



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

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## MEMORANDUM

**To:** David Ramsay, City Manager **QUASI JUDICIAL**

**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

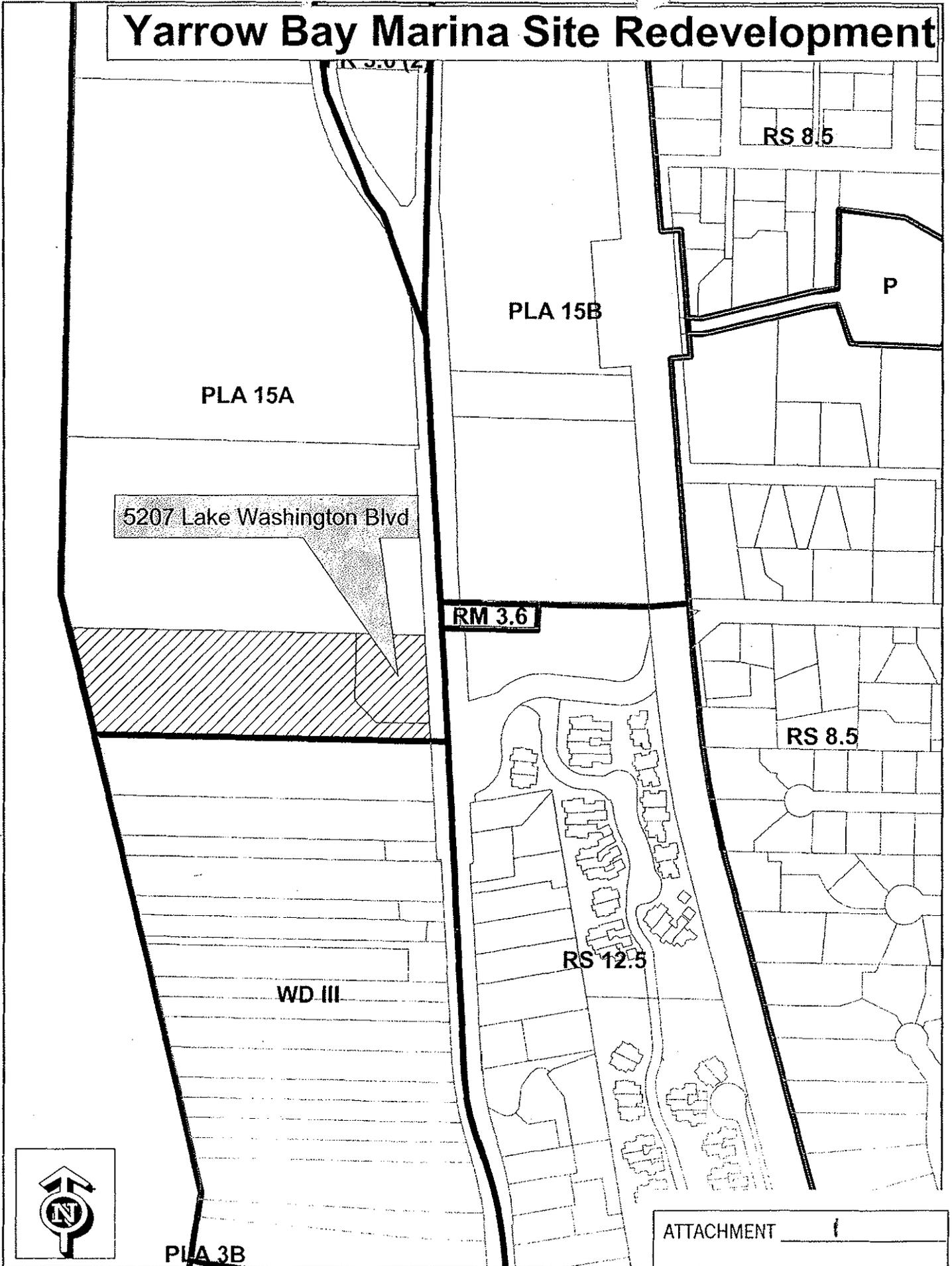
The Breakwater Condominium Association has raised a procedural issue in a letter from Mr. Aramburu dated September 5, 2006, and addressed to the City Council (see Enclosure 5.d). Mr. Aramburu requests that the City Council not consider a request included in applicant's August 28, 2006, response to the 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

S:\R06-00001



Lake Washington Blvd.

Landscape Plan

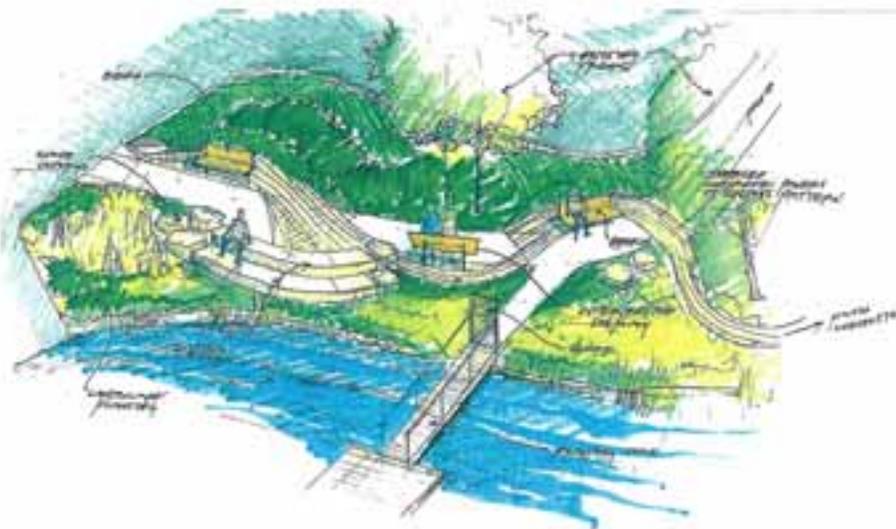
**Marina Suites**

Landscape Plan

Date: June 16, 2006

Professional & Associates

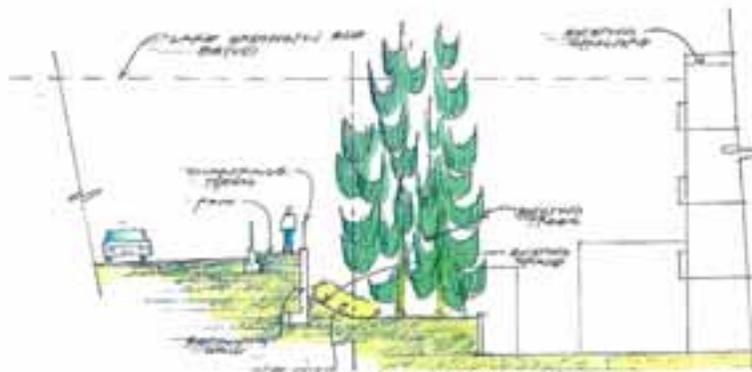




Plaza Perspective



Plaza Plan and Section



Trail Section '1'

DATE	05.04
PROJECT	ACCOMMODATION OF LAND
PROJECT NO.	07-000000
DESIGNED BY	SK
DRAWN BY	SK
CHECKED BY	SK
DATE	04.26

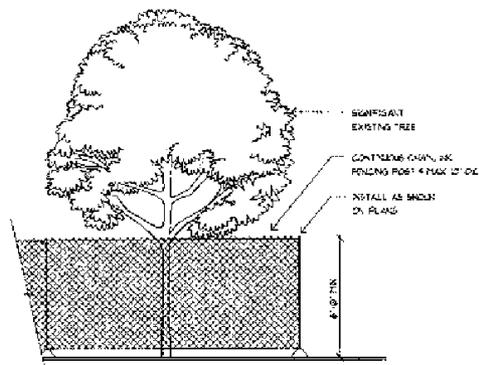


TREE PLAN

MARINA SUITES  
 LAKE WASHINGTON BLVD.  
 KIRKLAND, WASHINGTON

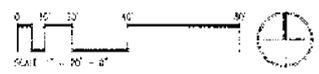
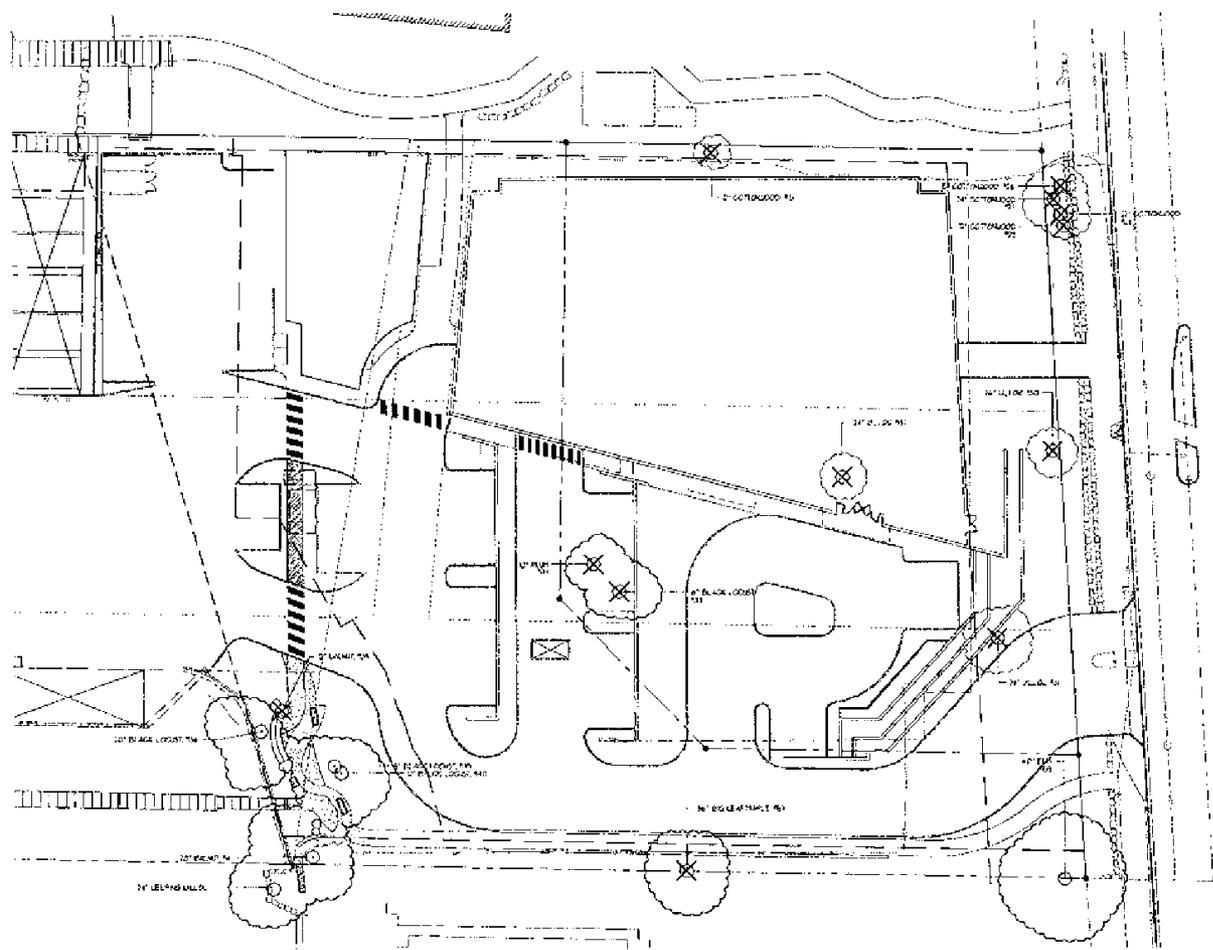
L-1

2006-01



- 6' X 6" MIN. TEMPORARY CHAIN LINK FENCE SHALL BE PLACED AS SHOWN ON PLANS. FENCE SHALL COMPLETELY ENCLOSE TREE. INSTALL FENCE POSTS USING PIER BLOCKS ONLY. AVOID DRIVING POSTS OR STAKES INTO TREE ROOTS.
- REMOVAL OF ROOTS PROHIBITED DURING CONSTRUCTION. FOR ROOTS OVER 1" IN DIAMETER DAMAGED DURING CONSTRUCTION, MAKE A CLEAN STRAIGHT CUT TO REMOVE DAMAGED PORTION OF ROOT. ALL EXPOSED ROOTS SHALL BE TEMPORARILY COVERED WITH DARK BURLAP TO PREVENT DRYING, AND COVERED WITH MULCH AS SOON AS POSSIBLE.
- WORK WITHIN PROTECTION FENCE SHALL BE DONE MANUALLY. NO STOCKPILING OF MATERIALS, MERCHANDISE OR STORAGE OF EQUIPMENT OR FACILITY SHALL BE ALLOWED WITHIN THE LIMIT OF THE FENCE.

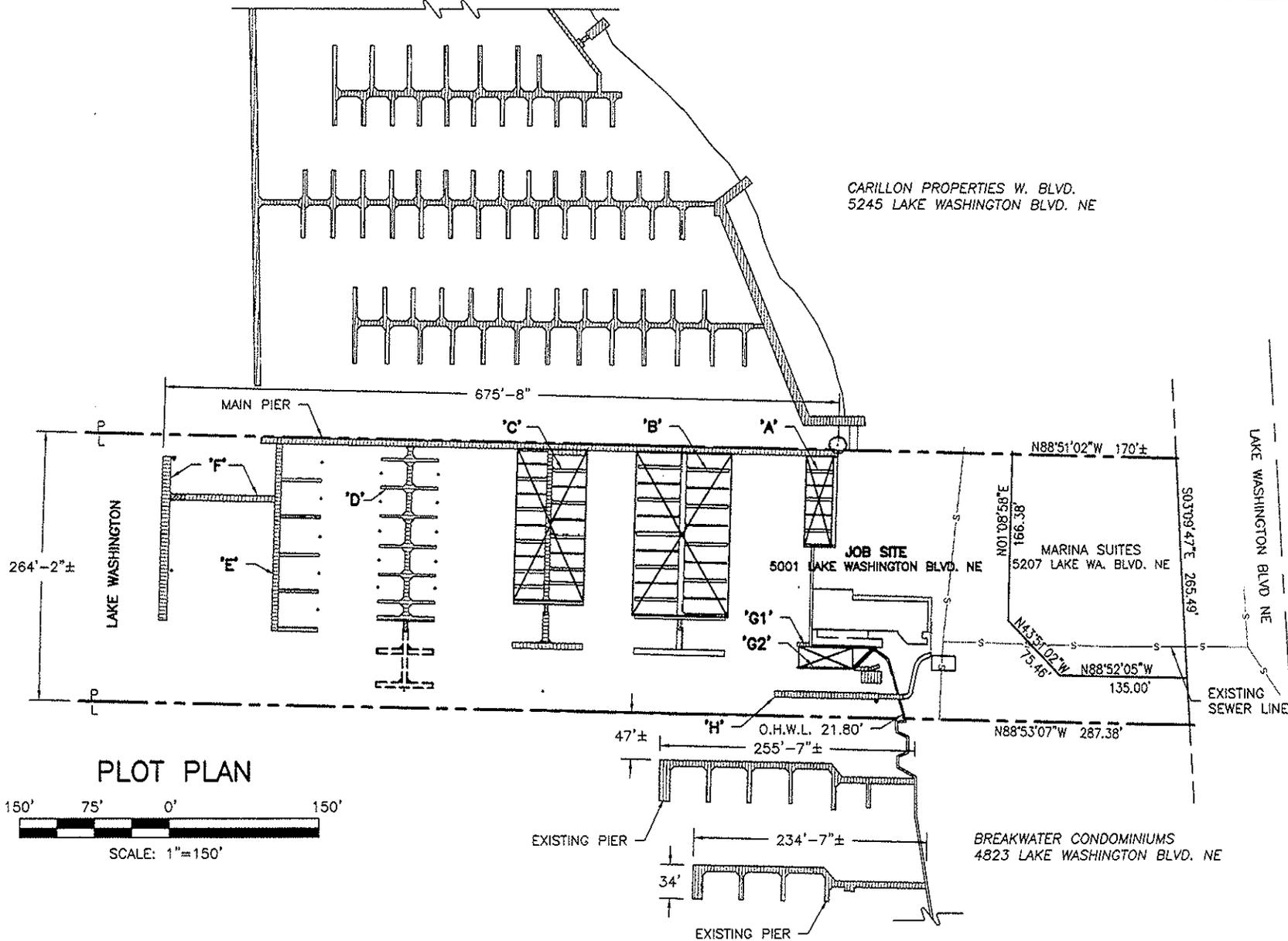
1 TREE PROTECTION DETAIL



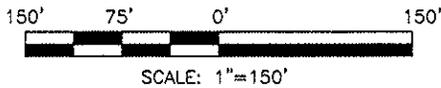
LEGEND

	SIGNIFICANT TREE TO REMAIN	10' & 1/2" EX STNG SIGNIF. TREES	7 CITY
	SIGNIFICANT TREE TO BE REMOVED	SIGNIFICANT TREES TO BE REMOVED	7 CITY
		SIGNIFICANT TREES TO BE SAVED	5 CITY





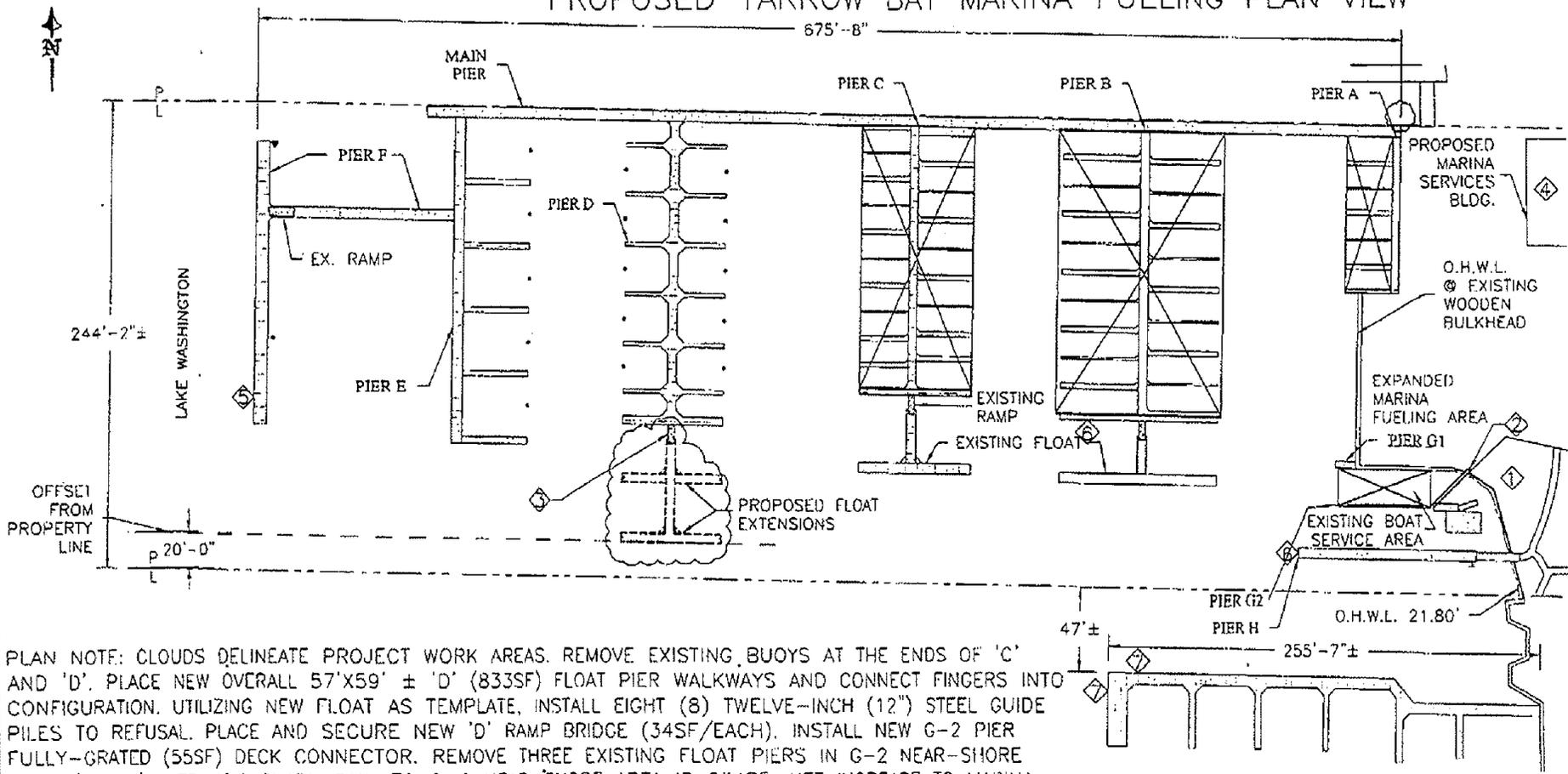
**PLOT PLAN**



**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



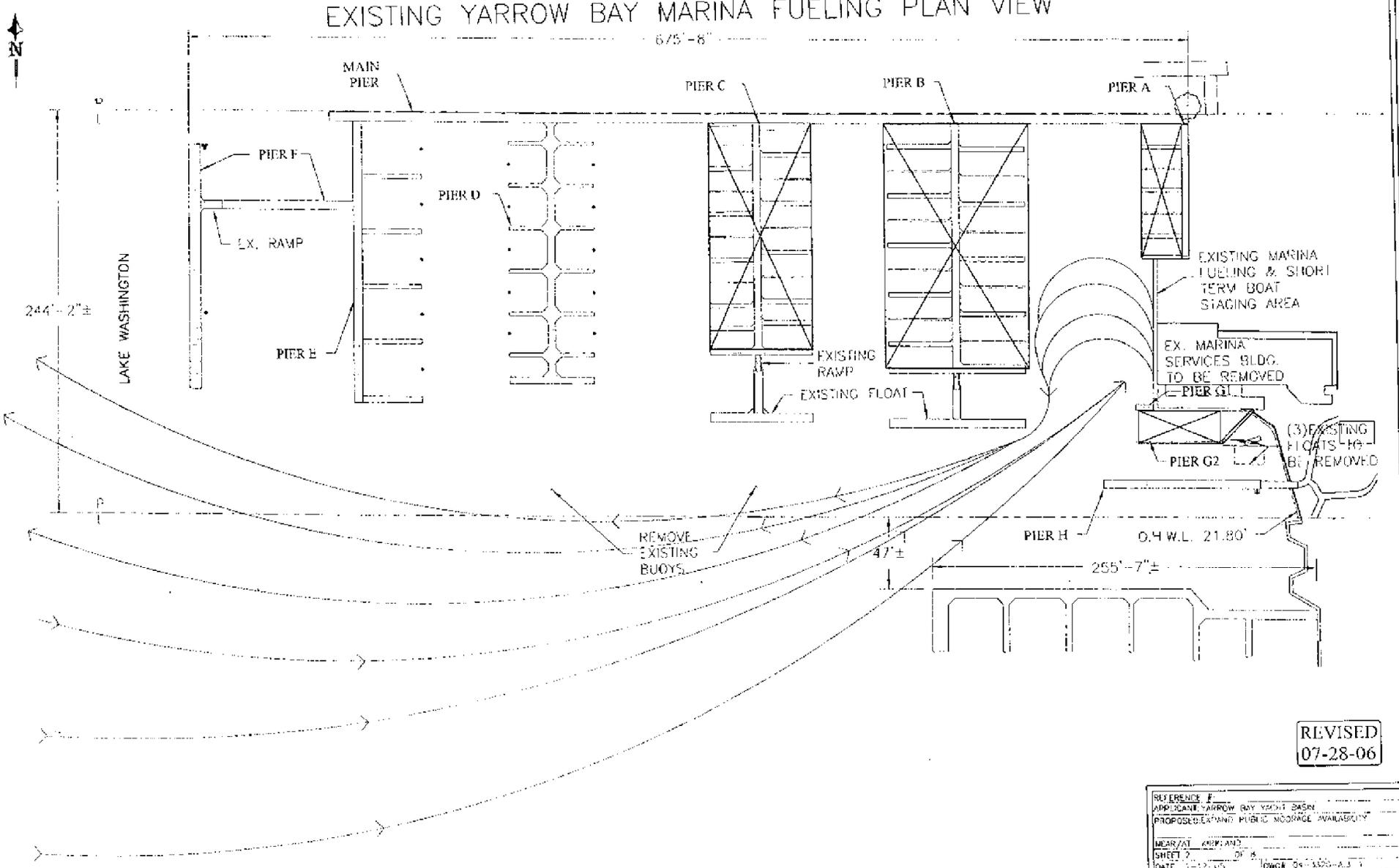
PLAN NOTE: CLOUDS DELINEATE PROJECT WORK AREAS. REMOVE EXISTING BUOYS AT THE ENDS OF 'C' AND 'D'. PLACE NEW OVERALL 57'X59' ± 'D' (833SF) FLOAT PIER WALKWAYS AND CONNECT FINGERS INTO CONFIGURATION. UTILIZING NEW FLOAT AS TEMPLATE, INSTALL EIGHT (8) TWELVE-INCH (12") STEEL GUIDE PILES TO REFUSAL. PLACE 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 SIGN: SLOW TO 5 MPH; NO WAKE. STAY NORTH OF BUOYS.
- ③ PROPOSED G-2 WALKWAY
- ④ PROPOSED SIGN: BOATS FOR FUELING SHALL NOT TIE TO NEIGHBORING DOCKS. YARROW BAY MARINA STAFF WILL ENFORCE.
- ⑤ NEW RAMP TO PROPOSED 'D' FLOAT PIER
- ⑥ PROPOSED SIGN: ABSOLUTELY NO PUBLIC BOATING TIE-UPS TO THIS PRIVATE PIER. TRESPASSERS WILL BE REFUSED FUELING SERVICE.
- ⑦ SEE: ADDENDUM D

**REVISED**  
5-26-06

REFERENCE 1	
APPLICANT: YARROW BAY YACHT BASIN	
PROPOSED EXPAND PUBLIC MOORAGE AVAILABILITY.	
NEAR/AT: KIRKLAND	OF: 8
SHEET: 3	DATE: 1-12-05
DWG#: 01-3170-A.1-1	

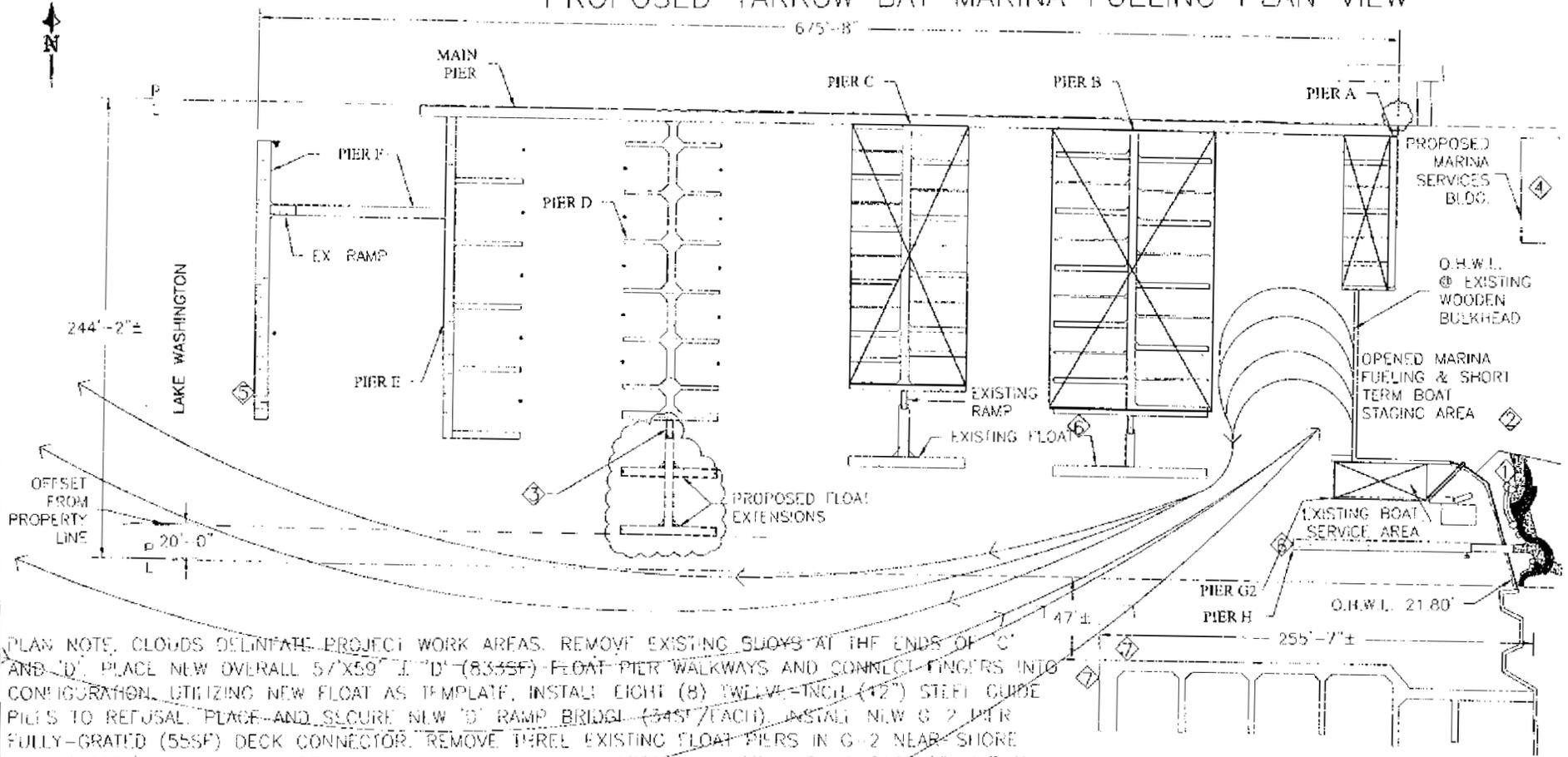
# EXISTING YARROW BAY MARINA FUELING PLAN VIEW



**REVISED**  
07-28-06

REFERENCE #	_____
APPLICANT	YARROW BAY YACHT BASIN
PROPOSED EXPAND PUBLIC MOORAGE AVAILABILITY	_____
NEAR/AT	_____
SHEET #	2 OF 8
DATE	12-22-05

# PROPOSED YARROW BAY MARINA FUELING PLAN VIEW

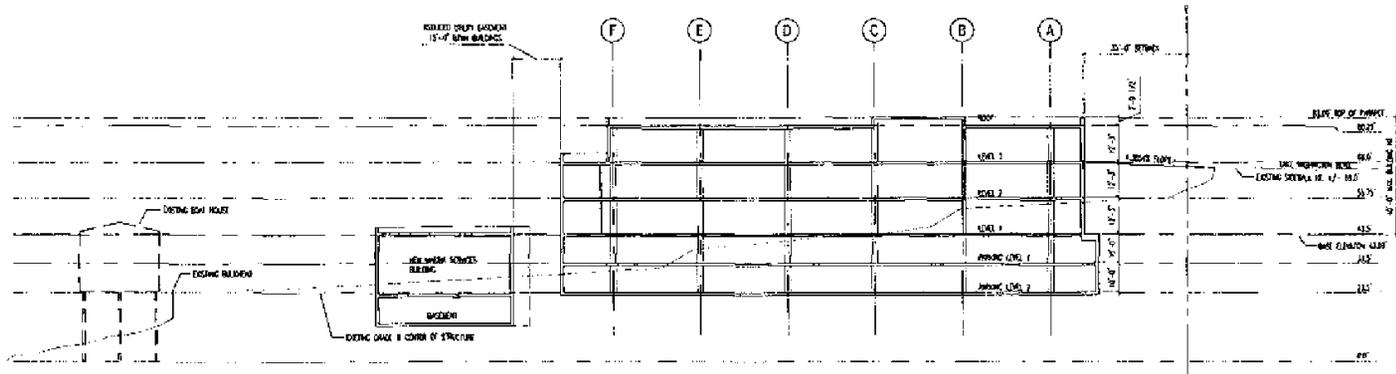


PLAN NOTE: CLOUDS DELINEATE PROJECT WORK AREAS. REMOVE EXISTING SLUOYS AT THE ENDS OF 'C' AND 'D'. PLACE NEW OVERALL 57'X59" I.D.' (836SF) FLOAT PIER WALKWAYS AND CONNECT FINGERS INTO CONFIGURATION. UTILIZING NEW FLOAT AS TEMPLATE. INSTALL EIGHT (8) TWELVE-INCH (12") STEEL GUIDE PILLS TO REFUSAL. PLACE AND SECURE NEW 'D' RAMP BRIDGE (345' FACI). 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 254SF. NET INCREASE TO MARINA DECKING IS 1184SF.

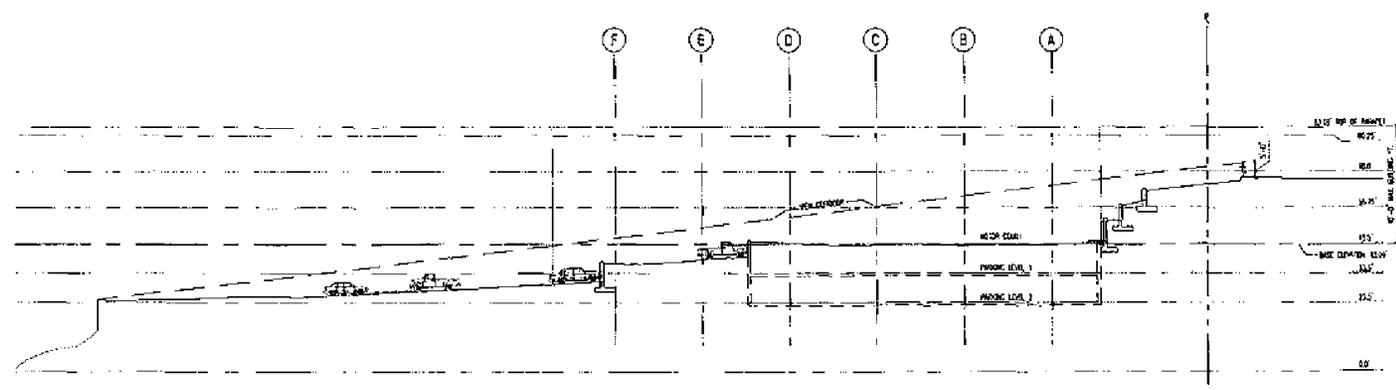
- ① SEE PLANTING PLAN ADDENDUM B
- ② PROPOSED G-2 WALKWAY
- ③ NEW RAMP TO PROPOSED 'D' FLOAT PIER
- ④ SEE ADDENDUM D
- ⑤ PROPOSED SIGN: SLOW TO 5 MPH - NO WAKE - STAY NORTH OF BUOYS.
- ⑥ PROPOSED SIGN: BOATS FOR FUELING SHAL NOT TIL TO NEIGHBORING DOCKS. YARROW BAY MARINA STAFF WILL ENFORCE.
- ⑦ PROPOSED 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 CLUB  
 PROPOSED: MARINA PUBLIC MOORAGE ADAPTATION  
 DRAWN BY: KAPLAGE  
 SHEET 3 OF 5  
 DATE: 11-12-05



**A** SECTION A  
1" = 40'-0"



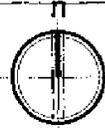
**B** SECTION B  
1" = 40'-0"

MARINA SUITES  
KIRKLAND, WASHINGTON

**COLLINS  
ERMAN**

910 SECOND AVENUE  
SUITE 1400  
SEATTLE WASHINGTON 98104-1710  
TEL: 206-243-2100 FAX: 206-243-2101  
COLLINS@ERMAN.COM

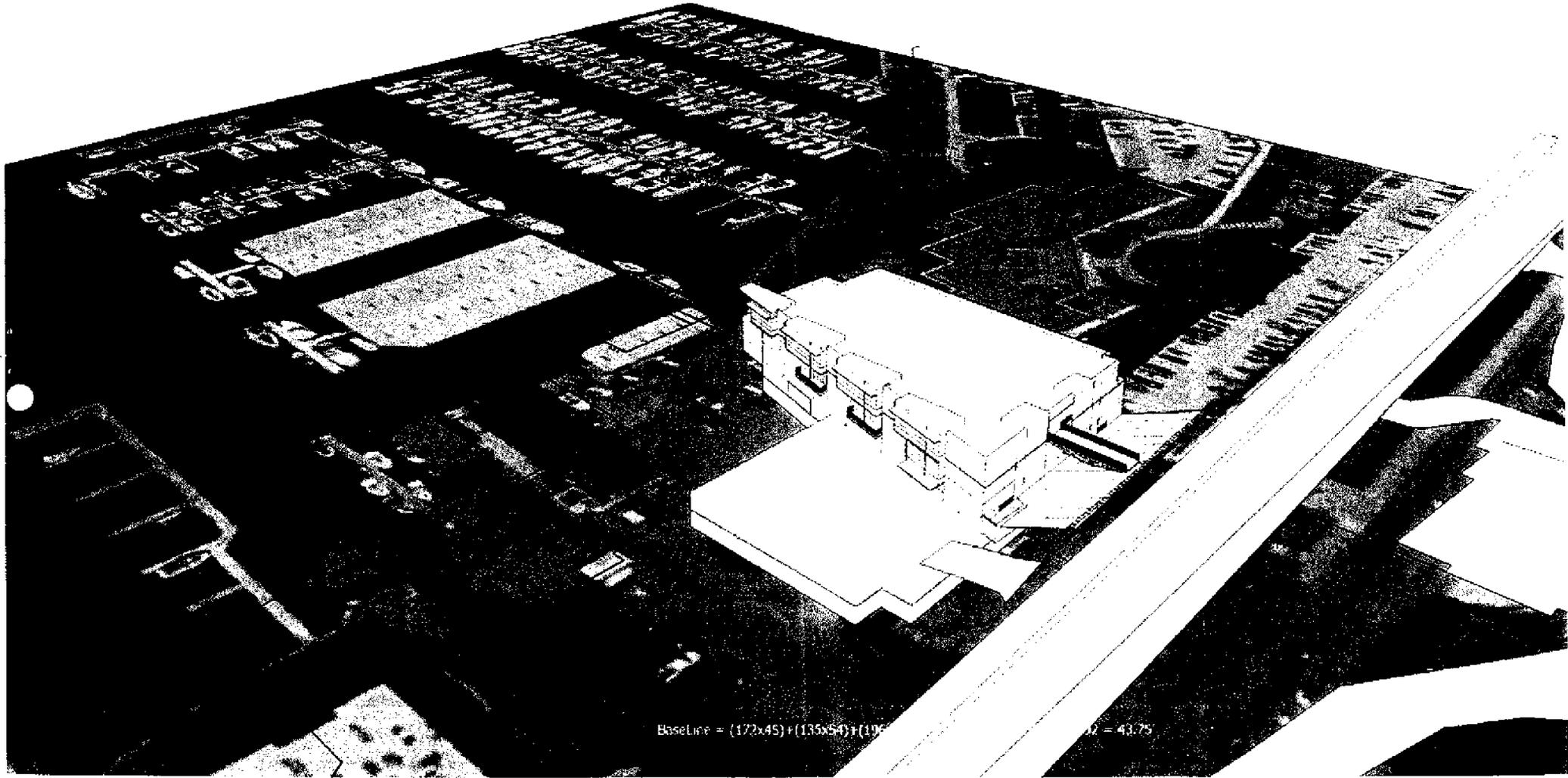
**SITE SECTIONS**



SCALE 1"=40'-0"

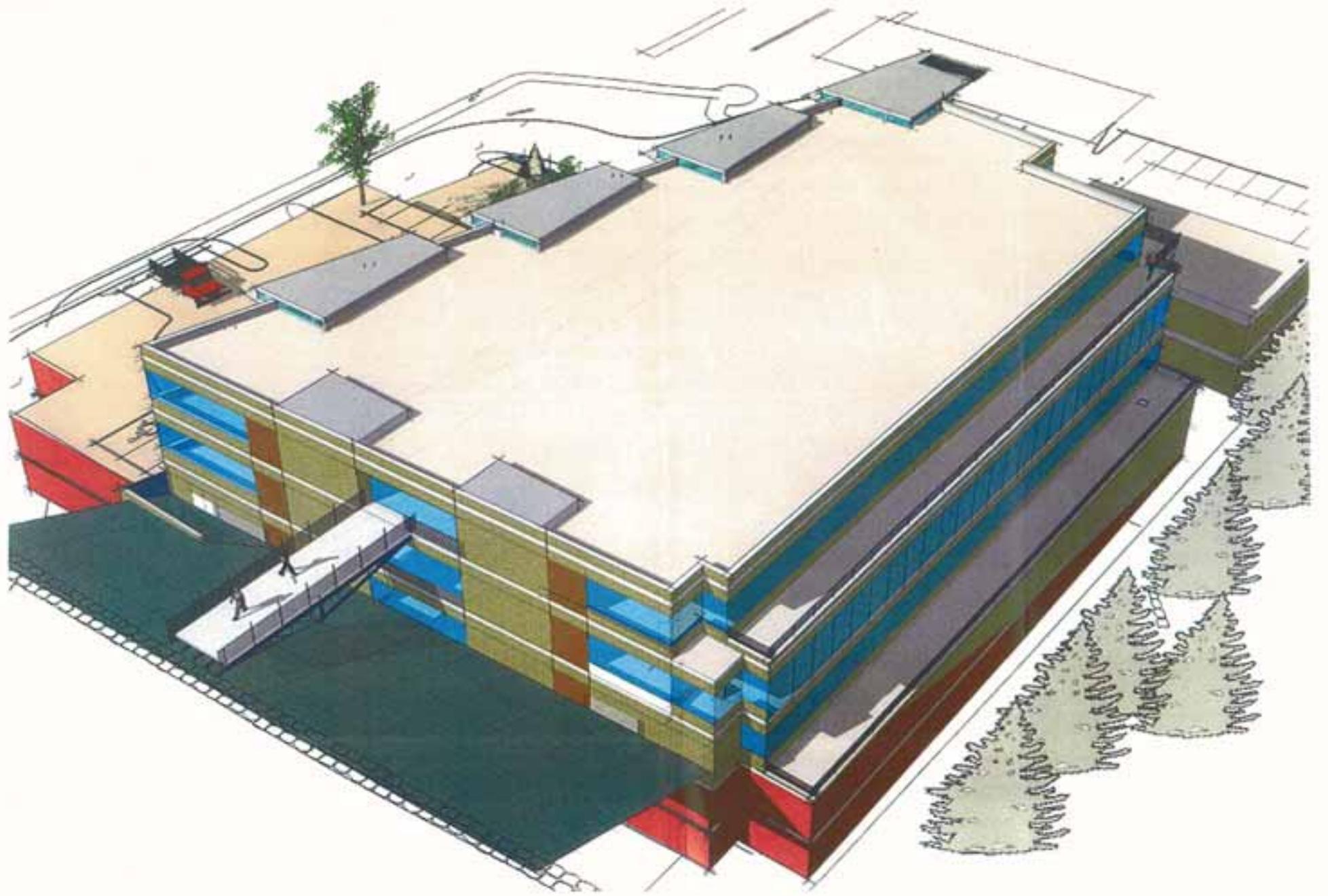
PROJECT NUMBER: 10201  
ISSUE DATE: JAN 23, 2006

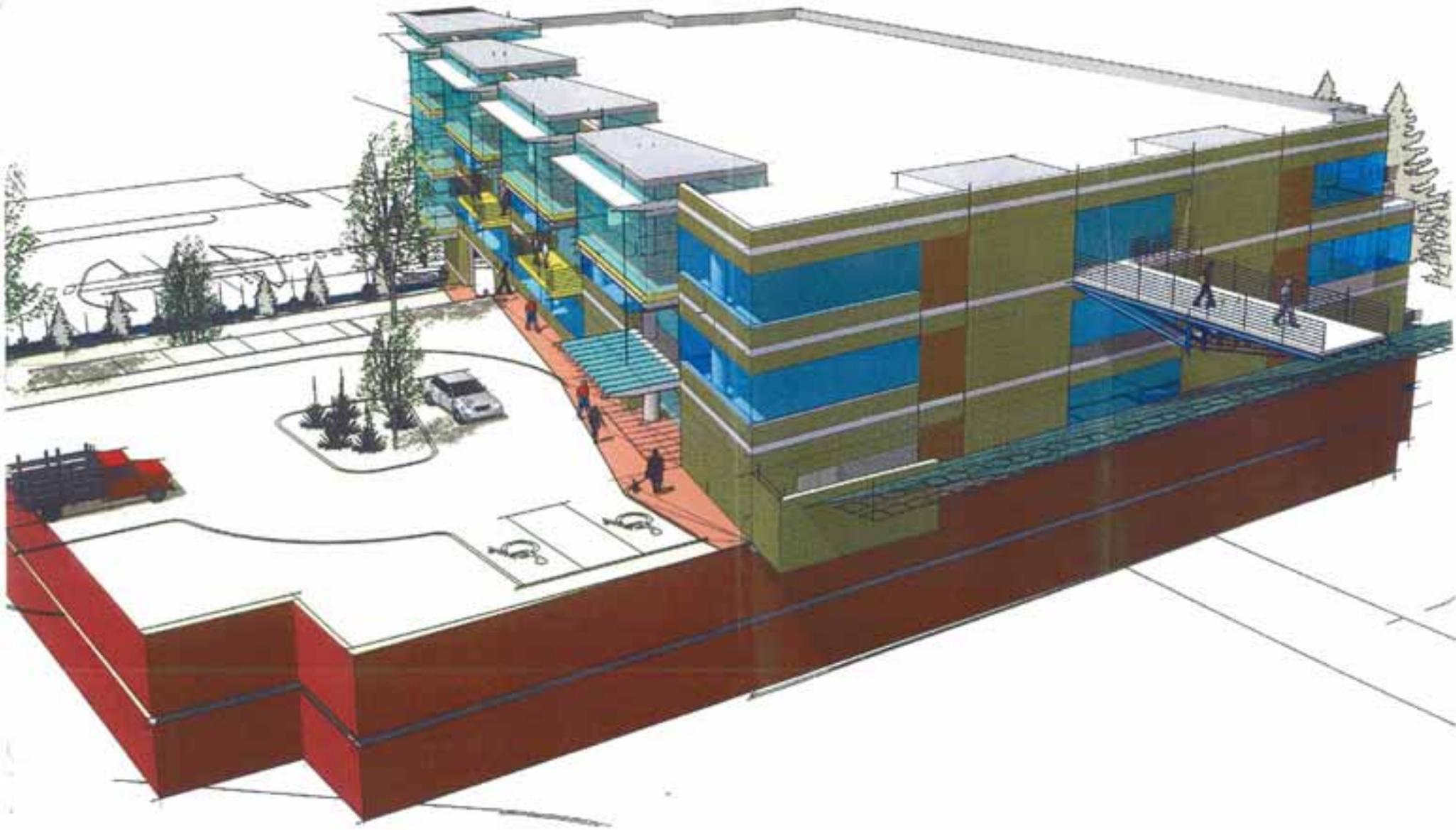




BaseLine = (172x45)+(135x54)+(196

12 = 43.75

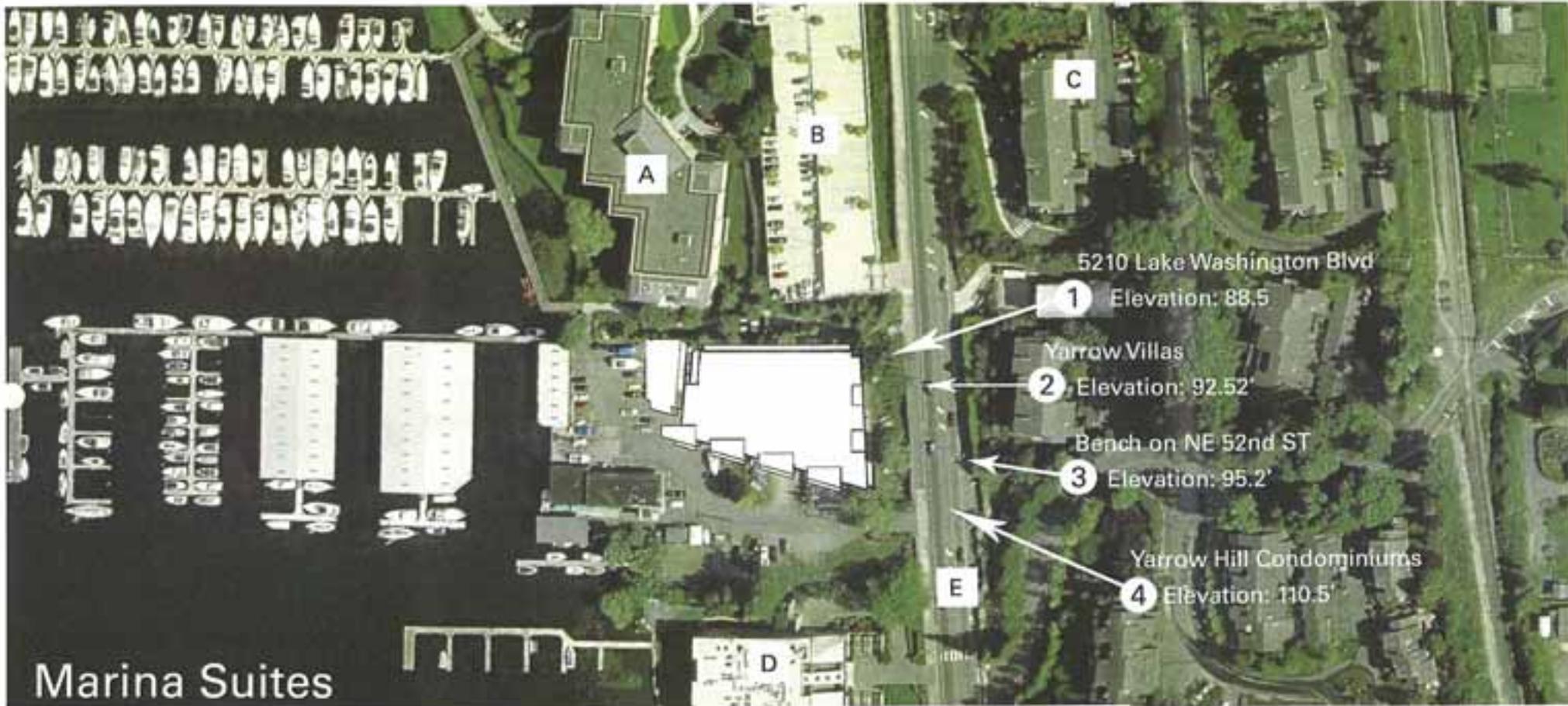












Marina Suites

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
- 5210 Lake Washington Blvd  
1 Elevation: 88.5  
Yarrow Villas  
2 Elevation: 92.52'  
Bench on NE 52nd ST  
3 Elevation: 95.2'  
Yarrow Hill Condominiums  
4 Elevation: 110.5'



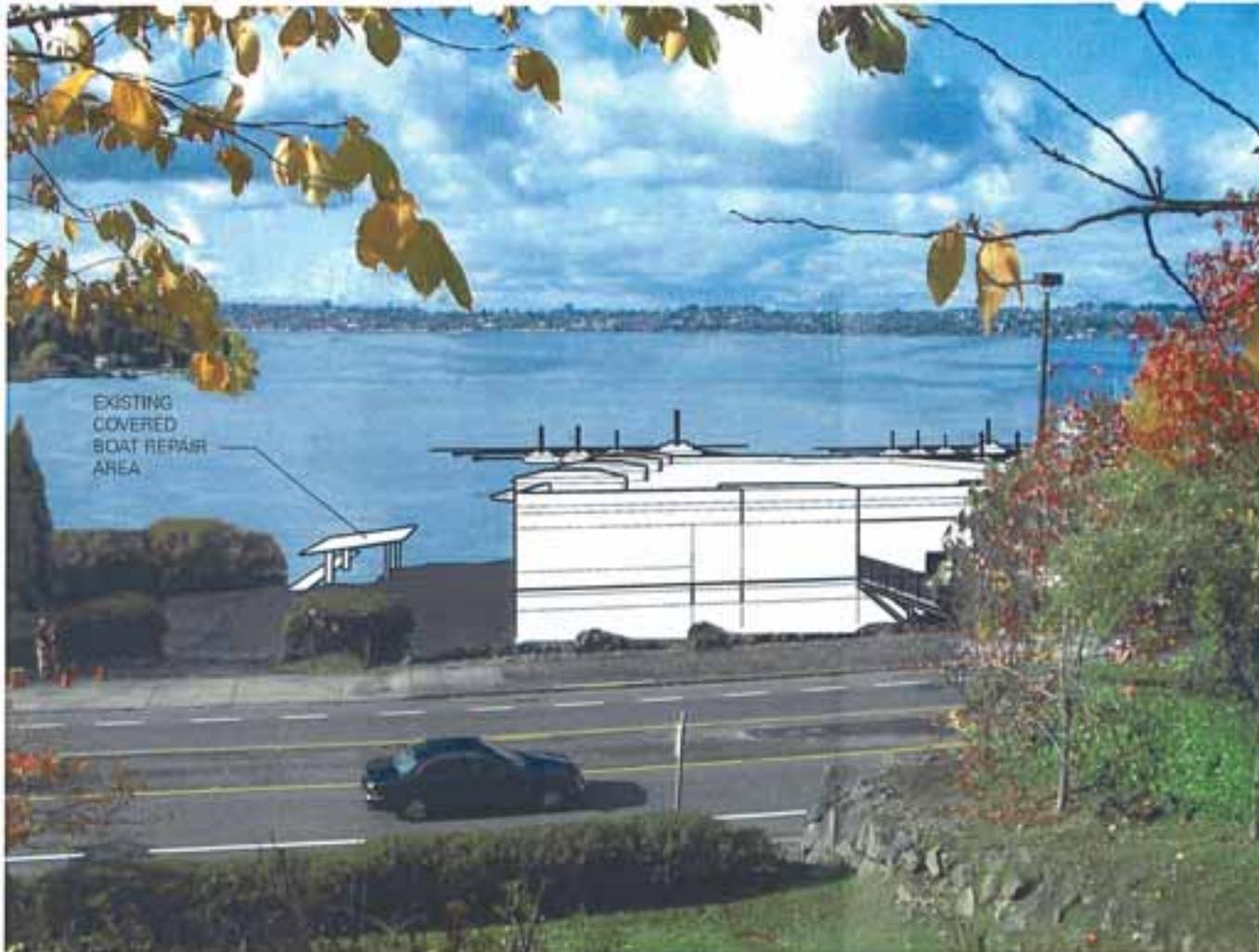
View 1 : From 5210 Lake Washington Blvd



View 1 : From 5210 Lake Washington Blvd



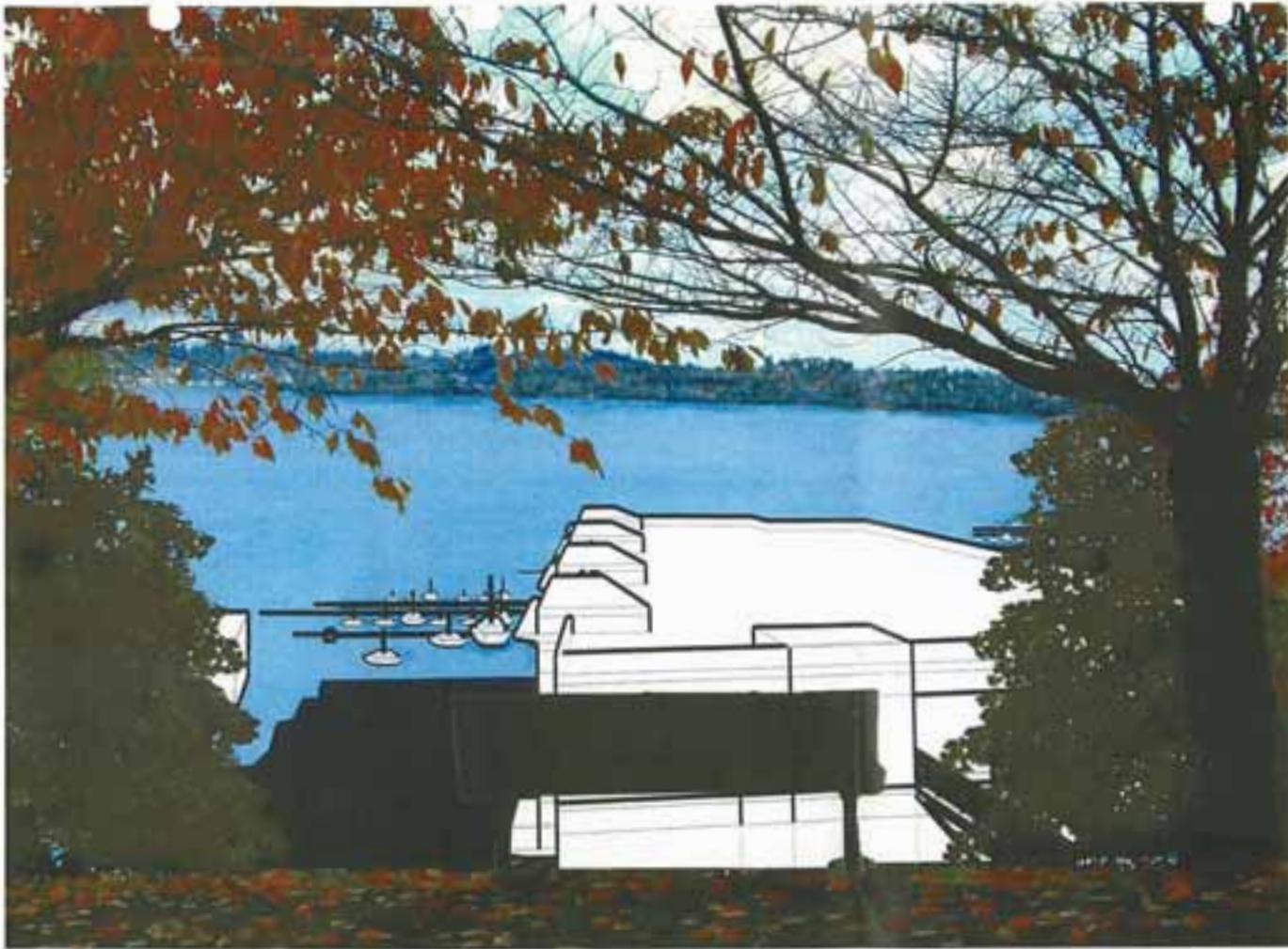
View 2 : From Yarrow Villas



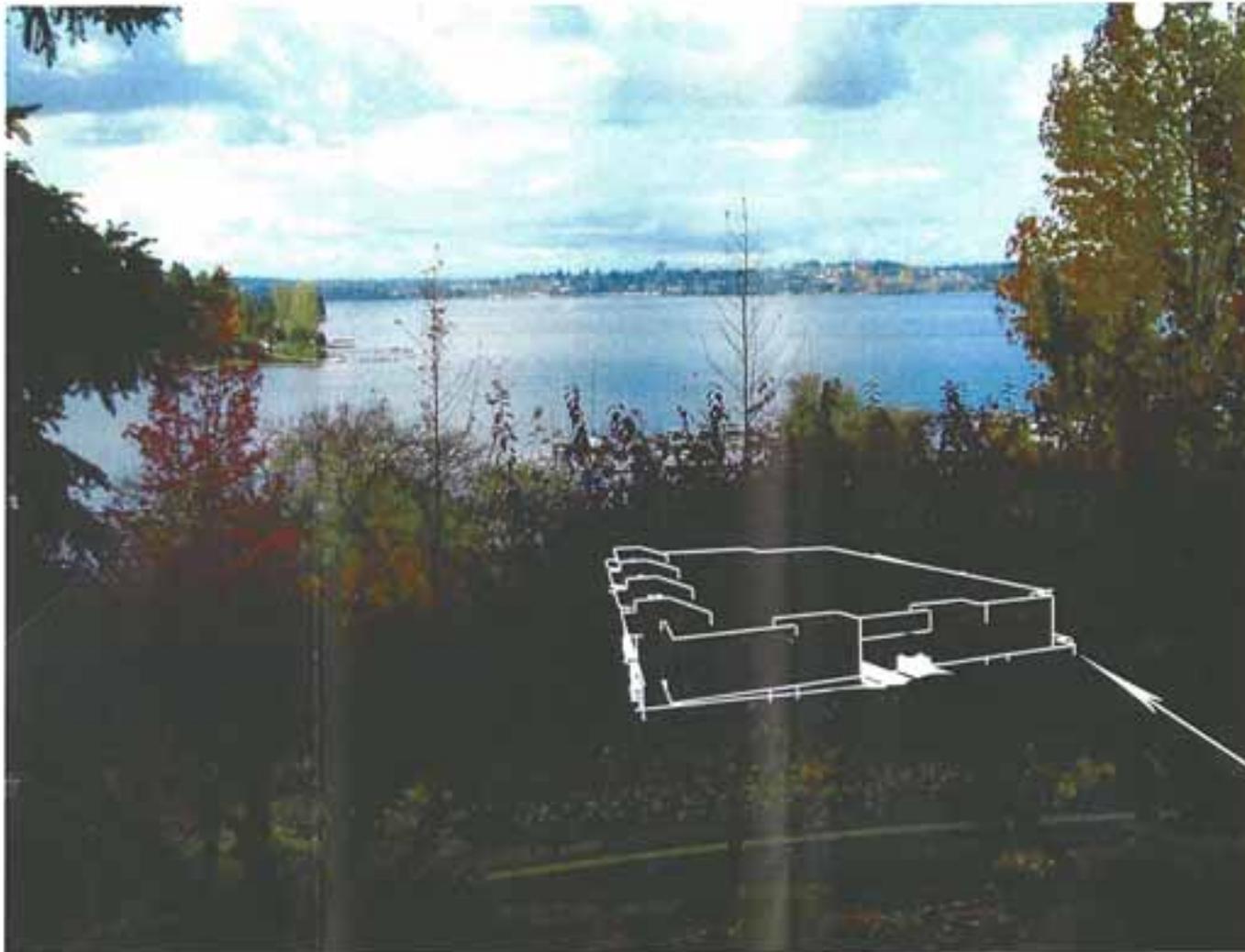
View 2 : From Yarrow Villas



View 3 : From Bench Viewpoint

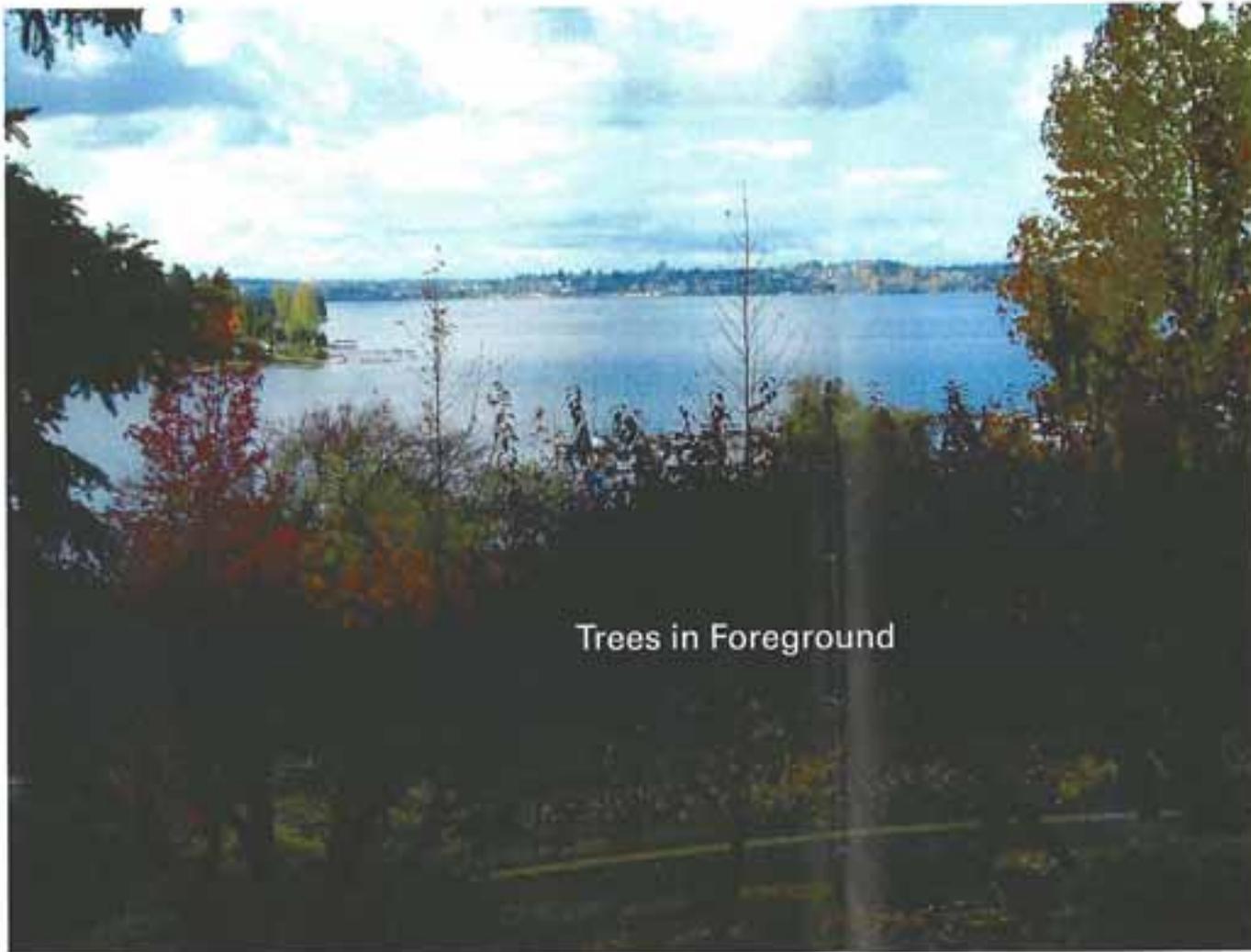


View 3 : From Bench Viewpoint



Building Obscured by  
Trees in Foreground

View 4 : From Yarrow Hill Condominiums



Trees in Foreground

View 4 : Yarrow Hill Condominiums

**CITY OF KIRKLAND  
HEARING EXAMINER FINDINGS,  
CONCLUSIONS AND RECOMMENDATION**

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**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

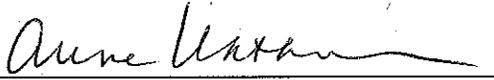
Board of Directors, Breakwater Condominium Association, 4823 Lake Washington Blvd NE, Kirkland, WA 98033

Muckleshoot Indian Tribe Fisheries Division, 39015 172<sup>nd</sup> 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 9<sup>th</sup> 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.



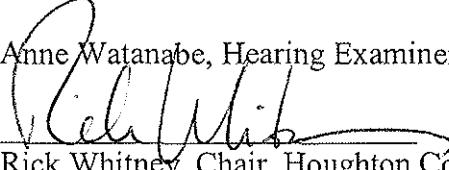
**Houghton Community Council**  
**CITY OF KIRKLAND**  
123 Fifth Avenue, Kirkland, WA 98033 425.587-3225  
www.ci.kirkland.wa.us

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 <u>    K    </u>

**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

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## 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.

Heleen 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:

104'7 $\frac{3}{4}$ " north of the south property line along Lake Washington Blvd. NE (30% of 265.49 (average parcel width) + (2.5 x 10) = 104'7 $\frac{3}{4}$ "') 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
			<b>Total = 232 stalls</b>		<b>Total = 212 stalls</b>

- (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) Conclusions:

- (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.

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 (width, 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](http://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](http://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

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](mailto: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](http://www.ci.kirkland.wa.us)

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### 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 Rockerries 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.

**Stacy Clauson**

**From:** Hhrogers@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 enforceable 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 <u>4.a</u>
<u>SHROU-00001</u>

4/10/2006

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	4.6
SHR06-00001	

- 3) - **The proposed 3-foot hedge-fence on our northern property line.** Not good enough! We **NEED** a 6-foot high **solid fence** to protect us from the noise pollution and headlights shining into our property!! This would be our only relief.
- 4) - **The proposed entrance/exit for boaters to the marina's fuel and repair docks.** 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.

**SUGGESTION:** 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 **must** 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) -- **The S.W. dock additions and expansions -- another big problem.** 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.

**SUGGESTION:** 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) - **The public walkway from Lake Washington Blvd. to the lakefront.** 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,



Mrs. Joan Schmidt

John Barnett  
4823 Lake Washington Blvd NE, #5  
Kirkland, WA 98033  
425-889-0207  
March 17, 2006

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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 <u>4.c</u>
<u>SAROB 0001</u>

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 difficulty 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,

A handwritten signature in cursive script that reads "John Barnett".

John Barnett

President, Breakwater Condo

Fred and LouAnn Freeburg  
Breakwater Condominium  
4823 Lake Washington Blvd. N.E. #6  
Kirkland, WA 98033  
March 15, 2006

RECEIVED  
MAR 17 2006  
AM \_\_\_\_\_ PM \_\_\_\_\_  
PLANNING DEPARTMENT  
BY \_\_\_\_\_

Stacy Clauson  
City of Kirkland Department of Planning and Community Development  
123 5<sup>th</sup> 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~~ 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 <u>4.d</u>
<u>SHR06-00001</u>

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 an 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 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 development 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 <u>4.e</u>
<u>SHR06-00001</u>

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 - 5<sup>th</sup> Avenue  
Kirkland WA 98033

Houghton City Council  
123 - 5<sup>th</sup> Avenue  
Kirkland WA 98033

Houghton Community Council  
City of Kirkland Hearing Examiner  
123 - 5<sup>th</sup> 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 pier 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 52<sup>nd</sup> 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.**

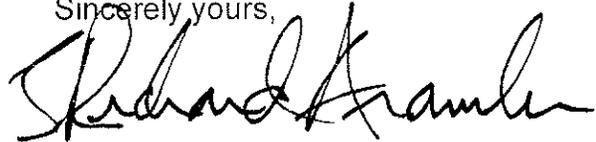
As noted above, the applicant must provide a 70 percent view corridor because the proposal exceeded 35 feet in height. However, a substantial amount of the view corridor is taken up with covered moorage, an illegal use under the Kirkland zoning code. Under the Kirkland Zoning Code a view corridor is 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

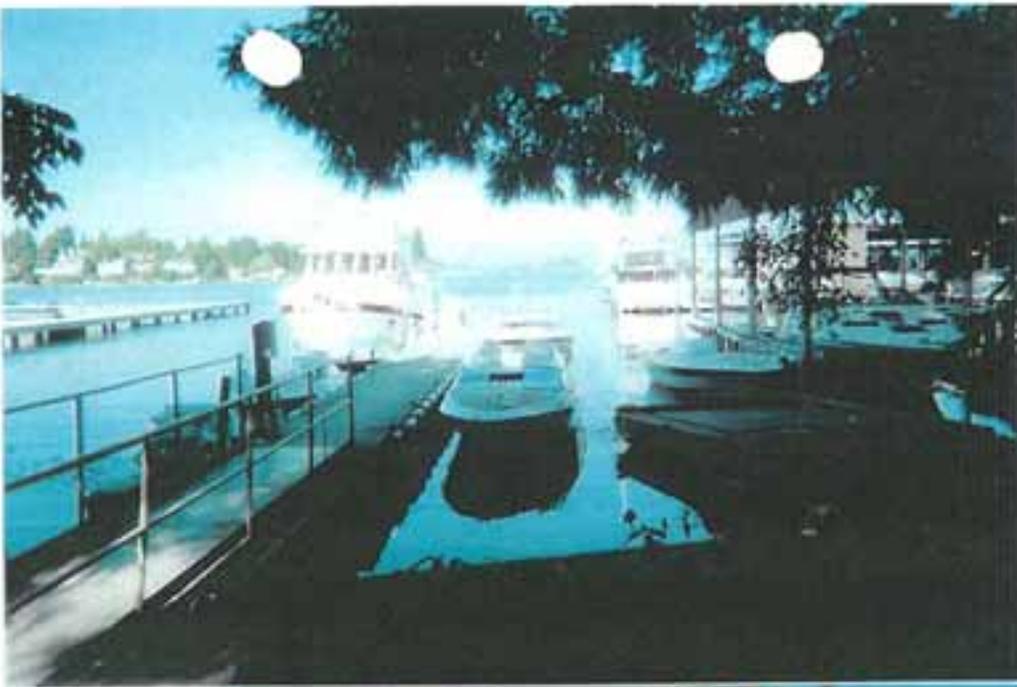
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2.



3.



4.



5.



July 31, 2006

Houghton Community Council  
City of Kirkland Hearing Examiner  
123-5<sup>th</sup> 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 on my neighborhood and 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 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 <u>    F    </u>

*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. The whole concept just doesn't make sense. *ndc that area*

#### 4] Moorage Expansion

The YBM project calls for the expansion of one of their present docks enlarging it to the south. <sup>by the pier</sup> 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 52<sup>nd</sup> 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



**Stacy Clauson**

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**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

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**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

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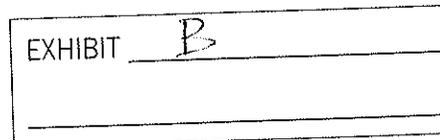
**From:** Karen Walter [mailto:Karen.Walter@muckleshoot.nsn.us]  
**Sent:** Friday, July 28, 2006 1:34 PM  
**To:** Stacy Clauson  
**Subject:** RE: Yarrow Bay Marina[Scanned]

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



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**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

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**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

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**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**

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**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

Date: January 18, 2006

Project Address: 5001 & 5207 Lake Washington Blvd. NE  
Kirkland, WA

RECEIVED

JAN 20 2006

AM  
PLANNING DEPARTMENT  
BY \_\_\_\_\_ PM

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  
SH206-00001

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](http://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 HB 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 5<sup>th</sup> Ave., Kirkland, WA. 98033 or to [sclauson@ci.kirkland.wa.us](mailto:sclauson@ci.kirkland.wa.us). Please indicate your name and address and refer to file number SHR06-00001.*

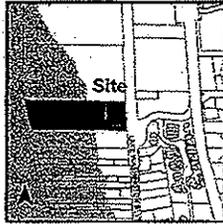
**APPEALS:** ~~The City Council's decision is the final decision of the City. Judicial review may be requested pursuant to state law. The Houghton Community Council may exercise its authority to disapprove of this application.~~

**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](mailto:sclauson@ci.kirkland.wa.us).

Application materials are contained in the official file available in the Planning Department, 123 5<sup>th</sup> 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

SC

**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](mailto:sclauson@ci.kirkland.wa.us)

CITY OF KIRKLAND DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT  
123 5th Avenue, Kirkland, WA 98033 - [www.kirklandpermits.net](http://www.kirklandpermits.net) - 425.587.3225



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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  
SHR06-0001

July 14, 2006  
Page 2

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.

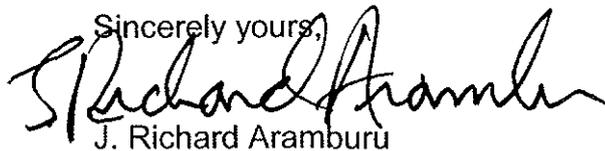
**II. Modifications To The Project Since Notice.**

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,

A handwritten signature in black ink, appearing to read "J. Richard Aramburu". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

J. Richard Aramburu

JRA/km

cc: Breakwater HOA

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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

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EXHIBIT   6

1 hearing on that application—including representation by legal counsel. Under controlling  
2 Washington law, even when a written notice is inadequate, any inadequacy of the notice is cured  
3 if the party has actual notice of the hearing. Here, not only was the notice adequate, but the  
4 condominium owners had ample actual notice of the application, submitted comments to the  
5 City, and have had adequate time to prepare for the hearing. Accordingly, their claims about  
6 lack of notice have no merit.

## 7 II. DISCUSSION

### 8 A. The City's Notices of Application Were Legally Adequate.

9 Under the local project permitting act, the notice of application for a project permit may  
10 be in "whatever sequence or format the local government deems appropriate." RCW  
11 36.70B.110(2). Among other things, the notice of application should include a description of the  
12 proposed project action and a list of the project permits included in the application. RCW  
13 36.70B.110(2)(b).

14 Under controlling Supreme Court law, the purpose of notice statutes is to apprise affected  
15 parties sufficiently so that they may prepare for the hearing on the issue involved. If petitioners  
16 are not misled and are able to adequately comment, notice is legally adequate. *Nisqually Delta*  
17 *Ass'n v. City of DuPont*, 103 Wn.2d 720, 727, 696 P.2d 1222 (1985) (ambiguous location of  
18 proposed and alternative dock sites in notice was not unlawful notice, when petitioners made no  
19 showing that any party was actually misled and where petitioners were able to prepare for  
20 hearing). Washington cases also recognize that the type of notice required depends on the  
21 specific situation (e.g., whether the notice is for a final legislative action or merely for an  
22 application process where the public is informed where they can get additional information if  
23 interested). *City of Tukwila v. King County*, 78 Wn.2d 34, 38-40, 469 P.2d 878 (1970). The *City*  
24 *of Tukwila* case involved annexation of property by the City. The notice of the annexation,  
25 which would affect real property interests of many members of the public, was ambiguous about  
26

1 which property along the northern annexation boundary would be included in the annexation.  
2 The Washington Supreme Court held that this notice was sufficient because it was “sufficient to  
3 alert anyone who read it that an annexation proceeding was underway involving the neighboring  
4 or adjacent area” and that maps and further information were available for inspection. *City of*  
5 *Tukwila*, 78 Wn.2d at 39-40.

6 Here, the City of Kirkland’s notices of application gave sufficient information about the  
7 required permitting for the proposed Yarrow Bay Marina projects. The March 9, 2006 published  
8 notice clearly identified the project and all the proposed work. The notice identified that a  
9 Process IIB Permit was required, which includes both zoning review and shoreline permit  
10 review.<sup>1</sup> Moreover, just as in the *City of Tukwila* case, the City’s notice of application included  
11 an invitation to seek additional information from the project planner Stacy Clauson for  
12 additional information about the application. The mailed notice that went to all the Breakwater  
13 Condominium homeowners was even clearer. That notice explicitly informed the Breakwater  
14 Condominium homeowners that the City’s decision would be “based on compliance with the  
15 Kirkland Zoning Code, Shoreline Master Program, and Comprehensive Plan.”<sup>2</sup> This plainly  
16 informed the petitioners that a shoreline permit was required. Again, the notice provided contact  
17 information for the project planner Stacy Clauson if any additional information was desired.

18 Like the notice approved by the Supreme Court in *City of Tukwila*, any person reading  
19 this notice would be alerted that development that work was proposed along the shoreline and in  
20 the water. Like the petitioners in *Nisqually Delta*, petitioners in this case have not shown that  
21 any party was actually misled by the notice and have not shown that they were prevented from  
22 preparing for the public hearing before the Examiner.

23 ////

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26 <sup>1</sup> Declaration of Phil Goldenman Regarding Project Notice (“Goldenman Dec.”) at Ex. A.  
<sup>2</sup> Goldenman Dec. at Ex. A.

1           **2.       Petitioners Had Actual Notice of the MIMP Application.**

2           Under Washington law, claims about inadequate notice are moot if petitioners have  
3 actual notice. *Prekeges v. King County*, 98 Wn. App. 275, 280-281, 990 P.2d 405 (1999) (notice  
4 for telecommunications tower permits was incorrect and defective, but petitioners lack of notice  
5 claim was moot because petitioner had actual notice of the application and an opportunity to  
6 participate in the administrative review process); *Department of Natural Resources v. Marr*, 54  
7 Wn. App. 589, 596-97, 774 P.2d 1260 (1989) (defective written notice of stop work order was  
8 not inadequate where appellant knew the property that the notice was intended to cover and was  
9 not actually misled by the notice).

10           Here, just like the petitioner in *Prekeges*, petitioners clearly had actual notice of the  
11 shoreline permit application and have fully participated in the application process. Petitioners  
12 attended two separate meetings called (one expressly for the Breakwater Condominium owners)  
13 that were held by the Applicant. Five different owners attended a January 11, 2006, meeting  
14 (including Homeowner Association president John Barnett) where all aspects of the project were  
15 discussed – including the shoreline permit and marina expansion.<sup>3</sup> After the Applicant changed  
16 the shoreline application specifically in response to petitioners’ concerns, petitioners attended a  
17 second meeting on May 17, 2006, to discuss all aspects of the project – including the plans for  
18 the extension of Pier D at Yarrow Bay Marina. Moreover, all three of the petitioners that  
19 signed the SEPA appeal in this case submitted lengthy comment letters to the City of Kirkland –  
20 including a comment letter from the president of the Breakwater Homeowners’ Association.  
21 Those comment letters called referenced the shoreline permit number and included detailed  
22 comments about the shoreline permitting issues.<sup>4</sup> Because petitioners had actual notice, any  
23 claim about defective notice is moot under controlling Washington law.

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26 <sup>3</sup> Goldenman Dec. at ¶3 and Ex. B.

<sup>4</sup> Goldenman Dec. at ¶4 and Ex. C.

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### 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

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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.

DECLARATION OF PHIL GOLDENMAN -

COPY

FOSTER PEPPER PLLC  
1111  
SEATTLE  
PHONE 206

EXHIBIT A

1           3.     Actual Notice to Breakwater Condominiums. Well prior to the City's notices of  
2 application, the project applicant and City had been working with neighbors of the Yarrow Bay  
3 Marina – including the Breakwater Condominiums – and provided them with actual notice of the  
4 project. On December 15, 2006, applicant Yarrow Bay Marina sent an invitation to all neighbors  
5 within 300 feet to a public meeting. This was not a required public meeting, but the City of  
6 Kirkland encouraged the applicant to do this outreach. One hundred sixty-five (165) invitations  
7 were sent out – including invitations to each of the eight (8) condominium owners in the  
8 Breakwater Condominiums. The meeting, which was attended by City staff as well as project  
9 consultants, was held January 11, 2006, at the marina. A number of people from the Breakwater  
10 Condominium attended, including John Barnett, president of the Condominium Association,  
11 Helen Rodgers, Fred Freeburg and Luann Freeburg. All aspects of the project were discussed at  
12 that meeting. True and correct copies of the notice letter for that meeting, the mailing list for the  
13 meeting, and the signup sheet for that meeting (showing attendance by Breakwater  
14 Condominium homeowners, including the president of the Condominium Association) are  
15 attached as Exhibit B to this declaration.

16           At that time, the applicant was proposing the extension of two piers – Piers C and D. In  
17 response to the concerns of Breakwater Condominiums, we did not include in the shoreline  
18 permit application the proposal to extend Pier C. Only Pier D is now proposed for extension,  
19 which will be over 180 feet from the end of Breakwater's dock and is double the 10-foot setback  
20 required by the City of Kirkland from the extended side property line.

21           On May 17, 2006, Marina Suites and its consultants had another meeting with the  
22 Breakwater Condominiums. This meeting was held in Mr. & Mrs. Freeburg's condominium.  
23 We reviewed the revised plans for the shoreline permit application with Breakwater  
24 Condominium homeowners at that time. We discussed site development within the view  
25 corridor requirements (which included the public access trails), the construction schedule,  
26 extension to Pier D and the signage we are willing to put up to assist with the boat fueling queue.

DECLARATION OF PHIL GOLDENMAN - 2

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 9<sup>th</sup> 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:

Handwritten signature of Eric Shields in black ink.

5/5/06

Eric Shields, Director  
Department of Planning and Community Development  
425-587-3225

Date

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
SEP06-00004	

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

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Applicant / Agent Phil Goldenman, 205 NE Northlake way, Suite 230  
Seattle WA 98105

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---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:

SEPA\_C\_A, rev: 5/5/2006

5-9-06

Date:

RECEIVED

MAY 23 2006

AM 12:40 PM  
PLANNING DEPARTMENT  
BY SM

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 [52<sup>nd</sup> 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 108<sup>th</sup>, 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 BORDER 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 than 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 use 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.

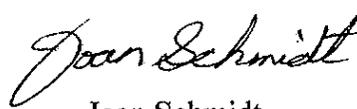
We would be surprised if present day zoning would allow the lake coverage by the marina as it exists today. It is unthinkable to consider impacting the environment with more docks and lake coverage.

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

## 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

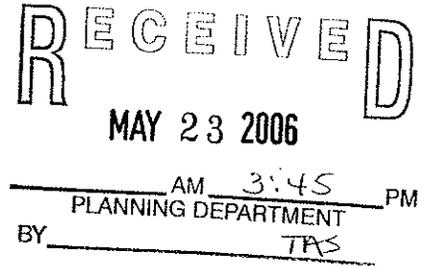
I am generally concerned about the Yarrow Bay Marina proposed development and the negative effects it will have upon the neighbors to the south and to the lake. The following are the major reasons for my submitting comments regarding the Yarrow Bay Marina proposed development:

### 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 52<sup>nd</sup> 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 52<sup>nd</sup> 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 52<sup>nd</sup> 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,

A handwritten signature in cursive script, appearing to read "LouAnn Freeburg".

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 172<sup>nd</sup> 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

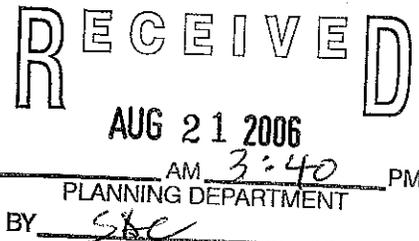
ATTACHMENT <u>7-b</u>
<u>SEP06-00004</u>

**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



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.

August 21, 2006

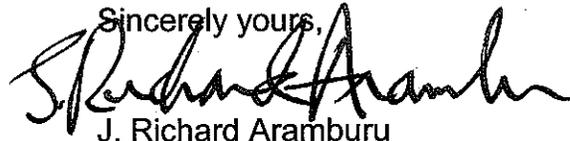
Page 2

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
<input checked="" type="checkbox"/> Challenge (including procedures to file a Response)	<input checked="" type="checkbox"/> IIB
<input type="checkbox"/> Response to Challenge	<input type="checkbox"/> III
<input type="checkbox"/> Application for Comprehensive Plan Amendment	<input type="checkbox"/> 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 21<sup>st</sup> day of August, 2006.



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 - 5<sup>th</sup> Avenue  
Kirkland WA 98033

Houghton City Council  
123 - 5<sup>th</sup> Avenue  
Kirkland WA 98033

Houghton Community Council  
City of Kirkland Hearing Examiner  
123 - 5<sup>th</sup> 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.

July 31, 2006

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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.

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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 pier 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

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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 52<sup>nd</sup> 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.**

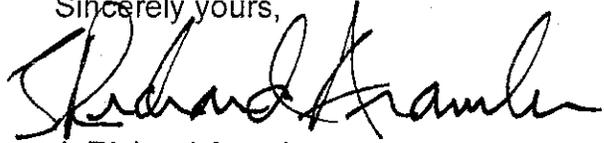
As noted above, the applicant must provide a 70 percent view corridor because the proposal exceeded 35 feet in height. However, a substantial amount of the view corridor is taken up with covered moorage, an illegal use under the Kirkland zoning code. Under the Kirkland Zoning Code a view corridor is 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**

BY  
PLANNING DEPARTMENT  
PM

City Council  
c/o Kirkland Planning Department  
123 Fifth Avenue  
Kirkland WA 98033  
ATTN: Ms. Stacy Clausen

AUG 28 2006  
RECEIVED

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 not 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  
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.



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## CITY OF KIRKLAND

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### 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 of 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. Along 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

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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

September 5, 2006  
Page 2

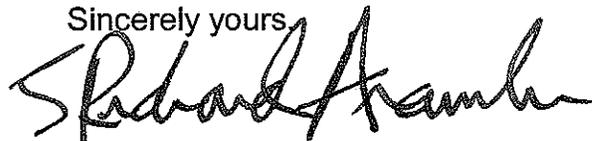
As Mr. Pearce recognizes, the recommendation of the Hearing Examiner provides that no designated parking stalls may be used for boat storage. The applicant did not object to this condition during the hearing, but in any event, the Examiner adopted this staff recommendation.

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 SHRO6-00001 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