Amendment decision process, public comment identified observing the boat yard activities was enjoyed as part of the personality of their neighborhood. When the existing marina services building is removed, the pedestrian public will be able to observe all of this activity at once from a safe distance at the trail's nearby proposed public amenity seating area and lake viewing node along the site's southerly shoreline.

The trail's shoreline access node area will be completely landscaped (existing site trees there will be retained) to include shoreline vegetation requirements of the permitting agencies. Landscaping will be continued along the southerly property line walkway to the boulevard. This will heighten the public's view enjoyment of Yarrow Bay, Lake Washington and the Olympic Mountain Range from the boulevard to the shoreline without obstruction by upland or marina moorage structures.

Our project team strongly recommends that the east-west public access be eliminated in favor of an additional landscaping buffer along the southerly property line to more fully screen the Breakwater Condominiums, as was requested by their residents at the January 15, 2006, Neighborhood Meeting. In the Kirkland Municipal Code, Section 24.05.135, (a), it states, "Access to the waterfront may be waived by the city if public access along the waterfront of the subject property can be reached from adjoining property."). As the shoreline can be reached along the north of the site's lateral property line with Carillon Point and at the south end of the Breakwater site, this waiver is possible and would afford more driveway screening plantings for the Breakwater Condominiums.

e. Moorage Structures and Facilities

Response: Proposed structures and facilities are within the general and permitted use criteria of this regulation and its specific codes for providing additional general moorage tenant slips and private boat service and repair. A comprehensive analysis and thorough summary of how the proposed structures meet PLA15A development codes may be found in the Development Regulations response portion to the Substantial Development Permit application in Section A.2. Those responses speak to most of these Shoreline Regulations. A few added notes are made here, however. No bulkhead is being proposed. Shoremount pin piles for proposed G-2 walkway are upland of the existing bulkhead structure. Its proposed walkway deck does not exceed a height of 24 feet above sea level. No covered over water structures are proposed. Side setback regulation is exceeded at 20'. The proposed 'C' float extension is more than 25 feet from the condominium's existing fixed pier structure. A joint-use buoy system is proposed as an out-growth of the 1/11/06 neighborhood meeting's comments by the Breakwater Condominium residents attending. It will be utilized to separate the boating public lining up for fueling at the marina allowing tethering while waiting. A sign will be posted at its western end to the effect of fueling left and trespassing right. The boom will prevent the public from being able to get into the fueling area if they attempt to enter the condominiums' shorelands area. The 40' height above ABE of the proposed office building structure follows the view corridor and setback requirements of the 2002 CPA determination. Finally, the proposed mooring structures do not extend out to the Inner and Outer Harbor Lines.

2. Kirkland Zoning Code Use for PLA-15 Zoning

a. Proposed Marina Suites Office Building

Response: The proposed office building is a city-permitted use and is considered complementary to the marina use. The city's guidelines for building footprint, configuration as to lot size, set-backs, height and vehicle parking are all incorporated in the design. Further details may be found in the *Project Summary* which is a part of this Land Use Submittal.

The minimum number of parking stalls (including the marina's) will be provided. The parking layout consists of approximately 43 surface parking stalls and 168 below grade parking stalls. This design greatly enhances the site view corridor and improves the site character through less visible vehicles. Please refer to the accompanying *Traffic Impact Analysis*, which evaluates the requirements, needs, and vehicle parking provisions.

Parking has been configured in an efficient manner so as to minimize site parking areas. The exterior parking areas will be attractively landscaped with the required vegetation planting islands that will not obstruct views of the lake from the public right-of-way. In designing public pedestrian access trails on the site to and along the shoreline, care has been exercised to minimize potential for hazards occurring

between vehicular traffic and marina operations. Site planning has afforded visual and physical separation from adjacent neighbors.

The ownership will provide the appropriate easements to the city for recording site public access, liability, utilities, joint landscape maintenance and parking, joint property line water boom with Breakwater Condominiums, as required.

b. Proposed New Yarrow Bay Marina Services Building

Response: The new Marina Services Building is both an existing and city permitted use. The existing marina is considered complementary to the office building. The building footprint and design configuration includes lot size, required setbacks, building height, and vehicle parking and complies with the city's guidelines. Further details may be found in the *Project Summary* section of this Land Use Submittal.

The two (2) proposed buildings will have similar material, color, and detailing to complement each other.

The site's vehicle parking provision will be attained through a shared parking strategy, where the office tenants will utilize site parking during weekday business hours; the marina's mooring tenants during the evenings and weekends. This strategy reduces the total number of vehicle parking stalls on the site.

Please refer to the accompanying *Traffic Impact Analysis* for additional information.

c. Proposed Pier Extension

Response: To provide for increased small boat moorage demand, Yarrow Bay Marina proposes to extend existing Pier 'D' with a 66' +/- float pier extension to provide for six (6) additional moorages. A fire standpipe will be extended along Pier 'D' to within 120' of the ends of the proposed float as required by Kirkland Fire Department. Deck lights will also be incorporated within it as required by the city. (See: the marina extension project plan set for details in C.8).

At one parking stall per two proposed moorages, the proposed overall site parking configuration of 211 spaces will incorporate this requirement. Please see the accompanying Transportation Report for the August, 2005 parking study by the marina indicating sufficiency of 30 spaces during peak boating season. As part of its Corps Permit concurrence, the National Marine Fisheries Service has requested the float pier extension be grated. A connector walkway to G-2 Pier is proposed so that it may be readily accessed by marina staff for their in-water boat repairs. The existing

nearshore floats will be removed and eliminated from the proposed public shoreline access area.

As per the 1/11/06 Neighborhood Meeting, a joint-use boom is being proposed with the Breakwater Condominium Homeowners Association. It will start just south of the western end point of 'H' pier (the marina's boat rental pier on the south end of the site) and extend 240' westerly along the east-west lateral property line extended across Yarrow Bay. Purpose of the boom is to provide summer boaters the ability to temporarily moor while lined up and waiting for fueling at the marina during the busy summer boating season and thereby deter them from utilizing the Breakwater Condominium's pier for this purpose.

d. Proposed South Shoreline Area Plantings

Response: The South Shoreline Area will be planted with native plant material in accordance with the U.S. Army Corps of Engineers' recommended plant list for Lake Washington. The plan has been reviewed and accepted by project biologist, Amy Myers of The Watershed Company. The zone between ordinary high and low lake levels and the immediately adjacent upland shoreline slope will be planted with a mix of native emergent and wet tolerant plant materials. The higher elevations of the shoreline slope will be planted with drought tolerant native plant material suitable for this area and its west exposure.

The proposed shoreline planting conforms to the conditions of the Line-of-Sight Corridor. Existing trees in the shoreline area will be retained as per agreement with city. No new trees are being planted with the proposed plantings for this area. All plantings will remain under the three foot height restriction within the view corridor.

e. Proposed Marina Operations

Response: Yarrow Bay Marina will continue its existing operations of providing moorage space rentals, boat fueling (the only fueling place between Kenmore and Newport Shores on Lake Washington), boat haul-out, washing, repair services, cleaning, and rentals. The location of its gasoline and diesel fuel storage areas will be re-located to underneath the lower driveway turn-around parking island. Marina garbage dumpsters and pier walkway carts will be corralled in the very northwest corner of the lower site at the locked entrance gate to the main pier walkway and the private marina moorages.

The existing marina services building and HzMt storage structures will be demolished after the proposed new marina services building is completed north end of the lower site. Internal shop area HzMt storage will be provided in the new building. A full basement area is proposed for underneath the first floor shop and retail area as well as an office area upstairs above the retail area. A central HzMt materials station will be located and maintained at the building's entrance to accommodate clean-up needs of moorage tenants. This will facilitate marina staff monitoring usage and maintaining

clean-up materials stock. It has been the marina's past experience that some mooring tenants tend to rifle through these expensive supplies at HzMt stations located out on the piers in order supply their own boats as opposed to using them for clean-ups at the marina. Restrooms and shower facilities will continue to be offered to boat slip moorage tenants and their guests in the new marina services building.

The proposed building footprint and configuration is squeezed between the 15% average parcel width shoreline setback area requirement (approximately 68' +/-) and the existing sewer easement. Kirkland Public Works Director Rob Jammerman has pre-approved a request to accommodate an approximate 40' east-west length needed in the proposed building's shop service area space by reducing the existing 20' wide sewer easement to fifteen feet along only the 42' length of the shop's proposed eastern wall. Grasscrete blocks will be placed alongside the sewer easement in this stretch of the proposed public access trail to accommodate sewer utility vehicles and/or equipment needing access along there.

a. **Substantial Development Permit.**

i. **WAC 173-27-140 Review criteria for all development.**

(1) No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.

(2) No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

The project will not obstruct views of any adjoining residential properties. The site designs follows the view corridor and building height conditions of the 2002 Kirkland Comprehensive Plan Amendment for the proposed 40' height above average building elevation, to the benefit of residences to the east of Lake Washington Boulevard.

ii. **WAC 173-27-150 Review criteria for substantial development permits.** (1) A substantial development permit shall be granted only when the development proposed is consistent with:

(a) The policies and procedures of the act;

(b) The provisions of this regulation; and

(c) The applicable master program adopted or approved for the area. Provided, that where no master program has been approved for an area, the development shall be reviewed for consistency with the provisions of chapter 173-26 WAC, and to the extent feasible, any draft or approved master program which can be reasonably ascertained as representing the policy of the local government.

(2) Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

iii. **Relevant Use Regulations:** *Refer to submittal responses found in Section B: Design Narrative Statement for below code use regulations.*

1. KMC 24.05.160, Retail and Office use (refers to KMC 24.05.205)
2. KMC 24.05.165, Moorage structures and facilities
3. KMC 24.05.130, Parking
4. KMC 24.05.135, Public Access

Zoning Code Decisional Criteria:

a. It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and

b. It is consistent with the public health, safety and welfare.

Development Regulations. See PLA 15A zone.

1. *The proposed pier structures for the site are marina-use-related.*
2. *Pedestrian access is provided to the south shoreline area and away from the light industrial nature of the marina activities for public safety in the northern shoreline portion of the site. and covered moorages site while affording the neighborhood views of the boating activity and Yarrow Bay.*
3. *The proposed marina services building is set-back 15% of the overall parcel width from the shoreline. Please see: Section C6, page A-1.0 The public safety is paramount consideration in constraining access through the light industrial nature of the boat yard and marina operations at the northern portion of the shore area. The view corridor through the site and public access area affords the pedestrian complete views of its operation and boating activities.*
4. *The proposed Yarrow Bay Marina Services Building and Marina Suites Office Building follow the view corridor design criteria determined within the 2002 Kirkland Comprehensive Plan Amendment decision. The view corridor is further enhanced by proposed demolition of the existing marina services building.*
5. *The proposed 40' height above the site's Average Building Elevation is only 17' above the top back of Lake Washington Boulevard NE sidewalk. It enhances the view for residences across the street from what exists now by eliminating blocking cottonwood and willow trees, and only obstructs the marina's covered moorage structures for the bottom Yarrow Villa condo residences. A waterfront public access area is provided. The public may rent boats from the marina moored there at Pier 'H' by showing their current drivers license and credit card. Breakwater Condominiums requested at the 1/11/06 neighborhood meeting that Kirkland Planning Department seek to amend 2002 CPA's 3' planting height constraint within the boulevard to shore access 6' trail design and planting buffer design along their joint property line [with the site] so that trees may grow taller and create more screening from the proposed driveway use. As this is not allowed in the 2002 Comprehensive Plan Amendment's requirements, the proposed development cannot reflect this recommendation in its planting buffer design. No roof top appurtenances are in the design. The height of the proposed celestory windows are at the 40' above ABE and provide visual interest to view of the roof for upland residential properties.*
6. *A traffic impact analysis report is provided in Addendum D.7. A pedestrian refuge island is proposed within the median of the driveway cut sidewalk crossing area. The proposed ten additional moorages' five required parking spaces meet the 23 spaces required of the marina services building square footage (6980 ./. 300/sf per parking space). The table developed in Addendum D8 justifies this approximate 30 parking space use by the marina operation. Marina staff noted business hours parking demand over two-hour day-time periods during one week in August, 2005. The table shows peak demand between 4-6pm on a Friday night and allows for complementary joint-use parking with the office building.*

7. *The design follows the view corridor conditions of the 2002 CPA determination and enhances the scenic nature of the site for the public's visual and physical access. Proposed moorage pier extension is to meet additional demand for small boat moorage slips at the marina. It is not beyond the Outer Harbor Line and concurs with the side setback from the lateral property line. At the 1/11/06 neighborhood meeting, the Breakwater Condominiums requested something be done to keep the boat fueling public from mooring at their pier while waiting in line. A 240 linear foot joint-use floating PVC boom is therefore being proposed as a result of this meeting's comments. It will have a sign to the effect at its western end buoy for fueling to the left and trespassing to the right. It will have facilities so fueling boats can tether themselves to it while waiting their turn for fueling. The G-2 walkway is being proposed to facilitate in-water boat service repair access for marina staff. It is being constructed without piling in the nearshore water and facilitates removal of three floats shading the aquatic habitat and salmonid migration zone in the proposed public shore access area. These structures will not interfere with public use, enjoyment nor create navigational hazards or adverse affects to nearby uses. They will have deck lighting and be as fully grated as is structurally possible to minimize any possible adverse shading impacts to fish predation and aquatic plant life over time.*
8. *No residential uses are being proposed in the designs. The proposed pier structure will not extend beyond the Inner Harbor Line.*
9. *No residential uses are being proposed in the designs. The proposed 'C' Float Pier Extension and G-2 Walkway wood framing components will be pre-treated with ACZA, which is accepted by local, state and federal permitting authorities. Steel guide piles for the float will be pre-treated with Devtar 5-A non-coal tar epoxy.*
10. *Covered and secured waste receptacles are provided at all piers and will be in the shoreline access area as well.*
11. *Utility lines into the site from the boulevard and throughout the pier structures will be underground and below deck.*
12. *Restrooms and shower facilities will be provided in the new Marina Services Building for boat mooring tenants and their guests.*
13. *Existing pier lighting and proposed deck lighting for new pier structures is shown in Section C.8 on Addendum A. Deck lights are low voltage and rise just a few inches above the plane of the deck surface.*
14. *Yarrow Bay Marina is identified at its water entrance for the boating public.*
15. *Additional covered moorage is not being proposed.*
16. *Aircraft moorage is not being proposed.*
17. *Only allowable accessory uses in Process IIB, chapter 152 KZC are being proposed:*

a. Boat rentals will continue to be provided to the public from Pier H off of the access shore area when a current drivers license and credit card are shown to the marina staff.

b. Boat and motor repairs and service will continue at the marina both in the covered G Pier moorage area for large boats and in the new shop and boat washing areas for smaller boats. This is in keeping with the public testimony during the 2001 CPA hearing process that the public deemed boat yard activities as part of the special nature and personality of the neighborhood. Dry land motor testing will be done, however, inside the new marina service building's shop area.

c. No boat launch ramp exists now or is proposed .

d. The existing dry land boat storage will end with the construction of the proposed upland site's re-development to office use.
e. No special meeting or special events rooms are being proposed in the designs.
f. Gas, diesel and oil sales for the boating public will continue as it exists now. Existing approved underground fuel storage tanks will be re-located to underneath the lower turn-around parking island. As exists now, facilities to clean-up and contain gas and oil spills will be maintained at the marina services building. The boating public has stocked its boats from these expensive supplies when stations were previously out on the piers. Thus a single station will continue to be retained at the proposed new marina services building as exists now. The Washington State Department of Ecology's Best Management Practices Manual for Marina Operations is incorporated as part of this Shoreline Substantial Development Permit application.
18. A pump-out facility is provided within the existing marina operations just upland from the boat fueling area and will be as well in the proposed.

Comprehensive Plan – Key Policies:

1. The primary objectives for development in PLA 15 are to maximum public access, use, and visual access to the lake and to maintain the natural characteristics and amenities of the Houghton Slope. *(Note that impacts of particular concern include view obstruction, traffic volume and movement, noise and glare from uses of higher intensity, and compatibility of building scale). See cover letter; Section B's Design Narrative and Section C.5 - C.7 and Addendum D.7.*
2. Subarea A should be developed with a mixture of **uses**: *Proposing marina and office.*
3. 'Water dependent' and 'water oriented' commercial uses should be included. *(Note that office uses are permitted if they do not detract from the public orientation of the waterfront). Building designs promote the public's waterfront orientation while affording the neighborhood views of the marina's boating activity as per public comment during 2001-02 Comprehensive Plan Amendment process design review.*
4. Public access to and along the water's edge and waterfront public use areas should be developed. *They are inherent in the overall site design(s) while keeping the public safe from the light industrial nature of the marina operations.*
5. Public improvements adjacent to Lake Washington Blvd are also desirable. *A pedestrian refuge island is proposed in the median of the driveway cut.*
6. Visual access to Lake Washington from Lake Washington Blvd should be maintained. *Provision of view corridor through site to shore provides public visual attraction as well as pedestrian access.* To achieve greater visual access, building height, setback, and view corridor requirements may be varied. *Office and marina services building height and setback designs promote view corridor. See: C.6.* Views from existing developments should be protected. *See: View Studies in C.7.*
7. Traffic impacts to Lake Washington Blvd should be considered. Access points should be limited. *See: Traffic Impact Analyses in D.7*
8. The existing marina in Subarea A and south of Carillon Point should be retained. *The site design keeps the existing marina operation with complementary office use.*

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

CITY OF KIRKLAND
NOTICE OF APPLICATION
YARROW BAY MARINA SITE REDEVELOPMENT
FILE NO. SHR06-00001
March 3, 2006

PROPOSAL: Marina Suites, LLC, the applicant, is requesting a Process IIB Permit to construct a new 55,000 square foot office building and 7,000 square foot marina services building. The existing Yarrow Bay Marina services building is proposed to be demolished. The existing marina operations which include boat moorage, fueling, repair, and rentals would continue at the site. The proposal also includes a 66-foot long extension of an existing pier to provide for six additional moorage spaces. The application was received by the City on January 20, 2006 and was deemed complete on February 27, 2006.

LOCATION: 5207 Lake Washington Blvd

REVIEW PROCESS: The decision on this application will be made by the City Council, based on a recommendation from the City's Hearing Examiner and Houghton Community Council. The City Council's decision on the application is also subject to disapproval by the Houghton Community Council. The process involves an opportunity for public comment in writing or at a public hearing to be held by the Hearing Examiner and Houghton Community Council. Prior to the hearing, the Planning Department will prepare a staff report making a recommendation on the application. Following the hearing, the Hearing Examiner and Houghton Community Council will each make a recommendation to approve, modify or deny the application. The City Council will make a decision on the application based on the recommendation of the Hearing Examiner and Houghton Community Council and the record of comments and information provided to the Hearing Examiner and Houghton Community Council. The decision will be based on whether the application complies with Kirkland's Zoning Code and other applicable codes. A hearing date has not yet been set. **Notice of the hearing will be given at least 14 days before the hearing**

PUBLIC COMMENT: Written comments received prior to 5 p.m. on April 10, 2006 will be considered by the Planning Department in preparing its recommendation and staff report to the Hearing Examiner. Written comments may be submitted to the Hearing Examiner at any time before the close of the public hearing. Oral comments may be provided at the hearing. A copy of the Hearing Examiner's recommendation, the Houghton Community Council's recommendation and the City Council's decision will be mailed to those providing written or oral comments before the close of the public hearing. Others may obtain copies from the Planning Department. ***Send written comments to project planner Stacy Clauson, 123 5th Ave., Kirkland, WA. 98033 or to sclauson@ci.kirkland.wa.us. Please indicate your name and address and refer to file number SHR06-00001.***

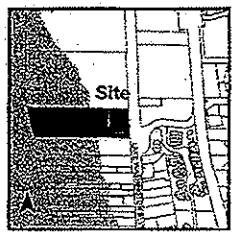
APPEALS: The City Council's decision is the final decision of the City. Judicial review may be requested pursuant to state law. The Houghton Community Council may exercise its authority to disapprove of this application.

FOR MORE INFORMATION: For more information about this application, please contact project planner Stacy Clauson, City of Kirkland Planning Department at 425-587-3248 or sclauson@ci.kirkland.wa.us.

Application materials are contained in the official file available in the Planning Department, 123 5th Ave., Kirkland, 8 a.m.–5 p.m. Mon.–Fri. Existing environmental documents that evaluate the proposal include: Geotechnical Report, Traffic Study, and Arborist Report, Biological Evaluation.

Publishing Date: March 9, 2006

NOTICE OF APPLICATION



Site Location
5201 LAKE
WASHINGTON BLVD NE

Applicant
PHIL GOLDENMAN

File Number
SHR06-00001

5c

Proposal: Construct a new 55,000 square foot Office Building and 7,000 square foot Marina Services Building. The existing Yarrow Bay Marina services building is proposed to be demolished. The existing marina operations which include boat moorage, fueling, repair, and rentals would continue at the site. The proposal also includes a 66-foot long extension of an existing pier to provide for six additional moorage spaces.

Decision Maker: Hearing Examiner and Houghton Community Council recommendation to City Council

Public Comment and Appeal: Public comments will be accepted in writing only (letters or e-mails) and must be received prior to 5 p.m. on April 10, 2006. The decision will be based on compliance with the Kirkland Zoning Code, Shoreline Master Program and Comprehensive Plan. Appeals may be filed only by the applicant or those who submitted written comments. City Council's decision is final, however, Houghton Community Council may exercise its authority to disapprove this application. Judicial review may be requested pursuant to state law..

More Information: You may view the official file in the Planning Department or contact project planner Stacy Clauson at (425) 587-3248 or sclauson@ci.kirkland.wa.us

CITY OF KIRKLAND DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT
123 5th Avenue, Kirkland, WA 98033 - www.kirklandpermits.net - 425.587.3225

J. RICHARD ARAMBURU
JEFFREY M. EUSTIS
Attorneys at Law
505 Madison Street, Suite 209
Seattle, Washington 98104
(206) 625-9515 Fax: (206) 682-1376

RECEIVED
JUL 17 2006
_____ AM _____ PM
PLANNING DEPARTMENT
BY_____

July 14, 2006

Ms. Stacy Clauson
Associate Planner
City of Kirkland
123 Fifth Avenue
Kirkland WA 98033-6189

Re: Yarrow Bay Marina/Marina Suites, Case No. SEP06-0004, SHR06-0001

Dear Ms. Clauson:

This office represents the Breakwater Condominium Homeowners Association whose address is 4823 Lake Washington Blvd NE, Kirkland, Washington 98033. Breakwater Condominium is located directly south of the subject proposal for construction of a new multi-level office building, relocated marina building, moorage expansion and parking development. I write today to ask, because of defects of notice and project description, that public comment period for the subject proposal be reopened and that no public hearings be held until after a new comment period has expired.

The reasons for our request are as follows.

I. Shoreline Permit Application Notices.

A subject proposal requires an issuance of a shoreline substantial development permit under the Shoreline Management Act. The Shoreline Management Act requires notice be given of an application for Shorelines Substantial Development, Conditional Use or Variance Permit.

The Notice of Application for this proposal issued on March 3, 2006 (published on March 9, 2006) referred only to processing of a subject proposal under a Process IIB Permit under the zoning code of the City of Kirkland. The notice makes no mention of any kind of processing of a Shoreline Substantial Development permit. Further, the Notice of Application indicates that the City Council decision is the "final decision" of the City when in fact under the Shoreline Management Act appeals of issuances of Substantial Development Permits can be made to the State Shorelines Hearings Board.

The Notice of Application is essentially misleading by not mentioning the

ATTACHMENT 4.f
SHR06-00001

application for a Substantial Development Permit or/and misleading the public as to review procedures.

The failure of the City to provide proper notice requires that the City provide a new notice of the project, a new comment period and to postpone any public hearing's pending completion of the comment period.

II. *Modifications To The Project Since Notice.*

It is essential that for public notice to be adequate there be a full description of the nature of the development proposal. In fact, this proposal has been modified substantially since the March 3, 2006 application. In particular, the applicant has now significantly modified and added a new public plaza, or pocket park, in the southwest corner of the site along the shoreline immediately adjacent to the Breakwater Condominium property. Plans recently made available indicate that a new plaza plan was prepared, according to the date block on the plans on May 26 and June 16, 2006, long after the notice was issued by the City. In fact, the notice provided by the City did not mention any shoreline plaza to be developed at the site at all.

Based on the foregoing, public notice should be reissued to correctly the nature of the total proposal on the site including the addition of the shoreline plaza/park.

Thank you in advance for attention to this matter.

Sincerely yours,

J. Richard Aramburu

JRA/km
cc: Breakwater HOA

C:\Aramburu\BREAKWATER HOA\ltr to clauson - kirkland 7-13-06.wpd

BEFORE THE CITY OF KIRKLAND
HEARING EXAMINER

In the Matter of: 5201 Lake Washington Boulevard NE Zoning/shoreline permit approval SEPA appeal	SHR06-0001 OUTLINE OF COMMENTS ON PROJECT NOTICE

I. INTRODUCTION

This memorandum outlines the comments of applicant Marina Suites LLC and Yarrow Bay Yacht Basin & Marina LLC ("Applicant") regarding the legal adequacy of the City of Kirkland's notice for the proposed office building, marina building relocation and marina expansion.

The Breakwater Condominiums have complained about the sufficiency of the City of Kirkland's notices of application for the City's Type IIB process, which includes the City's review of the shoreline substantial development permit for that portion of the proposed development within the City's shoreline jurisdiction. In particular, Breakwater complains that the shoreline permit was not specifically called out in the notice of application. As shown in the record before the Examiner, the notice of application mailed to the Breakwater Condominium homeowners clearly disclosed that the City's permit review included compliance with the City's Shoreline Master Program. That notice was legally sufficient. Moreover, the Breakwater Condominium homeowners had actual notice of the shoreline permit application, submitted extensive comments on that application, and have had ample time to prepare for the public

COPY

F
111
SEAT
PHONE (

EXHIBIT 6

hearing on that application—including representation by legal counsel. Under controlling Washington law, even when a written notice is inadequate, any inadequacy of the notice is cured if the party has actual notice of the hearing. Here, not only was the notice adequate, but the condominium owners had ample actual notice of the application, submitted comments to the City, and have had adequate time to prepare for the hearing. Accordingly, their claims about lack of notice have no merit.

II. DISCUSSION

A. The City's Notices of Application Were Legally Adequate.

Under the local project permitting act, the notice of application for a project permit may be in "whatever sequence or format the local government deems appropriate." RCW 36.70B.110(2). Among other things, the notice of application should include a description of the proposed project action and a list of the project permits included in the application. RCW 36.70B.110(2)(b).

Under controlling Supreme Court law, the purpose of notice statutes is to apprise affected parties sufficiently so that they may prepare for the hearing on the issue involved. If petitioners are not misled and are able to adequately comment, notice is legally adequate. *Nisqually Delta Ass'n v. City of DuPont*, 103 Wn.2d 720, 727, 696 P.2d 1222 (1985) (ambiguous location of proposed and alternative dock sites in notice was not unlawful notice, when petitioners made no showing that any party was actually misled and where petitioners were able to prepare for hearing). Washington cases also recognize that the type of notice required depends on the specific situation (e.g., whether the notice is for a final legislative action or merely for an application process where the public is informed where they can get additional information if interested). *City of Tukwila v. King County*, 78 Wn.2d 34, 38-40, 469 P.2d 878 (1970). The *City of Tukwila* case involved annexation of property by the City. The notice of the annexation, which would affect real property interests of many members of the public, was ambiguous about

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

which property along the northern annexation boundary would be included in the annexation. The Washington Supreme Court held that this notice was sufficient because it was "sufficient to alert anyone who read it that an annexation proceeding was underway involving the neighboring or adjacent area" and that maps and further information were available for inspection. *City of Tukwila*, 78 Wn.2d at 39-40.

Here, the City of Kirkland's notices of application gave sufficient information about the required permitting for the proposed Yarrow Bay Marina projects. The March 9, 2006 published notice clearly identified the project and all the proposed work. The notice identified that a Process IIB Permit was required, which includes both zoning review and shoreline permit review.[1] Moreover, just as in the *City of Tukwila* case, the City's notice of application included an invitation so seek additional information from the project planner Stacy Clauson for additional information about the application. The mailed notice that went to all the Breakwater Condominium homeowners was even clearer. That notice explicitly informed the Breakwater Condominium homeowners that the City's decision would be "based on compliance with the Kirkland Zoning Code, Shoreline Master Program, and Comprehensive Plan."[2] This plainly informed the petitioners that a shoreline permit was required. Again, the notice provided contact information for the project planner Stacy Clauson if any additional information was desired.

Like the notice approved by the Supreme Court in *City of Tukwila*, any person reading this notice would be alerted that development that work was proposed along the shoreline and in the water. Like the petitioners in *Nisqually Delta*, petitioners in this case have not shown that any party was actually misled by the notice and have not shown that they were prevented from preparing for the public hearing before the Examiner.

////

////

---

[1] Declaration of Phil Goldenman Regarding Project Notice ("Goldenman Dec.") at Ex. A.
[2] Goldenman Dec. at Ex. A.

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

2. Petitioners Had Actual Notice of the MIMP Application.

Under Washington law, claims about inadequate notice are moot if petitioners have actual notice. *Prekeges v. King County*, 98 Wn. App. 275, 280-281, 990 P.2d 405 (1999) (notice for telecommunications tower permits was incorrect and defective, but petitioners lack of notice claim was moot because petitioner had actual notice of the application and an opportunity to participate in the administrative review process); *Department of Natural Resources v. Marr*, 54 Wn. App. 589, 596-97, 774 P.2d 1260 (1989) (defective written notice of stop work order was not inadequate where appellant knew the property that the notice was intended to cover and was not actually misled by the notice).

Here, just like the petitioner in *Prekeges*, petitioners clearly had actual notice of the shoreline permit application and have fully participated in the application process. Petitioners attended two separate meetings called (one expressly for the Breakwater Condominium owners) that were held by the Applicant. Five different owners attended a January 11, 2006, meeting (including Homeowner Association president John Barnett) where all aspects of the project were discussed – including the shoreline permit and marina expansion.[3] After the Applicant changed the shoreline application specifically in response to petitioners' concerns, petitioners attended a second meeting on May 17, 2006, to discuss all aspects of the project – including the plans for the extension of Pier D at Yarrow Bay Marina. Moreover, all three of the petitioners that signed the SEPA appeal in this case submitted lengthy comment letters to the City of Kirkland – including a comment letter from the president of the Breakwater Homeowners' Association. Those comment letters called referenced the shoreline permit number and included detailed comments about the shoreline permitting issues.[4] Because petitioners had actual notice, any claim about defective notice is moot under controlling Washington law.

---

[3] Goldenman Dec. at ¶3 and Ex. B.
[4] Goldenman Dec. at ¶4 and Ex. C.

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

III. CONCLUSION

In this case the notices were legally sufficient, petitioners have not shown that any party was misled by the City's notices, petitioners were able to participate in the administrative process, and petitioners clearly had actual notice of the permit application. For all those reasons, petitioners claims of insufficient notice have no merit.

RESPECTFULLY SUBMITTED this 31st day of July, 2006.

FOSTER PEPPER PLLC

Roger A. Pearce, WSBA #21113
Attorneys for Marina Suites LLC and Yarrow Bay Yacht Basin & Marina LLC

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

BEFORE THE CITY OF KIRKLAND
HEARING EXAMINER

In the Matter of: 5201 Lake Washington Boulevard NE Zoning/shoreline permit approval and SEPA appeal	SHR06-0001 DECLARATION OF PHIL GOLDENMAN REGARDING PROJECT NOTICE

PHIL GOLDENMAN declares as follows:

1. Identity of Declarant. I am a permit coordinator for Waterfront Contruction and have been the permit coordinator for the Yarrow Bay Marina and Marina Suites redevelopment project at 5201/5207 Lake Washington Boulevard NE in Kirkland, Washington. I have personal knowledge of the facts in this declaration and am competent to testify to those facts.

2. City of Kirkland Notices. On about March 9, 2006, the City of Kirkland published a notice of application for the Yarrow Bay Marina site redevelopment under shoreline permit number SHR06-00001. That notice disclosed that a new 55,000 SF office building, a new marina services building, demolition of the existing marina services building, and a 66-foot extension to an existing pier were proposed. On about the same date, the City of Kirkland provided mailed notice of application to all project neighbors. The mailed notice disclosed that the project would be reviewed for compliance with both the Kirkland Zoning Code and the Kirkland Shoreline Master Program. True and correct copies of these notices are attached as Exhibit A to this declaration.

COPY
FOSTER PEPPER PLLC
1111
SEATTI
PHONE (2

EXHIBIT H

3. Actual Notice to Breakwater Condominiums. Well prior to the City's notices of application, the project applicant and City had been working with neighbors of the Yarrow Bay Marina – including the Breakwater Condominiums – and provided them with actual notice of the project. On December 15, 2006, applicant Yarrow Bay Marina sent an invitation to all neighbors within 300 feet to a public meeting. This was not a required public meeting, but the City of Kirkland encouraged the applicant to do this outreach. One hundred sixty-five (165) invitations were sent out – including invitations to each of the eight (8) condominium owners in the Breakwater Condominiums. The meeting, which was attended by City staff as well as project consultants, was held January 11, 2006, at the marina. A number of people from the Breakwater Condominium attended, including John Barnett, president of the Condominium Association, Helen Rodgers, Fred Freeburg and Luann Freeburg. All aspects of the project were discussed at that meeting. True and correct copies of the notice letter for that meeting, the mailing list for the meeting, and the signup sheet for that meeting (showing attendance by Breakwater Condominium homeowners, including the president of the Condominium Association) are attached as Exhibit B to this declaration.

At that time, the applicant was proposing the extension of two piers – Piers C and D. In response to the concerns of Breakwater Condominiums, we did not include in the shoreline permit application the proposal to extend Pier C. Only Pier D is now proposed for extension, which will be over 180 feet from the end of Breakwater's dock and is double the 10-foot setback required by the City of Kirkland from the extended side property line.

On May 17, 2006, Marina Suites and its consultants had another meeting with the Breakwater Condominiums. This meeting was held in Mr. & Mrs. Freeburg's condominium. We reviewed the revised plans for the shoreline permit application with Breakwater Condominium homeowners at that time. We discussed site development within the view corridor requirements (which included the public access trails), the construction schedule, extension to Pier D and the signage we are willing to put up to assist with the boat fueling queue.

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

4. Comment Letters from Breakwater Condominium Owners. Several of the condominium owners from Breakwater Condominiums have sent comment letters to the City specific to the shoreline permit application. The three signers of the SEPA appeal in this matter are Joan Schmidt, John Barnett, and Fred & Luann Freeburg. All of those condominium owners submitted comment letters to the City of Kirkland between March 17, 2006 and March 23, 2006. Those three comment letters are included in the City's staff report. True and correct copies of those letters are attached as Exhibit C to this declaration. The comment letters from the Freeburgs and Ms. Schmidt specifically referenced the Marina Suites shoreline permit application number. All of those letters discussed issues related to the marina site development.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Executed this 31st day of July, 2006, at Seattle, Washington.

PHIL GOLDENMAN

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

FINDINGS AND DECISION OF THE HEARING EXAMINER FOR THE CITY OF KIRKLAND

In the Matter of the Appeal of

File No. APL06-00007

BREAKWATER CONDOMINIUM BOARD OF DIRECTORS

from a SEPA determination by the Director, Planning and Community Development Department

Introduction

The Director of the Planning and Community Development Department, as SEPA Responsible Official, issued a Mitigated Determination of Nonsignificance (MDNS) on May 9, 2006. The MDNS was appealed by the Board of Directors for the Breakwater Condominium on May 23, 2006. The subject proposal is the extension of a pier and the redevelopment of the upland portion of the Yarrow Bay Marina site, located at 5207 Lake Washington Blvd NE.

The SEPA appeal hearing was conducted by the undersigned Hearing Examiner on July 31, 2006. The appeal hearing was held immediately following the public hearing conducted by the Hearing Examiner and the Houghton Community Council on the application for zoning and shoreline substantial development permit approval of the underlying project. Represented at the appeal hearing were the appellants, the Board of Directors of Breakwater Condominiums, by J. Richard Aramburu, attorney at law; the Director, by Stacy Clauson, Project Planner; and the applicant, Marina Suites LLC/Yarrow Bay Yacht Basin & Marina LLC, by Roger Pearce, attorney at law.

For purposes of this decision, all section numbers refer to the Kirkland Municipal Code (KMC or Code) unless otherwise indicated. Having considered the evidence in the record, the Hearing Examiner enters the following findings of fact, conclusions and decision on this appeal.

Findings of Fact

1. The Findings set forth in the Hearing Examiner's Findings, Conclusion and Recommendation on the underlying project application for zoning and shoreline permit approval (Files SHR06-00001 and ZONO06-00001), dated August 9, 2006, are hereby adopted and incorporated by reference.

2. All evidence entered into the record as part of the Examiner's review of the zoning and shoreline permit application for the underlying project was made part of the record for this appeal.

Conclusions

1. Under KMC 24.02.015, the decision of the responsible official is accorded substantial weight.

2. The appellants' appeal letter identified several issues as the basis for the appeal. Although the appellants' letter raises concerns about a number of aspects of the project, the record does not show that the MDNS was issued in error.

3. With regard to transportation, the record, including Exhibit A and the testimony of the applicant's traffic engineer, William Popp, show that the potential impacts from traffic would not have significant adverse environmental impacts, and are otherwise adequately conditioned.

4. With regard to trees, the appellants cite concern over potential damage to trees on their property, but the arborist's reports in Exhibit A show that there are unlikely to be impacts to the trees as a result of the proposed retaining wall, and no showing has been made that additional mitigation is required pursuant to SEPA.

5. With regard to parking, the appeal letter states that the appellants "strongly object to any variations from present codes," but otherwise alleges no errors with regard to the MDNS. This issue is therefore dismissed from the appeal.

6. The appellants appeal letter identifies the height of the lighting poles as a potential "huge negative factor to our residents." No adverse environmental impacts were shown to be created by light poles for the project, either because of their appearance or because of any light or glare that might be created.

7. The appellants also object to the proposed pedestrian path as being unnecessary because of existing pedestrian shoreline access, and the appellants urge removing the path to create additional space between the project and their property. However, no error is alleged as to the Director's SEPA determination, so the issue is dismissed from the appeal.

8. The appeal asks for the plantings on the southern portion of the project to be more than three feet in height, and asserts that allowing such taller plantings would have no significant impact on the view corridor. Again, the appellants do not allege errors that are cognizable in a SEPA appeal, so the issue is dismissed from the appeal.

9. The appellants objected to the marina dock expansion as causing boaters to use the water in front of the Breakwater Condominiums and to come more closely to the Breakwater dock. The appellants also allege that allowing the expansion would minimize the view of the lake and allows greater lake coverage. The evidence in this record does not show that the proposal would create significant adverse environmental impacts on account of greater boat traffic in proximity to the Breakwater property, additional lake coverage, or impairment of views. (Although not required as SEPA mitigation, the recommendation on the underlying project includes a condition concerning tie-up points and signage to manage boat traffic that might come near the Breakwater pier, which may at least partially address the appellants' concerns regarding boaters' activities.)

10. The MDNS has not been shown to be in error, and it should therefore be affirmed.

Decision

The Mitigated Determination of Nonsignificance is hereby **AFFIRMED**.

Entered this 9th day of August, 2006.

Anne Watanabe
Hearing Examiner

Concerning Further Review

KMC 24.02.110 states that: "Judicial review of SEPA determinations are by RCW 43.21C.075 required to be heard only at the time of judicial review of the underlying action, i.e. approval or disapproval of the proposal for which SEPA review was required. For rules on perfecting and timing of the SEPA determination and judicial appeal, see RCW 43.21C.075 and WAC 197-11-680(4). The notice required by WAC 197-11-680(5) shall be appended to the permit or "notice of appeal" at the time of final city action."

CITY OF KIRKLAND
123 FIFTH AVENUE, KIRKLAND, WASHINGTON 98033-6189
(425) 587-3225

DETERMINATION OF NONSIGNIFICANCE (DNS) .

CASE #: SEP06-00004 DATE ISSUED: 5/9/2006

DESCRIPTION OF PROPOSAL

Construct a new 55,000 square foot Office Building and 7,000 square foot Marina Services Building. The existing Yarrow Bay Marina services building is proposed to be demolished. The existing marina operations which include boat moorage, fueling, repair, and rentals would continue at the site. The proposal also includes a 66-foot long extension of an existing pier to provide for six additional moorage spaces.

PROPONENT: **PHIL GOLDENMAN**

LOCATION OF PROPOSAL

5201/5207 LAKE WASHINGTON BLVD NE

LEAD AGENCY IS THE CITY OF KIRKLAND

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21.030 (2) (c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

This DNS is issued under 197-11-340 (2); the lead agency will not act on this proposal for 14 days from the date above. Comments must be submitted by 5:00 p.m. 5/23/2006

Responsible official: 5/5/06

Eric Shields, Director Date
Department of Planning and Community Development
425-587-3225

Address: City of Kirkland
123 Fifth Avenue
Kirkland, WA 98033-6189

You may appeal this determination to NANCY COX at Kirkland City Hall, 123 Fifth Avenue, Kirkland, WA 98033 no later than 5:00 p.m., May 23, 2006 by WRITTEN NOTICE OF APPEAL.

You should be prepared to make specific factual objections. Contact Nancy Cox to read or ask about the procedures for SEPA appeals.

ATTACHMENT 5

SHR06-00001

Please reference case # SEP06-00004.

Publish in the Eastside Journal (date): May 18, 2006

Distribute this form with a copy of the checklist to the following:

✓ Environmental Review Section, Department of Ecology,
P.O. Box 47703, Olympia, WA 98504-7703

____ Department of Fish and Wildlife (for streams and wetlands - with drawings)
North Lake Washington Tributaries Area Habitat Biologist
16018 Mill Creek Boulevard, Mill Creek, WA 98012

✓ Department of Fish and Wildlife (for shorelines and Lake Wa. - with drawings)
Lake Washington Tributaries Area Habitat Biologist
C/O DOE
3190 160th Avenue SE, Bellevue, WA 98008

✓ Seattle District, U.S. Army Corps of Engineers,
P.O. Box C-3755
Seattle, WA 98124

____ Attn: Lynn Best, Acting Director, Environmental Division, Seattle City Light
700 5th Avenue, Suite 3316
P.O. Box 34023
Seattle, WA 98125-4023

✓ Muckleshoot Tribal Council, Environmental Division, Fisheries Department
39015 172nd SE
Auburn, WA 98092

____ Northshore Utility District,
P.O. Box 82489
Kenmore, WA 98028-0489

✓ Shirley Marroquin
Environmental Planning Supervisor
King County Wastewater Treatment Division
201 South Jackson Street, MS KSC-NR-0505
Seattle, WA 98104-3855 - and -

✓ Gary Kriedt
King County Metro Transit Environmental Planning
201 South Jackson Street, MS KSC-TR-0431
Seattle, WA 98104-3856

____ Director of Support Services Center
Lake Washington School District No. 414
P.O. Box 97039
Redmond, WA 98073-9739

✓ John Sutherland, Developer Services
Washington State Department of Transportation
15700 Dayton Ave. N., MS 240
P.O. Box 330310
Seattle, WA 98133-9710

✓ Tim McGruder, Conservation Chair
East Lake Washington Audubon Society
13450 NE 100th St.
Kirkland, WA 98033

Department of Community Development Attn: Environmental Coordinator, City of Bellevue, PO Box 90012, Bellevue WA 98009-9013

Applicant / Agent Phil Goldenman, 205 NE Northlake Way, Suite 230, Seattle WA 98105

---MITIGATING MEASURES INCORPORATED INTO THE PROPOSAL: ----------

1. Designate at least 34 parking spaces for the marina use at all times.
2. Designate at least 21 parking spaces near the office building employee entrances for carpools and high occupancy vehicles initially and more as required following Commute Trip Reduction surveys.
3. Provide a covered secured bicycle rack for at least six bikes.
4. Provide a commuter information center located in a prominent location within the building that provides commuters with transit schedules and information on commute options and promotions
5. Construct a driveway that provides a 14 foot entering lane and two 12 foot exiting lanes with a six foot pedestrian refuge island separating ingress and egress.
6. Install a guard rail/barrier between the driveway and the pedestrian path per AASHTO guidelines.
7. Prior to issuance of a building permit for the in-water or over-water structures, the applicant shall provide a more detailed plan describing how the proposed BMPs will be incorporated into the marina operations. This plan shall include text, drawings, and/or other materials. The plans shall include, at a minimum, the following elements:

a. A spill prevention and containment plan as recommended by the Best Management Practices for Marina Operators (Ecology, 1998). The plan shall address bilge water discharge, hazardous waste, waste oil and spills, solid waste, sewer management, and spill prevention and response.

b. A site plan showing the location, layout, and a mock-up of the informational signs suggested by the Best Management Practices for Marina Operators (Ecology, 1998). This shall be included on a sheet and submitted with the construction plans.

c. A copy of a proposed moorage agreement for the facility including the various notices and requirements as recommended by the Best Management Practices for Marina Operators (Ecology, 1998).

8. The applicant shall provide full containment during construction to control sediment transport and turbidity beyond the construction area.
9. No release of oils, hydraulic fluids, fuels, paints, solvents, or other hazardous materials shall be permitted into the lake. Accidental spill or discharge containment shall take precedence over other work on the site.
10. Prior to issuance of a building permit for the in-water or over-water structures, the applicant shall provide copies of the other applicable permits including additional federal and state mitigation requirements, if any. This may include an HPA, Corps Section 404/10 Permit, Department of Ecology 401 Water Quality Certification and National Pollution Discharge Elimination System (NPDES) (or letters of exemption, if applicable), and letters of concurrency with Section 7 of the ESA and/or a Section 10 incidental take statement from the NMFS and USFWS.
11. Prior to issuance of a land surface modification or building permit for the upland development, the applicant shall provide a copy of the National Pollution Discharge Elimination System (NPDES), if required.
12. Prior to final inspection of building permits for the in-water or over-water structures, the applicant shall:

a. Have all public information identified in the BMP's in place, including approved signs, brochures, moorage agreements, etc.
b. Complete installation of the approved shoreline restoration plan and submit to the Planning Department a five-year financial security device along with a cost estimate from a qualified biologist, to cover 100 percent of the cost of all monitoring and maintenance activities that will need to be done to meet the goals of the mitigation plan. These may

include biologist consultant site visits, reports to the Planning Department, and the cost of any vegetation that needs to be replaced. The estimate must include an inflation rate. The cost estimate must be approved by the City's consultant.

13. Prior to issuance of a building permit or land surface modification, the owners shall submit a copy of the results of the Hazardous Material Study (or Phase I environmental assessment) to the City for review, together with proof that any release of a hazardous substance discovered on the site has been reported to the Washington State Department of Ecology in accordance with the provisions of the Model Toxics Control Act (MCTA). The applicant is responsible for ensuring that any cleanup occurs in compliance with provisions established in the MCTA. If any cleanup is required, then prior to issuance of a Certificate of Occupancy, the applicant shall submit evidence (e.g. a "No Further Action" letter issued by the Department of Ecology) that the required cleanup work has been completed at the site.
14. Prior to issuance of a building permit for relocation the underground storage tank (UST), the applicant shall demonstrate that any state or federal requirements for USTs have been met, including notification to the Washington State Department of Ecology.
15. Prior to issuance of a building permit for the marina services building, the applicant shall submit a copy of the hazardous spill management plan which shall include the location of spill clean-up and containment materials. The plan shall address the Best Management Practices for Marina Operators (Ecology, 1998).
16. All exterior building mounted and ground mounted light fixtures for open air parking areas shall be directed downward and use "fully shielded cut off" fixtures as defined by the Illuminating Engineering Society of North America (IESNA), or other appropriate measures to conceal the light source from adjoining uses. Manufacturer specification sheets for the lighting fixtures including photometric data shall be included with lighting plans.
17. The maximum mounting height of ground mounted light fixtures in open air parking areas and equipment storage yards shall be 20'. Height of light fixtures shall be measured from the finished floor or the finished grade of the parking surface, to the bottom of the light bulb fixture.
18. All exterior lighting shall be turned off after business hours or 10:00 pm, whichever is earlier, leaving necessary lighting for site security. Outdoor lighting used for security purposes or to illuminate walkways, roadways, equipment yards, parking lots and building entrances may remain on after 10:00 p.m. provided the following are met:
a. Light fixtures are mounted to a maximum of 12' high, and
b. Site illumination does not exceed a uniformity ratio maximum of 15: 1, vertical illumination of .25 fc and horizontal luminance of .5 fc.
19. Mirrored glass may not be used on any exterior surface which is visible from any area beyond the subject property.

cc: Case # ZON06-00001

Distributed to agencies along with a copy of the checklist. (see attached).

Distributed By: 5-9-06 Date:

SEPA_C_A, rev: 5/5/2006

RECEIVED
MAY 23 2006
AM 12:20 PM
PLANNING DEPARTMENT
BY SA

SEPA Appeal May 19,2006
Appeal for File No.: SHR06-00001 / SEP06-00004
Address of proposal: 5201 & 5207 Lake Washington Boulevard NE
Kirkland, WA 98033

We are writing to appeal some aspects of the proposed Yarrow Bay Marina development.

We are the Breakwater Condominium Board of Directors. [4823 Lake WA Blvd. NE Kirkland, WA 98033, bordering the proposed development directly to the south]. Board members: John Barnett, president; Joan Schmidt; and Fred Freeburg.

The following are the basic items in the Yarrow Bay Marina proposed development that we are appealing.

TRANSPORTATION

The methods used to evaluate and address the present traffic and the additional impact on traffic, as a result of the YBM proposed development, do not apply to our situation and therefore conclusions should not be drawn from such data. There are several reasons these methods of traffic evaluation do not adequately speak to our situation:

1]The Breakwater Condominium driveway and 52nd Street are almost but not quite directly across from each other on Lake Wash Blvd.N.E. As the result of this slight off set, it makes it much more difficult for anyone turning on to L.W. B. from either of these. A driver coming from either direction [52nd or the Breakwater driveway] is unable to be certain the oppositional driver has seen him because of the offset. Also both groups are competing for both of the turn lanes.

2]The increased traffic from the YBM will make it more difficult to access the turn lanes.

3] Lake WA Blvd has wonderful bicycle lanes on each side of the street. For numerous obvious reasons, these lanes are used a great deal. We saw no mention in any of the data regarding what impact YBM proposed development would have on these bicycle lanes.

4] Lake WA Blvd also has a multitude of pedestrian walkers, joggers, runners and dog walkers. We saw no mention of how these people enjoying the boulevard would be impacted. Not only were the pedestrians and bicyclers not mentioned as a part of the traffic survey, they were not mentioned as to their extreme impact on the so called "gaps" that were to be available to allow cars leaving and entering the boulevard.

5]Presently, some people who live in the area of 52nd St. and above Lake WA Blvd. avoid using 52nd to enter Lake WA Blvd. whenever possible. They journey the additional blocks and use 108th, in order to avoid the situation as it presently is, without the additional cars from the proposed development.

6]Cars going north or south, attempting to use the turn lanes for entering 52nd, leaving 52nd, entering the Breakwater Condo, or leaving the Breakwater are presently experiencing difficulty . Any additional traffic in the turn lanes of this area would only

ATTACHMENT 6
SHR06-00001

make this area of LK WA Blvd. impossible to safely navigate.

7] The statement that the majority of vehicles exiting the Condominium turn right is not accurate. Please refer to Dept of Public Works Memorandum date 4/14/06 stating that "Based on the PM peak hour (time when street traffic is most congested) traffic count, the majority of vehicles exiting the Condominium turn right."

TREES

The Breakwater Condominium property maintains a small buffer of established trees between our residentially-zoned lot and the commercially zoned Yarrow Bay Marina property to the north. Work with backhoes and other such equipment would put the root systems of these trees in great danger, thus endangering the survival of the trees. The trees and thus root systems are located so close together that if one tree is killed during the construction process it would be impossible to plant another even small tree in its place with out killing the trees on either side. To protect the root system of these "screening trees" we request special care and distancing of at least five feet of all YBM construction equipment in order to protect the survival of these trees. We would suggest at least a five foot "green belt" with no construction allowed in that space to the north of our trees.

PARKING

We realize the parking requests for the YBM proposed development have received some special consideration from the various government agencies. We strongly object to any variations from the present codes.

LIGHTING

Requirements for lighting of this proposed development leave us more than concerned. The lighting poles for the daytime lighting were to be something like 20 feet tall, and the poles for the night time lighting were to be something like 12 feet tall. These numbers do not reflect the true height of the poles as they relate to the Breakwater, the neighbors to the south. As a result of the fill planned for the project, and thus the increased elevations, the portion of the property directly to the north of our building will be as much as 20 feet higher than our first level condominium. Thus the light pole height as specified, would be either 40 feet or 32 feet above us. Even though we are aware of possibilities for special directional lights, we remain concerned that we have nothing to show in the plans to indicate these lights would not be a huge negative factor to our residents.

WALKWAY

The proposed pedestrian path/walkway to the north of the Breakwater Condo and the south line of the YBM seems to be an unnecessary inclusion for the proposed development, given the existing walkway to the north of the YBM and another second walkway to the south of the Breakwater Condominium. We recommend this requirement for the project be eliminated since it causes the Breakwater residents to have a public walkway on each of our borders.

Removing the walkway requirement would allow the five feet necessary to protect our screening trees without causing the Yarrow Bay Marina proposed development to "give up" any additional space. We would not favor the removal of the walkway if it would mean the project [roadway and bulkheads and such] would simply be put closer to our buffer trees and our property.

VEGETATION BOARDER AND VIEW CORRIDORS

In order to help buffer the change from commercial to residential zoning, we request the proposed plantings on the southern portion of the YBM project be allowed to be more than three feet in height. This small addition next to our property would greatly enhance the buffer zone. The screening needs to be greater that three feet in height to give us any protection. In viewing the present plans for this area we find a great deal of a low growing ground cover plants and very few plants even three feet in height.

Using this present strip two and one half to three feet wide for plantings greater than three feet in height would not have any significant impact on the view corridor and would certainly help our situation.

MARINA DOCK EXPANSION

Yarrow Bay Marina is requesting additional docks as part of their proposed development. We oppose the building of the additional boat docks for the following reasons: The proposed additional docks are to be located on the south west corner of the marina lake coverage. Without this addition or as the situation exists today no boat travels on the marina water to get to the fueling dock located in the marina. In other words all boats coming to used the fueling dock or marina enter or come across the lake water to the south of the YBM water line. They use the water in front of the Breakwater Condo to access the fueling dock or any other service of the marina. The addition of the new proposed docks would cause boaters to come even more closely to the Breakwater dock.

It seems reasonable for a business to be able to use its easement for entering and exiting its business. The addition of these new docks would further prohibit their customers from staying out of the Breakwater water. A business should not be allowed to enhance their profit at the expense of residential neighbors.

To allow more dock expansion would also negatively impact the sought after "view corridors". Causing more building on the lake would only minimize the view of the lake.

We would be surprised if present day zoning would allow the lake coverage by the marina as it exists today. It is unthinkable to consider impacting the environment with more docks and lake coverage.

In conclusion, we appreciate the opportunity to ask for further scrutiny of these matters.

Breakwater Condominium Board of Directors

John Barnett, President

Joan Schmidt

Fred Freeburg

RECEIVED
MAY 23 2006
AM 3:45 PM
PLANNING DEPARTMENT
BY TAS

SEPA COMMENTS

FILE No. SHR06-00001 / SEP06-00004

Address or Location of proposal: 5201 & 5207 Lake WA Blvd. NE

City of Kirkland
Dept. of Planning and Community Development
123 Fifth Ave
Kirkland,WA 98033

From: LouAnn Freeburg
resident Breakwater Condominium, property directly to the south of the proposed development
4823 Lake WA Blvd. NE
Kirkland, WA 98033

I am generally concerned about the Yarrow Bay Marina proposed development and the negative effects it will have upon the neighbors to the south and to the lake. The following are the major reasons for my submitting comments regarding the Yarrow Bay Marina proposed development:

1] The Expansion of the docks at the marina

There are numerous reasons for objecting to the additional docks requested by the Yarrow Bay Marina proposed development. A major concern is for the environment and having more coverage of the lake. Another concern deals with boat traffic as it relates to the Breakwater. Presently the boat traffic accessing the marina travels across the lake water in front of the Breakwater Condo rather than across the lake water in front of the marina. This appears to be the result of so many docks and boats presently on the southern waters of the marina. Boat traffic is forced to travel thru the waters in front of the Breakwater. The addition of more docks on this southern side would only make the problem worse. By the boats swinging our way to feel a more open access to the marina, they come close to our dock. Also when ever there is any kind of a back up to get into the marina, boats tend to tie up to our dock while waiting their turn at the marina. Without going into all the grim details this results in people using our dock, urinating on our dock, and cursing at any one approaching our dock. It is not right to allow more docks and thus more lake coverage on the southern boarder of the marina which is our northern border. If these additional docks were allowed, boat traffic using the marina would be forced even closer to our dock and the boat traffic to the marina would use even more of the lake in front of our condo.

2] The Traffic

The methods used to evaluate the traffic on Lake Washington Blvd. are not appropriate to our situation. We have a most unique situation on Lake Washington Blvd.

ATTACHMENT 7.a
SHR06-00001

and particularly in the area by the Yarrow Bay Marina, the Breakwater Condo and 52nd St.

Part of this unique situation is the two bicycle paths on each side of Lake WA Blvd. and the huge use of the sidewalk [located on our side of the street] by walkers, dog walkers, joggers, people pushing baby carriages, and so on. These two aspects, the pedestrians and the bicyclers, cause the situation of Lake Wash Blvd. to be much more complicated than might appear from a survey looking at traffic only. You see we have to cross several "lanes" composed of all the different pedestrians, and the bikers, and the automobile traffic before we can enter on the Lake WA Blvd.

Another part of the unique situation we experience in this part of Lake WA Blvd. is that the drive for the Breakwater and the 52nd St. are not exactly directly across from each other. Therefore when an automobile traveling south on Lake WA Blvd. is in the turn lane awaiting to turn left on to 52nd St. they are directly in front of the drive way for the Breakwater. Thus that car is prohibiting a Breakwater car from entering the turn lane. Surprising it happens frequently.

These are a few of the reasons for concern for the increased traffic caused by the Yarrow Bay Marina proposed development.

3] The Trees and Required Pathway/Walkway

The row of trees on our northern border are the only protection or buffer we will have from this new development. To even think of back hoes or any kind of construction within several feet [five or six] of these trees can only mean the roots systems will be harmed and the trees killed. The trees are so close together that if one or two were killed it would be impossible to replant a large tree without killing the trees on either side. We must be given some protection for these trees. Our property is zoned residential and the Yarrow Bay Marina property is zoned commercial. We needs some buffer between these two very different zoning designations.

As I understand, the present plans for the proposed development call for a pathway or walkway on the southern border of the property and thus on my northern border all the way from Lake WA Blvd. to Lake Washington. For several reason I request you give further thought to this walkway requirement and take it out of the proposal. One reason is we at the Breakwater presently have a public walkway on our southern border. We have a public walkway between our building and Lake Washington, and of course we have the public side walk on our eastern border. To put another public walkway on our northern border is a too much considering the size of our lot. There is presently a public walkway on the northern border of the Yarrow Bay Marina property.

Along with the above reasons for not having the walkway, I would ask you to consider again the buffer trees. With the walkway or pathway, [which as I understand is to be cement steps] right against our trees, our trees are going to be killed by construction [footings into the ground, cement steps etc.] on top of them. By omitting the walkway, the five foot could be used as a buffer to protect our trees. It could be a planted area to give us a little more of a buffer and a little more protection from a roadway and so on directly against our border.

4] The Work Day Schedule

As I understand the stipulations for work times presently upon the Yarrow Bay

Marina proposed development, they are from 7 am till 7 pm. I would request this time to be limited to end at something like no later than 5 pm. There will be plenty of truck and other equipment noise as well as dirt and dust throughout the day. We should have some relief by 5 pm at dinner time. I also understand that the work men do not plan on working until 7 pm so to put the stipulation of no later than 5 pm in writing into the requirements would not seem to bother anyone. It would give us a little protection for the work day times.

In conclusion, these are some of my concerns for the Yarrow Bay Marina proposed development. Thank you for the opportunity to bring them to your attention.

Sincerely,

LouAnn Freeburg

From: Karen Walter [mailto:Karen.Walter@muckleshoot.nsn.us]
Sent: Monday, May 15, 2006 3:25 PM
To: Eric Shields
Subject: Yarrow Bay Marina Determination of Non-Significance (DNS) SEP06-00004

Mr. Shields,
The Muckleshoot Indian Tribe Fisheries Division received the DNS and environmental checklist for the above referenced project. Based on our review of the checklist, several documents are cited as the response to various checklist questions. As a result, we do not have enough information to evaluate potential impacts to salmonids and their habitat associated with this project. To facilitate our review, we request a copy of the following documents prior to the SEPA comment deadline as follows:

1. April 2005 Biological Evaluation by The Watershed Company;
2. Yarrow Bay Marina project plan set and project description notes;
3. The approved shoreline restoration plan.

Also, according to the agency evaluation of the responses in section 11 –Light and Glare, it appears that the applicant may need to submit a light study. Do you know if this light study considers the potential for lighting to shine on Lake Washington and enhance potential salmonid predation opportunities by bass and other species? Did the City consider this potential impact?

We would appreciate if someone could send us the requested documents electronically. If they are not available in an electronic format, then please send them to us at:

Muckleshoot Indian Tribe Fisheries Division
39015 172nd Ave SE
Auburn WA 98092

ATTN: Karen Walter

Thank you very much,
Karen Walter
Watershed and Land Use Planner
Muckleshoot Indian Tribe Fisheries Division
253-876-3116

ATTACHMENT 7.b
S11-2006 · 00001

J. RICHARD ARAMBURU
JEFFREY M. EUSTIS
Attorneys at Law
505 Madison Street, Suite 209
Seattle, Washington 98104
(206) 625-9515 Fax: (206) 682-1376

August 21, 2006

RECEIVED
AUG 21 2006
AM 3:40 PM
PLANNING DEPARTMENT
BY SKC

City Council
City of Kirkland
123 Fifth Avenue
Kirkland WA 98033

Re: Challenge to Hearing Examiner Recommendation File Numbers SHR06-00001, ZON06-00001 Property Located at 5207 Lake Washington Boulevard NE: Applicant Marina Suites LLC and Yarrow Bay Yacht Basin and Marina LLC

Dear Councilmembers:

This office represents the Breakwater Condominium Association ("BCA"), an eight unit residential condominium located at 4823 Lake Washington Boulevard NE in Kirkland. BCA participated through its members and counsel in proceedings regarding the above-referenced application. In particular, a letter dated July 31, 2006 from the undersigned was addressed to the Hearing Examiner, City Council and Kirkland's Houghton Community Council addressing concerns and legal deficiencies in the applicant's proposal.

Notwithstanding these objections, on August 9, 2006 the City's Hearing Examiner entered findings and conclusions and a recommendation approving the application subject to several conditions. Pursuant to 152.85 of the Kirkland Zoning Code, this letter constitutes a challenge to the decision of the Hearing Examiner. In particular, BCA challenges the recommendation of approval of Section A, Findings of Fact, and Section B, Conclusions.

The comprehensive objections and concerns were raised by the BCA in its attached (without attachments) July 31, 2006 letter. The Hearing Examiner, while acknowledging concerns expressed by the BCA, did not discuss these concerns, nor provide legal or factual analysis of them, and only entered summary conclusions that the proposal was consistent with the City's codes, plans, policies and the Shoreline Master Program. See Conclusion 5. Accordingly, as there is no analysis of BCA's concerns by the Hearing Examiner, the council is requested to review BCA's letter of July 31.

In addition, the Hearing Examiner refused to order a re-notice of the application because of notice deficiencies raised in BCA's July 14, 2006 letter to Stacy Clauson (written by the undersigned). That letter is incorporated by reference herein. As noted in that letter, serious deficiencies exist with respect to notice and the City Council should require a re-notice of the project to correct the identified deficiencies.

Council should also deny, revise and modify as appropriate, the subject proposal based upon those matters raised in the BCA's letter of July 31, 2006. These include, as listed in the letter, excessive fill, inadequate parking, parking located between the office building and shoreline, deficiencies in boat parking, improper moorage extension, addition of public access trail, additional buffering between commercial and residential use, creation of a public park area, dangerous roadway conditions and an illegal view corridor.

Thank you for this opportunity to make this challenge.

Sincerely yours,

J. Richard Aramburu

JRA/km
Encl. Check $150 to Challenge
Affidavit of Service
cc: Clients

"Any response to this letter (City File No. SHR06-00001 and ZON06-00001) must be delivered to the Planning Department within seven (7) calendar days after the day the challenge letter was filed with the Planning Department, or by August 28, 2006.

Within the same time period, any person making the response must mail or personally deliver a copy of the response letter to the applicant and all other people who submitted written or oral testimony on the matter. Proof of delivery by mail or personal delivery shall be by affidavit attached to the copy of the response to the challenge letter filed with the Planning Department.

If you wish to submit a response letter, further information about procedural requirement is available from the Kirkland Planning Department at City Hall. The staff Planner assigned to the application is Stacy Clauson at (425) 587-3248."

AFFIDAVIT OF SERVICE - FILE NO. SHR06-00001, ZON06-00001

Document Served	Process
X Challenge (including procedures to file a Response)	X IIB
____ Response to Challenge	____ III
____ Application for Comprehensive Plan Amendment	____ IV
(check appropriate box in each column)	

Kathleen McLemore, being first duly sworn on oath deposes and says that I am 18 years of age or older. That I served the above-indicated document by mail or personal service upon the following-named persons who constitute all of the parties entitled to receive same and to participate in the land use proceeding identified in Kirkland Planning and Community Development Department File No. (See above). A copy of the document is attached to this affidavit.

The persons who were served by mailing, postage prepaid, and the address to which mailed are set forth in Exhibit "A" to this affidavit and which by this reference is incorporated herein.

The persons who I served by personal service are listed on Exhibit "B",to this affidavit which exhibit is by this reference incorporated herein. For the purposes of this affidavit, "personal service" means hand-delivery of the document to the person being served, or in the alternative, hand-delivery to another adult who also makes his or her home at the residence of the person served.

DATED at Kirkland, Washington, this 21st day of **August**, **2006**.

Kathleen McLemore
Notary's Signature
Kathleen McLemore
Print Notary's Name
Notary Public in and for the State of Washington
Residing at: Bellevue, Washington
My commission expires: March 27, 2008

EXHIBIT A
to Affidavit of Service File No. SHR-06-00001, ZON06-00001

Service was accomplished as to the following persons by mailing a copy of the identified document, postage prepaid, to that person at the indicated address:

John R. Barnett
4823 Lake Washington Blvd NE #5
Kirkland WA 98033

Board of Directors
Breakwater Condominium Association
4823 Lake Washington Blvd NE
Kirkland, WA 98033

Fred and LouAnn Freeburg
4823 Lake Washington Blvd NE #6
Kirkland, WA 98033

Paul Friedrich
10224 NE 52nd Street
Kirkland WA 98033

Phil Goldenman
Waterfront Construction
205 NE Northlake Way, Suite 230
Seattle, WA 98105

Stacy Clauson *and*
City of Kirkland Planning & Community Development
123 Fifth Avenue
Kirkland WA 98033

City of Kirkland
Department of Public Works
123 Fifth Avenue
Kirkland WA 98033

City of Kirkland
Department of Building and Fire Services
123 Fifth Avenue
Kirkland WA 98033

Muckleshoot Indian Tribe Fisheries Division,
Attn: Karen Walter
39015 172nd Ave SE
Auburn, WA 98092

Roger Pearce
Foster Pepper & Shefelman
1111 Third Avenue, Suite 3400
Seattle WA 98101-3299

William Popp
William Popp & Associates
14400 Bldg., Suite 206
14400 Bel-Red Road
Bellevue, WA 98007

Helen Rodgers
4823 Lake Washington Blvd NE #8
Kirkland WA 98033

Joan Schmidt
4823 Lake Washington Blvd NE #7
Kirkland, WA 98033

Gary Shelton
4817 Lake Washington Blvd NE
Kirkland WA 98033

James Walker, Architect
CollinsWoerman
710 Second Avenue, Suite 1400
Seattle, WA 98104

Ronald Weinstein
4823 Lake Washington Blvd NE #1
Kirkland WA 98033

Paul Wilcox, owner rep.
c/o Waterfront Construction
205 NE Northlake Way, Suite 230
Seattle, WA 98105

Don Wilcox, Owner
Yarrow Bay Yacht Basin
5207 Lake Washington Blvd
Kirkland, WA 98033

J. RICHARD ARAMBURU
ATTORNEY AT LAW
SUITE 209, COLLEGE CLUB BUILDING
505 MADISON STREET
SEATTLE, WASHINGTON 98104
(206) 625-9515 · FAX (206) 682-1376

J. RICHARD ARAMBURU
JEFFREY M. EUSTIS

July 31, 2006

Anne Watanabe
Hearing Examiner Pro Tem
City of Kirkland
123 - 5th Avenue
Kirkland WA 98033

Houghton City Council
123 - 5th Avenue
Kirkland WA 98033

Houghton Community Council
City of Kirkland Hearing Examiner
123 - 5th Avenue
Kirkland WA 98033

RE: Yarrow Bay Marina, Marina Suites proposal SHR06-0001

Dear Houghton Community Council and Hearing Examiner :

This office represents the Breakwater Condominium Association (BCA), owners and residents of the property immediately south of the subject proposal. Breakwater has asked me to provide you with comments and concerns relative to the Yarrow Bay Marina (YBM) proposal, consisting of a new 55,000 square foot office building, 7,000 square foot relocated marina building, a public access trail, dock extension and a waterside pocket park.

The subject property has been historically used as a marina, with upland boat and trailer parking as a part of the YBM use. The current marina is nonconforming as a substantial number of moorage slips are covered contrary to the terms of the Kirkland Zoning Code and Shoreline Master Program.

Breakwater believes that the subject proposal cannot be approved in its present form for the following reasons. Breakwater asks that the proposal be modified or denied outright.

1. EXCESSIVE FILL.

The proposal involves significant fill to be placed on the mid to western side of the project, causing an increase in grade of between five and nine feet. As a result, a retaining wall will be placed immediately adjacent to the Breakwater property along the south side of the YBM project. This will elevate the property adjacent to the Breakwater Condominium, causing aesthetic, light and noise impacts.

Under the Kirkland Shoreline Master Program, land surface modification or fill activity is permitted only if it is "necessary for the approved development" under Kirkland municipal code (KMC) section 24.05.140(c). The BCA believes there is no reason for the landfill to be put on the western portion of the site and that the project can proceed without it. Accordingly, the project should be re-designed to eliminate such fill.

2. PARKING QUANTITY.

The subject proposal consists of several different uses, including a 55,000 square foot office building, a 7,000 square foot marina services building, various existing and expanded moorage facilities and public trail and park facilities. Parking calculations presented on the most recent site plan and staff report (page 22) show parking spaces calculated only for the office building (1/300 s.f.) and the moorage (1 stall/2 slips). However, no vehicular parking is provided for the marina services building which will be relocated to the north side of the lot. The current marina building contains various uses including boat repair, boat sales, boat rentals and other retail type uses which have employees and retail trade, all of which generate additional parking requirements and are unrelated to the recreational moorage slips. Parking is a critical issue here because there is essentially no street parking in the vicinity of the project (no parking is available along Lake Washington Boulevard.)

The parking requirements for the proposal should be redrawn and recalculated and parking sufficient to meet the demand should be located on site.

3. PARKING LOCATION.

The most recent site plan proposal includes multiple (43 or more) surface parking areas located between the office building and Lake Washington. A large number of parking spaces are located immediately adjacent to the shoreline.

The Kirkland Shoreline Master Program specifies that parking should not be located between the buildings on the property and Lake Washington. KMC

24.05.130. ("Wherever possible, parking should be located out of the shoreline area and should not be located between the building or buildings on the subject property and Lake Washington"). The unsightly surface parking areas proposed here should be eliminated pursuant to the Shoreline Master Program. Parking for all facilities may be easily accommodated in a third level of underground parking in the office building. As indicated previously, parking for the marina building must be included in any calculations.

4. YARROW BAY BOAT PARKING.

Yarrow Bay Marina maintains an active boat repair and overhaul facility which results in a significant number of boats being stored on site. The shoreline permit application does not indicate where such boat storage facilities will be located on the site, but it is expected that such uses will remain. If boat parking area is to be relocated at the site of the demolished current marina building, serious issues of aesthetics and other such impacts need to be explored. It is noted that there is a large open area shown on the plans immediately adjacent to the water, but there is indication of the uses proposed for this area.

The plans should be revised to accommodate both boat parking and storage, as well as defining on the site plan the location for such use.

5. MOORAGE EXTENSION.

The proposal requests the extension of the "D" dock moorage further to the south towards the Breakwater Condominium. Breakwater is the owner of second class tidelands in this area which extend to the inner harbour line.

No expansion of moorages should be permitted at this location. The Yarrow Bay Marina has a number of covered moorages which are not permitted under the current Shoreline Master Program and PLA15A rules (Special Regulation 15), but YBM does not propose to eliminate that non-conformity. The staff report at page 35-36 states that this nonconformity may remain because the cost of on site work does not exceed 50 percent of the replacement cost of the improvement. However, the applicant is demolishing and rebuilding the marina services building and constructing a new office building which is clearly more than 50 percent of the replacement cost of the covered moorage. Accordingly, if the proposal proceeds, the applicant should be required to bring the marina facility into conformance with the code by removing the structures that cover the moorages, though the moorage themselves may remain.

The moorage extension proposed would also narrow the passage on the south side of the Yarrow Bay Marina site between it and the Breakwater property. Because there is no access to the marina from the north side of the YBM property, this is the only area available for passage of boats to the majority of the marina slips. More importantly, this is the only area for passage to the refueling docks at YBM as well as the boat repair facility. In the past, there have been numerous instances of trespassing onto the property of the Breakwater Condominiums, including boats near the Breakwater dock or actually tying to it while waiting for space at the YBM fuel dock. Photos 1 and 2 attached hereto show boats waiting for fueling - even one moored at the Breakwater dock while waiting. On occasion, there have been 10 or more boats waiting to be refueled at YBM, which is one of the few refueling facilities that exist on Lake Washington. See Photo 1 attached. In fact, the drawings provided show that numerous boats will transit the Breakwater property for these commercial uses which will interfere with uses on my clients' property including boating, swimming and other water dependent uses. Such contemplated useage is inconsistent with PLA15A Special Regulation 7(d) which provides that "the moorage structures will not adversely affect nearby uses . . ."

The moorage extension should be denied because it will decrease the available maneuvering area between the Breakwater property and the moorages and create interference with the Breakwater property.

6. PUBLIC ACCESS TRAIL.

The applicant proposes a public access trail located on the south side of its property adjacent to the Breakwater Condominiums. This will allow access from sidewalks along Lake Washington Boulevard to the lake. Under the code, Breakwater believes this trail should be deleted from the plan for several reasons.

a. First, adequate public access to the waterfront in this location is available within the immediate vicinity of the project. There is a public access trail just to the north of the Yarrow Bay property, developed in connection with the Carillon Point project. It accesses significant public walkway and other public facilities at the Carillon Point project. There is another public access pathway just to the south of the Breakwater Condominium which also accesses the water and a lineal trail running along the lake in this location. In fact, the shoreline trail that traverses the Breakwater property ends just to the south of the property, meaning there is limited available use of the trail in this location. It makes no sense whatsoever to have three public access trails within the space of a little over 500 feet on Lake Washington Boulevard.

b. While public access is a preferred use within the Shoreline Master Program, under KMC 24.05.135(1)(a), "access to the waterfront may be waived by the city if public access along the waterfront of the subject property can be reached from adjacent property." As demonstrated above, there is plentiful access to the water in these locations and adding a third access is not appropriate.

c. There is very little use of the public access facilities in this area. There is no parking nearby to allow persons to access these facilities, and users are limited to those walking along the sidewalk on Lake Washington Boulevard.

d. Further, the visual access to the water in this location is limited by the existing covered moorages and open moorage adjacent to the trail area. Photos 3,4 and 5 show the limited views available on the YBM pry at its southwest corner. Use of canoes or other small craft, as well as swimming, is problematic in this area due to the presence of the moorage and boat traffic using the fuel dock. See Photo3 attached. Far more attractive public access area is available at the commercial Carillon Point property without the need of further impacting residential properties in the area.

7. BUFFER AREA BETWEEN COMMERCIAL AND RESIDENTIAL USE.

The subject proposal is a commercial use that proposes significant fill and a parking lot next to the residential use at the Breakwater. The proposal includes only a minimal buffer to separate the uses (5-6 feet). If the proposal proceeds, the size and nature of this buffer area should be substantially increased.

First, the applicant proposes to remove a large maple tree as a part of the construction. This is a substantial and attractive tree providing buffering, shade and separation between these uses. In addition, this tree is on, or very near the property line and thus cannot be removed without the permission of BCA.

Second, the buffer area should be widened to 15 feet and include substantial vegetation to increase the buffer between the new use and the Breakwater property. The YBM proposal includes a 4-9 foot high retaining wall and an elevated parking area which would cause lights from vehicles to be directed at the residential units on the northside of the Breakwater building. Indeed the staff report (page 26)indicates that: "The parking layout is designed so that vehicles exiting the garage would face the Breakwater building." In addition, though BCA recommends its deletion, there is a public access pathway along the south side of the YBM property that suggests the need for a substantial buffering element. These impacts clearly call for additional separation between the new parking and office use and the Breakwater. The revised area can be easily provided by a minor reconfiguration of access and parking

facilities if they are permitted despite the provisions of the shoreline master program. See section 3 hereof.

Third, it may be asserted that the additional landscaping is contrary to view corridor requirements. However, the view corridor requirements on this property are a result of the applicant wishing to exceed the maximum height requirement. See Staff Report, page 18. As such, Breakwater should not suffer less than appropriate buffering and separation simply because the applicant's proposal exceeds 35 feet requiring a larger view corridor.

Additional landscaping and buffering as described above should be required adjacent to the Breakwater property.

8. PUBLIC PARK AREA.

Apparently the City now proposes to create a pocket park on the Yarrow Bay Marina site to enhance further public access. However, as indicated above, significant public access already exists at Carillon Point and there is no demonstration that even these public access facilities are overused or that there is a need for such additional facilities. Again, there is no public parking in the area and most users would be from the already developed residential uses in the vicinity.

Further, the park area is visually cut off from the water by moored boats close to shore, covered moorage to the west and boating traffic using the fueling facilities. See Photos 3,4 and 5. In short, no new or additional public park area should be required in this location beyond the provision for a trail across the YBM property.

In short, the public park area should be deleted from the plans and access in the area should be limited to maintenance of a lineal trail parallel to the shoreline.

8. DANGEROUS AND CONGESTED ROADWAY CONDITIONS.

The Marina Suites project will greatly increase turning movements on and off Lake Washington Boulevard in the location of this proposal. As the city is aware, Lake Washington Boulevard is already a highly congested two lane street with very few breaks in traffic.

The new proposal will create additional demand for a left turn lane, creating the strong potential for queuing back for northbound left turns into the Marina Suites site, which may block the access to the Breakwater Condominium site and disrupt turning movements to NE 52nd Street.

No solutions to these impacts are proposed and this proposal should be remanded to the city for the development of traffic and transportation solutions that resolve these impacts.

9. VIEW CORRIDOR.

As noted above, the applicant must provide a 70 percent view corridor because the proposal exceeded 35 feet in height. However, a substantial amount of the view corridor is taken up with covered moorage, an illegal use under the Kirkland zoning code. Under the Kirkland Zoning Code a view corridor is defined as follows:

> 5.10.974 View Corridor – An open area that provides an unobstructed view across the subject property to and beyond Lake Washington from the adjacent right-of-way.

(Emphasis supplied.) A significant part of the view corridor is obstructed by the covered moorage structures presently on the site. As such, the applicant's proposal is inconsistent with view corridor requirements and cannot be permitted.

As may be seen from the foregoing, the present proposal is inconsistent with a variety of city codes, goals, plans and programs. As such it cannot be approved in its present form and must be modified to conform with those standards specified herein.

Sincerely yours,

J. Richard Aramburu

JRA:py
cc: Breakwater Condominium Association

FOSTER PEPPER PLLC

Direct Phone (206) 447-4676
Direct Facsimile (206) 749-1997
E-Mail PearR@foster.com

August 28, 2006

VIA HAND DELIVERY

RECEIVED
AUG 28 2006
PLANNING DEPARTMENT
AM PM
BY

City Council
c/o Kirkland Planning Department
123 Fifth Avenue
Kirkland WA 98033
ATTN: Ms. Stacy Clausen

Re: Response to Challenge
Hearing Examiner Recommendation under City of Kirkland File Nos. SHR06-00001 and ZON06-000001

Councilmembers:

This response is submitted on behalf of permit applicants Marina Suites LLC and Yarrow Bay Yacht Basin and Marina LLC (collectively, "Yarrow Bay"). This response relies on the facts in the administrative record created before the City's Hearing Examiner and does not discuss any additional facts or evidence not already in the City's record.

A. Background.

The proposed project includes three related projects on the site of the Yarrow Bay Marina, which is one of the few water-dependent uses remaining along the Kirkland shoreline. The three projects that have been recommended by both the City's Planning Staff, the Hearing Examiner and the Houghton Community Council are: (1) construction of a new office building on the uplands portion of the site that would be approximately 53,000 SF in size; (2) updating the existing marina operations, which includes replacing the old marina repair building with a new services building outside the view corridor and replacing the two (2) existing underground gas tanks with a modern, double-walled tank – without increasing the capacity of the existing boat fueling operation; and (3) adding six new moorage slips to Pier D (the shortest pier at the existing marina). The new moorage slips are approximately 185 feet further out into the lake and 67' north of the end of the dock at the neighboring Breakwater Condominium. As part of this project, floats that currently shade near-shore habitat will be removed, native planting areas will be added at the shoreline, and invasive weed species will be removed from the near-shore habitat area.

The project is consistent with the 2001-02 comprehensive plan amendment, which was enacted specifically to allow an office use (and enhanced view corridor) on this site. The

uplands portion of the project has been underdeveloped for years, and used as outdoor storage for boats and trailers. That part of the site will be developed with the office use and this storage use discontinued. Office development of the uplands was selected because it is compatible with the marina use – in particular, the traffic and parking peaks for office development (business hours during weekdays) occur at different times than the marina traffic and parking peaks (weekends and holidays). The marina use has been in this location for over 30 years, and the compatible office development is necessary in order to keep the marina operating and to upgrade its operations.

B. Specific Responses.

As an initial matter, the Breakwater Condominium Association (BCA) challenge fails to comply with the City's rules relating to challenges. Under KMC 152.85(2), a challenge letter must specify which findings and conclusions of the Hearing Examiner that are being challenged. Rather than comply with that requirement, the BCA simply challenges the entire Examiner recommendation and attaches the conclusory statements from its earlier letter that was submitted at the hearing before the City's Hearing Examiner. As discussed in more detail below, BCA's complaints have no merit and are distinguished by their lack of citation to any evidence in the City's administrative record. The City Staff Report and the Hearing Examiner recommendations amply support the proposed II-B Process and Shoreline and SEPA permit applications. Yarrow Bay respectfully requests the City Council to adopt the Examiner's recommendations and promptly forward her approval to the Houghton Community Council, which has also recommended approval of these applications.

1. The City's Notice of Application Was Lawful and BCA Had Actual Notice of the Examiner's Proceeding.

The BCA have complained about the sufficiency of the City's notices of application for the Type IIB process hearing, which includes the City's review of the shoreline substantial development permit for the Yarrow Bay projects. This claim is disingenuous because, as discussed at the hearing, Yarrow Bay had at least two meetings with the BCA homeowners to discuss the shoreline permit issues--one prior to formal application in January and one in May prior to the hearing. Yarrow Bay changed its proposal to respond to BCA concerns; BCA homeowners sent written comments to the City regarding the shoreline permit application (listing the shoreline permit on their comments). A public notice sign was posted at the site's boulevard sidewalk adjacent to their property for them to read as they drive by each day; and BCA homeowners attended the hearing with their land use attorney to comment to the Examiner.

An Outline Of Comments On Project Notice was submitted to the Hearing Examiner and is part of the public record. That document, and the supporting declaration and testimony from Mr. Philip Goldenman, Project Permit Coordinator, show (a) that the City's notices explicitly called out that the City's review included compliance with its Shoreline Master Program and were therefore legally sufficient, and (b) that the BCA had *actual* notice of the shoreline permit application and adequate time to prepare for the hearing. Under Washington law, BCA's

complaints regarding the form of notice have no merit. The City's attorney and staff agree that the City's notices were adequate.

3. The Change in Site Grades Are Required to Accommodate Public Access.

Under the City's Shoreline Master Program (SMP), land surface modification is allowed outright if it is necessary for either (a) public pedestrian access or (b) an approved use of the property. KMC 24.05.140(b)(3); KMC 24.05.140(c). The record shows that the grades on the property will be changed little from its existing configuration. *See* Staff Report Att.5/Encl.2 (Conceptual Grading Plan) and Staff Report Att.16 (Topographic Survey). The property currently has a slope along its southern edge – the boundary with the Breakwater Condominiums property. Some fill will be required in that area in order to install the public pedestrian pathway required by the City's SMP. The City has required the fill in order to raise the pedestrian path to the same general level as the project roadway, for pedestrian visibility and safety. Two to four feet of fill will be required along most of the length of this 5-foot wide pedestrian path. See Staff Report Att.2A (Site Plan). The path will be supported on its south side by a retaining wall that will be screened by additional evergreen vegetation and enhanced by an embossed wall design.

BCA's characterization of this as "excessive" fill is not correct. The fill for the required public pedestrian pathway is specifically allowed under KMC 24.05.140(b)(3). The other grade modifications on the site are primarily excavations for the office building underground parking garage and for the basement of the new marina repair/service building, which are approved uses of the property. Accordingly, that modification is allowed under KMC 24.05.140(c).

4. The City Correctly Calculated the Projects' Overall Code Parking Requirement.

BCA complains that the City did not calculate a separate parking requirement for the marina services building. That claim has no merit for two independent reasons.

First, the marina services building is part of the overall existing as well as future marina use, and the marina use requires one parking space for every two slips. There is no separate use category in the Zoning Code for marina services and marina boat slips (or for marina walkways, or for marina accessory offices, etc.). All the marina-related activities are part of the marina use, and the Zoning Code parking requirement has a single way to calculate required parking for a marina use. In fact, the City took the conservative position of requiring the marina to meet existing parking standards (1 space for every 2 slips for a total of 55 required parking stalls), when the marina is an existing nonconforming use with 37 spaces. Per City Code, the existing nonconformity of parking could simply remain, but the project is upgrading the situation to provide full Code-required parking for the marina.

Second, the marina uses can share parking with the proposed office use pursuant to KMC 105.45. This is how the City Staff analyzed the parking requirement in its Staff Report, which was supported by the Examiner and Houghton Community Council. Here, the office building and all marina uses are sharing a portion of the parking in the building. The expert transportation

impact analysis for the project confirmed that this will accommodate both projects' peak parking demand, which occur at different times as discussed above.

Yarrow Bay requests clarification from the City Council on the overall parking requirement during the winter months. At the hearing and in the Staff Report, the peak parking demand for the marina uses was based on the summer peak boating season, when the marina is at its busiest, and the parking stalls have been allocated on the site accordingly. The Staff Report contains a condition of approval that no "designated" parking stalls may be used for boat storage. However, the testimony at the hearing showed that the parking demand for the marina is far lower in the winter months, which are approximately November through April. During those off-peak times, there are occasions after winter storm wave activity when boats are damaged and brought to the marina for service. This creates an unusual amount of boat repairs and service activity. During those times, it is necessary to store some boats next to the existing marina building that are awaiting repair (they cannot be stored in the water because they would sink). The applicant requests the Council to clarify that City Staff has the discretion to modify the shared parking requirement during the winter months for the parking stalls proposed next to "A' dock for this short-term staging of storm-generated boating service. The marina owner will show that the marina has lower parking peaks during those months. This would allow the marina operation some flexibility in parking stall use during those off-peak boating months. Yarrow Bay believes this is consistent with the existing conditions of approval and with the shared parking regulations – it just means that fewer designated parking spaces will be required by the marina during the winter months when the parking demand peaks are far lower than during the peak summer boating season.

5. The Projects' Parking Location Meets the Requirements of the Shoreline Master Program.

The general regulations of the City's SMP state that "Whenever possible, parking should … not be located between the building or buildings on the subject property and Lake Washington." KMC 24.05.130. The project meets this requirement for two, independent reasons.

First, the only parking waterward of the new marina building is a small surface parking area between the new marina building and the covered moorage of Dock A. *See* Staff Report Att. 2A (Site Plan). Parking to the south of Dock A along the shoreline is being relocated in order to open up views of the Lake, so relocating the parking next to the covered moorage is not feasible in this instance. *See* Staff Report Att. 15 (Aerial Photographs).

Second, and most important, the parking area waterward of the new marina building is already in existence, and is not being enlarged – in fact that parking area is becoming smaller. *Compare* Staff Report Att. 2A with Att. 15. Even if the Dock A covered moorage were not considered a building, then the existing surface parking is a legally nonconforming condition that is permitted to remain under the City's SMP. SMC 24.05.210(2) (nonconforming development may be continued provided that it is not enlarged or altered in a way that increases the nonconformity).

In either case, the City Staff and Hearing Examiner appropriately recommended approval of the parking location on the projects' site design.

6. The Existing Dry Dock Boat Storage Use Is Being Discontinued.

BCA complains that there is no indication of where the existing boat storage facilities are being relocated on the site. That is because the existing dry dock storage will not continue on the site. The boat repair and overhaul uses will remain, and will have more indoor shop area for boat servicing. There is an area currently used for short-term storage for boats awaiting repair, or after completed repair, but the current dry dock storage use for boats and trailers will not be continued. As pointed out at the hearing, this will greatly improve the appearance and use of the overall site.

7. Moorage Extension.

BCA complains that the moorage extension would increase the nonconformity of the marina. This complaint has no merit. A small moorage extension is proposed for the marina's shortest dock (Dock D) will <u>not</u> add any covered moorage. The City's nonconforming use regulations clearly allow the covered moorage to remain because it is not being expanded in any way. The 50% value rule cited by BCA only applies if the applicant is making a change to the nonconforming structure itself, or if the nonconforming structure "supports" the new changes. Here, in sharp distinction, the new moorage is not covered moorage and the covered moorage does not "support" or otherwise enable any of the new permitted uses of the site.

BCA also complains that Dock D will narrow the access for the public to the marina fueling facility – thus inconveniencing BCA by having the public drive boats across the part of the lake the BCA supposedly "owns." (NOTE that there is no evidence of BCA ownership anywhere in the administrative record.) This objection also has no merit. The extension of D Dock is approximately 185 feet further out into Lake Washington than the Breakwater Condominium dock, and will comply with the 20 foot setback from Yarrow Bay's property line. Moreover, D Dock extension (for only six additional moorage slips) will not increase the marina's fueling facility or fueling capacity, and that existing use is anticipated to remain in place at its current level. There is no evidence in the record showing that this dock extension will increase public use of the fueling facility or increase public use of the waters in front of the Breakwater Condominium.

Moreover, the public has an absolute right under the Washington Public Trust Doctrine to use the surface waters in front of the Breakwater Condominium for navigation purposes. This was first confirmed by the Washington Supreme Court in the *Wilbour v. Gallagher* case in 1969, and was reaffirmed in the 1987 cases of *Caminiti v. Boyle* and *Orion Corp. v. State.* This does not mean that the public gets to tie up to the Breakwater dock or use Breakwater dock facilities. Therefore, as part of the project, Yarrow Bay is willing to place signage on its property, and on the BCA dock, to direct the public away from the BCA dock. Opening up the view corridor area, by moving the marina services building, will make it easier for Yarrow Bay Marina staff to

see and control boat access to the marina. In sum, the BCA is complaining about an existing condition that this project will change for the better.

8. The Public Access Trail.

There are actually two public pedestrian access ways through the site, which have been required by the City. One trail would cross the site near the water and would connect the Carillon Point pedestrian path to the north with the pedestrian path in front of the Breakwater Condominiums to the south. A small required pedestrian shoreline seating area is included along this pathway with views of the water (this in on the south half of the site and pedestrian views would not be impaired by the existing covered moorage). The other pedestrian path would run near the south edge of the site and connect the Lake Washington Boulevard with the pedestrian path along the water. *See* Staff Report Att. 2A (Landscape Plan) and Att.5 Enc.1 (Landscape Plan).

City staff believes it is important to connect the Carillon Point pedestrian path across the site to the Breakwater pedestrian path. It is less important to have another pedestrian path down from Lake Washington to the water. However, City Staff has required both of these trail connections because it aligns with this City dedicated view of Lake Washington. Yarrow Bay is pleased to provide that pedestrian pathway, but would not object if the Council found that the other existing pedestrian paths to Lake Washington (to the north on the Carillon Point property and to the south on the Breakwater property) were deemed sufficient.

9. BCA's Request for an Additional Buffer Area Has No Basis.

BCA's request for an additional setback from the condominium is not based on any evidence in the record, is not supported by the Zoning Code or the SMP, and should be rejected. The Breakwater Condominium is already set back over 40 feet from the property line, and is screened by its large, mostly evergreen, trees. The Yarrow Bay project will enhance that landscape buffer by plantings along the south edge of the Yarrow Bay property that will include more evergreen trees to provide additional screening. Moreover, the project has been required to provide a large view corridor along the south half of its property (and 70% along the shoreline), which places the office building far from the BCA property. Furthermore, it actually moves the marina services building away from the south property line (adjacent to the Breakwater Condominium site) to the north (adjacent to Carillon Point's commercial development).

10. The Pedestrian Plaza Area Is Designed Appropriately.

BCA first complains that the City is providing a small public "park" viewpoint on the shoreline at all, then complains that this small pedestrian plaza area cannot see the water. BCA is wrong on both counts. The pedestrian plaza area is an important design feature to give the public an opportunity to view the water and the shoreline activities at the marina. *See* Staff Report Att. 2A (Landscape Plan & Plaza Plan). The plaza area is at the southwest corner of the site, adjacent to the shoreline, and is not blocked by any of the existing covered moorage. As

explained at the hearing, the plaza and associated pedestrian path are pulled back slightly from the ongoing industrial uses of the marina repair yard for public safety reasons.

11. The Transportation Impacts of the Projects Have Been Thoroughly Studied and There Are No Significant Adverse Impacts.

BCA's allegations of "dangerous and congested" roadway conditions are not supported by any evidence in the record. The transportation expert hired by Yarrow Bay produced a fully-documented Transportation Impact Analysis. This report concluded that the project, as designed with a pedestrian refuge island in the new driveway entrance design, would have no significant impact on either transportation or on traffic/pedestrian safety. Staff Report Att. 5, Enc. 5.

Prior to the hearing, both Yarrow Bay's transportation expert and the City's expert traffic engineer responded to BCA's concerns about traffic, pedestrian, and bicycle safety. Staff Report Att. 12 and Att. 13. Both of these experts concluded that there would not be any significant impact to transportation, parking or traffic safety.

12. The Project Meets the City's View Corridor Criteria

Finally, BCA broadly claims that the project design does not meet the City's view corridor criteria because of the existing covered moorage. This claim is incorrect for three reasons.

First, the specific view corridor requirements for projects along Lake Washington Boulevard control this project – not the general definition of a view corridor in KMC 5.10.974. For properties waterward of Lake Washington Boulevard, the view corridor must be supplied across the upland property – not across open water. Zoning Code Plate 27C.

Second, the view corridor provided for this project does meet the view corridor definition. The view studies of the project clearly show that unimpeded views to Lake Washington will be available from the Lake Washington Blvd right-of-way. In fact, the project will significantly improve those views by removing trees that obstruct the view and by moving the marina services building out of the view corridor (which was not required by the 2002 Comprehensive Plan Amendment but is being done because of the generosity of the Wilcox Family, owners of the marina). Staff Report Att. 5, Encl. 11.

Third, the BCA again is complaining about the covered moorage here. As discussed above, the covered moorage is an existing, legally nonconforming structure. Under both the City Zoning Code and SMP, that nonconforming structure can remain.

In sum, Yarrow Bay respectfully requests the Council to approve the Hearing Examiner recommendation for these combined projects, with the clarification requested in Section 3 above. The replacement of the dry dock storage with the office building will allow this important marina

use to continue as part of the City's waterfront, and the project will open up and provide both visual and physical access for the public to the shoreline areas.

Very truly yours,

FOSTER PEPPER PLLC

Roger A. Pearce

Roger A. Pearce
Attorneys for Yarrow Bay Yacht Basin and Marina LLC and Marina Suites LLC

RECEIVED
AUG 28 2006
AM PM
PLANNING DEPARTMENT
BY

BEFORE THE CITY OF KIRKLAND
HEARING EXAMINER

In the Matter of: 5201 Lake Washington Boulevard NE Zoning/shoreline permit approval SEPA appeal	SHR06-0001 DECLARATION OF SERVICE

Helen M. Stubbert declares:

I am a legal assistant to Roger A. Pearce. I am now, and at all times hereinafter mentioned was, a resident of the State of Washington, over the age of 18 years, and competent to be a witness in the above-entitled proceeding, and that, on August 28, 2006, I caused to be delivered in the manner indicated below true and correct copies of:

and this Declaration of Service to the following:

City Council
c/o City of Kirkland Planning Department
123 Fifth Ave.
Kirkland WA 98033
Via Legal Messenger and Via e-mail

All parties listed on Attachment A hereto.
Via U.S. Mail

Declared under penalty of perjury under the laws of the State of Washington.

DATED this 28th day of August, 2006, at Seattle, Washington.

Helen M. Stubbert

FOSTER PEPPER PLLC
1111 THIRD AVENUE, SUITE 3400
SEATTLE, WASHINGTON 98101-3299
PHONE (206) 447-4400 FAX (206) 447-9700

J. Richard Aramburu
Jeffrey M. Austis
Attorneys at Law
505 Madison St., Ste. 209
Seattle WA 98104

John R. Barnett
4823 Lake Washington Blvd NE #5
Kirkland WA 98033

Board of Directors
Breakwater Condominium Association
4823 Lake Washington Blvd NE
Kirkland WA 98033

Stacy Clauson *and*
City of Kirkland Planning &
Community Development
123 Fifth Ave.
Kirkland WA 98033

Fred and LouAnn Freeburg
4823 Lake Washington Blvd NE #6
Kirkland WA 98033

Paul Friedrich
1022 NE 52nd St
Kirkland WA 98033

Phil Goldenman
Waterfront Construction Inc
205 NE Northlake Way Ste 230
Seattle WA 98105

City of Kirkland
Department of Public Works
123 Fifth Ave
Kirkland WA 98033

City of Kirkland
Department of Building and Fire Services
123 Fifth Ave
Kirkland WA 98033

William Popp
William Popp & Associates
14400 Bldg., Ste. 206
14400 Bel-Red Road
Bellevue WA 98007

Helen Rodgers
4823 Lake Washington Blvd NE #8
Kirkland WA 98033

Joan Schmidt
4823 Lake Washington Blvd NE #7
Kirkland WA 98033

Gary Shelton
4817 Lake Washington Blvd NE
Kirkland WA 98033

James Walker, Architect
Collins Woerman
710 – 2nd Ave., Ste. 1400
Seattle WA 98104

Attn: Ms. Karen Walter
Muckleshoot Indian Tribe
- Fisheries Division
39015 172nd Avenue SE
Auburn, WA 98092

Ronald Weinstein
4823 Lake Washington Blvd NE #1
Kirkland WA 98033

Don Wilcox, Owner
Yarrow Bay Yacht Basin
5207 Lake Washington Blvd
Kirkland WA 98033

Mr. Paul Wilcox
Waterfront Construction, Inc.
205 NE Northlake Way, Suite 230
Seattle, WA 98105

Attachment A

J. Richard Aramburu
Jeffrey M. Austis
Attorneys at Law
505 Madison St., Ste. 209
Seattle WA 98104

John R. Barnett
4823 Lake Washington Blvd NE #5
Kirkland WA 98033

Board of Directors
Breakwater Condominium Association
4823 Lake Washington Blvd NE
Kirkland WA 98033

Stacy Clauson *and*
City of Kirkland Planning &
Community Development
123 Fifth Ave.
Kirkland WA 98033

Fred and LouAnn Freeburg
4823 Lake Washington Blvd NE #6
Kirkland WA 98033

Paul Friedrich
1022 NE 52nd St
Kirkland WA 98033

Phil Goldenman
Waterfront Construction Inc
205 NE Northlake Way Ste 230
Seattle WA 98105

City of Kirkland
Department of Public Works
123 Fifth Ave
Kirkland WA 98033

City of Kirkland
Department of Building and Fire Services
123 Fifth Ave
Kirkland WA 98033

William Popp
William Popp & Associates
14400 Bldg., Ste. 206
14400 Bel-Red Road
Bellevue WA 98007

Helen Rodgers
4823 Lake Washington Blvd NE #8
Kirkland WA 98033

Joan Schmidt
4823 Lake Washington Blvd NE #7
Kirkland WA 98033

Gary Shelton
4817 Lake Washington Blvd NE
Kirkland WA 98033

James Walker, Architect
Collins Woerman
710 – 2nd Ave., Ste. 1400
Seattle WA 98104

Attn: Ms. Karen Walter
Muckleshoot Indian Tribe
- Fisheries Division
39015 172nd Avenue SE
Auburn, WA 98092

Ronald Weinstein
4823 Lake Washington Blvd NE #1
Kirkland WA 98033

Don Wilcox, Owner
Yarrow Bay Yacht Basin
5207 Lake Washington Blvd
Kirkland WA 98033

Mr. Paul Wilcox
Waterfront Construction, Inc.
205 NE Northlake Way, Suite 230
Seattle, WA 98105

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

MEMORANDUM

To: City Council

From: Eric Shields, Planning Director
Stacy Clauson, Project Planner

Date: Monday, August 28, 2006

Subject: Staff Response to Challenge to the Hearing Examiner Recommendation on the Yarrow Bay Marina/Marina Suites Project
File No. SHR06-00001 and ZON06-00001

INTRODUCTION

A challenge has been filed to the Hearing Examiner's recommendation for the Yarrow Bay Marina site redevelopment in a timely manner on August 21, 2006. The issues raised in the challenge are summarized by staff below and can be found in more detail as part of the challenge letter dated August 21, 2006. The purpose of this response is to provide clarification and staff's interpretation of policies relating to issues addressed in the challenge.

SUMMARY OF SPECIFIC ISSUES RAISED IN THE CHALLENGE:

1. Excessive Fill

Challenge: The challenger has stated that the proposal contains landfill on the mid to western side of the project and is inconsistent with the provisions of the Shoreline Master Program addressing landfill. The challenger has requested that the project be redesigned to eliminate the fill.

Applicable code provision:

KMC 24.05.140.b states that Land Surface Modification Within the High Waterline Yard. Land surface and modifications within the high waterline yard may be permitted only if no unique or significant natural area of flora or fauna will be destroyed and only for the following purposes:

> *(1) The land surface modification is proposed by a public agency to improve public safety, recreation or access.*
> *(2) The land surface modification is part of a development on the subject property and is to improve access to a pier, dock or beach.*
> *(3) The land surface modification is necessary to provide public pedestrian access or a public use area.*

> *(4) The land surface modification is necessary for the structural safety of a structure.*
> *(5) There has been severe and unusual erosion within the one year immediately preceding the application and the land surface modification is to restore the shoreline to its configuration prior to this erosion.*

KMC 24.05.140(c) states that Land surface modification landward of the high waterline yard is only permitted if it is necessary for an approved development or use of the subject property or if it is incidental to landscaping for an existing use on the subject property.

Hearing Examiner Recommendation:

The Hearing Examiner considered the issue of fill raised by the challenger and concluded that the application as conditioned would meet all relevant codes, plans and policies, including the City's Shoreline Master Program, and applicable state laws and regulations, including WAC 173-27 (see page 3 of HE recommendation, conclusion B.4 and 5). Staff agrees with the Hearing Examiner that the land surface modification is consistent with the provisions of KMC 24.05.140.b and c.

Applicable provisions in Hearing Examiner Exhibits:

- Attachment 2.a, Sheet A1.1 of the staff advisory depicts the site development as well as finished grades. Within the high waterline yard, the proposal includes the public access trail system, with grading work associated with the construction of the access trail. Landward or the ordinary high water mark, the proposal depicts the grades of the access driveway and trail system, with a retaining wall proposed along the south side of the public access trail.
- Pages 25-27 of the staff advisory report includes the staff analysis concerning the grading work associated with the proposed construction of the retaining wall along the south property line, noting that the topography along the driveway has been raised in order to meet the requirements of KZC 105.12, which regulates the maximum slope of driveways. The grading work has been viewed as necessary to support the development and provide the public pedestrian access.
- Attachment 2.a, Sheet A4.5 provides site sections through the site showing existing grades and the proposed development. Another section drawing is provided depicting the retaining wall and driveway as well as existing grades.
- Attachment 5, Enclosure 3, Section B.1 of the Environmental Checklist addresses issues related to grading and filling, including estimated quantities of grading excavation and fill.
- As noted in the public hearing by the applicant, the public access trail has been retained at the height of the access driveway, in order to encourage a more pedestrian friendly design than if the walkway was lowered below the elevation of the driveway.

2. Parking Quantity

Challenge: The challenger has contested the parking supply provided, indicating that sufficient parking has not been provided for the marina services building. The challenger has requested that

the parking requirements for the proposal be recalculated and parking sufficient to meet the demand should be located on site.

Applicable code provision:

KZC 105.45 establishes that two or more uses may share a parking area if the number of parking spaces provided is equal to the greatest number of required spaces for uses operating at the same time.

Hearing Examiner Recommendation:

The Hearing Examiner considered the issue of parking quantity raised by the challenger and concluded that the application as conditioned would meet all relevant codes, plans and policies, including the City's Shoreline Master Program, and applicable state laws and regulations, including WAC 173-27 (see page 3 of HE recommendation, conclusion B.4 and 5). Staff agrees with the Hearing Examiner that the parking quantity, as conditioned, would be consistent with the provisions of KZC 105.45.

Applicable provisions in Hearing Examiner Exhibits:

- Pages 21-23 of the staff advisory report include the staff analysis of the parking requirements. Staff concluded that the parking requirement has been met based on a supply that would satisfy the combined peak demand of all uses.
- Existing demand for the general moorage facility was based upon the results of a parking study of existing marina operations, which includes the service operations occurring within the existing marina services building (see Enclosure 5 of Attachment 5). Therefore, the parking demand related to the marina services building has been appropriately accounted for.
- Attachment 21, the use zone chart for general moorage facilities, notes under Special Regulation 17 that boat and motor sales leasing, repair and service as well as gas and oil sales are accessory components of a general moorage facility. The regulations concerning general moorage facilities do not establish additional parking requirements for these accessory uses.
- As noted by staff at the public hearing, the City has not previously required additional parking stalls to be provided for users of the public trail system.

3. Parking Location

Challenge: The challenger has contested the location of surface parking areas located between the office building and Lake Washington, indicating that these are not consistent with regulations contained in the Shoreline Master Program addressing parking location. The challenger requests the surface parking be eliminated and replaced with additional underground parking.

Applicable code provision:

KMC 24.05.130.c states that parking layouts must be designed efficiently to use the minimum amount of space necessary to provide the required parking and safe and reasonable access. Wherever possible, parking should be located out of the shoreline area and should not be located between the building or buildings on the subject property and Lake Washington. Exterior parking areas, other than for detached dwelling units, must be attractively landscaped with vegetation that will not obstruct views of the lake from the public right-of-way.

Hearing Examiner Recommendation:

The Hearing Examiner considered the issue of parking location raised by the challenger and concluded that the application as conditioned would meet all relevant codes, plans and policies, including the City's Shoreline Master Program, and applicable state laws and regulations, including WAC 173-27 (see page 3 of HE recommendation, conclusion B.4 and 5). Staff agrees with the Hearing Examiner that the parking location would be consistent with the provisions of KMC 24.05.130.c.

Applicable provisions in Hearing Examiner Exhibits:

- Attachment 2.a of the Staff Advisory Report depicts the site development, including the location of the surface parking. The majority of the parking is proposed to be provided in two parking levels underneath the office building. Additional parking is proposed to be provided in surface parking located on the southern portion of the site, together with 15 stalls proposed in between the Marina Services building and Lake Washington.
- As shown in the demolition plan in Attachment 2.a of the Staff Advisory Report and aerial photographs as shown in Exhibit C, parking is currently located in this vicinity and serves marina patrons and employees. This provides customers of the marina with parking near the access point to the piers. The parking use in this area is proposed to continue and would not be expanded.
- As noted by the applicant in their presentation and as depicted in Exhibit D, the paved area between the marina services building and the shoreline also serves as circulation area for access to the bay doors of the marina services building, which face west, as well as a staging area for boats awaiting service to be stored during the boating off season, when the parking demand for the marina is reduced.

4. Yarrow Bay Boat Parking

Challenge: The challenger has indicated that the application does not indicate where boat storage facilities will be located on site and requests the plans be revised to accommodate both boat parking and storage.

Applicable code provision:
Both the Zoning Code (KZC 60.172.050) and Shoreline Master Program (KMC 24.05.165) regulations permit the following accessory uses as part of a general moorage facility use:

(A) Boat and motor sales and leasing;
(B) Boat and motor repair and service, if:
(i) This activity is conducted on dry land and either totally within a building or totally sight-screened from adjoining property and the right-of-way; and
(ii) All dry land motor testing is conducted within a building.
(C) Pumping facilities to remove effluent from boat holding tanks.
(D) Dry land boat storage; provided, however, that stacked storage is not permitted.
(E) Meeting and special event rooms.
(F) Gas and oil sales for boats, if:
(i) All storage tanks are underground and on dry land; and
(ii) The use has facilities to contain and clean up gas and oil spills.
This accessory use (gas and oil sales) may be conducted within an over water shed that is not more than fifty square feet in area and ten feet high as measured from the deck...

Hearing Examiner Recommendation:

The Hearing Examiner considered the issue of parking for boats raised by the challenger and concluded that the application as conditioned would meet all relevant codes, plans and policies, including the City's Shoreline Master Program, and applicable state laws and regulations, including WAC 173-27 (see page 3 of HE recommendation, conclusion B.4 and 5). Staff agrees with the Hearing Examiner that the boat parking, as conditioned, would be consistent with the provisions of the zoning and shoreline regulations.

Applicable provisions in Hearing Examiner Exhibits:

- As noted on page 36 of the staff advisory report, the existing dry land storage activities that occur on the site would be eliminated under the proposal.
- As noted by the applicant in their presentation and as depicted in Exhibit D, the applicant is proposing to utilize the shoreline area for short term haul out and staging area for boats, consistent with existing uses in this area. Photographs of the existing shoreline operations are included in the applicant's presentation under Exhibit C.
- Further, as noted by the applicant in their presentation and as depicted in Exhibit D, the paved area between the marina services building and the shoreline also serves as a short term storage area for boats awaiting service during the boating off season, when the parking demand for the marina is reduced and the demand for service and repair is the greatest.

5. Moorage Extension

Challenge: The challenger requests that the proposed dock extension be denied because it will decrease the available maneuvering area between the Breakwater property and the moorage and create interference with the Breakwater property.

Applicable code provision:

Nonconformance Issue:

KZC 60.172.050 Special Regulation #14 prohibits covered moorage.

KZC 162.35.9 states that any nonconformance must be brought into conformance if the applicant is making any alteration or change or doing any other work in a consecutive 12 month period to an improvement that is nonconforming or houses, supports or is supported by the nonconformance, and the cost of the alteration, change or other work exceeds 50% of the replacement cost of the improvement.

Other:

KMC 24.05.165.e states that moorage structures may not be larger than is necessary to provide safe and reasonable moorage for the boats to be moored. The city will specifically review the size and configuration of each proposed moorage structure to help ensure that:

> *(1) The moorage structure does not extend waterward beyond the point necessary to provide reasonable draft for the boats to be moored, but not beyond the outer harbor line;*
> *(2) The moorage structure is not larger than is necessary to moor the specified number of boats; and*
> *(3) The moorage structure will not interfere with the public use and enjoyment of the water or create a hazard to navigation; and*
> *(4) The moorage structure will not adversely affect nearby uses; and*
> *(5) The moorage structure will not have a significant long-term adverse effect on aquatic habitats.*

KZC 60.172.050, Special Regulation 7 states that moorage structures may not be larger than is necessary to provide safe and reasonable moorage for the boats moored. The City will specifically review the size and configuration of moorage structures to insure that:

> *a. The moorage structures do not extend waterward of the point necessary to provide reasonable draft for the boats to be moored, but not beyond the outer harbor line; and*
> *b. The moorage structures are not larger than is necessary to moor the specified number of boats; and*
> *c. The moorage structures will not interfere with the public use and enjoyment of the water or create a hazard to navigation; and*
> *d. The moorage structures will not adversely affect nearby uses; and*
> *e. The moorage structures will not have a significant long-term adverse effect on aquatic habitats.*

Hearing Examiner Recommendation:

The Hearing Examiner considered the issues of expansion of the moorage raised by the challenger and concluded that the application as conditioned would meet all relevant codes, plans and policies, including the City's Shoreline Master Program, and applicable state laws and regulations, including WAC 173-27 (see page 3 of HE recommendation, conclusion B.4 and 5). Staff agrees with the Hearing Examiner that the expansion of the moorage, as conditioned, would be consistent with the zoning and shoreline regulations for general moorage facilities.

Applicable provisions in Hearing Examiner Exhibits:

Nonconformance:

- Pages 35-36 of the staff advisory report include the staff analysis of the nonconforming covered moorage and concluded that the covered moorage was not required to be brought into conformance at this time. Staff based its evaluation on the cost of the expansion of the moorage piers as a percentage of the replacement cost of the existing moorage piers, since this is the improvement that supports the nonconforming covered moorage.

Other:

- Pages 10, 14, and 33-35 of the staff advisory report include the staff analysis of the expansion of the moorage facilities and potential affects to nearby uses. Staff has concluded that the addition, as a result of its location and separation both from the Breakwater property line and the Breakwater dock, would not cause additional or increased adverse impacts to the adjoining property.
- As noted, many of the impacts described by the challenger are a result of the existing access for the fuel docks. The fuel facility is not proposed to be expanded. To address these existing impacts, the applicant has proposed signage to be installed (see Exhibit D) and the Hearing Examiner has recommended a condition of approval to provide tie-up points at the end of the pier extension to be made available for boats waiting for fuel (see recommended condition number 2 in Hearing Examiner report).

6. Public Access Trail

Challenge: The challenger requests that the public access trail located on the south side of the property adjoining the Breakwater Condominiums be deleted from the plan.

Applicable code provision:

KZC 60.172.025, Special Regulation 2 states that an office project must provide public pedestrian access from the right-of-way to and along the entire waterfront of the subject property within the high waterline yard. Access to the waterfront may be waived by the City if public access along the waterfront of the subject property can be reached from adjoining property...

KMC 24.05.065 establishes that public pedestrian access along the water's edge of all shoreline development, other than single-family residential or where unique and fragile shoreline areas would be adversely affected, should be required of all developments. All developments required to provide public pedestrian access along the water's edge should connect this access to the right-of-way unless access to the water's edge can easily be gained via existing access points.

Hearing Examiner Recommendation:

The Hearing Examiner considered the issue of the public access by the challenger and concluded that the application as conditioned would meet all relevant codes, plans and policies, including the City's Shoreline Master Program, and applicable state laws and regulations, including WAC 173-27 (see page 3 of HE recommendation, conclusion B.4 and 5). Staff agrees with the Hearing Examiner that the public access, as conditioned, would be consistent with the provisions in the zoning and shoreline regulations addressing public access.

Applicable provisions in Hearing Examiner Exhibits:

- Pages 11, 15–18, 27-28, and 41 of the staff advisory report include staff analysis addressing the recommendation for a public access trail connecting the waterfront trail to Lake Washington Blvd. NE. The Hearing Examiner and Houghton Community Council have both recommended that the trail be included as part of the proposal.

7. Buffer area between Commercial and Residential Use

Challenge: The challenger requests that the nature and size of the landscape buffer between the subject property and the Breakwater Condominiums be substantially increased.

Applicable code provision:
Zoning Code section 60.172.025 requires office uses in a PLA 15A zone to comply with Landscape Category D. Section 95.40 lists the applicable regulations for Landscape Category D. Given the adjoining uses, the office use is not required to provide a landscape buffer under the provisions of KZC 90.40.

Zoning Code section 60.172.050 requires general moorage facilities in a PLA 15A zone to comply with Landscape Category B. Section 95.40 lists the applicable regulations for Landscape Category B. Because the marina property is adjacent to medium and high density uses to the south, Section 95.40 (6)(a) (Buffering Standard 1) applies. Buffering Standard 1 requires that the applicant provide a 15-foot-wide landscaped strip with a six-foot-high solid screening fence or wall along the south property line. The land use buffer must be planted with trees planted at the rate of one tree per 20 linear feet of land use buffer, and large shrubs or a mix of shrubs planted to attain coverage of at least 60 percent of the land use buffer area within two years.

KZC 95.40.8 establishes that land use buffers must only be brought into conformance with the requirements of KZC 95.40.6 in either of the following situations:

- *An increase in gross floor area of any structure (the requirement to provide conforming buffers applies only where new gross floor area impacts adjoining property); or*
- *A change in use on the subject property and the new use requires larger buffers than the former use.*

KZC 95.40.7.b requires the applicant to buffer all parking areas and driveways from the right-of-way and from adjacent property with a five-foot-wide strip along the perimeter of the parking areas and driveways planted with one row of trees planted 30 feet on center along the entire length of the strip and living groundcover planted to attain coverage of at least 60 percent of the strip area within two years.

Hearing Examiner Recommendation:

The Hearing Examiner considered the issue of the need for additional buffering between the project and Breakwater Condominiums and has recommended that evergreen and taller vegetation be permitted within the landscape strip located along the south property line in order to provide greater buffering for the property to the south (see page 3-4 of HE recommendation, conclusion B.4 through 6 and recommended conditions of approval). Staff agrees with the Hearing Examiner that the buffering, as conditioned, would be consistent with the provisions in the zoning and shoreline regulations. Concerns raised about the ownership interests of the maple tree are civil issues.

Applicable provisions in Hearing Examiner Exhibits:

- Pages 20-21 of the staff advisory report include staff analysis addressing the recommendation for increased vegetation height within the landscape strip located along the south property line.
- Pages 23 and 39 of the staff advisory report include staff analysis of the project compliance with the landscaping requirements for the office use. As noted, the zoning regulations do not require a land use buffer to be provided between the office and medium density residential use to the south.
- Pages 23-24 of the staff advisory report include staff analysis of the landscape buffering requirements for access driveways and parking areas. As noted, the proposal includes a five-foot wide landscape strip, consistent with the buffering requirements for driveways and parking areas.
- Page 23-24 of the staff advisory report includes staff analysis of the project compliance with the landscaping requirements for the general moorage facility.
- Sheets L-2 and L-3 of Attachment 2.a as included in the staff advisory report show the proposed landscaping plan as well as a site section through the public access trail and south property line.
- Exhibit C contains photographs of the existing landscape buffer located along the north property line at the Breakwater Condominium site.

- Attachment 9 of the staff advisory report provides information on the impacts and need for removal of the Maple tree located along the south property line.

8. Public Park Area

Challenge: The challenger requests the elimination of the waterfront access area and the limitation of access in the waterfront area to maintenance of a lineal trail parallel to the shoreline.

Applicable code provision:

KZC 60.172.025, Special Regulation 5.d requires the following if structure height to be increased to 40 feet above average building: A waterfront area developed and open for public use shall be provided with the location and design specifically approved by the City. Public amenities shall be provided, such as non-motorized watercraft access or a public pier. A public use easement document shall be provided to the City for the public use area, in a form acceptable to the City. The City shall require signs designating the public use area.

Hearing Examiner Recommendation:

The Hearing Examiner considered the issue of the waterfront use area by the challenger and concluded that the application as conditioned would meet all relevant codes, plans and policies, including the City's Shoreline Master Program, and applicable state laws and regulations, including WAC 173-27 (see page 3 of HE recommendation, conclusion B.4 and 5). Staff agrees with the Hearing Examiner that the waterfront use area, as conditioned, would be consistent with the provisions in the zoning code. Please note that the terminology used by the challenger of a public park is incorrect, as the waterfront use area will not be managed by a governmental agency.

Applicable provisions in Hearing Examiner Exhibits:

- Pages 28-30 of the staff advisory report include staff analysis addressing the waterfront use area.
- The landscape plan and plaza plan provided in Attachment 2.a of the staff advisory report provide a plan and perspective drawings of the waterfront use area.

9. Dangerous and Congested Roadway Conditions

Challenge: The challenger contests the traffic evaluation, indicating that impacts relating to turning movements on and off Lake Washington Blvd. in the location of the proposal and queue back-ups from the project driveway have not been appropriately mitigated and requests that the proposal be remanded for the development of transportation solutions that address these impacts.

Hearing Examiner Decision: Issues relating to traffic were evaluated through the SEPA appeal process, which was decided by the Hearing Examiner. In issuing the decision on the SEPA appeal,

which affirmed the Mitigated Determination of Non-Significance issued by the Planning Department, the Hearing Examiner concluded that with regard to transportation, the record, including Exhibit A and the testimony of the applicant's traffic engineer, William Popp, show that the potential impacts from traffic would not have significant adverse environmental impacts and are otherwise adequately conditioned. The decision on the SEPA appeal issued by the Hearing Examiner is the final decision of the City.

10. View Corridor

Challenge: The challenger has contested that the proposal is inconsistent with the view corridor requirements because a substantial amount of the view corridor is taken up with covered moorage.

Applicable code provision:

KMC 24.05.160 states that for properties lying waterward of Lake Washington Boulevard, Lake Street South, 98th Avenue NE or Juanita Drive, a minimum view corridor of thirty percent of the average parcel width must be maintained. The view corridor must be in one continuous piece. Within the view corridor, structures, parking areas and landscaping will be allowed, provided that they do not obscure the view from these rights-of-way to and beyond Lake Washington.

KZC 60.170.2 states that a view corridor shall be provided and maintained across the subject property as follows and as described in Plate 27 (does not apply to Development containing Attached or Stacked Dwelling Units and Restaurant or Tavern and General Moorage Facility use under an approved master plan):
a. A view corridor must be maintained across 30 percent of the average parcel width; and
b. Along Lake Washington Boulevard, the view corridor of 30 percent of the average parcel width shall be increased 2.5 feet for each foot, or portion thereof, that any building exceeds 30 feet above average building elevation. If the subject property does not directly abut Lake Washington Boulevard, the length of the view corridor along its east property line shall be determined by projecting the view corridor as required along Lake Washington Boulevard across the subject property to the view corridor required along the shoreline; and
c. Aong the shoreline, the width of the view corridor shall be:

> *1. Sixty percent of the length of the high water line if the height of any building is greater than 30 feet but less than or equal to 35 feet above average building elevation, or*
> *2. Seventy percent of the high water line if the height of any building is greater than 35 feet above average building elevation. If the subject property does not directly abut the shoreline, the width of the view corridor along its west property line shall be determined by projecting the view corridor as required along Lake Washington Boulevard across the subject property to the view corridor required along the shoreline; and*

d. The view corridor must be in one continuous piece; and
e. Within the view corridor, structures, parking areas and landscaping will be allowed, provided that they do not obscure the view from Lake Washington Boulevard to and beyond Lake Washington. Trees or shrubs that mature to a height of greater than three feet above average grade may not be

placed in the required view corridor. Parking stalls or loading areas are not permitted in the required view corridor that would result in vehicles obscuring the line of sight from Lake Washington Boulevard to the high water line as shown in Plate 27; and
f. The view corridor must be adjacent to either the north or south property line, whichever will result in the widest view corridor given development on adjacent properties.

Plate 27 indicates that the required shoreline view corridor across the property shall be determined by taking the view corridor required along Lake Washington Boulevard (30 percent of the average parcel width plus 2.5 feet for each foot the building height exceeds 30 feet above average building elevation) and then extending the view corridor across the property to the shoreline to provide a shoreline view corridor of 60 percent if building height is greater than 30 feet, but equal to or less than 35 feet or 70 percent if building height is greater than 35 feet (see diagram above).

View corridor is defined in KZC 5.10.974 as an open area that provides an unobstructed view across the subject property to and beyond Lake Washington from the adjacent right-of-way.

Hearing Examiner Recommendation:

The Hearing Examiner considered the issue of impacts to views raised by the challenger and concluded that the application as conditioned would meet all relevant codes, plans and policies, including the City's Shoreline Master Program, and applicable state laws and regulations, including WAC 173-27 (see page 3 of HE recommendation, conclusion B.4 and 5). Staff agrees with the Hearing Examiner that the view corridor, as conditioned, would be consistent with the provisions in the zoning and shoreline regulations.

Applicable provisions in Hearing Examiner Exhibits:

- Pages 18-20 of the staff advisory report includes the staff analysis of the view corridor. Staff concluded that the proposed development was consistent within the dimensional requirement for the view corridor. The view corridor across the site would allow views to the lake and boats moored at the marina as well as to Lake Washington beyond the covered moorage.
- Pages 35-36 of the staff advisory report includes the staff analysis of the nonconforming covered moorage and concluded that the covered moorage was not required to be brought into conformance at this time.

11. Notice Adequacy

Challenge: The challenger has requested that the City Council require a re-notice of the project to correct deficiencies in the notice of application.

Hearing Examiner Recommendation: The issue concerning notice adequacy has been reviewed by staff, the City Attorney and the Hearing Examiner, who have concluded that the notice provided

was adequate and did not provide a basis for remanding the application to the Planning Department for further notice.

Conclusion

The general issue raised in the challenge is that the Hearing Examiner did not adequately discuss and evaluate concerns raised in the July 31, 2006 letter submitted on behalf of the Breakwater Condominium Association. Based on the detailed consideration of City policies and regulations contained in the supporting exhibits to the Hearing Examiner recommendation, including the staff advisory report, staff concludes that the Hearing Examiner did adequately and appropriately address these concerns.

Enclosure: Affidavit of Service

Cc: File SHR06-00001

RECEIVED
SEP - 6 2006
AM PM
PLANNING DEPARTMENT
BY

J. RICHARD ARAMBURU
JEFFREY M. EUSTIS
Attorneys at Law
505 Madison Street, Suite 209
Seattle, Washington 98104
(206) 625-9515
Fax: (206) 682-1376

September 5, 2006

City Council
c/o Stacy Clauson, Kirkland Planning Department
123 Fifth Avenue
Kirkland WA 98033

VIA FAX 425-587-3232

RE: Yarrow Bay Marina / Marina Suites Proposal
File No. SHR06-00001 and ZON06-00001

Dear Councilmembers:

As you are aware, this office represents the Breakwater Condominium Association ("BCA"). On August 21, 2006, BCA filed a challenge to the recommendations of the Hearing Examiner in the above matter. No other challenges to the Hearing Examiner recommendation were filed.

On August 28, 2006 the applicants filed a response through their counsel, Roger Pearce.

Though BCA recognizes that the code does not provide for a reply to a response from one filing a challenge, we believe one request filed by the applicant is out of order and should not be considered by the Council.

In the first full paragraph on page four of Mr. Pearce's response, he requests "clarification" from the City Council on issue concerning boat parking. In that paragraph of his letter, Mr. Pearce goes on to make the following request:

> The applicant requests the Council to clarify that city staff has the discretion to modify the shared parking requirement during winter months for the parking stalls proposed next to "A" dock for this short-term staging of storm-generated boating service. The marina owner will show that the marina has lower parking peaks during these months.

ENCLOSURE 8

As Mr. Pearce recognizes, the recommendation of the Hearing Examiner provides that no designated parking stalls may be used for boat storage. The applicant did not object to this condition during the hearing, but in any event, the Examiner adopted this staff recommendation.

If the applicant wished to challenge the staff and Hearing Examiner decisions on this point, a challenge should have been filed to the Examiner's recommendation under Section 152.85 of the code. Bringing the matter up in a response, to which the BCA has no reply, violates the letter and spirit of the code. Accordingly, the Council should not consider applicant's request to modify the Hearing Examiner recommendation.

In any event, the applicant's request is inappropriate inasmuch as there is no authority for adopting shared parking provisions on a seasonal basis, as is requested. Further, the applicant's request is vague and adopts criteria impossible to understand or regulate, i.e., "staging of storm-generated boating service" which would occur "during the winter months." Part of the project justification for this proposal is that derelict boats would be removed from these premises and such a provision is contrary to such intent.

In summary, the applicant's request is out of order because it was not included in a challenge and should not be considered by the Council. If it is considered, the proposal should be rejected.

Sincerely yours,

J. Richard Aramburu

JRA:cc
cc: Roger Pearce *(via FAX 447-9700)*
Stacy Clauson, City of Kirkland
Client

FOSTER PEPPER PLLC

Direct Phone (206) 447-4676
Direct Facsimile (206) 749-1997
E-Mail PearR@foster.com

September 8, 2006

VIA EMAIL and U. S. MAIL

City Council
c/o Kirkland Planning Department
123 Fifth Avenue
Kirkland WA 98033
ATTN: Ms. Stacy Clausen

Re: Sur-Reply to Challenger's Unpermitted Reply Letter
Hearing Examiner Recommendation under City of Kirkland File Nos. SHR06-00001 and ZON06-000001

Councilmembers:

This responds to the September 5, 2006, reply letter sent by Breakwater Condominium Association (BCA). BCA admits in its letter that the Kirkland Code does not allow for its reply.

The BCA reply concerns the request of permit applicant Yarrow Bay for clarification of a portion of the Examiner's recommendation. BCA incorrectly characterizes that request as a "challenge" to the Examiner's decision. It is nothing of the kind. Yarrow Bay supports the Examiner's recommendation. Nevertheless, in order to avoid any unnecessary distractions for the City Council, Yarrow Bay withdraws its request for clarification.

We look forward to the Council's approval of the Examiner's recommendation after the Council's September 19 meeting.

Very truly yours,
FOSTER PEPPER PLLC

Roger A. Pearce
Attorneys for Yarrow Bay Yacht Basin and Marina LLC and Marina Suites LLC

cc: Clients
J. Richard Aramburu

RESOLUTION. R-4603

A RESOLUTION OF THE CITY OF KIRKLAND APPROVING THE ISSUANCE OF A PROCESS IIB PERMIT AND OF A SUBSTANTIAL DEVELOPMENT PERMIT AS APPLIED FOR IN DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT FILE NO. ZON06-00001 AND SHR06-00001 BY MARINA SUITES LLC BEING WITHIN A PLA 15A ZONE AND UM 2 SHORELINE ENVIRONMENT, AND SETTING FORTH CONDITIONS TO WHICH SUCH PROCESS IIB PERMIT AND SUBSTANTIAL DEVELOPMENT PERMIT SHALL BE SUBJECT.

WHEREAS, the Department of Planning and Community Development has received an application for a Process IIB permit, filed by Marina Suites LLC, representing the owner of said property described in said application and located within PLA 15A zone; and

WHEREAS, the Department of Planning and Community Development has received an application for a Substantial Development Permit filed by Marina Suites LLC, representing the owner of said property described in said application and located within a UM 2 zone.

WHEREAS, pursuant to the City of Kirkland's Concurrency Management System, KMC Title 25, a concurrency application has been submitted to the City of Kirkland, reviewed by the responsible Public Works official, the concurrency test has been passed, and a concurrency test notice issued; and

WHEREAS, pursuant to the State Environmental Policy Act, RCW 43.21C and the Administrative Guideline and local ordinance adopted to implement it, an environmental checklist has been submitted to the City of Kirkland, reviewed by the responsible official of the City of Kirkland, and a negative determination reached; and

WHEREAS, said environmental checklist and determination have been available and accompanied the application through the entire review process; and

WHEREAS, The application has been submitted to the Kirkland Hearing Examiner who held public hearing thereon at the special meeting of July 31, 2006; and

WHEREAS, after the public hearing and consideration of the recommendations of the Department of Planning and Community Development, the Kirkland Hearing Examiner did adopt certain Findings, Conclusions and Recommendations and recommended approval of the Process IIB Permit and Substantial Development Permit subject to the specific conditions set forth in said recommendation; and

WHEREAS, the City Council, in regular meeting, did consider the environmental documents received from the responsible official, together with the recommendation of the Hearing Examiner, as well as a timely filed challenge of said recommendation.

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

Section 1. The findings, conclusions, and recommendation of the Hearing Examiner as signed by the Hearing Examiner and filed in the Department of Planning and Community Development File No. ZON06-00001 and SHR06-00001 are adopted by the Kirkland City Council as though fully set forth herein.

Section 2. The Process IIB permit and Substantial Development permit shall be issued to the applicant subject to the conditions set forth in the recommendation hereinabove adopted by the City Council.

Section 3. Nothing in this resolution shall be construed as excusing the applicant from compliance with any federal, state or local statutes, ordinances or regulations applicable to this project, other than expressly set forth herein, or other than the permit requirements of the Shoreline Management Act of 1971. Construction pursuant to the Substantial Development Permit shall not begin or be authorized until 30 days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-14-090 or until all review proceedings initiated within 30 days from the date of such filing have been terminated, except as provided in RCW 90.58.140(5)(a)(b)(c).

Section 3. Failure on the part of the holder of the permit to initially meet or maintain strict compliance with the standards and conditions to which the Process IIB permit is subject shall be grounds for revocation in accordance with Ordinance 3719, as amended, the Kirkland Zoning Ordinance.

Section 4. Failure on the part of the holder of the Substantial Development Permit to initially meet or maintain strict compliance with the standards and conditions to which the permit is subject shall be grounds for revocation in accordance with RCW 90.58.140(8). The local procedure for revocation shall substantially follow the procedure set forth in Section 170.50 of Ordinance 3719, as amended.

Section 5. Notwithstanding any recommendation heretofore given by the Houghton Community Council, the subject matter of this resolution and the permit herein granted are, pursuant to Ordinance 2001, subject to the disapproval jurisdiction of the Houghton Community Council or the failure of said Community Council to disapprove this resolution within sixty days of the date of the passage of this resolution.

Section 6. A complete copy of this resolution, including Findings, Conclusions and Recommendation adopted by reference, shall be certified by the City Clerk who shall then forward the certified copy to the King County Department of Assessments.

Section 7. A certified copy of this resolution, together with the findings, conclusions, and recommendation herein adopted shall be attached to and become a part of the Process IIB permit and Substantial Development permit or evidence thereof delivered to the permittee.

Section 8. Copies of this resolution shall be delivered to the following:

(a) The Department of Ecology for the State of Washington
(b) The Office of the Attorney General for the State of Washington

PASSED by majority vote in open meeting of the Kirkland City Council on the _____ day of _____, 20___.

SIGNED IN AUTHENTICATION thereof this _____ day of _____, 20___.

_____
Mayor

Attest:

_____
City Clerk

CITY OF KIRKLAND
123 Fifth Avenue, Kirkland, WA 98033 425.587.3000
www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: Daryl Grigsby, Public Works Director

Date: September 6, 2006

Subject: Puget Sound Regional Council's Burlington Northern Railroad Advisory Committee Update

In December of 2005, the Puget Sound Regional Council (PSRC) established an Advisory Committee to review potential types of uses for the 41 mile BNSF corridor from Renton to Snohomish. This Committee is part of a federal planning grant secured by WSDOT and the PSRC to analyze the opportunities, types of uses, implications and benefits of acquiring the regional trail corridor. In addition to the study efforts, King County and Burlington Northern are in active negotiations regarding potential acquisition by the County. The County has deferred discussion with regional players relative to uses, focusing instead on acquisition and allowing the Advisory Committee to review uses consistent with the plans and needs of agencies along the corridor.

The Committee began meeting in February of 2006, and has received a series of briefings from WSDOT, Sound Transit, BNSF, the Dinner Train, Boeing, cities along the corridor, and other organizations regarding their goals and interests. In addition, HDR has been hired by the PSRC to provide technical assistance and alternative analysis to the Advisory Commission. As part of their work, HDR met with each city along the corridor to discuss what work has been done to date, determine the status of studies of the alignment, and to clarify any community vision for the corridor. They obtained information on potential obstacles, community issues and other concerns. In addition, the consultant has analyzed future rail needs and other long-range plans that may impact uses of the corridor.

As part of the analysis, the consultant divided the corridor into four segments, A, B, C, and D; with each representing a section of the corridor moving from south to north. A is Renton to Bellevue, B is Bellevue to Woodinville, C is Woodinville to Snohomish, and D is the spur from Woodinville to Redmond. The City of Kirkland is in Segment B. For each segment the consultant has outlined the major opportunities and constraints for the various alternatives. Typical opportunities are trail connections, trail heads, transit centers, parks, Central Business Districts, retail connectivity, favorable terrain, and potential for ROW sharing with utilities. Constraints include high embankments, steep slopes, wetlands, residential areas, private driveways, significant at-grade crossings, bridges, and other obstacles.

For the City of Kirkland, we informed them that our first Non-Motorized Plan in 1995 included the rail corridor as a major north-south trail opportunity. Following that acknowledgement began the 'Cross-Kirkland Trail' project. In 1998, the City funded a $100,000 feasibility study through the Capital

Improvement Program which engaged the community, property owners, and BNSF in an exploration of a "rails with trails" concept, i.e. constructing a pedestrian/bike trail within the BNSF-owned right-of-way adjacent to the rail lines. Technical consultants were hired to study the engineering/design opportunities and constraints. A working focus group comprised of community and BNSF representatives was established. Combined with feedback received at several public meetings, information was generated to identify major issues related to the placement, design, and functionality of a potential trail. Engineers created a preliminary conceptual plan which identified where the trail might be located within the right-of-way, proposed possible remedies to trail crossings at key intersections, suggested options for separating the trail from the tracks, and identified potential conflicts with adjacent property owners. That work culminated in the Cross Kirkland Trail project we currently have in our unfunded Non-Motorized Transportation Capital Improvement Program as project NM 0024. In addition, the Trail is identified in the Transportation Element of the City's Comprehensive Plan as a 10-12 foot wide two-way bike/pedestrian asphalt trail between the north and south city limits.

Councilmember Tom Hodgson, the City of Kirkland's representative, has expressed the City's interest in the corridor as a major north-south non-motorized trail. We have emphasized its potential both as a local and regional facility, benefiting residents, non-motorized travel, and accessing neighborhoods, downtown Kirkland and the Urban Center at Totem Lake.

At our most recent meeting, HDR presented their findings for Commission consideration. The five alternatives are as follows.

1. Trail Only	**12-14 foot paved pathway for bicyclists and pedestrians**
2. Trail with Current Rail	**Trail as above with barrier separation along existing track**
3. Trail with Increased Rail	**Same as 1 and 2 with enhanced rail corridor. Primary objective is to have a contingency for possible disruption of Seattle-Everett rail connections.**
4. Trail with Commuter Rail	**Same as rail with trail and with 12 stations**
5. Trail with High Capacity Transit	**Same as 4 with upgraded stations and tracks**

It should be noted that the Cross Kirkland Trail concept as developed is most consistent with Alternative 2 above, Trail with Current Rail.

The Committee agreed their work should focus on the Short-term (0-10 years) and Mid-term (10-20 years) solutions. Given the level of investments, decision-making processes, and other factors, the Committee agreed that items 4 and 5 be considered Long-Term (20-40 years), and not be subject to additional technical study in the BNSF Corridor Study. There was strong feeling the Commission work should lay the groundwork for facilities in the 0-20 year time frame. After much discussion, everyone agreed both with the designation of alternative 4 and 5 as Long-Term, and with the decision to not include them for further study. Consequently, the Commission will restrict its analysis to the first three alternatives.

Alternatives 1, 2 and 3 are currently under further review and study by HDR. At the September 29th Commission meeting, members will weigh the three alternatives against Scenario Evaluation Criteria (attached). The Commission is scheduled to present their final recommendations to the PSRC's Transportation Policy Board at the end of this year.

BNSF CORRIDOR ADVISORY COMMITTEE

- Composition & Interests Represented -

Current as of May 1, 2006

INTEREST	ORGANIZATION	REPRESENTATIVE	ALTERNATES
Local Jurisdictions	**City of Bellevue**	Councilmember Don Davidson	Shelley Marelli, Parks Kim Becklund, Transportation
	City of Kirkland	Councilmember Tom Hodgson	Daryl Grigsby
	City of Redmond	Mayor Rosemarie Ives	Nina Rivkin, Mayor's Office Dave Rhodes, Public Works Director Craig Larson, Parks Director
	City of Renton	Councilmember Marcie Palmer	Gregg Zimmerman
	City of Snohomish	Councilmember Larry Countryman	Councilmember Doug Thorndike
	City of Woodinville	Mick Monken, Public Works Dir.	Sarah Ruether
	King County	Councilmember Julia Patterson ***(Advisory Committee Chair)***	
		Rod Brandon – County Executive's Office	
	Snohomish County	Marc Krandel, Parks Planning, County Executive's Rep.	
		Councilmember Dave Somers	
Transportation Interests	**BNSF Railway Company**	Jerome Johnson, Assist. V.P., Network Development	Andrew Johnsen, Govt. Affairs
	Sound Transit	Councilmember Mary-Alyce Burleigh City of Kirkland	
	Spirit of Washington Dinner Train	Eric Temple, President/Owner	
	WSDOT	Chris Picard, Urban Planning Office Manager	Charles Prestrud
BNSF Corridor Users/Beneficiaries	**Bicycle Alliance of Washington**	Louise McGrody, Trails Program	
	Boeing Company	Shaunta Hyde, Manager, Local Govt Relations, Puget Sound	
	Cascade Bike Club	Chuck Ayers, Executive Director	
	Cascade Land Conservancy	Chip Nevins, Senior King County Conservation Director	Erik Steffens
	Discovery Institute, Cascadia Center	Bruce Agnew, Program Director, Discovery Institute's Cascadia Center	Thomas Till, Managing Director
	Duwamish Manufacturing Industrial Center	Dave Gering, Executive Director	Marilyn Young Skogland
	Port of Seattle	Geri Poor, Regional Transportation Manager, Economic Development	
	Puget Sound Energy	Susan Hempstead, Local Govt. & Community Relations Mgr.	
	Eastside Transportation Choices	Councilmember Kathy Huckabay City of Sammamish	Rob Johnson
	Weyerhaeuser	Dale King	

Overall Corridor Summary

Scenario Evaluation Criteria ("YES/MAYBE//NO" or "High/MEDIUM/LOW" entries)	Scenarios								
	#1 Trail Only			**#2 Trail with Current Rail**			**#3 Trail with Increased Rail**		
	Timeframes *								
	Short	**Medium**	**Long**	**Short**	**Medium**	**Long**	**Short**	**Medium**	**Long**
Community									
Is the scenario compatible with local comprehensive plans and/or policies?									
Probable community support for the scenario?									
Transportation									
Would the scenario support/enable (not preclude) future transportation options?									
Is dual use (trail with rail) probable within the right-of-way for the majority of the corridor? If not, which segments least probable to support dual-use? (A, B, C, D)									
Is the scenario compatible with future transportation needs in the region?									
Economic									
Are the expected scenario impacts to residential property owners neutral or positive?									
Are the expected scenario impacts to commercial property owners neutral or positive?									

* Short Term 5-10 years; Medium Term 10-20 years; Long Term 20-40 years

Overall Corridor Summary, page 2

Scenario Evaluation Criteria ("YES/MAYBE//NO" or "High/MEDIUM/LOW" entries)	Scenarios								
	#1 Trail Only			#2 Trail with Current Rail			#3 Trail with Increased Rail		
	Timeframes *								
	Short	Medium	Long	Short	Medium	Long	Short	Medium	Long
Economic (continued)									
Is there a neutral to positive benefit to the community with the scenario?									
Is it likely that benefits will outweigh costs?									
Does the scenario support existing rail-oriented businesses?									
Is there opportunity for rail use growth in the scenario without the need for financial subsidy (public or private)?									
Other									
To what degree does the scenario support and promote physical activity and healthy lifestyles as promulgated by local comp. Plan amendments in ESSB 5186 (2005 session) [Codified as RCW 36.70A.070(1) and RCW 36.70A.070(6)(a)(7)]									

* Short Term 5-10 years; Medium Term 10-20 years; Long Term 20-40 years

BNSF Woodinville Subdivision

(N. Renton to Snohomish)

Existing Rail Lines and Regional Trails

- BNSF Corridor Under Study
- Other Regional Rail Lines
- Regional Bike Routes/Trails
- Metropolitan Transportation System
- City Limits
- Urban Growth Area

0 1.5 3 6 9 Miles

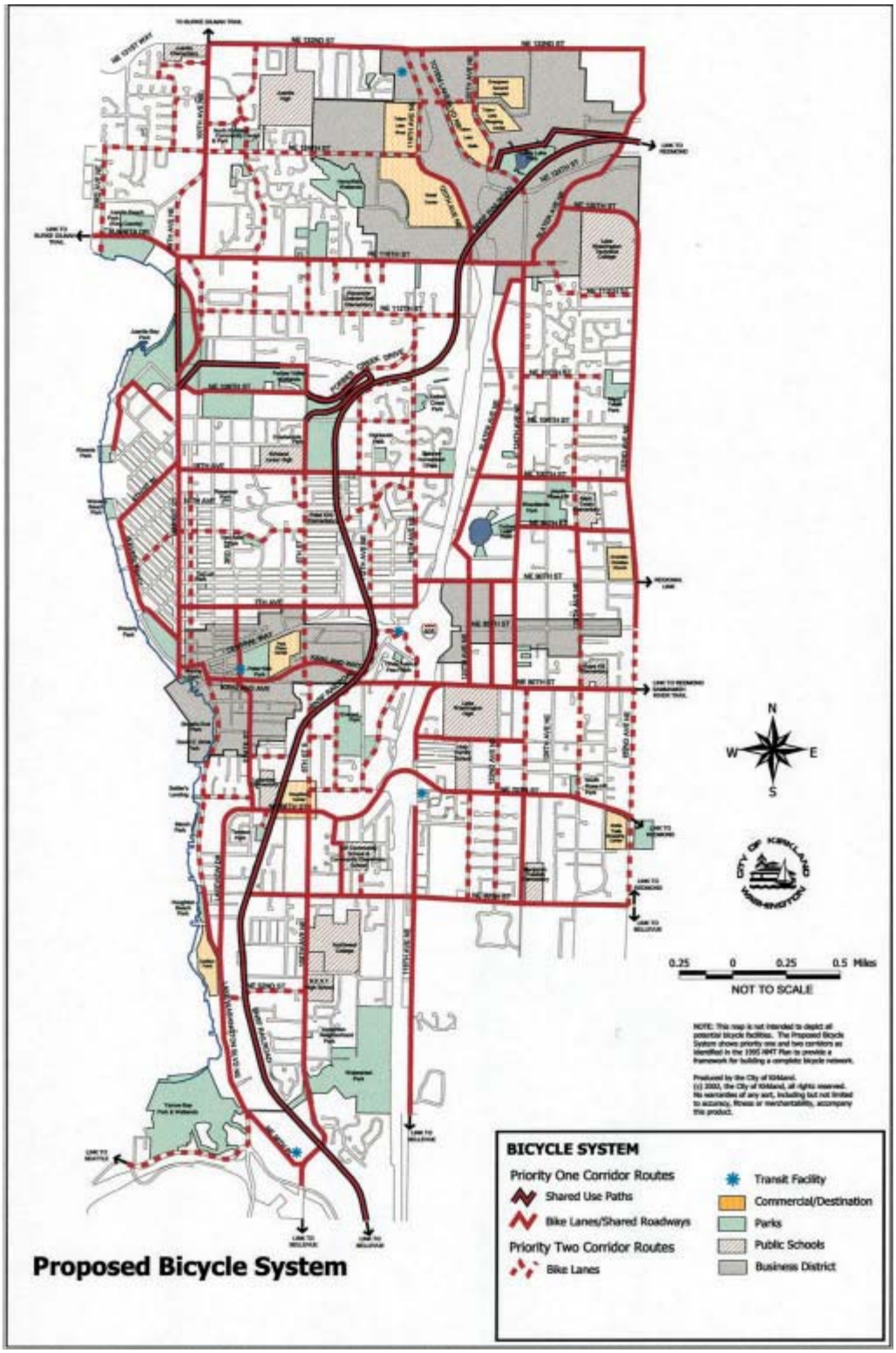
May 31, 2006

Puget Sound Regional Council
PSRC

Snohomish
King
Kitsap
Pierce

Granite Falls
Marysville
Lake Stevens
Everett
Snohomish
Mukilteo
Mill Creek
Cathcart
Monroe
Sultan
Lynnwood
Edmonds
Mountlake Terrace
Maltby
Woodway
Brier
Bothell
Lake Forest Park
Woodinville
Shoreline
Kenmore
Duvall
Seattle
Redmond
Kirkland
Bainbridge Island
Hunts Point
Yarrow Point
Medina
Clyde Hill
Bellevue
Carnation
Beaux Arts
Sammamish
Mercer Island
Issaquah
Newcastle
Snoqualmie
North Bend
Renton
Burien
Tukwila
SeaTac
Normandy Park
Des Moines
Kent
Covington
Maple Valley
Harbor
Federal Way
Auburn
Black Diamond
Ruston
Algona
Tacoma
Pacific
Milton
Fircrest
Fife
Edgewood
Sumner
University Place

W:\gis\projects\stacy\requests\bnsfcorridor\layout11x17newextent5306.mxd 053006


N
W
E
S
0.25 0 0.25 0.5 Miles
NOT TO SCALE
BICYCLE SYSTEM
Priority One Corridor Routes
Shared Use Paths
Bike Lanes/Shared Roadways
Priority Two Corridor Routes
Bike Lanes
Transit Facility
Commercial/Destination
Parks
Public Schools
Business District
Proposed Bicycle System

CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3800
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Daryl Grigsby, Public Works Director
Ray Steiger, P.E., Capital Projects Manager

Date: September 7, 2006

Subject: RIGHT OF WAY ACQUISITION – NE 120TH STREET

RECOMMENDATION:

It is recommended that the City Council authorize the advance of $300,000 worth of funds for the acquisition of private property along the proposed NE 120th Street roadway alignment.

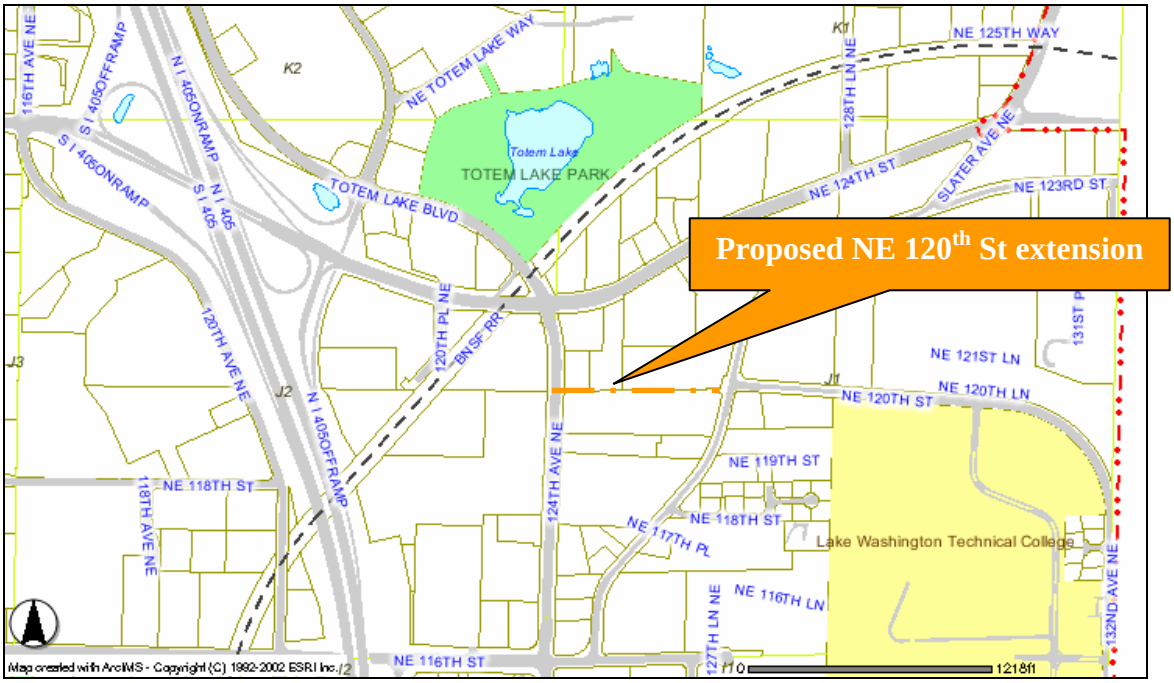
BACKGROUND AND DISCUSSION:

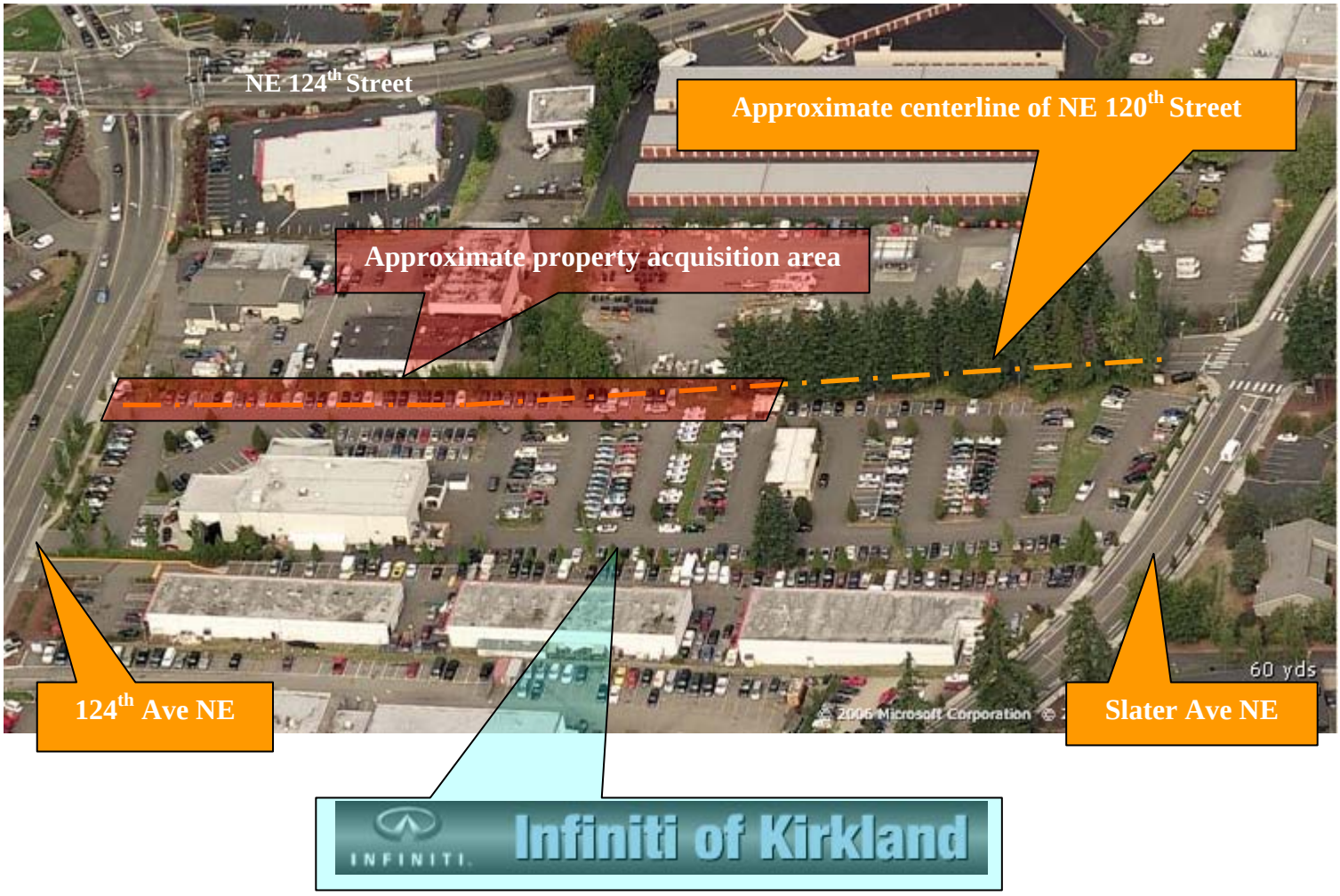
NE 120th Street begins at 132nd Ave NE adjacent to the Lake Washington Technical College and continues west to Slater Ave NE (Attachment A). The $4.6 million extension of this arterial from Slater Ave NE to 124th Ave NE has been identified as a priority project in the City's Totem Lake plan, comprehensive plan, Capital Improvement Plan, and Transportation Improvement Plan. In 1996, with the development of the Infinity of Kirkland auto dealership, owners of the property along the proposed corridor entered into an agreement with the City to allow purchase of the needed property along the alignment. Terms of the ten year agreement fixed the cost of the property at 1996 values ($9.11 per square foot) adjusted for the regional consumer price index (Attachment B); this agreement expires on August 27, 2007.

Staff has submitted a number of grant applications for the new roadway extension project, however for various reasons, none have been successful to date. In the spring of 2006, based on information and materials provided to the staff of various congressional and senatorial representatives, the City was notified that $1.5 million in federal funds had been tentatively earmarked for Kirkland's NE 120th Street extension project. The funding would not however be available until late 2007, and as such not in time to secure the Infinity of Kirkland right of way under the 1996 agreement.

With this memo, staff is recommending that the property be purchased in advance of the federal funding that is due to be received in late 2007. Funding for the acquisition of the right of way will come from two sources: impact fees, and REET II reserves that have been approved for the project in 2008 (Attachment C). Federal funding that is received in 2007 will then be utilized to develop preliminary engineering, environmental documentation, and purchase the remaining right of way (if not secured through development activity along the proposed corridor). With the purchase of right of way, preliminary engineering and environmental documentation completed, it has been conveyed to staff that the overall project will be in a more competitive position to secure additional federal or State grant funds to complete the project.

Attachment A





Infiniti of Kirkland

Attachment B

CITY OF KIRKLAND

123 FIFTH AVENUE • KIRKLAND, WASHINGTON 98033-6189 • (206) 828-1100 • TTY (206) 828-2245

December 4, 1996

RECEIVED
DEC - 4 1996
PUBLIC WORKS
CITY OF KIRKLAND

Mr. Ken Davidson
520 Kirkland Way, Suite 400
P.O. Box 817
Kirkland, Washington 98083-0817

Subject: Sound Infiniti Project at 119XX 124th Avenue NE

Dear Mr. Davidson:

The City has reviewed and discussed your November 5, 1996 letter regarding the future street right-of-way associated with the proposed Sound Infiniti car dealership at 119XX 124th Avenue NE. The City appreciates the accommodations made by Infiniti to move the building and preserve a corridor for the future NE 120th Street connection between Slater Avenue NE and 124th Avenue NE. In response to your letter, the City would like to offer the following:

1. The City is willing to enter into an agreement with Sound Infiniti to reserve the option to purchase the right-of-way and easement area within the next 10 years (a legal description and drawing of the right-of-way and easement area will need to accompany the option to purchase agreement). As discussed in your letter, the price per square foot would be based on the 1996 sale price of $9.11 and then adjusted for future inflation in accordance with changes to the Seattle Consumer Price Index (CPI). This price is based on the actual property acquisition costs and is 16% lower than the $10.58 per square foot reported in a recent MAI appraisal.

2. The City suggests that if the sidewalk and landscape strip is located in an easement rather than right-of-way, this area should not command the same cost per square foot as the right-of-way. In our experience, easement area usually sells for about 1/2 of the value of public right-of-way, thus the City is willing to pay, in the future, $4.55 per square foot plus the adjustment for future inflation in accordance with changes to the CPI. We feel this is a fair offer given the fact that Infiniti will be including the landscape strip in their lot coverage calculations.

3. Sound Infiniti will not be required to participate in the cost of construction for the future NE 120th Street connection. When the street is constructed, driveway access to the Infiniti property will be provided but, parking lot modifications will be at Infiniti's expense. Also, any appurtenances placed in the right-of-way or easement area shall be relocated at Infiniti's expense.

4. As agreed, Sound Infiniti will sign concomitant agreements with respect to their share of other capital improvement projects as identified in the traffic impact analysis.

5. The sign allowance will be based on existing rights-of-way. A proposal to increase the sign allowance may be submitted to the Planning Department when the NE 120th Street connection is constructed.

If Sound Infiniti agrees with issues discussed in this letter, I will ask the City Attorney's office to draft the *Right-of-way and Easement Option to Purchase Agreement* for your review. We look forward to the resolution of this agreement and would expect that it can be concluded prior to issuance of the Building Permit. If you have any questions please call me at 828-1237.

Sincerely,

PUBLIC WORKS DEPARTMENT

Rob Jammerman
Senior Development Engineer

cc: Terry Ellis, City Manager
Jim Arndt, P.E., Public Works Director
Eric Shields, AICP, Planning Director
Gary Sund, P.E., City Engineer
Oscar Rey, City Attorney
Jeremy McMahan, Associate Planner
Dianne Kilwein, P.E., Development Engineer

RJ:rj:infinrow.doc

ATTACHMENT C

FISCAL NOTE

CITY OF KIRKLAND

Source of Request

Daryl Grigsby, Public Works Director

Description of Request

Request for funding of $300,000 for right of way related to the NE 120th Street Roadway Extension project. The City has a purchase agreement with the Infinity of Kirkland dealership to purchase the right of way at a reduced cost that will expire in 2007. In order to take advantage of the favorable terms of the purchase agreement and to better position the remaining portions of the roadway extension project for grants, it is recommended to use reserves to purchase the right of way in 2006.

Funding for the right of way purchase will come from funding that was already planned for this project in the current 2006-2011 CIP in year 2008.

Legality/City Policy Basis

Fiscal Impact

Funding will be from Impact Fees ($200,000) and REET II Reserves ($100,000) that were already planned for this project but in year 2008. The Impact Fee Fund and the REET II Reserve are fully able to fund these requests earlier than originally planned.

Recommended Funding Source(s)

	Description	2006 Est End Balance	Prior Auth. 2005-06 Uses	Prior Auth. 2005-06 Additions	Amount This Request	Revised 2006 End Balance	2006 Target
Reserve							
Revenue/ Exp Savings							
Other Source							

Other Information

Prepared By	Sandi Miller, Financial Planning Manager	Date	September 7, 2006

CITY OF KIRKLAND
123 Fifth Avenue, Kirkland, WA 98033 425.587.3000
www.ci.kirkland.wa.us

MEMORANDUM

To: Kirkland City Council

From: Jeremy McMahan, Planning Supervisor
Ellen Miller-Wolfe, Economic Development Manager

Date: September 6, 2006

Subject: DOWNTOWN STRATEGIC PLAN – ASSESSMENT AND UPDATE

Recommendation

Review the attached recommendation from the City Council Economic Development Committee (Attachment 1) and authorize work to commence on an assessment and update of the Downtown Strategic Plan.

Authorize new funding in the amount of $31,000 (see Attachment 2, fiscal note). The DSP budget still contains approximately $19,000, which would provide for the total proposed project budget of $50,000.

Attachments

Cc: Downtown Action Team
Jeremy McMahan
Ellen Miller-Wolf

CITY OF KIRKLAND
123 Fifth Avenue, Kirkland, WA 98033 425.587.3000
www.ci.kirkland.wa.us

MEMORANDUM

To: Kirkland City Council

From: City Council Economic Development Committee

Date: August 28, 2006

Subject: DOWNTOWN STRATEGIC PLAN – ASSESSMENT AND UPDATE

Recommendation

Direct the Downtown Action Team (DAT) and staff to prepare an assessment of Downtown Strategic Plan (DSP) implementation and to consider specific updates to the DSP. Allocate $31,000 funding for appropriate consulting tasks.

Direct staff to work with the Economic Development Committee of the City Council (EDC) and the full Council to act on findings and quick-strike opportunities as this assessment proceeds.

Background

The DSP was adopted by the City Council in June of 2001 and is now five years old. Most of the projects identified have either been studied or implemented (see attached DAT action plan). The nature of strategic planning is that it is cyclical, evaluating performance in order to build on successes and learn form mistakes. The DSP and related projects and policies have not been evaluated for performance against initial objectives. One of the more obvious performance concerns is the health of downtown retail. In this regard, it appears that downtown retail is still fragile and the desired mix of uses remains elusive.

The DAT is still engaged in downtown issues and is eager to help facilitate this process. Recent discussion with the DAT indicate their desire to serve the community as a representational organization in two key areas – keeping the vision for downtown current and relevant, and promoting that vision by keeping it in front of the community.

Scope of Work

The proposed scope is not project based. Rather, the scope and City Council direction to the DAT is to study the identified issues and gather appropriate information. Because the goal is not to

rebuild the DSP from the ground up, we recommend a tightly scoped study with a concise process and limited budget. The following basic tasks are proposed:

- Evaluate existing market and land use conditions and future trends
- Evaluate existing plan and vision
- Assess near and long term vision in light of existing conditions and trends
- Assess performance – are/were projects (f*inancial/economic, urban design, transportation)* effective in implementing the vision
- Identify necessary clarifications to DSP language and concepts
- Identify additional elements
- Identify opportunities for implementing projects, policies, and design guidelines

In addition, the City Council should identify any additional task/issues for consideration. The EDC has identified the following key questions:

- Vision
    - Is vision of residential core area with local-serving and anchor retail still appropriate? Is a different vision emerging (e.g. - an entertainment district)?
    - Are we or should we be planning around downtown's market tendencies or are we "swimming against the tide" and trying to fight a market tendency?
- Office
    - What are the pros and cons of residential vs. office over retail in mixed use projects?
    - What is the appropriate balance between residential and office and do incentives need to be adjusted to achieve that balance?
    - Should CBD be expanded to the east (Planned Area 5, toward post office) to incorporate additional high-density office development?
    - Should allowances for office development be intensified on the north side of Central Way?
    - Are there incentives we could offer for existing structures to modernize and provide upper-story office?
- Retail
    - How are various retail sectors (restaurant, general retail, retail – art, etc.) performing relative to each other and relative to "successful" downtowns?
    - What are strategies for attracting anchor retail and what is an appropriate scale?
    - What are appropriate ground floor uses in various districts?
- Access and parking
    - Is the existing and planned transportation infrastructure (cars, transit, pedestrians, etc.) consistent with the vision?
    - Is there a role for the City in creating new parking supply?
- Property Owners
    - What to property owners need to redevelop?

Process

The following six month process is suggested:

- Staff retain consultant team to:
    - Review existing conditions
    - Determine whether current and foreseeable market is consistent with the vision for downtown and proposed major projects
    - Suggest clarification and specificity to DSP vision and design guidelines
    - Suggest adjustments that better take advantage of market forces
    - Suggest new ideas for implementation tools
- Conduct an outreach program to familiarize wider community with downtown history, downtown opportunities and challenges and to recruit new DAT members
- Economic Development Committee of City Council hosts intensive community charrette (2-day) with DAT, other participants identified, and top-notch facilitator to:
    - Review and endorse adjustment to DSP vision
    - Review analysis of existing conditions
    - Organize next steps
- Report to Council on charrette results/opportunities for quick wins
- Develop recommendations for strategic initiatives for DAT consideration
- DAT reports to City Council

Budget Estimate

The project budget is estimated at approximately $50,000. The DSP budget still contains approximately $19,000 that is uncommitted. An additional $31,000 is needed. The DAT requested a $50,000 budget in fall, 2005. At that time, Council requested specific work program and proposal prior to allocation of funds. If funds are currently available, the project could start in the fall. Otherwise, the project would require a service package for the 2007-2009 budget.

Attachments

Cc: Jeremy McMahan
Ellen Miller-Wolfe

LF – Lakefront	**RA** – Regulatory Amendments	
TC – Transit Center	**PS** – Parking Strategy	Complete
OS – Opportunity Sites	**TI** – Traffic Improvements	Not Complete
HI – Human Infrastructure	**PI** – Pedestrian Improvements	Partially Complete
FS – Funding strategy		

DOWNTOWN STRATEGIC PLAN IMPLEMENTATION
(DAT 3-year action plan)

2001

HI-1 Restructure the Downtown Action Team (DAT)

PS-1 Conduct parking study and develop a comprehensive parking strategy

TI-1 Obtain community and Council approval of the Norkirk neighborhood traffic plan and implement first set of traffic calming measures

TC-1 Initiate a planning process for the Transit Center, including site selection and design concepts

RA-1 Obtain Council approval of needed Comprehensive Plan amendments

OS-1 Initiate discussions with property owners of key opportunity sites including:

- Bank of America (Lake/Kirkland)
- Antique Mall
- US Bank
- Salvation Army site

LF-1 Initiate discussions with Lakefront owners on Lakeshore Plaza

LF-2 Resume DAT deliberation of potential lakefront strategies regarding ferry and breakwater/marina

FS-1 Conduct project funding and phasing analysis for downtown public improvements, develop strategy and obtain City Council approval

FS-2 Obtain service package for 2002 planning and design projects

2002

HI-2 Ongoing DAT coordination

RA-2 Obtain Council approval of needed Zoning Code amendments

TI-2 Conduct preliminary technical assessment of appropriate traffic calming measures in the Moss Bay neighborhood.

TI-3 Conduct design level study of Central Way narrowing

TI-4 Complete first phase of Norkirk neighborhood traffic plan

OS-2 Initiate a planning process for development of the Lake/Central site with possible inclusion of the US Bank site

OS-3 Continue discussions with property owners of opportunity sites

PS-2 Obtain Council approval of parking strategy and begin implementation

PI-1 Design pedestrian spine concept between Park Place and the Lakefront including street and sidewalk improvements for Park Lane

PI-2 Make minor improvements to downtown streets and sidewalks (including trees) pursuant to funding and phasing strategy

LF-3 Initiate planning process for Lakeshore Plaza project

TC-2 Select transit center site and approve design concept

FS-3 Obtain service package for 2003 planning and design projects

2003

HI-3 Ongoing DAT coordination

OS-4 Select developer for the Lake/Central site and complete negotiations on a development agreement

TI-5 Implement Central Way narrowing project (coordinate with other CIP projects)

TI-6 Signalize Kirkland Avenue/3rd Street Intersection

LF-4 Complete the planning process for the Lakeshore Plaza project

PI-3 Construct pedestrian spine between Park Place and the Lake

PI-4 Continue minor improvements to downtown streets and sidewalks

TC-3 Final design for the Transit Center

PS-3 Continue implementation of parking strategy and develop funding strategy

FS-4 Obtain service package for 2004 planning and design projects

FISCAL NOTE

CITY OF KIRKLAND

Source of Request

City Council Economic Development Committee

Description of Request

Request for funding of $31,000 from the Contingency Fund for an update to the Downtown Strategic Plan (DSP). The DSP is now five years old and an assessment is needed to measure the performance of completed policies and projects against the initial objectives. Also, the plan needs an update for current trends and market conditions and to identify new opportunities to fullfill the vision of the plan.

Legality/City Policy Basis

Fiscal Impact

One-time use of $31,000 of the Contingency Fund. The contingency is able to fully fund this request.

Recommended Funding Source(s)

	Description	2006 Est End Balance	Prior Auth. 2005-06 Uses	Prior Auth. 2005-06 Additions	Amount This Request	Revised 2006 End Balance	2006 Target
Reserve	Contingency	2,115,677	118,293	0	31,000	1,966,384	2,952,182
	2005-2006 Prior Authorized Uses includes $26,000 for a Sidewalk Bond survey, $10,000 for an assessment of the Cannery Building, $30,293 for a pension payout related to the Municipal Court, and $52,000 for the purchase of water rights from the King County Water District #1.						
Revenue/ Exp Savings							
Other Source							

Other Information

Prepared By	Sandi Miller, Financial Planning Manager	Date	September 5, 2006