CITY OF KIRKLAND
CITY COUNCIL

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

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AGENDA
KIRKLAND CITY COUNCIL SPECIAL MEETING
City Council Chamber
Monday, November 2, 2009
5:00 p.m. – Special Study Session – Peter Kirk Room
7:30 p.m. – Regular Meeting

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

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

1. *CALL TO ORDER*

2. *ROLL CALL*

3. *STUDY SESSION*, Peter Kirk Room. 5:00 p.m.

   a. Shoreline Master Program

4. *EXECUTIVE SESSION*

   a. To Discuss Labor Negotiations

5. *SPECIAL PRESENTATIONS*

   a. Alaska Yukon Pacific Exposition Centennial - Loita Hawkinson, Kirkland Heritage Society

   b. 2009 Arbor Day Proclamation and Invitation

6. *REPORTS*

   a. *City Council*

      (1) Regional Issues

   b. *City Manager*

      (1) City Council Meeting with Highlands Neighborhood

      (2) Calendar Update

P - denotes a presentation from staff or consultant

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

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

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

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

P - denotes a presentation from staff or consultant

7. COMMUNICATIONS

a. Items from the Audience

b. Petitions

8. CONSENT CALENDAR

a. Approval of Minutes: (1) October 20, 2009

(2) October 22, 2009

b. Audit of Accounts:

Payroll $

Bills $

c. General Correspondence

(1) King County Council, Regarding the Proposed 2010 Budget

d. Claims

(1) Kathryn A. Greve

(2) Mark Niklason

(3) Heather Wickman

(4) Jennifer Zyris

e. Award of Bids

f. Acceptance of Public Improvements and Establishing Lien Period

(1) 2008 Sidewalk Maintenance Project

(2) 2008 Water System Improvement Project (South)

g. Approval of Agreements

(1) Resolution R-4785, Authorizing the City Manager to Execute an Agreement for the Use of Eight Stalls of the Auxiliary Parking Lot at Lakeshore Plaza for a Construction Staging and Mobilization Area

h. Other Items of Business

(1) 2010 NORCOM Budget Approval

(2) Resolution R-4781, Relinquishing Any Interest the City May Have in an Unopened Right-of-Way as Described Herein and Requested by Property Owners Diane F. Reynolds and Glen C. Reynolds

(3) Report on Procurement Activities

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

9. PUBLIC HEARINGS

10. UNFINISHED BUSINESS

a. Bank of America Project Review

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

11. NEW BUSINESS

a. Resolution R-4782, Making a Declaration of Substantial Need for Purposes of Setting the Limit Factor for the Property Tax Levy for 2010

b. Resolution R-4783, Authorizing the Transfer of Funds from the Contingency Reserve Fund to the General Fund to Pay Fire Hydrant Costs in 2009-2010 and for Professional Services Related to the Proposed Transfer by Verizon

c. Resolution R-4784, Setting Fourth the Current Rules of Procedure for the Conduct of Kirkland City Council Meetings

12. ANNOUNCEMENTS

13. ADJOURNMENT

P - denotes a presentation from staff or consultant

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

MEMORANDUM

To: David Ramsay, City Manager

From: Stacy Clauson, Contract Planner
Teresa Swan, Senior Planner
Paul Stewart, Deputy Director of Planning

Date: October 27, 2009

Subject: Kirkland's Shoreline Master Program Update (SMP)
RESPONSE TO CITY COUNCIL QUESTIONS
File No. ZON06-00017

I. RECOMMENDATION

Staff recommends that the City Council continue the discussion from the October 22nd Study Session and:

A. Consider the recommendation from the Planning Commission; and

B. Direct staff to prepare a 'Resolution of Intent' for the Comprehensive Plan, Zoning and Municipal Code amendments to be considered at the City Council's November 17, 2009 meeting.

II. CITY COUNCIL REVIEW

At the October 22, 2009 meeting the City Council began its review of the updated Shoreline Master Program, discussing the SMP background and policy context and beginning preliminary review of the following key policy areas and recommended changes by the Planning Commission:

- Shoreline Setbacks;
- Shoreline Setback Reduction Mechanisms
- Nonconformance Provisions; and
- Zoning Code changes.

At the November 2nd meeting, staff recommends that the Council continue its discussion of the remaining key 6 issues (e.g. vegetation, shoreline stabilization, piers and docks, and critical areas), as well as additional issues highlighted in Section V below. **To aide in this effort, staff recommends that the Council bring the October 22nd meeting notebook to the November 2nd meeting, as we will be working from these materials.**

Staff then recommends that the Council follow-up on issues and questions raised at the October 22nd meeting, which are addressed in Section III below, as well as with additional materials that will be provided at the November 2nd Study Session.

Staff recommends that the Council continue its review of the remaining key provisions outlined in the memo from October 22nd and provide direction on changes to the Planning Commission's recommendation. Staff can then draft any requested changes and, if the Council is ready to take action, ordinances to be adopted by the Council at their November 17, 2009 meeting.

III. RESPONSE TO CITY COUNCIL QUESTIONS

During the October 22nd meeting, the City Council posed a number of specific questions concerning shoreline setbacks and zoning code changes recommended by the Planning Commission. Specifically, the Council requested more information detailing whether the recommended Zoning Code changes provide equivalent easing of current restrictions in order to offset for recommended increased shoreline setbacks. In response to this issue, staff plans to provide scenarios at the November 2nd Study Session that will compare existing and proposed standards and their net effect on potential buildable area. It should be noted that there is great variability among the shoreline properties, so the scenarios will provide anecdotal information that can provide a better understanding of the proposed offsets being proposed, but will not exemplify all properties due to the varying characteristics.

In preparation for the November 2nd meeting, staff would also like to provide a brief overview of the current standards that impact buildable area and a description of how the recommended zoning code provisions would modify these current provisions.

A. Residential –L Environment

What are the existing regulations affecting building area?

Location	Shoreline Setback	North Yard	South Yard	Front (Street) Yard	Height
R-L, North of Lake Ave W Street End Park	15′, 15% of average parcel depth (whichever is greater); OR If dwelling units exist immediately adjacent both to the north and south of the subject property, then the average	With flat lot, second story (assume 20-25′ in height) would be setback 15-20′ from north property line. A larger setback may be required if lot contains a slope. Main floor would typically be setback 5-10′.	5′	20′, except for the following: 1) If shoreline setback averaging results in greater setback, the required opposite yard may be decreased to the average of the existing opposite yards on the properties abutting the subject property 2) Private access drives 21′ or less in width (e.g. Lake Ave W, 5th Ave W and Rose Pt Lane), which have 10′.	25′ above ABE
R-L, South of Lake Ave W Street End Park	15′, 15% of average parcel depth (whichever is greater), or If dwelling units exist immediately adjacent both to the north and south of the subject property, average	N/A – Side yard setback applied (5′, but 2 side yards must equal 15′). * Typical North Yard is not applicable because of the angle of the yard is southwest.	N/A – Side yard setback applied (5′, but 2 side yards must equal 15′) *Same note as for North Yard.	20′, except for the following: 1) If shoreline setback averaging results in greater setback, the required opposite yard may be decreased to the average of the existing opposite yards on the properties abutting the subject property	25′ above ABE

Notes: The following are some key issues to be aware of:

- For most lots (over 90%) the current setback standard would actually be determined by the average of the adjoining structures to the north and south. When the median of this setback (based on approximate locations of existing structures) is calculated, it would be approximately 41 feet.
- It is estimated that the current 'solar access' setback would reduce the second story buildable area by approximately 15% the size of the main floor. This may be larger on sites with a slope across the building site.

What are the proposed regulations that affect the buildable area?

Location	Shoreline Setback	Side Yard	Front (Street) Yard	Height
R-L, North of Lake Ave W Street End Park	30% of average parcel depth with 30′ minimum and 60′ maximum. Incentives provide potential to reduce to 25′.	Side yard setback of 5′ with 2 equaling 15′ OR 5′ on each side with upper modulation at 15% less than 1st floor.	10′ (would include private access drives 21′ or less in width (e.g. Lake Ave W, 5th Ave W and Rose Pt Lane)).	30′ above ABE (for properties with 45′ of lake frontage)
R-L, South of Lake Ave W Street End Park	Average of existing setback on adjacent properties, with 15′ minimum. Incentives provide potential to reduce to 15′.	5′, but 2 side yards must equal 15′	10′, except for the following: 1) If shoreline setback averaging results in greater setback, the required opposite yard may be decreased to the average of the existing front yards on the properties abutting the subject property	30′ above ABE (for properties with 45′ of lake frontage)

What are some of the key affects on buildable area?

- It is estimated that for almost 3/4 of the properties located north of the Lake Ave W Street End Park, the proposed shoreline setback would either be consistent with or more advantageous for buildable area than the existing averaging provisions. Thus, for the majority of these 77 properties, the setback standard would actually be equivalent or a net improvement for property owners who would otherwise need to comply with an averaging standard under the current provisions.
- It is estimated that four properties located south of the Lake Ave W Street End Park would be subject to an increased shoreline setback, based on the recommended minimum standard of 15 feet that would apply in this area (which for those four properties would impose a greater setback than the average of adjoining residences).
- The additional building height would allow a sloped roof form to be more easily designed on the site. In addition, in some cases (e.g. sites with gradient changes) an additional story may be realized.
- The provisions replacing the ‘solar access’ standard would allow for more flexibility in design. Depending upon what option is chosen, there may be additional buildable area.

- In some cases for properties north of the Lake Ave W Street End Park, the averaging that would have been permitted along the opposite yard from the shoreline setback (e.g. the street side) may have resulted in a decrease in setback above and beyond the recommended 10′ standard.

Where are additional areas where Council could ease existing regulations?

- Front (street) yard.
  - For properties located north of the Lake Ave W Street End Park, allow the applicant to choose between the recommended 10′ front yard and the average setback of the adjoining residences to allow greater flexibility to match the streetside character of adjoining residences.
  - For properties located along a private access easement, allow the setback from the easement to be reduced from 10 to 5 feet, while ensuring that a parking pad is provided as required under KZC 105.47. Also allow applicants to choose between the prescribed dimensional standard (10′ or 5′ if reduced by Council) and the average of the two adjoining structures.

B. Residential –M/H Environment

What are the current regulations that affect building area?

Location	Shoreline Setback	North Yard	South Yard	Front (Street) Yard	View Corridor	Height
R-M/H	15′, 15% of average parcel depth (whichever is greater)	15′ or 1/2 times height, minus 10′ (whichever is greater)	10′	30′, except for the following: 1) Reduction for development of public use area (one foot for each one foot).	30% of average parcel width (within side yard that provides the best view)	30′ above ABE (uses other than single family may increase up to 35′ in exchange for superior view corridor).

Notes: The following are some key issues to be aware of:

- With a standard 30-foot tall building, the north required yard would be 35 feet in width. Combined with the south yard, the buildable area is reduced by a minimum of 45 feet.
- The view corridor could be required along the south property line, further impacting potential buildable area. The view corridor must be provided along either the north or side property line, whichever provides superior views to the lake given topography, existing vegetation and view corridors on adjacent properties.

What are the proposed regulations that affect the buildable area?

Location	Shoreline Setback	Side Yard	Front (Street) Yard	View Corridor	Height
R-M/H	15% of average parcel depth with 25′ minimum	Side yard setback of 5′ with 2 equaling 15′	30′, except for the following: 1) Reduction for development of public use area (one foot for each one foot). 2) Reduction for nonconforming structure that is brought into conformance with shoreline setback (one foot for each one foot).	30% of average parcel width	30′ above ABE (uses other than single family may increase up to 35′ in exchange for superior view corridor).

What are some of the key affects on buildable area?

- In this environment, for each one foot that a nonconforming shoreline setback is increased, it can be offset by a reduction in the front (street) setback, provided that each portion of the structure is setback by a distance equal to the height of that portion of the structure above the front property line. This provision tries to ensure that there is an equal exchange in buildable area as possible, while still addressing building massing along the street.

- Parcel widths range from 60′ to 75′ along Lake Washington Blvd south of Carillon Point in WDIII. Looking at examples of existing parcel widths, here is how the view corridor and north property line setback combined currently affects properties and why past variances have been approved.
    - Scenarios when View Corridor and North Property Line are in Different Locations

Parcel width at 60’	Parcel width at 75’
View Corridor on south side= 18′ wide	View corridor on south side= 22.5′ wide
North property line setback = 35′ wide	North property line setback = 35′ wide
Parcel width left for residence = 7′ wide	Parcel width left for residence =17.5′ wide

    - Scenarios when View Corridor and North Property Line are in Same Location

Parcel width at 60’	Parcel width at 75’
View Corridor on south side= 18′ wide	View corridor on south side= 22.5′ wide
North property line setback = 35′ wide	North property line setback = 35′ wide
South property line setback = 10′ wide	South property line setback = 10′ wide
Parcel width left for residence = 15′ wide	Parcel width left for residence =30′ wide

As shown above, the combination of the existing required view corridor and north property line setback results in inadequate buildable area (7′ to 17.5′) for structures and improvements. The City has received many variances for the north property line setback. The Planning Commission and Houghton Community Council recommend deleting the north property line setback requirement and replacing it with the standard 5′ side yard setback (15′ for two side yards) required throughout the rest of the city.

In contrast, here is how the view corridor and the proposed side yard setbacks would impact the same properties:

Parcel width at 60'	**Parcel width at 75'**
View Corridor on south side= 18′ wide	View corridor on south side= 22.5′ wide
Side yards = 5′ wide (10′ coincides with view corridor)	Side yards = 5′ wide (10′ coincides with view corridor)
Parcel width left for residence = 37′ wide	Parcel width left for residence =47.5′ wide

Where are additional areas where Council could ease existing regulations?

- Height. Single-family residences could be provided with the same option to increase the building height to 35 feet in exchange for a superior view corridor.
- Front (street) yard. Reduce the front yard to a standard dimension of 20 feet.

C. Urban Mixed

What are the current regulations that affect the building area?

Location	Shoreline Setback	Side Yard	Front (Street) Yard	View Corridor	Height
UM	15′, 15% of average parcel depth (whichever is greater)	0′	0′	CBD: 30% average parcel width JBD: 30% average parcel width	CBD: 28′ above adjoining right-of-way JBD: 26′ above ABE

What are the proposed regulations that affect the buildable area?

Location	Shoreline Setback	Side Yard	Front (Street) Yard	View Corridor	Height
UM	25′, 15% of average parcel depth (whichever is greater)	0′	0′	None	CBD: 28′ above adjoining right-of-way JBD: 26′ above

Location	Shoreline Setback	Side Yard	Front (Street) Yard	View Corridor	Height
					ABE

What are some of the key affects on buildable area?

- The current view corridor standard significantly reduces the potential buildable area. Elimination of this standard would more than offset for the increased minimum shoreline setback.

IV. ADDITIONAL PUBLIC COMMENT

As noted at the October 22nd Study Session, the City continues to receive additional public comments addressing the recommended SMP. *Please note that copies of these public comments have been placed in the binder in the Council Study Room.* Of particular note, staff would like to clarify several issues raised in some of the letters, as follows:

- Comparison to other cities. While comparison to approaches taken by other cities is informative, it is important to note that each City has a different baseline condition to which it needs to assure that there is no net loss. Depending upon how the current standards (e.g. setbacks) compare to the baseline conditions, each City may have different needs to modify their existing standards to comply with the principles of no net loss.

  With respect to City of Kenmore, the KLA stated in its letter dated October 22, 2009 that Kenmore has not imposed greater setbacks on its existing single family owner under its SMP update. However, it appears that the existing setback standard is proposed to be **increased** from a current shoreline setback for single family development of 20 feet to a new setback of 50 feet, which may be reduced to 35 feet if non-native vegetation is removed from the setback and native vegetation is reestablished in 100 percent of the reduced setback as part of a shoreline restoration or enhancement project.

- Nonconformance provisions. The nonconformance provisions allow significant change to an existing structure, unless the modification involves structural alteration to an exterior wall or roof. Excepted from this section is the repair or maintenance of structural members. Structural Alterations as envisioned under these provisions (and specifically defined in the Zoning Code) would include any change in the supporting member of a building or structure. This would include the following type of features: foundations, beams, trusses, joists, headers and other similar features.

  These provisions, as applied in the Zoning Code (after which the SMP is modeled), have not been interpreted to include changes in windows or door framing, as raised as a concern in the letter from KLA dated October 22nd. Under the City's existing structural alteration provisions, windows and doors can be replaced. New windows and/or doors that were not on a non conforming wall before may be added, but in some cases an administrative variance may be required.

- Shoreline stabilization. It is important to note that the State Guidelines contained in WAC 173-26-231(3)(iii)(c) contain the following specific requirements addressing replacement of existing shoreline stabilization measures:

  An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents, tidal action, or waves.

  • The replacement structure should be designed, located, sized, and constructed to assure no net loss of ecological functions. Replacement walls or bulkheads shall not encroach waterward of the ordinary high-water mark or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.

  • Where a net loss of ecological functions associated with critical saltwater habitats would occur by leaving the existing structure, remove it as part of the replacement measure.

  • Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark.

  • For purposes of this section standards on shoreline stabilization measures, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.

  Further, as noted in WAC 173-26-231(3)(iii)(E), the following provisions would apply:

  When any structural shoreline stabilization measures are demonstrated to be necessary, pursuant to above provisions,

  • limit the size of stabilization measures to the minimum necessary. Use measures designed to assure no net loss of shoreline ecological functions Soft approaches shall be used unless demonstrated not to be sufficient to protect primary structures, dwellings, and businesses.

  The request by KLA to allow an outright provision to rebuild their current shoreline stabilization measures in the event of catastrophic failure or in reasonable anticipation of failure would not be consistent with these provisions, which will be evaluated by Ecology when they review the City's SMP for consistency with the Guidelines.

  The recommended regulations do not prohibit the replacement of existing shoreline stabilization measures, but do require a consideration of and documentation that other alternative measures, such as soft shoreline stabilization measures, are not

sufficient. To aide in this process and provide more certainty for property owners, the recommended regulations contain a Shoreline Stabilization decision tree (see pages 584 and 585 of October 22nd meeting packet) that outlines different potential shoreline stabilization options that may be appropriate, given a site's specific characteristics. As presented in this decision tree, there are limited circumstances in which a full beach (hard shoreline stabilization removal and beach restoration) would be considered, and the applicant would have the ability to provide additional information for the City to consider in determining the appropriate form of shoreline stabilization.

V. ADDITIONAL KEY ISSUES FOR CITY COUNCIL CONSIDERATION

In addition to the 6 key regulation areas that staff recommended that the City Council address in the Study Sessions, staff would also like to highlight the following issues for City Council discussion:

- Key new proposed uses contained in SMP:
  - i. Floatplane facilities (as a Conditional Use in the UM environment only)
  - ii. Passenger ferry service (as a Conditional Use in the UM environment only)
  - iii. Water taxis (permitted as accessory to a marina or public park)
- New regulations would allow boatlift canopies (1 per dwelling unit and canopy must be constructed of translucent materials). Boatlift canopies are currently not permitted in the SMP. This new regulation was recommended in response to several property owners who have requested that canopies be permitted and has been drafted to minimize environmental impacts, consistent with standards developed by the Army Corps of Engineers under RGP-1.

VI. MINOR CHANGES

As noted at the October 22nd Study Session, staff continues to review the recommended SMP for clarifications or to respond to issues that have been raised in additional public comments received since the Planning Commission and Houghton Community Council rendered their recommendations and which staff believes are consistent with these recommendations. The following overviews some of the key recommended changes found in the enclosed revised Chapter 83 (see Exhibit A):

- Nonconformance provisions (Section 83.550). A change to Section 83.550.5.g to clarify that the vegetation standard would be required if there is an increase of at least 10 percent in gross floor area of the total gross floor area on the property. This change responds to an issue addressed in the October 22nd letter from KLA, which raised a concern about vegetation being required for small additions to accessory structures.
- Piers and docks (Section 83.270).
  - o Elimination of standard requiring moorage piles to be separated from the dock by 12 feet, which will provide more flexibility to use moorage piles in lieu of fingers or ells.

- New provisions to allow a flare at the end of a pier, which can provide an alternative to an ell.
- Modification to the allowed height of canopies to address concerns about the limited height permitted under the recommended provisions.

- Reasonable Use (Sections 83.500 and 510). In response to required changes noted by Ecology, staff is recommending the following changes:
  - Section 83.500.6 and 83.510.6—Delete reference to "or Reasonable Use Exceptions" in second box under "Development Proposal."
  - Sections 83.500. 12 and Section 83.510. 8 – Delete the reasonable use exception provisions and replace with shoreline variance provisions. Retain some of the submittal requirements and approval criteria for the reasonable use exception and apply to the shoreline variance provision.

Staff would also recommend adding a goal to support the **Restoration Plan** (Exhibit C). After final review of the draft goals and policies, staff noticed that the Restoration Plan has not addressed. Staff recommends the following new text:

RestorationPlanning:

Goal SMP 28: Implement the projects, programs and plans established within the Restoration Plan as funding and staffing resources permit. Restoration planning is an important component of the environmental protection policy of the Shoreline Management Act. Continued improvement of shoreline ecological functions requires a comprehensive watershed approach that combines upland and shoreline projects and programs. The City of Kirkland has adopted a Restoration Plan for the City's shorelines that provides the framework for the community's efforts to restore degraded portions of the City's shorelines.

The Restoration Plan provides multiple programmatic and site-specific opportunities for restoring the City's shoreline areas that outline opportunities to achieve a net benefit in ecological conditions. Ecological benefits that would be realized by implementing this plan include: increased use of soft approaches for shoreline stability and corresponding reductions in low-functioning hard shorelines; increased organic inputs, habitat, and filtration from shoreline riparian vegetation; improved wildlife corridor connectivity; improved habitat for salmon; displacement of noxious vegetation; and eventual introduction of woody debris.

VII. EXHIBITS

D. Shoreline Regulations: Chapter 83 (retaining same exhibit number as in the October 22, 2009 study session packet)

EXHIBIT D
KZC CHAPTER 83
CC Study Session 11/02/09

Chapter 83 – SHORELINE MANAGEMENT

Sections:

Authority and Purpose

83.10 Authority
83.20 Applicability
83.30 Purpose and Intent
83.40 Relationship to Other Codes and Ordinances
83.50 Interpretation
83.60 Liberal Construction
83.70 Severability

Definitions

83.80 Definitions

Shoreline Environment Designations and Shorelines of Statewide Significance

83.90 Shoreline Jurisdiction and Official Shoreline Map
83.100 Natural
83.110 Urban Conservancy
83.120 Residential - L
83.130 Residential – M/H
83.140 Urban Mixed
83.150 Aquatic

Uses and Activities in Shoreline Environment

83.160 User Guide
83.170 Shoreline Environments, Permitted Uses and Activities Chart

Use Specific Regulations

83.180 Development Standards Chart
83.190 Additional Standards for Lot Size or Density, Setback, Lot Coverage and Height
83.200 Residential Uses
83.210 Commercial Uses
83.220 Recreational Uses
83.230 Transportation Facilities
83.240 Utilities
83.250 Land Division

Shoreline Modification Regulations

83.260 General
83.270 Piers, Docks, Moorage Buoys, Boatlifts and Canopies Serving Detached Dwelling Units
83.280 Piers, Docks, Moorage Buoys, Boatlifts and Canopies Serving Attached, Stacked and Detached Dwelling Units

83.290 Marinas and Moorage Facilities Associated with Commercial Uses
83.300 Shoreline Stabilization for Soft and Hard Measures
83.310 Breakwaters, Jetties, Rock Weirs, Groins
83.320 Dredging and Dredge Material Disposal
83.330 Land Surface Modification
83.340 Fill
83.350 Shoreline Habitat and Natural Systems Enhancement Projects

General Regulations

83.360 No Net Loss Standard and Mitigation Sequencing
83.370 Federal and State Approval
83.380 Shoreline Setbacks Reduction
83.390 Site and Building Design
83.400 Tree Management and Vegetation in Shoreline Setback
83.410 View Corridors
83.420 Public Access
83.430 In-Water Construction
83.440 Parking
83.450 Screening of Storage and Service Areas, Mechanical Equipment and Garbage Receptacles
83.460 Signage
83.470 Lighting
83.480 Water Quality, Stormwater and Nonpoint Pollution
83.490 Critical Areas – General Standards
83.500 Wetlands
83.510 Streams
83.520 Geologically Hazardous Areas
83.530 Flood Hazard Reduction
83.540 Archaeological and Historic Resources
83.550 Nonconformances
83.560 Emergency Actions

Authority and Purpose

83.10 Authority

1. This Chapter is adopted as part of the shoreline master program for the city. It is adopted under the authority of RCW Chapter 90.58 and WAC Chapter 173-26.

83.20 Applicability

1. The requirements of this Chapter apply to uses, activities and development within shoreline jurisdiction.
2. Designation – The waters of Lake Washington and shorelands associated with Lake Washington are designated as shorelines of statewide significance.
3. Shoreline Jurisdiction
   a. The provisions of this Chapter shall apply to all shorelines of the state, all shorelines of statewide significance, and shorelands.
   b. Lake Washington, its underlying land, associated wetlands, and those lands extending landward 200 feet from its OHWM are within shoreline jurisdiction.
   c. Shoreline jurisdiction does not include buffer areas for wetlands or streams that occur within shoreline jurisdiction, except those buffers contained within lands extending landward 200 feet from the OHWM of Lake Washington.

83.30 Purpose and Intent - It is the intent of the Kirkland Shoreline Master Program (SMP) to manage the use and development of the shorelines of Kirkland, giving preference to water-dependent and water-related uses, and encouraging shoreline development and uses to avoid, minimize and mitigate impacts. In addition, the SMP, consisting of this Chapter, the Shoreline Master Program Chapter of the Comprehensive Plan and the Restoration Plan, has the following purposes**:**

1. Enable current and future generations to enjoy an attractive, healthy and safe waterfront.
2. Protect the quality of water and shoreline natural resources to preserve fish and wildlife and their habitats.
3. Protect the City's investments as well as those of property owners along and near the shoreline.
4. Efficiently achieve the SMP mandates of the State.
5. In interpreting the provisions of this Chapter, preference shall be given in the following order to uses that:
   a. Recognize and protect the statewide interest over local interest;
   b. Preserve existing natural areas along the shoreline;
   c. Result in long term over short term benefit;
   d. Protect the resources and ecology of the shoreline;
   e. Increase public access to publicly owned areas of the shorelines;
   f. Increase recreational opportunities for the public in the shoreline; and
   g. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

83.40 Relationship to other Codes and Ordinances

1. The shoreline regulations contained in this Chapter shall apply as an overlay and in addition to zoning, land use regulations, development regulations, and other regulations established by the City.
2. In the event of any conflict between these regulations and any other regulations of the City, the regulations that provide greater protection of the shoreline natural environment and aquatic habitat shall prevail.
3. Shoreline Master Program policies, found in the City's Comprehensive Plan, establish intent for the shoreline regulations.

83.50 Interpretation

1. General – The Planning Director may issue interpretations of any provisions of this Chapter as necessary to administer the shoreline master program policies and regulations. The Director shall base his/her interpretations on:
   a. The defined or common meaning of the words of the provision; and
   b. The general purpose of the provision as expressed in the provision; and
   c. The logical or likely meaning of the provision viewed in relation to the Washington State Shoreline Management Act (the Act), including the purpose and intent as expressed in chapter 90.58 RCW and the applicable guidelines as contained in WAC 173-26, and the Shoreline Chapter of the Comprehensive Plan.

   Any formal written interpretations of shoreline policies or regulations shall be submitted to the Department of Ecology for review.
2. Effect – An interpretation of this Chapter will be enforced as if it is part of this code.
3. Availability – All interpretations of this Chapter, filed sequentially, are available for public inspection and copying in the Planning Department during regular business hours. The Planning Official shall also make appropriate references in this code to these interpretations.

83.60 Liberal Construction

1. As provided for in RCW 90.58.900, the Shoreline Management Act is exempted from the rule of strict construction; the Act and this Chapter shall therefore be liberally construed to give full effect to the purposes, goals, objectives, and policies for which the Act and this Chapter were enacted and adopted, respectively.

83.70 Severability

1. The standards, procedures, and requirements of this Chapter are the minimum necessary to promote the health, safety, and welfare of the residents of Kirkland. The City is free to adopt more rigorous or different standards, procedures, and requirements whenever this becomes necessary.
2. The Act and this Chapter adopted pursuant thereto comprise the basic state and City law regulating use of shorelines. In the event provisions of this Chapter conflict with other applicable City policies or regulations, the more restrictive shall prevail. Should any section or provision of this Chapter be declared invalid, such decision shall not affect the validity of this Chapter as a whole.

Definitions

83.80 Definitions

For the purposes of this Chapter the following terms shall have the meaning ascribed to them below. Terms not defined in this section shall be defined as set forth in Chapter 5 KZC.

1. Act: The Washington State Shoreline Management Act, Chapter 90.58 RCW.

2. Agriculture: Agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation.

3. Aquaculture: The cultivation of fish, shellfish, and/or other aquatic animals or plants, including the incidental preparation of these products for human use.

4. Aquatic: Those areas waterward of the OHWM.

5. Appurtenance: For the purpose of an exemption of a single family residence, also referred to as a detached dwelling unit on one lot, and its associated appurtenances from a substantial development permit, an appurtenance includes those listed under WAC 173-14-040 and tool sheds, greenhouses, swimming pools, spas, accessory dwelling units and other accessory structures common to a single family residence located landward of the OHWM and the perimeter of a wetland.

6. Accessory Dwelling Unit: See Chapter 5 KZC.

7. Average Parcel Depth: The average of the distance from the OHWM to the public right-of-way or vehicular access easement, whichever provides direct access to the subject property, as measured along the side property lines or the extension of those lines where the water frontage of the subject property ends, the center of the OHWM of the subject property and the quarter points of the OHWM of the subject property. At the northern terminus of the 5th Ave West private access easement, the average parcel depth shall be measured from the OHWM to the west side of the public pedestrian access easement providing access to Waverly Beach Park. See Plate 19.

8. Average Parcel Width: The average of the distance from the north to the south property lines as measured along the OHWM and the front property line, or along the east and west property lines if the parcel does not abut Lake Washington.

9. Bioengineering: Project designs or construction methods which use live woody vegetation or a combination of live woody vegetation and specially developed natural or synthetic materials to establish a complex root grid within the existing bank that is resistant to erosion, provides bank stability, and maintains a healthy riparian environment with habitat features important to fish life. Use of wood structures or limited use of clean angular rock may be allowable to provide stability for establishment of the vegetation.

10. Boat: Any contrivance used or capable or being used as a means of transportation on water, except for cribs or piles, shinglebolts, booms or logs, rafts of logs, and rafts of lumber.

11. Boat House: An overwater structure designed for the storage of boats, but not including boatlift canopies.

12. Boat Launch: Graded slopes, slabs, pads, planks, or rails used for launching boats by means of a trailer, hand, or mechanical device.

13. Boat Lift: Lifts for motorized boats, kayaks, canoes and jet skis. Includes floating lifts that are designed to not contact the substrate of the Lake; ground-based lifts that are designed to be in contact with or supported by the substrate of the Lake; and suspended lifts that are designed to be affixed to the existing overwater structure with no parts contacting the substrate.

14. Boating Facilities: Facilities providing boat moorage space, fuel, or other commercial services. As used in this Chapter, boating facilities refer to the following use listings: Piers, Docks, Moorage Buoys, Boatlifts and Canopies serving Attached, Stacked and Detached Dwelling Units and Marinas and Moorage Facilities Associated with Commercial Uses.

15. Breakwater: Protective structures that are normally built offshore to provide protection from wave action.

16. Buffer: The area immediately adjacent to wetlands and streams that protects these sensitive areas and provides essential habitat elements for fish and/or wildlife.

17. Buffer Setback: A setback distance of 10 feet from a designated or modified wetland or stream buffer within which no buildings or other structures may be constructed, except as provided in KZC 83.500.3(b) and 83.510.3(b). The buffer setback serves to protect the wetland or stream buffer during development activities, use, and routine maintenance occurring adjacent to these resources.

18. Bulkhead: A vertical or nearly vertical erosion protection structure placed parallel to the shoreline consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.

19. Canopy: A cover installed as a component of a boatlift.

20. Channel Migration Zone: The area along a river or other watercourse within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river or other watercourse and its surroundings.

21. Class A Streams: Streams that are used by salmonids. Class A streams generally correlate with Type F streams as defined in WAC 222-16-030.

22. Class B Streams: Perennial streams (during years of normal precipitation) that are not used by salmonids. Class B streams generally correlate with Type F streams (if used by non-salmonids or they contain fish habitat) or Type Np streams (if they are perennial and do not contain fish habitat) as defined in WAC 222-16-030.

23. Class C Streams: Seasonal or ephemeral streams (during years of normal precipitation) not used by salmonids. Class C streams generally correlate with Type F streams (if used by non-salmonid fish or they contain fish habitat) or Type Ns streams (if they are seasonal and do not contain fish habitat) as defined in WAC 222-16-030.

24. Commercial Use: Includes retail, office services, entertainment, recreation and/or light industrial uses, depending on the location. Retail uses are those that provide goods and/or services directly to the consumer, including service uses not usually allowed within an office use.

25. Concession Stand: A permanent or semi-permanent structure for the sale and consumption of food and beverages and water-related products, such as sunscreen, sunglasses, and other similar products. A concession stand may include outdoor seating areas. Indoor seating and associated circulation areas shall not exceed more than 10 percent of the gross floor area of the use, and it must be demonstrated to the City that the floor plan is designed to preclude the seating area from being expanded.

26. Conditional Uses: A use, development, or substantial development that is classified as a conditional use in KZC Section 83.170 or which is not classified within the SMP. Those activities identified as conditional uses or not classified in this Chapter must be treated according to the review criteria established in WAC 173-27-160.

27. Convalescent Center: See Chapter 5 KZC.

28. Critical Areas: Critical areas include the following areas and ecosystems: (a) wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas (streams); (d) frequently flooded areas; and (e) geologically hazardous areas. Kirkland does not contain any critical aquifer recharge areas. Critical areas may also be referred to as sensitive areas.

29. Development: A use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to RCW 90.58 at any state of water level.

30. Dock: A structure that floats on the surface of the water, without piling supports, but which is attached to land. Typically used for boat moorage, swimming, public access, and other activities that requires access to deep water.

31. Drainage Basin: A specific area of land drained by a particular Kirkland watercourse and its tributaries.

32. Dredging: The removal, displacement, or disposal of unconsolidated earth material such as sand, silt, gravel, or other submerged materials, from the bottom of water bodies, ditches, or natural wetlands; maintenance dredging and/or support activities are included in this definition.

33. Dry Land Boat Storage: A commercial service providing storage of boats and other boat on the upland portion of a property.

34. Dwelling Unit, Attached: See Chapter 5 KZC.

35. Dwelling Unit, Detached: See Chapter 5 KZC.

36. Dwelling Unit, Stacked: See Chapter 5 KZC.

37. Ecological Functions: The work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments constituting the shoreline's natural ecosystem.

38. Ecological Restoration: See Restore.

39. Ecologically Intact Shoreline: Those shoreline areas that retain the majority of their natural shoreline functions, as evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, ecologically intact shorelines are free of structural shoreline modifications, structures, and intensive human uses.

40. Ecosystem-wide Processes: The suite of naturally occurring physical and geologic processes of erosion, transport, and deposition, and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat that are present and the associated ecological functions.

41. Feasible: An action, such as a development project, mitigation, or preservation requirement that meets all of the following conditions:

a. Can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;

b. Provides a reasonable likelihood of achieving its intended purpose; and

c. Does not physically preclude achieving the project's primary intended legal use.

The burden of proving infeasibility is on the applicant in cases where these guidelines require certain actions. In determining an action's infeasibility, the City may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

42. Ferry Terminal, Passenger-only: A docking facility used in the transport of passengers across a body of water. A ferry terminal may include accessory parking facilities, ticketing booth, and other accessory uses or structures necessary for its operation. A passenger-only ferry terminal does not include provisions for the ferrying of vehicles.

43. Fill: The addition of soil, sand, rock, gravel, sediment, earth-retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the ground elevation or creates dry land.

44 Float: A structure that floats on the surface of the water that is not attached to the shore, but that may be anchored to submerged land. Floats are typically used for swimming, diving and similar recreational activities.

45. Float Plane Landing and Moorage Facility: A place where commercially operated water-based passenger aircraft arrive and depart. May include accessory facilities, such as waiting rooms, ticketing booths and similar facilities. May be used for private or public purposes.

46. Floodplain: Synonymous with the one hundred year floodplain and means the land susceptible to inundation with a one (1) percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulations maps or a reasonable method that meets the objectives of the Shoreline Management Act.

47. Forest Practices: Any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber.

48. Frequently Flooded Areas: All areas shown on the Kirkland Sensitive Areas Maps as being within a 100-year floodplain and all areas regulated by Chapter 21.56 KMC.

49. Gabions: Structures composed of masses of rocks or rubble held tightly together by wire mesh (typically) so as to form upright blocks or walls. Often constructed as a series of overlapping blocks or walls. Used primarily in retaining earth, steep slopes or embankments, to retard erosion or wave action, or as foundations for breakwaters or jetties.

50. Geologically Hazardous Areas: Landslide, erosion and seismic hazardous areas as defined in KZC 85.13 and in WAC 365-190-080(4).

51. Geotechnical Analysis: See Geotechnical Report.

52. Geotechnical Report: A scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts on the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers (or geologists) who have professional expertise about the regional and local shoreline geology and processes.

53. Grading: The movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

54. Hard Structural Shoreline Stabilization: Shore erosion control practices using hardened structures that armor and stabilize the shoreline from further erosion. Hard structural shoreline stabilization typically

uses concrete, boulders, dimensional lumber or other materials to construct linear, vertical or near-vertical faces. These include bulkheads, rip-rap, groins, and similar structures.

55. Helipad: A takeoff and landing area for helicopters.

56. Houseboat: A structure designed and operated substantially as a permanently based overwater residence. Houseboats are not vessels and lack adequate self-propulsion and steering equipment to operate as a vessel. They are typically served by permanent utilities and semi-permanent anchorage/moorage facilities.

57. Impervious Surface: A hard surface water that either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development; and/or a hard surface area that causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, roof tops, walkways, patios, driveway, parking lots or storage areas, concrete or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam, or other surfaces which similarly impede the natural infiltration of surface and storm water runoff. Open, uncovered flow control or water quality treatment facilities shall not be considered impervious surfaces. Impervious surfaces do not include pervious surfaces as defined in this Chapter.

58. Industrial Uses: Uses such as manufacturing, assembly, processing, wholesaling, warehousing, distribution of products and high technology.

59. In-Stream Structure: A structure placed by humans within a stream or river waterward of the OHWM that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.

60. Joint-use: Piers and floats that are constructed by more than one contiguous waterfront property owner or by a homeowner's association or similar group.

61. Land Division: The division or redivision of land into lots, tracts, parcels, sites or divisions for the purpose of sale, lease, or transfer of ownership.

62. Land Surface Modification: The clearing or removal of shrubs, groundcover and other vegetation, excluding trees, and all grading, excavation and filling of materials.

63. Large Woody Debris: Trunks or branches of trees that have fallen in or been placed in a water body and serve the purposes of stabilization or habitat for fish and aquatic insects.

64. Low Impact Development: Low Impact Development (LID) is a set of techniques that mimic natural watershed hydrology by slowing, evaporating/transpiring, and filtering water that allows water to soak into the ground closer to its source. The development shall meet one or more of the following objectives:

- Preservation of natural hydrology.
- Reduction of impervious surfaces.
- Treatment of stormwater in numerous small, decentralized structures.
- Use of natural topography for drainage ways and storage areas.
- Preservation of portions of the site in undisturbed, natural conditions.
- Reduction of the use of piped systems. Whenever feasible, site design should use multifunctional open drainage systems such as vegetated swales or filter strips that also help to fulfill vegetation and open space requirements.

- Use of environmentally sensitive site design and green building construction that reduces runoff from structures, such as green roofs.

65. Marina: A private or public facility providing the purchase and or lease of a slip for storing, berthing and securing motorized boats or watercraft, including both long-term and transient moorage. Marinas may include accessory facilities for providing incidental services to users of the marina, such as waste collection, boat sales or rental activities, and retail establishments providing fuel service, repair or service of boats.

66. May: Means the action is acceptable, provided it conforms to the provisions of the Shoreline Management Act, with the decision-maker having or using the ability to act or decide according to their own discretion or judgment.

67. Minor Improvements: Walkways, pedestrian bridges, benches, and similar features, as determined by the Planning Official, pursuant to KZC 83.500.3(e) and 83.510.3(e).

68. Moorage Buoy: A floating object, sometimes carrying a signal or signals, anchored to provide a mooring place away from the shore.

69. Moorage Pile: A piling to which a boat is tied up to prevent it from swinging with changes of wind or other similar functions.

70. Must: means a mandate; the action is required.

71. Neighborhood-oriented Retail Establishment: Small scale retail and service uses that provide primarily convenience retail sales and service to the surrounding residential neighborhood. The following is a nonexclusive list of neighborhood-oriented retail uses: small grocery store, drug store, hair salon, coffee shop, dry cleaner or similar retail or service uses.

72. Nonconforming Use or Development: A shoreline use or development that was lawfully constructed or established prior to the effective date of The Act or the applicable master program, or amendments thereto, but which does not conform to present regulations or standards of the program.

73. Non-Structural Flood Hazard Reduction Measures: Improvements, actions or provisions that reduce flood hazard by non structural means, such as setbacks, land use controls, wetland restoration, dike removal, use relocation, biotechnical measures and surface water management programs.

74. Non-Water-Oriented Use: Uses that are not water-dependent, water-related, or water-enjoyment.

75. Ordinary High Water Mark (OHWM): The mark that will be found on all lakes and streams by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department; provided, that in any area where the OHWM cannot be found, the OHWM adjoining fresh water shall be the line of mean high water, or as amended by the State. For Lake Washington, the OHWM corresponds with a lake elevation of 21.8 feet, based on the NGVD 29 datum.

76. Outfall: A structure used for the discharge of a stormwater or sewer system into a receiving water.

77. Pervious: As opposed to impervious surfaces, these are surfaces that allow water to pass through at rates similar to pre-developed conditions. Pervious surfaces, include, but are not limited to: pervious asphalt, pervious concrete, pervious gravel, grass or pervious pavers.

78. Permitted Uses: Uses that are allowed within the applicable shoreline environment, provided that they must meet the policies, use requirements, and regulations of this Chapter and any other applicable regulations of the City or state.

79. Pier: A structure supported by pilings that projects over, and is raised above the water but is attached to land, and that is used for boat moorage, swimming, fishing, public access, float plane moorage, or similar activities requiring access to deep water.

80. Piling: The structural supports for piers, usually below the pier decking and anchored in the water.

81. Preserve: The protection of existing ecological shoreline processes or functions.

82. Primary Basins: The primary basins shown on the Kirkland Sensitive Areas Map.

83. Primary Structure: A structure housing the main or principal use of the lot on which the structure is situated, including a detached garage associated with the primary structure. This term shall not include accessory uses, structures or activities as defined in Chapter 5 KZC.

84. Priority Habitat: A habitat type with unique or significant value to one or more species as defined in WAC173-26-020.

85. Priority Species: Species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels based on the criteria in WAC 173-26-020.

86. Public Access: The ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline.

87. Public Access Facility: A water-oriented structure, such as a trail, pier, pedestrian bridge, boat launch, viewing platform, or fishing pier that provides access for the public to or along the shoreline.

88. Public Access Pier or Boardwalk: An elevated structure that is constructed waterward of the OHWM and intended for public use.

89. Public Pedestrian Walkway: A portion of private property subject to an easement giving the public the right to stand on or traverse this portion of the property.

90. Public Use Area: A portion of private property that is dedicated to public use and that contains one or more of the following elements: benches, tables, lawns, gardens, piers, exercise or play equipment or similar improvements or features. These elements are to provide the public with recreational opportunities in addition to the right to traverse or stand in this area.

91. Qualified Professional: An individual with relevant education and training, as determined by the Planning Official, and with at least 3 years experience in biological fields such as botany, fisheries, wildlife, soils, ecology, and similar areas of specialization, and including a professional wetland scientist.

92. Rain Garden: Rain gardens and bioretention areas are vegetation features adapted to provide on-site infiltration and treatment of stormwater runoff using soils and vegetation. They are commonly located within small pockets of residential land where surface runoff is directed into shallow, landscaped depressions; or in landscaped areas around buildings; or, in more urbanized settings, to parking lot islands and green street applications.

93. Recreational Use: Commercial and public facilities designed and used to provide recreational opportunities to the public.

94. Residential Use: Developments in which people sleep and prepare food, other than developments used for transient occupancy. As used in the Chapter, residential development includes single-family development (known as detached dwelling unit) and multifamily development (known as detached, attached or stacked dwelling units) and the creation of new residential lots through land division.

95. Restore: The reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including but not limited to revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

96. Restoration: See Restore.

97. Revetment: A shoreline protective structure constructed on a slope, and used to prevent erosion.

98. Riparian area: A transition area between the aquatic ecosystem and the adjacent upland area that supports a number of shoreline ecological functions and processes, including bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, habitat and other riparian features that are important to both riparian forest and aquatic system conditions.

99. Salmonid: A member of the fish family salmonidae, including chinook, coho, chum, sockeye, and pink salmon; rainbow, steelhead, and cutthroat trout; brown trout; brook and dolly varden char, kokanee, and white fish.

100. Secondary Basins: The secondary basins depicted on the Kirkland Sensitive Areas Map.

102. Shall: Means a mandate; the action must be taken.

103. Shorelands: Those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the OHWM; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters that are subject to the provisions of the Shoreline Management Act; the same to be designated as to location by the Department of Ecology.

104. Shoreland Areas: See Shorelands.

105. Shoreline Functions: See Ecological Functions.

106. Shoreline Habitat and Natural Systems Enhancement Projects: Activities conducted for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines. The following is a nonexclusive list of shoreline habitat and natural systems enhancement projects: modification of vegetation, removal of non-native of invasive plants, shoreline stabilization, dredging and filling - provided that the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline.

107. Shoreline Modification: Those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element, such as a dike, breakwater, pier, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

108. Shoreline Setback: The distance measured in feet that a structure or improvement must be located from the OHWM.

109. Shoreline Stabilization: Means for protecting shoreline upland areas and shoreline uses from the effects of shoreline wave action, flooding or erosion. Shoreline stabilization includes structural and non-structural methods, riprap, bulkheads, gabions, jetties, dikes and levees, flood control weirs, and bioengineered walls or embankments.

110. Shorelines: All of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them: except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes.

111. Shorelines of Statewide Significance: Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the OHWM and those natural rivers or segments thereof where the mean annual flow is measured at one thousand cubic feet per second or more. Definition is limited to freshwater areas in Western Washington.

112. Should: Means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and the Shoreline Rules, against taking the action.

113. Sign, Interpretive: A permanent sign without commercial message, located on a publicly-accessible sit, that provides public educational and interpretive information related to the site on which the sign is located, such as information on natural processes, habitat restoration programs, or cultural history, or that is associated with an adopt-a-stream, adopt-a-park or similar agency-sponsored program.

114. Significant Tree: See Chapter 5 KZC.

115. Significant Vegetation Removal: The removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

116. Soft Structural Shoreline Stabilization Measures: Shore erosion control and restoration practices that contribute to restoration, protection or enhancement of shoreline ecological functions. Soft shoreline stabilization typically includes a mix of gravels, cobbles, boulders, logs and native vegetation placed to provide shore stability in a non-linear, sloping arrangement.

117. Streams: Areas where surface waters produce a defined channel or bed that demonstrates clear evidence of the passage of water, including but not limited to bedrock channels, gravel beds, sand and silt beds, and defined-channel swales. The channel or bed need not contain water year-round. Streams do not include irrigation ditches, canals, storm or surface water runoff devices, or other entirely artificial watercourses, unless they are used by salmonids or convey a naturally occurring stream that has been diverted into the artificial channel.

118. Structural Flood Hazard Reduction Measures: Improvements or activities that reduce flood hazard by structural means, such as dikes, levees, revetments, floodwalls, channel realignment, and elevation of structures consistent with the National Flood Insurance Program.

119. Structural Shoreline Stabilization: Means for protecting shoreline upland areas and shoreline uses from the effects of shoreline wave action, flooding or erosion that incorporate structural methods, including both hard structural shoreline stabilization methods and soft structural shoreline stabilization measures.

120. Substantial Development: As defined in the Washington State Shoreline Management Act (SMA) found in 90.58 RCW, and WAC 173-27-030 and 173-27-040.

121. Transportation Facilities: Facilities that include street pavement, curb and cutter, sidewalk and landscape strip as regulated under KZC 110.

122. Tour Boat Facility: A moorage pier designed for commercial tour boat usage.

123. Tree: A woody plant with one main trunk at a minimum height of 12 feet measured from the existing ground at maturity, having a distinct head in most cases. The Urban Forester shall have the authority to determine whether any specific woody plant shall be considered a tree or a shrub.

124. Upland: Generally described as the dry land area above and landward of the OHWM, but not including wetlands.

125. Utilities: Services, facilities and infrastructure that produce, transmit, carry, store, process or dispose of electric power, gas, water, sewage, communications, oil, storm water, and similar services and facilities.

126. Utility Production and Processing Facilities: Facilities for the making or treatment of a utility, such as power plants and sewage treatment plants or parts of those facilities.

127. Utility Transmission Facilities: Infrastructure and facilities for the conveyance of services, such as power lines, cables, and pipelines.

128. View Corridor: An open area of the subject property that provides views unobstructed by structures an across the subject property from the adjacent right-of-way to Lake Washington.

129. Water-Dependent Use: A use or portion of a use that cannot exist in a location that is not adjacent to the water and that is dependent on the water by reason of the intrinsic nature of its operation.

130. Water-Enjoyment Use: A recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that foster shoreline enjoyment.

131. Water-Oriented Use: A use that is water-dependent, water-related, or water-enjoyment or a combination of such uses.

132. Water Quality: The physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this Chapter, the term "water quantity" refers only to development and uses regulated under this Chapter and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this Chapter, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

133. Water-Related Use: A use or portion of a use which is not intrinsically dependent on a waterfront location, but whose economic viability is dependent upon a waterfront location because:

a. The use has a functional requirement for a waterfront location, such as the arrival or shipment of materials by water or the need for large quantities of water; or

b. The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes it services less expensive and/or more convenient.

134. Watershed: A region or area bounded on the periphery by a parting of water and draining to a particular watercourse or body of water.

135. Watershed Restoration Plan: A plan, developed or sponsored by the State Department of Fish and Wildlife, the State Department of Ecology, the State Department of Natural Resources, the State Department of Transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to Chapter 43.21C RCW, the State Environmental Policy Act.

136. Watershed Restoration Project: A public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

a. A project that involves less than ten miles of streamreach, in which less than twenty-five cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;

b. A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

c. A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structure, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than two hundred square feet in floor area and is located above the OHWM of the stream.

137. Water Taxi: A boat used to provide public transport for passengers, with service scheduled with multiple stops or on demand to many locations. A water taxi does not include accessory facilities, such as ticketing booths, and does not include the transport of vehicles.

138. Wetlands: Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soils conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, retention and/or detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands do include those artificial wetlands intentionally created from non-wetland sites as mitigation for the conversion of wetlands.

139. Wetland Rating: Wetlands shall be rated according to the *Washington State Wetland Rating System for Western Washington* (Department of Ecology 2004, or as revised). This document contains the definitions, methods and a rating form for determining the categorization of wetlands below:

a. Category I wetlands are those that 1) represent a unique or rare wetland type; or 2) are more sensitive to disturbance than most wetlands; or 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or 4) provide a high level of functions. Category I wetlands include Natural Heritage wetlands, bogs, mature and old growth forested wetlands, and wetlands that score at least 70 points on the rating form.

b. Category II wetlands are difficult, though not impossible, to replace, and provide high levels of some functions. These wetlands occur more commonly than Category I wetlands, but still need a relatively high level of protection. Category II wetlands score between 51 and 69 points on the rating form.

c. Category III wetlands have a moderate level of function, scoring between 30 and 50 points on the rating form.

d. Category IV wetlands have the lowest levels of functions (scores less than 30 points on the rating form) and are often heavily disturbed. These are wetlands that can often be replaced, and in some cases improved. However, replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions and also need to be protected.

Shoreline Environment Designations and Statewide Significance

83.90 Shoreline Jurisdiction and Official Shoreline Map

1. Shoreline Map -

d. The adopted Shoreline Environment Designations Map is the graphic representation of the City's shorelines that are regulated by this program. The map, or set of maps, entitled City of Kirkland Shoreline Environment Designation Map and adopted by ordinance is hereby adopted as part of this code. See KZC Chapter 141 for information regarding amending this map.

e. The adopted shoreline map identifies shoreline environment designations and the extent of shoreline jurisdiction.

1) Extent of Shoreline Jurisdiction - The shoreline jurisdiction as depicted on the adopted Shoreline Environment Designations Map is intended to depict the *approximate* location and extent of known shorelands. In determining the exact location of shoreline jurisdiction, the criteria contained in RCW 90.58.030(2) shall be used. For Lake Washington, the OHWM corresponds with a lake elevation of 21.8 feet. The extent of shoreline jurisdiction on any individual lot, parcel or tract is to be determined by a field investigation and a survey and is the sole responsibility of the applicant. The location of the OHWM shall be included in shoreline permit application submittals to determine the extent of shoreline jurisdiction for review and approval by the Planning Official.

2) Interpretation of Shoreline Environment Designations - The following shall be used to interpret the boundary of shoreline environment designations:

a) Following Property Lines – Where a shoreline environment designation boundary is indicated as approximately following a property line, the property line is the shoreline environment designation boundary.

b) Following Streets – Where a shoreline environment designation boundary is indicated as following a street, the midpoint of the street right-of-way is the shoreline environment designation boundary, except as follows:

i) The portion of the public right-of-way known as 98th Avenue NE located within 200 feet of the OHWM is designated wholly as Urban Mixed.

ii) Waterfront street ends, where the public right-of-way is designated wholly under one shoreline environment.

c) Wetlands – Where an associated wetland boundary extends beyond the area depicted on the Shoreline Environment Designation Map, the additional wetland area shall be designated the same shoreline environment as the adjoining wetland area.

d) Lakes – The Aquatic environment designation boundary extends into Lake Washington to the full limit and territorial extent of the police power, jurisdiction and control of the City of Kirkland.

e) Other Cases – Where a shoreline environment designation boundary is not indicated to follow a property line or street, the boundary line is as follows:

i) The transition of the shoreline environment designation from Urban Conservancy to Urban Mixed at Juanita Beach Park occurs at a point measured 75 feet east of the OHWM of Juanita Creek.

ii) The transition of the shoreline environment designation from Urban Conservancy to Urban Residential west of Juanita Beach Park occurs at a point measured 75 feet west of the OHWM of Juanita Creek.

f) Classification of Vacated Rights-of-Way – Where a right-of-way is vacated, the area comprising the vacated right-of-way will acquire the classification of the property to which it reverts.

g) Undesignated Properties - Any shoreline areas not mapped and/or designated shall be assigned an Urban Conservancy designation, except wetlands as noted in KZC 83.90 2)c) above.

2. Shoreline Environment Designations -

a. Sections 83.100 through 83.150 establish the six (6) shoreline environment designations used in the City of Kirkland and their respective purposes, designation criteria, and management policies. Sections 83.180 through 83.550 then establish the different regulations that apply in these different environmental designations.

b. The management policies contained in the Shoreline Chapter of the Comprehensive Plan shall be used to assist in the interpretation of these regulations.

83.100 Natural

1. Purpose - To protect and restore those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. The Natural environment also protects shoreline areas possessing natural characteristics with scientific and educational interest. These systems require restrictions on the intensities and types of land uses permitted in order to maintain the integrity of the ecological functions and ecosystem-wide processes of the shoreline environment.

2. Designation Criteria – A Natural environment designation should be assigned to shoreline areas if any of the following characteristics apply:

a. The shoreline is ecologically intact and, therefore, currently performing an important, irreplaceable function or ecosystem-wide process that would be damaged by human activity;

b. The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest; or

c. The shoreline is unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.

83.110 Urban Conservancy

1. Purpose - To protect and restore ecological functions of open space, flood plain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

2. Designation Criteria - An Urban Conservancy environment designation should be assigned to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring the ecological functions of the area, that are not generally suitable for water-dependent uses and that lie in incorporated municipalities or urban growth areas if any of the following characteristics apply:

a. They are suitable for water-related or water-enjoyment uses;

b. They are open space, flood plain or other sensitive areas that should not be more intensively developed;

c. They have potential for ecological restoration;

d. They retain important ecological functions, even though partially developed; or

e. They have the potential for development that is compatible with ecological restoration.

83.120 Residential - L

1. Purpose - To accommodate low-density residential development and appurtenant structures that are consistent with this Chapter.

2. Designation Criteria - A Residential - L environment designation should be assigned to shoreline areas inside urban growth areas, as defined in RCW 36.70A.110, and incorporated municipalities if they are predominantly single-family residential development or are planned and platted for low-density residential development, unless these areas meet the designation criteria for the Natural shoreline environment designation.

83.130 Residential - M/H

1. Purpose - To accommodate medium and high-density residential development and appurtenant structures that are consistent with this Chapter. An additional purpose is to provide appropriate public access and recreational uses, as well as limited water-oriented commercial uses that depend on or benefit from a shoreline location.

2. Designation Criteria - A Residential - M/H environment designation should be assigned to shoreline areas inside urban growth areas, as defined in RCW 36.70A.110, and incorporated municipalities if they are predominantly multifamily residential development or are planned and platted for medium or high-density residential development, unless these properties meet the designation criteria for the Natural or Urban Conservancy shoreline environment designation.

83.140 Urban Mixed

1. Purpose - To provide for high-intensity land uses, including residential, commercial, recreational, transportation and mixed-used developments. The purpose of this environment is to ensure active use of shoreline areas that are presently urbanized or planned for intense urbanization, while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.

2. Designation Criteria - An Urban Mixed environment designation should be assigned to shoreline areas within incorporated municipalities and urban growth areas if they currently support high-intensity uses related to commerce, transportation or navigation; or are suitable and planned for high-intensity water-oriented uses.

83.150 Aquatic

1. Purpose - To protect, restore, and manage the unique characteristics and resources of the areas waterward of the OHWM.

2. Designation Criteria - An Aquatic environment designation should be assigned to lands waterward of the ordinary high-water mark.

Uses and Activities in the Shoreline Environment

83.160 User Guide

1. Explanation of Uses Table

   a. The table contained in KZC 83.170 identifies uses and activities and defines whether those uses are prohibited, permitted by application for Exemption or Shoreline Substantial Development Permit, or permitted by a Shoreline Conditional Use Permit. If a use is not specifically listed, then it may be considered through a Shoreline Conditional Use Permit (see Chapter 141). The following symbols apply:

      1) "X" means that the use or activity is prohibited in the identified Shoreline Environment. Shoreline uses, activities, or conditions listed as prohibited shall not be authorized through a variance, conditional use permit, or any other permit or approval.

      2) "SD" means that the use or activity may be permitted by approval of the Planning Official through a Letter of Shoreline Exemption (see KZC Chapter 141) or through a Shoreline Substantial Development Permit (see KZC Chapter 141).

      3) "CU" means that the use or activity may be permitted by approval of the Planning Official and Department of Ecology through a Shoreline Conditional Use Permit (see KZC Chapter 141). Uses that are not specifically prohibited under KZC 83.170 may be authorized through a Shoreline Conditional Use Permit.

      Shoreline Variances (see Chapter 141) are intended only to grant relief from specific bulk, dimensional or performance standards in this Chapter, NOT to authorize shoreline uses and activities. They are therefore not included in KZC 83.170.

2. See KZC 83.370 for federal and state approval.

83.170 Shoreline Environments, Permitted and Prohibited Uses and Activities Chart

The chart is coded according to the following legend. SD = Substantial Development[1] CU = Conditional Use X = Prohibited; the use is not eligible for a Variance or Conditional Use Permit	**Natural**	**Urban Conservancy**	**Residential - L**	**Residential – M/H**	**Urban Mixed**	**Aquatic**
SHORELINE USE						
Resource Land Uses						
Agriculture	X	X	X	X	X	X
Aquaculture	X	X	X	X	X	X
Forest practices	X	X	X	X	X	X
Mining	X	X	X	X	X	X
Commercial Uses						
Water-dependent uses						

[1] A development activity may also be exempt from the requirement to obtain a substantial development permit. See Chapter 141 KZC addressing exemptions. If a development activity is determined to be exempt, it must otherwise comply with applicable provisions of the Act and this Chapter 83.

The chart is coded according to the following legend. SD = Substantial Development[1] CU = Conditional Use X = Prohibited; the use is not eligible for a Variance or Conditional Use Permit	**Natural**	**Urban Conservancy**	**Residential - L**	**Residential – M/H**	**Urban Mixed**	**Aquatic**
Float plane landing and mooring facilities[2]	X	X	X	X	CU	See adjacent upland environments
Any water-dependent Retail Establishment other than those specifically listed in this chart, selling goods or providing services.	X	SD[2]	X	X	SD	See adjacent upland environments
Water-related, water-enjoyment commercial uses						
Any water-oriented Retail Establishment other than those specifically listed in this chart, selling goods or providing services.	X	SD[3]	X	X	SD	X

[1] A development activity may also be exempt from the requirement to obtain a substantial development permit. See Chapter 141 KZC addressing exemption. If a development activity is determined to be exempt, it must otherwise comply with applicable provisions of the Act and this Chapter.
[2] Limited to water-based aircraft facilities for air charter operations.
[3] Permitted as an accessory use to a Public Park.

The chart is coded according to the following legend. SD = Substantial Development[1] CU = Conditional Use X = Prohibited; the use is not eligible for a Variance or Conditional Use Permit	**Natural**	**Urban Conservancy**	**Residential - L**	**Residential – M/H**	**Urban Mixed**	**Aquatic**
Retail Establishment providing new or used Boat Sales or Rental	X	SD[3]	X	CU[4,6]	SD[5]	See adjacent upland environments
Retail establishment providing gas and oil sale for boats	X	X	X	CU[4,6]	CU[6]	See adjacent upland environments
Retail establishment providing boat and motor repair and service	X	X	X	CU[4,6]	CU[6]	X
Restaurant or Tavern[7]	X	X	X	CU[4]	SD	X
Concession Stand	X	SD[3]	X	X	SD[3]	X
Entertainment or cultural facility	X	CU[8]	X	X	SD	X

[1] A development activity may also be exempt from the requirement to obtain a substantial development permit. See Chapter 141 KZC addressing exemption. If a development activity is determined to be exempt, it must otherwise comply with applicable provisions of the Act and this Chapter.
[3] Permitted as an accessory use to a Public Park.
[4] Permitted if located on the west side of Lake Washington Lake Blvd NE/Lake St S south of Lake Avenue West and north of NE 52nd Street.
[5] Permitted in the Juanita Business District or as an accessory use to a marina.
[6] Accessory to a marina only.
[7] Drive-in or drive-through facilities are prohibited.
[8] Use must be open to the general public.

The chart is coded according to the following legend. SD = Substantial Development[1] CU = Conditional Use X = Prohibited; the use is not eligible for a Variance or Conditional Use Permit	**Natural**	**Urban Conservancy**	**Residential - L**	**Residential – M/H**	**Urban Mixed**	**Aquatic**
Hotel or Motel	X	X	X	CU[9]/X	SD	X
Nonwater-oriented uses						
Any Retail Establishment other than those specifically listed in this chart, selling goods, or providing services including banking and related services	X	X	X	X	SD[10]	X
Office Uses	X	X	X	X	SD[10]	X
Neighborhood-oriented Retail Establishment	X	X	X	CU[11]	SD[10]	X
Private Lodge or Club	X	X	X	X	SD[10]	X
Vehicle Service Station	X	X	X	X	X	X
Automotive Service Center	X	X	X	X	X	X

[1] A development activity may also be exempt from the requirement to obtain a substantial development permit. See Chapter 141 KZC addressing exemption. If a development activity is determined to be exempt, it must otherwise comply with applicable provisions of the Act and this Chapter.

[9] Permitted in Planned Area 3B if allowed through the Lakeview Neighborhood Plan.

[10] Permitted as part of mixed-use development containing water-dependent uses, where there is intervening development between the shoreline and the use, or if located on the east side of Lake Washington Blvd NE/Lake St S or the east side of 98th Avenue NE.

[11] Permitted if located on the east side of Lake Washington Blvd NE between NE 60th Street and 7th Ave S.

The chart is coded according to the following legend. SD = Substantial Development[1] CU = Conditional Use X = Prohibited; the use is not eligible for a Variance or Conditional Use Permit	**Natural**	**Urban Conservancy**	**Residential - L**	**Residential – M/H**	**Urban Mixed**	**Aquatic**
Dry land boat storage	X	X	X	X	X	X
Industrial Uses						
Water-dependent uses	X	X	X	X	X	X
Water-related uses	X	X	X	X	X	X
Nonwater-oriented uses	X	X	X	X	X	X
Recreational Uses						
Water-dependent uses						
Marina[13]	X	CU	X	SD	SD	See adjacent upland environ ments
Piers, docks, boat lifts and canopies serving Detached Dwelling Unit[12]	X	X	SD	SD	SD[13]	

[1] A development activity may also be exempt from the requirement to obtain a substantial development permit. See Chapter 141 KZC addressing exemption. If a development activity is determined to be exempt, it must otherwise comply with applicable provisions of the Act and this chapter.
[12] No boat shall be used as a place of habitation.
[13] Permitted if located south of NE 60th Street only.

The chart is coded according to the following legend. SD = Substantial Development[1] CU = Conditional Use X = Prohibited; the use is not eligible for a Variance or Conditional Use Permit	**Natural**	**Urban Conservancy**	**Residential - L**	**Residential – M/H**	**Urban Mixed**	**Aquatic**
Piers, docks, boat lifts and canopies serving Detached, Attached or Stacked Dwelling Units **Error! Bookmark not defined.**	X	X	X	SD	SD	
Float	X	SD[3]	X	X	SD[3]	
Tour Boat Facility	X	X	X	X	SD[14]	
Moorage buoy[13]	X	SD	SD	SD	SD	
Public Access Pier or Boardwalk	CU	SD	SD	SD	SD	
Boat launch (for motorized boats)	X	X	X	X	CU	
Boat launch (for non-motorized boats)	SD	SD	SD	SD	SD	
Boat houses or other covered moorage not specifically listed	X	X	X	X	X	
Swimming beach and other public recreational use	CU	SD	SD	SD	SD	

[3] Permitted as an accessory use to a Public Park.
[13] Permitted if located south of NE 60th Street only.
[14] Permitted as an accessory use to a Marina or Public Park only.
[1] A development activity may also be exempt from the requirement to obtain a substantial development permit. See Chapter 141 KZC addressing exemption. If a development activity is determined to be exempt, it must otherwise comply with applicable provisions of the Act and this Chapter.

The chart is coded according to the following legend. SD = Substantial Development[1] CU = Conditional Use X = Prohibited; the use is not eligible for a Variance or Conditional Use Permit	**Natural**	**Urban Conservancy**	**Residential - L**	**Residential – M/H**	**Urban Mixed**	**Aquatic**
Any water-dependent recreational development other than those specifically listed in this chart	CU	SD	SD	SD	SD	
Water-related, water-enjoyment uses						
Any water-oriented recreational development other than those specifically listed in this chart	X	CU	CU	CU	SD	X
Other Public Park Improvements[15]	CU	SD	SD	SD	SD	X
Public Access Facility	SD[16]	SD	SD	SD	SD	See adjacent upland environ ments
Nonwater-oriented uses						
Nonwater-oriented recreational development.	X	X	X	X	SD[10]	X
Residential Uses						

[1] A development activity may also be exempt from the requirement to obtain a substantial development permit. See Chapter 141 KZC addressing exemption. If a development activity is determined to be exempt, it must otherwise comply with applicable provisions of the Act and this Chapter.

[15] This use does not include other public recreational uses or facilities specifically listed in this chart.

[16] Limited to trails, viewpoints, interpretative signage and similar passive and low-impact facilities.

The chart is coded according to the following legend. SD = Substantial Development[1] CU = Conditional Use X = Prohibited; the use is not eligible for a Variance or Conditional Use Permit	**Natural**	**Urban Conservancy**	**Residential - L**	**Residential – M/H**	**Urban Mixed**	**Aquatic**
Detached dwelling unit	CU	CU	SD	SD	SD[13]	X
Accessory dwelling unit[17]	X	X	SD	SD	SD[13]	X
Detached, Attached or Stacked Dwelling Units (multi-family units on one lot)	X	X	X	SD	SD	X
Houseboats	X	X	X	X	X	X
Assisted Living Facility[18]	X	X	X	CU	SD	X
Convalescent Center or Nursing Home	X	X	X	CU[19]	SD[20]	X
Land division	SD[21]	SD[21]	SD	SD	SD	X
Institutional Uses						
Government Facility	X	SD	SD	SD	SD	X

[10] Permitted as part of mixed-use development containing water-dependent uses, where there is intervening development between the shoreline and the use, or if located on the east side of Lake Washington Blvd NE/Lake St S or the east side of 98th Avenue NE.

[13] Permitted if located south of NE 60th Street only.

[17] One accessory dwelling unity (ADU) is permitted subordinate to a detached dwelling unit.

[1] A development activity may also be exempt from the requirement to obtain a substantial development permit. See Chapter 141 KZC addressing exemption. If a development activity is determined to be exempt, it must otherwise comply with applicable provisions of the Act and this Chapter.

[10] Permitted as part of mixed-use development containing water-dependent uses, where there is intervening development between the shoreline and the use, or if located on the east side of Lake Washington Blvd NE/Lake St S or the east side of 98th Avenue NE.

[18] A nursing home use may be permitted as part of an assisted living facility use.

[19] Permitted if located on the east side of Lake Washington Blvd NE/Lake St S, or the east side of 98th Avenue NE.

[20] Not permitted in the Central Business District. Otherwise, permitted if located on the east side of Lake Washington Blvd NE/Lake St S, the east side of 98th Avenue NE or on the south side of NE Juanita Drive.

[21] May not create any new lot that would be wholly contained within shoreland area in this shoreline environment.

The chart is coded according to the following legend. SD = Substantial Development[1] CU = Conditional Use X = Prohibited; the use is not eligible for a Variance or Conditional Use Permit	**Natural**	**Urban Conservancy**	**Residential - L**	**Residential – M/H**	**Urban Mixed**	**Aquatic**
Community Facility	X	X	X	X	SD	X
Church	X	X	X	CU[19]	SD[20]	X
School or Day-Care Center	X	X	X	CU[19]	SD[10]	X
Mini-School or Mini-Day-Care Center	X	X	X	SD[19]	SD[10]	X
Transportation						
Water-dependent						
Bridges	CU	CU	SD	SD	SD	See adjacent upland environments
Passenger-only Ferry terminal	X	X	X	X	CU	
Water Taxi	X	SD[22]	SD[22]	SD[22]	SD[22]	
Nonwater-oriented						
Arterials, Collectors, and neighborhood access streets	CU	SD[23]/CU	SD	SD	SD	X
Helipad	X	X	X	X	X	X
Utilities						
Utility production and processing facilities	X	CU[24]	CU[24]	CU[24]	CU[24]	X

[22] Permitted as an accessory use to a marina or a public park.
[23] Construction of pedestrian and bicycle facilities only.

[24] This use may be allowed provided there is no other feasible route or location. Must be underground unless not feasible.
[25] Wireless towers are not permitted.

The chart is coded according to the following legend. SD = Substantial Development[1] CU = Conditional Use X = Prohibited; the use is not eligible for a Variance or Conditional Use Permit	**Natural**	**Urban Conservancy**	**Residential - L**	**Residential – M/H**	**Urban Mixed**	**Aquatic**
Utility transmission facilities	CU[25]	SD[24]	SD[24]	SD[24]	SD[24]	CU[24]
Personal Wireless Service Facilities[25]	X	SD	SD	SD	SD	X
Radio Towers	X	X	X	X	X	X
SHORELINE MODIFICATIONS						
Breakwaters/jetties/rock weirs/groins	X	X	X	SD[26]/CU	SD[26/]CU	See adjacent upland environments
Dredging and dredge materials disposal	SD[26]/CU	SD[26]/CU	SD[26]/CU	SD[26]/CU	SD[26]/CU	
Fill waterward of the OHWM	SD[26]/CU	SD[26]/CU	SD[26]/CU	SD[26]/CU	SD[26]/CU	
Land surface modification	SD[26]/CU	SD	SD	SD	SD	
Shoreline habitat and natural systems enhancement projects	SD	SD	SD	SD	SD	
Hard Structural Shoreline Stabilization	X	CU	SD	SD	SD	
Soft Structural Shoreline Stabilization Measures	X	SD	SD	SD	SD	

[1] A development activity may also be exempt from the requirement to obtain a substantial development permit. See Chapter 141 KZC addressing exemption. If a development activity is determined to be exempt, it must otherwise comply with applicable provisions of the Act and this Chapter.

[26] Permitted under a substantial development permit when associated with certain shoreline stabilization measures, and habitat and natural system enhancement projects. See KZC 83.300.10.g and KZC 83.350.

Use Specific Regulations

83.180 Shoreline Development Standards

1. General –
   a. See KZC 83.40 for relationship to other code and ordinances.
   b. Development standards specified in this Chapter shall not extend beyond the geographic limit of the shoreline jurisdiction, except as noted in the provisions contained below.
2. Development Standards Chart –
   a. The following chart establishes the minimum required dimensional requirements for development. At the end of the chart are footnotes pertaining to certain uses and activities.
   b. KZC Section 83.170 contains an overview of the activities permitted under each of the use classifications contained in the development standards chart.
   c. KZC 83.180 through KZC 83.550 contains additional standards for the uses and activities, including provisions for No Net Loss and Mitigation Sequencing in KZC 83.360 and federal and state approval in KZC 83.370.

SHORELINE DEVELOPMENT STANDARDS

83.180. 3

DEVELOPMENT STANDARDS	SHORELINE ENVIRONMENT					
	Aquatic	**Natural**	**Urban Conservancy**	**Residential – L**	**Residential – M/H**	**Urban Mixed**
Residential Uses						
Detached Dwelling Units and Accessory Dwelling Units						
Minimum Lot Size	n/a	12,500 sq. ft.	12,500 sq. ft.	12,500 sq. ft. except for the following: • 5,000 sq. ft. if located on east side of Lake St S, at 7th Ave S; and • 7,200 sq. ft. if subject to the Historic Preservation provisions of KMC 22.28.048	3,600 sq. ft.	3,600 sq. ft.

DEVELOPMENT STANDARDS	SHORELINE ENVIRONMENT					
	Aquatic	**Natural**	**Urban Conservancy**	**Residential – L**	**Residential – M/H**	**Urban Mixed**
Shoreline Setback[1]	n/a	Thirty (30) % of the average parcel depth, except in no case is the shoreline setback permitted to be less than 30 feet or required to be greater than 60 feet, except as otherwise specificall y allowed through this Chapter.	Outside of shoreline jurisdictional area, if feasible, otherwise 50'.	30 % of the average parcel depth, except in no case is the shoreline setback permitted to be less than 30 feet or required to be greater than 60 feet, except as otherwise specifically allowed through this Chapter. For those properties located along Lake Ave W south of the Lake Ave W Street End Park, the following standard shall apply: If dwelling units exist immediately adjacent to both the	The greater of: a. 25' or b.15% of the average parcel depth.	The greater of: a. 25' or b.15% of the average parcel depth.

[1] Critical area buffer and buffer setback requirements may impose a larger setback requirement. Please see Section 83.500 and 83.510.

DEVELOPMENT STANDARDS	SHORELINE ENVIRONMENT					
	Aquatic	**Natural**	**Urban Conservancy**	**Residential – L**	**Residential – M/H**	**Urban Mixed**
				north and south property lines of the subject property, then the shoreline setback of the primary structure on the subject property is the average of the shoreline setback of these adjacent dwelling units, but at a minimum width of 15 feet. If a dwelling unit is not adjacent to the subject property, then the setback of the property without a dwelling unit for the purposes of determining an average setback shall be based upon 30% of the average parcel depth. Also see KZC 83.190.2.b.3		
Maximum Lot Coverage	n/a	50%	50%	50%	60%	80% except:

DEVELOPMENT STANDARDS	**SHORELINE ENVIRONMENT**					
	Aquatic	**Natural**	**Urban Conservancy**	**Residential – L**	**Residential – M/H**	**Urban Mixed**
						In the CBD, 100% for properties that do not abut Lake Washington; otherwise 90%
Maximum Height of Structure[2]	n/a	25' above ABE[3]	35' above ABE	30' above ABE	35' above ABE	35' above ABE
Other Residential Uses (Attached, Stacked, and Detached Dwelling Units/multifamily; Assisted Living Facility; Convalescent Center or Nursing Home)						
Maximum Density[4]	n/a	n/a	n/a	n/a	3,600 sq. ft./unit, except 1,800 sq. ft./unit for up to 2 dwelling units if the public access provisions of KZC 83.420 are met	No minimum lot size in the CBD zones; otherwise 1,800 sq. ft./unit
Shoreline Setback[1]	n/a	n/a	n/a	n/a	The greater of: a. 25' or b.15% of the average parcel depth.	The greater of: a. 25' or b.15% of the average parcel depth. In the PLA 15A zone located south of NE 52nd Street, a mixed-use development

[1] Critical area buffer and buffer setback requirements may impose a larger setback requirement. Please see Section 83.500 and 83.510.
[2] The height limit applies to that portion of the building physically located within the shoreline jurisdiction. Permitted increases in building height are addressed in KZC 83.190.4.
[3] Structure height may be increased to 30' above ABE in the Natural shoreline environment. See KZC83.190.4.c.1
[4] For density purposes 2 assisted living units shall be constitute one dwelling unit.

DEVELOPMENT STANDARDS	**SHORELINE ENVIRONMENT**					
	Aquatic	**Natural**	**Urban Conservancy**	**Residential – L**	**Residential – M/H**	**Urban Mixed**
						approved under a Master Plan shall comply with the Master Plan provisions.
Maximum Lot Coverage	n/a	n/a	n/a	n/a	80% in the CBD	80% except: zones 100% on properties that do not abut Lake Washington; otherwise 90%

DEVELOPMENT STANDARDS	**SHORELINE ENVIRONMENT**					
	Aquatic	**Natural**	**Urban Conservancy**	**Residential – L**	**Residential – M/H**	**Urban Mixed**
Maximum Height of Structure[2]	n/a	n/a	n/a	n/a	30' above ABE[5]	41' above ABE, except for the following: • In the CBD zones, if located on the east side of Lake Street South, 55' above the abutting right-of-way measured at the midpoint of the frontage of the subject property. • In the PLA 15A zone located south of NE 52nd Street, mixed-use developments approved under a Master Plan shall comply with the Master Plan provisions.[6]
Commercial Uses						
Minimum Lot Size	n/a	n/a	n/a	n/a	n/a	n/a

[2] The height limit applies to that portion of the building physically located within the shoreline jurisdiction. Permitted increases in building height are addressed in KZC 83.190.4
[5] Structure height may be increased to 35' above ABE. See KZC 83.190.4
[6] See KZC 83.190.4 for height in Master Plan.

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DEVELOPMENT STANDARDS	SHORELINE ENVIRONMENT					
	Aquatic	**Natural**	**Urban Conservancy**	**Residential – L**	**Residential – M/H**	**Urban Mixed**
Shoreline Setback[1]	n/a	n/a	Water-dependent uses: 0', Water-related use: 25', Water-enjoyment use: 30', Other uses: Outside of shoreline jurisdictional area, if feasible, otherwise 50'.	n/a	The greater of: a. 25' or b.15% of the average parcel depth.	The greater of: a. 25'or b.15% of the average parcel depth. In the PLA 15A zone located south of NE 52nd Street, mixed-use developments approved under a Master Plan shall comply with the Master Plan provisions.
Maximum Lot Coverage	n/a	n/a	50%	n/a	80% in the CBD	80% except: zones 100% on properties that do not abut Lake Washington; otherwise 90%

[1] Critical area buffer and buffer setback requirements may impose a larger setback requirement. Please see Section 83.500 and 83.510.

DEVELOPMENT STANDARDS	**SHORELINE ENVIRONMENT**					
	Aquatic	**Natural**	**Urban Conservancy**	**Residential – L**	**Residential – M/H**	**Urban Mixed**
Maximum Height of Structure[2]	n/a	n/a	If adjoining the Residential-L Shoreline Environment, then 25' above ABE. Otherwise, 30' above ABE.[3]	n/a	30' above ABE[5]	41' above ABE, except for: • In the CBD zones, if located on the east side of Lake St S, 55' above the abutting right-of-way measured at the midpoint of the frontage of the subject property. • In the PLA 15A zone located south of NE 52nd Street, mixed-use developments approved under a Master Plan shall comply with the Master Plan provisions. [6]
Recreational Uses						
Minimum Lot Size	n/a	n/a	n/a	n/a	n/a	n/a
Shoreline Setback[1]	n/a	Water-dependent	Water-dependent uses: 0', Water-	30% of the average parcel depth,	The greater of:	The greater of:

[6] See KZC 83.190.4 for height in Master Plan.
[1] Critical area buffer and buffer setback requirements may impose a larger setback requirement. Please see Section 83.500 and 83.510.
[2] The height limit applies to that portion of the building physically located within the shoreline jurisdiction. Permitted increases in building height are addressed in KZC 83.190.4
[3] Structure height may be increased to 30' above ABE in the Natural shoreline environment. See KZC83.190.4.c.1
[5] Structure height may be increased to 35' above ABE. See KZC 83.190.4

DEVELOPMENT STANDARDS	SHORELINE ENVIRONMENT					
	Aquatic	**Natural**	**Urban Conservancy**	**Residential – L**	**Residential – M/H**	**Urban Mixed**
		uses: 0', Water-related use: 25', Water-enjoyment use: 30', Other uses: Outside of shoreline area, if feasible, otherwise 50'.	related use: 25', Water-enjoyment use: 30', Other uses: Outside of shoreline jurisdictional area, if feasible, otherwise 50'.	except in no case is the shoreline setback permitted to be less than 30 feet or required to be greater than 60 feet, except as otherwise specifically allowed through this Chapter.	a. 25' or b.15% of the average parcel depth.	a. 25' or b.15% of the average parcel depth. In the PLA 15A zone located south of NE 52nd Street, mixed-use developments approved under a Master Plan shall comply with the Master Plan provisions.
Maximum Lot Coverage	n/a	10%	30%	30%	80%	80% except: zones 100% on properties that do not abut Lake Washington; otherwise 90%
Maximum Height of Structure[2]	n/a	25' above ABE	If adjoining the Residential-L Shoreline Environment, then 25' above ABE. Otherwise, 30' above ABE[3]	25' above ABE	30' above ABE[4]	41' above ABE, except for the following: • In the CBD zones, if located on the east side of Lake St S, 55' above the abutting right-of-way measured at the

[2] The height limit applies to that portion of the building physically located within the shoreline jurisdiction. Permitted increases in building height are addressed in KZC 83.190.4
[3] Structure height may be increased to 30' above ABE in the Natural shoreline environment. See KZC83.190.4.c.1

DEVELOPMENT STANDARDS	SHORELINE ENVIRONMENT					
	Aquatic	**Natural**	**Urban Conservancy**	**Residential – L**	**Residential – M/H**	**Urban Mixed**
						midpoint of the frontage of the subject property. • In the PLA 15A zone located south of NE 52nd Street, mixed-use developments approved under a Master Plan shall comply with the Master Plan provisions.
Institutional Uses						
Minimum Lot Size	n/a	n/a	n/a	n/a	n/a	n/a
Shoreline Setback[1]	n/a	n/a	Outside of shoreline jurisdictional area, if feasible, otherwise 50'.	Outside of the shoreline jurisdictional area, if feasible, otherwise 30% of the average parcel depth, except in no case is the shoreline setback permitted to be less than 30 ft. or required to be greater than	The greater of: a. 25' or b.15% of the average parcel depth.	The greater of: a. 25' or b.15% of the average parcel depth.

[1] Critical area buffer and buffer setback requirements may impose a larger setback requirement. Please see Section 83.500 and 83.510.

DEVELOPMENT STANDARDS	SHORELINE ENVIRONMENT					
	Aquatic	**Natural**	**Urban Conservancy**	**Residential – L**	**Residential – M/H**	**Urban Mixed**
				60 ft., except as otherwise specifically allowed through this Chapter.		
Maximum lot coverage	n/a	n/a	50%	50%	80%	80% except: zones 100% on properties that do not abut Lake Washington; otherwise 90%
Maximum height of structure[2]	n/a	n/a	If adjoining the Residential-L Shoreline Environment, then 25' above ABE. Otherwise, 30' above ABE[3]	25' above ABE	30' above ABE[5]	41' above ABE, except In the CBD zones, if located on the east side of Lake St S, 55' above the abutting right-of-way measured at the midpoint of the frontage of the subject property.
Transportation Facilities						
Minimum Lot Size	n/a	n/a	n/a	n/a	n/a	n/a
Shoreline Setback[1]	n/a	n/a	Outside of shoreline area, if	30% of the average parcel	The greater of:	The greater of:

[1] Critical area buffer and buffer setback requirements may impose a larger setback requirement. Please see Section 83.500 and 83.510.
[2] The height limit applies to that portion of the building physically located within the shoreline jurisdiction. Permitted increases in building height are addressed in KZC 83.190.4
[3] Structure height may be increased to 30' above ABE in the Natural shoreline environment. See KZC83.190.4.c.1
[5] Structure height may be increased to 35' above ABE. See KZC 83.190.4

DEVELOPMENT STANDARDS	SHORELINE ENVIRONMENT					
	Aquatic	**Natural**	**Urban Conservancy**	**Residential – L**	**Residential – M/H**	**Urban Mixed**
			feasible, otherwise 50'.	depth, except in no case is the shoreline setback permitted to be less than 30 feet or required to be greater than 60 feet, except as otherwise specifically allowed through this Chapter.	a. 25' or b. 15% of the average parcel depth.	a. 25' or b.15% of the average parcel depth.
Maximum Lot Coverage	n/a	n/a	n/a	n/a	n/a	n/a
Maximum Height of Structure[2]	n/a	n/a	n/a	n/a	n/a	n/a
Utilities						
Minimum Lot Size	n/a	n/a	n/a	n/a	n/a	n/a
Shoreline Setback[1]	n/a	Outside of shoreline area, if feasible, otherwise	Outside of shoreline area, if feasible, otherwise 50'.	30% of the average parcel depth, except in no case is the shoreline setback permitted to be	The greater of: a. 25' or b.15% of the average parcel depth.	The greater of: a. 25' or b.15% of the average parcel depth.

[1] Critical area buffer and buffer setback requirements may impose a larger setback requirement. Please see Section 83.500 and 83.510.
[2] The height limit applies to that portion of the building physically located within the shoreline jurisdiction. Permitted increases in building height are addressed in KZC 83.190.4

DEVELOPMENT STANDARDS	SHORELINE ENVIRONMENT					
	Aquatic	**Natural**	**Urban Conservancy**	**Residential – L**	**Residential – M/H**	**Urban Mixed**
		50'.		less than 30 feet or required to be greater than 60 feet, except as otherwise specifically allowed through this Chapter.		
Maximum Lot Coverage	n/a	5%	30%	50%	80%	80% except in the CBD zones, 100% on properties that do not abut Lake Washington; otherwise 90%
Maximum Height of Structure[2]	n/a	25' above ABE	If adjoining the Residential-L Shoreline Environment, then 25' above ABE. Otherwise, 30' above ABE[3]	25' above ABE	30' above ABE[5]	41' above ABE, except: • In the CBD zones if located on the east side of Lake St South, 55' above the abutting right-of-way measured at the midpoint of the frontage of the subject property. • In the PLA 15A zone located south of NE 52nd

[2] The height limit applies to that portion of the building physically located within the shoreline jurisdiction. Permitted increases in building height are addressed in KZC 83.190.4
[3] Structure height may be increased to 30' above ABE in the Natural shoreline environment. See KZC83.190.4.c.1
[5] Structure height may be increased to 35' above ABE. See KZC 83.190.4

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DEVELOPMENT STANDARDS	SHORELINE ENVIRONMENT					
	Aquatic	Natural	Urban Conservancy	Residential – L	Residential – M/H	Urban Mixed
						Street, mixed-use developments approved under a Master Plan shall comply with the Master Plan provisions.[5]

5

83.190 Lot Size or Density, Shoreline Setback, Lot Coverage and Height

1. Calculation of Minimum Lot Size or Maximum Density –

   a. Development shall not use lands waterward of the OHWM to determine minimum lot size or to calculate allowable maximum density.

   b. For properties that are only partially located within the shoreline jurisdiction, the allowed density within the shoreline jurisdiction shall be based upon the land area located within the shoreline jurisdiction only. If dwelling units will be partially located within the shoreline jurisdiction, the City may approve an increase in the actual number of units in the shoreline jurisdiction, provided that the total square footage of the units within the shoreline jurisdiction does not exceed the allowed density multiplied by the average unit size in the proposed development on the subject property.

   c. If a maximum density standard is used, the number of permitted dwelling units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.

   d. For detached dwelling units, the provisions addressing lot size, lot size averaging, and historic preservation contained in Chapter 22.28 KMC shall apply within the shoreline jurisdiction

2. Shoreline Setback –

   a. General – This section establishes what structures, improvements, and activities may be in or take place in the shoreline setback established for each use in each shoreline environment.

   b. Measurement of Shoreline Setback –

      1) The shoreline setback shall be measured landward from the OHWM on the horizontal plane and in the direction that results in the greatest dimension from the OHWM (see Plate XX).

      2) In those instances where the OHWM moved further upland pursuant to any action required by this Chapter, or in accordance with permits involving a shoreline habitat and natural systems enhancement project approved by the City, a state or federal agency, the shoreline setback shall be measured from the location of the OHWM that existed immediately prior to the enhancement project.

      3) For those properties located along Lake Ave W south of the Lake Ave W Street End Park, in instances where the shoreline setback of adjacent dwelling units has been reduced through a shoreline reduction authorized under KZC Section 83.380, the shoreline setback of these adjacent dwelling units, for the purpose of calculating a setback average, shall be based upon the required setback that existed prior to the authorized reduction.

   c. Exceptions and Limitations in Some Zones – KZC Sections 83.190 through 83.250 contain specific regulations regarding what may be in or take place in the shoreline setback. Where applicable, those specific regulations supersede the provisions of this section.

   d. Structures and Improvements – The following improvements or structures may be located in the shoreline setback, except within the Natural environment, provided that they are constructed and maintained in a manner that meets KZC 83.360 for avoiding or at least minimizing adverse impacts to shoreline ecological functions:

      1) For public pedestrian access required under KZC 83.420, walkways, benches, and similar features, as approved by the Planning Official.

      2) For private pedestrian access to the shoreline, walkways within the shoreline setback are permitted, subject to the following standards:

a) The maximum width of the walkway corridor area shall be no more than 25 percent of the property's shoreline frontage, except in no case is the corridor area required to be less than 15 feet in width (see Plate XX).

b) The walkway corridor area shall be located outside of areas of higher ecological and habitat value.

c) The walkway in the corridor area shall be no more than 8 feet wide, and be constructed of a pervious walking surface, such as unit pavers, grid systems, pervious concrete, or, equivalent material approved by the Planning Official.

d) The walkway corridor area may contain minor improvements, such as garden sculptures, light fixtures, trellises and similar decorative structures that are associated with the walkway, provided that these improvements comply with the dimensional limitations required for the walkway corridor area and any view corridor requirements under KZC Section 83.410. Light fixtures approved under this subsection shall comply with the provisions contained in KZC 83.470.

3) Those portions of a water-dependent development that require improvements adjacent to the water's edge, such as fueling stations for retail establishments providing gas sales, haul-out areas for retail establishments providing boat and motor repair and service, boat ramps for boat launches or other similar activities.

4) Public access facilities or other similar public water-enjoyment recreational uses, including swimming beaches.

5) Underground utilities accessory to a shoreline use approved by the Planning Official, provided there is no other feasible route or location.

6) Bioretention swales, rain gardens, or other similar bioretention systems that allow for filtration of water through planted grasses or other native vegetation.

7) Infiltration systems provided that installation occurs as far as feasible from the OHWM.

8) Bay windows, greenhouse windows, eaves, cornices, awnings, and canopies may extend up to 18 inches into the shoreline setback, subject to the limitations of this section. Eaves on bay windows may extend an additional 18 inches beyond the bay window. Chimneys that are designed to cantilever or otherwise overhang are permitted. The total horizontal dimension of the elements that extend into the shoreline setback, excluding eaves and cornices, shall not exceed 25 percent of the length of the facade of the structure.

9) Decks, patios and similar improvements may extend up to 10 feet into the shoreline setback but shall not be closer than 25 feet to the OHWM, subject to the following standards:

a) The improvement shall be constructed of a pervious surface, such as wood with gaps between boards and a pervious surface below, unit pavers, grid systems, pervious concrete, or, alternatively, equivalent material approved by the Planning Official.

b) The total horizontal dimension of the improvement that extends into the shoreline setback shall not exceed 50 percent of the length of the facade of the residence structure.

c) The improvement shall be located on the ground floor of the building and shall not be elevated more than necessary to allow for grade transition from the structure to the deck or to follow the existing topography.

10) In the Urban Mixed shoreline environment, balconies at least 15 feet above finished grade may extend up to 4 feet into the shoreline setback.

11) Outdoor seating areas for restaurants, hotels and other water enjoyment commercial uses may extend up to 10 feet into the shoreline setback, but shall be no closer than 16 feet to the OHWM, subject to the following standards:

a) The improvement shall be constructed of a permeable surface, such as wood with gaps between boards and a pervious surface below, unit pavers, grid systems, porous concrete, or equivalent material approved by the Planning Official.

b) The total horizontal dimension of the improvement that extends into the shoreline setback shall not exceed 50 percent of the length of the facade of the primary structure.

c) The improvement shall be located on the ground floor of the building and shall not be elevated more than necessary to allow for grade transition from the structure to the seating area or to follow the existing topography.

d) All outdoor lighting is required to meet the lighting standards of KZC Section 83.470.

e) The seating area is required to be fenced off from the shoreline by rope stanchions, portable planters, or similar device approved by the City, with openings through the fencing for customer entry. The floor plan of the seating area shall be designed to preclude the seating area from being expanded.

f) The applicant is required to provide one (1) or more approved trash receptacles and one (1) or more ashtrays.

g) The area of the seating shall be considered new gross floor area for the purposes of determining whether vegetation is required under the provisions of KZC Section 83.400.

12) Retaining walls and similar structures that are no more than four (4) feet in height above finished grade; provided the following standards are met:

a.) The structure shall be designed so that it does not interfere with the shoreline vegetation required to be installed under the provisions of KZC 83.400;

b.) The structure shall not be installed to provide the function of a shore erosion control structure unless approved under the provisions of KZC 83.300, and

c.) The structure shall meet the view corridor provisions of KZC 83.410.

13) Public bridges and other essential public facilities that must cross the shoreline.

14) Parking as authorized by the Planning Official under the provisions of KZC 83.440.3.

15) Shoreline stabilization measures approved under the provisions of KZC 83.300.

16) Fences, swimming pools, tool sheds, greenhouses and other accessory structures and improvements are not permitted within the shoreline setback, except those specifically listed above in subsection 83.190 2.d.2).d).

3. <u>Maximum Lot Coverage</u> –

a. <u>General</u> –

1) KZC 83.180.3, Development Standards Chart, establishes the maximum lot coverage by use and shoreline environment.

2) In calculating lot coverage, lands waterward of the OHWM shall not be included in the calculation.

3) The area of all structures and pavement and any other impervious surface on the subject property will be calculated under either of the following, at the discretion of the applicant:

1) A percentage of the total lot area of the subject property, or

2) A percentage of the area of the subject property located within the shoreline jurisdiction.

4) If the subject property contains more than one use, the maximum lot coverage requirements for the predominant use will apply.

5) In those instances where the OHWM moved further upland pursuant to any action required by this Chapter, or in accordance with permits involving a shoreline habitat and natural systems enhancement project approved by the City, a state or federal agency, the lot area for purposes of calculating lot coverage shall be measured from the location of the OHWM that existed immediately prior to the enhancement project.

b. Exceptions – The exceptions contained in Chapter 115 KZC shall apply within the shoreline jurisdiction.

4. Height Regulations –

a. General –

1) KZC 83.180.3, Development Standards Chart, establishes the maximum allowed building height for all primary and accessory structures. In the event that the maximum allowable building height in KZC 83.180.3 is greater than the maximum allowable height in the Kirkland Zoning Code, the lower of the two (2) height provisions shall apply.

2) Maximum building height shall be measured from an average building elevation (ABE), calculated under the methods described in KZC 115.59 and depicted in Plates 17A and 17B. The calculation of ABE shall be based on all wall segments of the structure, whether or not the segments are located within the shoreline jurisdiction.

3) In the CBD zones, maximum building height shall be measured from the midpoint of the abutting right-of-way, not including alleys.

4) Pursuant to RCW 90.58.320, no permit shall be issued for any new or expanded building or structure more than 35 feet above average grade level that will obstruct the view to the lake of a substantial number of residences on or adjoining the shoreline, except where this Chapter does not prohibit a height of more than 35 feet and only when overriding considerations of the public interest will be served. The applicant shall be responsible for providing sufficient information to the City to determine whether such development will obstruct the view to the lake for a substantial number of residences on or adjoining such shorelines. For the purposes of this provision, average grade level is equivalent to and shall be calculated under the method for calculating average building elevation established in Option 2 as described in KZC 115 for calculating average building elevation and depicted in Plate 17B.

b. Exceptions –

1) Element or feature of a structure, other than the appurtenances listed below, shall not exceed the applicable height limitation established for each use in each shoreline environment. The following appurtenances shall be located and designed so that views from adjacent properties to the lake will not be significantly blocked.

1) Antennas, chimneys, and similar appurtenances, but not including personal wireless service facilities, which are subject to the provisions of Chapter 117 KZC.

2) Rooftop appurtenances and their screens as regulated in KZC 115.

3) Decorative parapets or peaked roofs approved through design review pursuant to Chapter 142 KZC.

4) Rooftop solar panels or other similar energy devices provided that the equipment is mounted as flush to the roof as feasible.

c. Permitted Increases in Height – The following permitted increases in building height shall be reviewed by the City as part of the shoreline permit required for the proposed development activity.

1) In the Natural shoreline environment, the structure height of a detached dwelling unit may exceed the standard height limit by a maximum of 5 feet above average building elevation if a reduction in the footprint of the building is sufficient to lessen the impact on a sensitive area and sensitive area buffer. The City shall include in the written decision any conditions and restrictions that it determines are necessary to eliminate or minimize any undesirable effects of approving the exception.

2) In the Residential – M/H and Urban Conservancy shoreline environments located south of Market Street, the structure height of a commercial, recreational, institutional, utility or residential use, other than a detached dwelling unit, may be increased to 35 feet above average building elevation if:

   a) Obstruction of views from existing development lying east of Lake St S or Lake Washington Boulevard is minimized. The applicant shall be responsible for providing sufficient information to the City to evaluate potential impacts to views; and either

   b) The increase is offset by a view corridor that is superior to that required by KZC Section 83.410.

3) Properties in the PLA 15A zone in the UM Shoreline Environment that contain mix use development where building heights have been previously established under an approved Master Plan shall comply with the building height requirements as approved. Modifications to the approved building heights shall be considered under the standards established in the Master and in consideration of the compatibility with adjacent uses and the degree to which public access, use and views are provided.

4) In all shoreline environments, the maximum height may be increased up to 35 feet if the City approves a Planned Unit Development under the provisions of KZC Chapter 125.

83.200 Residential Uses

1. General – Residential uses shall not occur over water, including houseboats, live-aboards, or other single- or multi-family dwelling units.

2. Detached Dwelling Units in the Residential-L environment- Not more than one (1) dwelling unit shall be on each lot, regardless of the size of each lot, except an accessory dwelling unit.

3. Accessory Structures or Uses - Accessory uses and structures shall be located landward of the principal residence, unless the structure is or supports a water-dependent use.

83.210 Commercial Uses

1. Float Plane Landing and Mooring Facilities –

   a. Use of piers or docks for commercial float plane service shall be allowed only in public or private marinas and shall be subject to a conditional use permit.

   b. Any shoreline conditional use permit for float plane use shall specify:

      1) Taxiing patterns to be used by float planes that will minimize noise impacts on area residents and wildlife and minimize interference with navigation and moorage;

      2) Float plane facilities and services shall conform to all applicable City codes and Federal Aviation Administration standards and requirements for fuel, oil spills, safety and firefighting equipment, noise, and pedestrian and swimming area separation; and

      3) Hours of operation may be limited to minimize impacts on nearby residents.

2. Retail establishment providing new or used Boat Sales or Rental – Outdoor boat parking and storage areas must be buffered as required for a parking area under the provisions of KZC 83.440.

3. Retail Establishment Providing Gas and Oil Sale for Boats –
   a. The location and design of fueling facilities must meet applicable state and federal regulations.
   b. Storage of petroleum products shall not be located over water.
   c. Storage tanks shall be located underground and shall comply with state and federal standards for Underground Storage Tanks.
   d. Fueling stations shall be located and designed to allow for ease of containment and spill cleanup.
   e. New fueling facilities shall incorporate the use of automatic shutoffs on fuel lines and at hose nozzles to reduce fuel loss.
   f. Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum products shall be provided.
   g. See KZC 83.360 for avoiding and minimizing impacts when locating, designing, constructing and operating the use.
4. Retail Establishment Providing Boat and Motor Repair and Service –
   a. Storage of parts shall be conducted entirely within an enclosed structure.
   b. If hull scraping, boat painting, or boat cleaning services is provided, boats shall be removed from the water and debris shall be captured and disposed in a proper manner.
   c. Repair and service activities shall be conducted on dry land and either totally within a building or totally sight screened from adjoining property and the right-of-way.
   d. All dry land motor testing shall be conducted within a building.
   e. An appropriate storage, transfer, containment, and disposal facility for liquid material, such as oil, harmful solvents, antifreeze, and paints shall be provided and maintained.
   f. Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum or hazardous products shall be provided.
5. Restaurant or Tavern –
   a. The building design must be oriented for the view to the waterfront.
   b. Drive-in or drive-through facilities are prohibited.

83.220 Recreational Uses

1. Motorized Boats – See KMC Chapter 14.24, Operation of Watercraft, for prohibition of use within restricted shoreline areas and established speed limits.
2. Floats/swim platforms – Only public floats/swim platforms are permitted.
3. Marina, Piers, Moorage Buoy or Pilings, Boat Facility and Boat Canopies – See standards contained in KZC Section 83.270 through 290.
4. Tour Boat Facility – Tour Boat Facilities shall be designed to meet the following standards:
   a. Size – The City will determine the maximum capacity of the tour boat facility based on the following factors:
      1) The suitability of the environmental conditions, such as, but not limited to, a consideration of the following conditions: the presence of submerged aquatic vegetation, proximity to shoreline associated wetlands, critical nesting and spawning areas, water depth, water circulation, sediment inputs and accumulation, and wave action

2) The ability of the land landward of the high waterline to accommodate the necessary support facilities.

b. Moorage structures supporting a tour boat facility shall comply with the moorage structure location standards and design standards for Marinas in KZC Section 83.290.

c. The City will make the determination if any parking and/or a passenger loading area will be required.

d. Associated buildings and structures, other than moorage structure for the tour boat facility, shall not be permitted over water.

e. Tour boat facilities shall comply with applicable state and/or federal laws, including but not limited to those for registration, licensing of crew and safety regulations.

f. Tour boat facilities operated accessory to public parks shall comply with the standards in Chapter 14.36 KMC.

g. See KZC 83.360 for avoiding and minimizing impacts when locating, designing, constructing and operating the use.

5. Public Access Pier, Dock or Boardwalk –

a. See KZC 83.360 for avoiding and minimizing impacts when locating, designing and constructing the use minimizing impacts

b. No accessory uses, buildings, or activities are permitted as part of this use.

c. See KZC 83.370 for federal and state approvals prior to submittal of a building permit for this use.

d. Must provide at least one (1) covered and secured waste receptacle upland of the OHWM.

e. All utility and service lines located waterward of the OHWM must be below the pier deck. All utility and service lines located upland of the OHWM shall be underground, where feasible.

f. Piers or docks shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night.

g. Structures must display the street address of the subject property. The address must be oriented to the lake with letters and numbers at least four inches high and visible from the lake.

h. Public access structures shall not be within 10 feet of a side property line, except that setbacks between moorage structures and north and south property lines may be decreased for over-water public use facilities that connect with waterfront public access on adjacent property.

i. Public access structures shall be separated from the outlet of a stream, including piped streams, by the maximum extent feasible, while meeting other required setback standards established under this section.

j. Pier structures shall comply with the moorage structure design standards for Marinas in KZC Section 83.290.3.b.2), except primary walkways and floats shall be no wider than 8 feet.

6. Boat Launch (for non-motorized boats) –

a. Location Standards – Boat launches for non-motorized boats shall be sited so that they do not significantly damage fish and wildlife habitats and shall not occur in areas with native emergent vegetation. Removal of native upland vegetation shall be minimized to the greatest extent feasible.

b. Size - The applicant shall demonstrate that the proposed size of the boat launch is the minimum necessary to safely launch the intended craft.

c. Design Standards – Boat launches for non-motorized boats shall be constructed of gravel or other similar natural material.

7. Boat Launch (for motorized boats) -

a. Location Standards –

2) Boat launches shall not be approved in cases when it can be reasonably foreseen that the development or use would require maintenance dredging during the life of the development or use.

3) Boat launches shall be designed and located according to the following criteria:

a) Separated from existing designated swimming areas by a minimum of 25 feet.

b) Meet KZC 83.360 for avoiding impacts to fish and wildlife habitats.

c) Located only at sites with suitable transportation and access. The applicant must demonstrate that the streets serving the boat launch can safely handle traffic generated by such a facility.

d) Not be located within 25 feet of a moorage structure not on the subject property; or within 50' of the outlet of a stream, including piped streams.

b. Size - The applicant shall demonstrate that the proposed length of the ramp is the minimum necessary to safely launch the intended craft. In no case shall the ramp extend beyond the point where the water depth is 6 feet below the OHWM, unless the City determines that a greater depth is needed for a public boat launch facility.

c. Design Standards –

1) Preferred ramp designs, in order of priority, are:

a) Open grid designs with minimum coverage of lake substrate.

b) Seasonal ramps that can be removed and stored upland.

c) Structures with segmented pads and flexible connections that leave space for natural beach substrate and can adapt to changes in shoreline profile.

2) The design shall comply with all regulations as stipulated by state and federal agencies, affected tribes, or others that have jurisdiction.

d. Boat launches shall provide trailer spaces, at least 10 feet by 40 feet, commensurate with projected demand.

8. Public Park - Recreation facilities that support non-water related, high-intensity activities, such as basketball and tennis courts, baseball and soccer fields and skate parks, shall be located outside of shoreline jurisdiction to the extent feasible.

9. Public Access Facility -

a. Fragile and unique shoreline areas with valuable ecological functions, such as wetlands and wildlife habitats, shall be used only for non-intensive recreation activities, such as trails, viewpoints, interpretative signage and similar passive and low-impact facilities.

b. Physical public access shall be located, designed and constructed to meet KZC 83.360 for net loss of shoreline ecological functions.

83.230 Transportation Facilities

1. General -

a. See KZC 83.360 for avoiding and minimizing impacts when locating, designing, constructing and operating the use.

b. Transportation facilities shall utilize existing transportation corridors whenever feasible; provided, that facility additions and modifications that will not adversely impact shoreline resources and otherwise consistent with this program are allowed. If expansion of the existing corridor will result in significant adverse impacts, then a less disruptive alternative shall be utilized.

c. When permitted within shoreline areas, transportation facilities must be placed and designed to minimize negative aesthetic impacts upon shoreline areas and to avoid and minimize impacts to existing land uses, public shoreline views, public access, and the natural environment.

d. Transportation and utility facilities shall be required to make joint use of rights-of-way, and to consolidate crossings of water bodies to minimize adverse impacts to the shoreline.

e. Transportation facilities located in shoreline areas must be designed and maintained to prevent erosion and to permit the natural movement of surface water.

2. Construction and Maintenance –

a. All debris and other waste materials from roadway construction and maintenance shall be disposed of in such a way as to prevent their entry into any water body.

b. All shoreline areas disturbed by facility construction and maintenance shall be replanted and stabilized with approved riparian vegetation by seeding, mulching, or other effective means immediately upon completion of the construction or maintenance activity. Such vegetation shall be maintained until established.

c. Clearing of vegetation within transportation corridors shall be the minimum necessary for infrastructure maintenance and public safety. The City shall give preference to mechanical means rather than the use of herbicides for roadside brush control on city roads in shoreline jurisdiction.

d. Construct facilities that cross streams to allow passage of fish inhabiting the stream or which may inhabit the stream in the future are allowed.

e. Construct facilities within the 100-year floodplain to allow for water pass-through is allowed.

3. Passenger-only Ferry Terminal –

a. See KZC 83.360 for minimizing impacts when locating, designing, constructing and operating the use.

b. Associated buildings and structures, other than moorage structure for the ferry terminal, shall not be permitted over water.

c. Equipment storage shall be conducted entirely within an enclosed structure.

d. Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum or hazardous products shall be provided.

e. The City will make the determination if any parking and/or a passenger loading area will be required.

4. Water Taxi –

a. See KZC 83.360 for avoiding and minimizing impacts when locating, designing, constructing and operating the use.

b. Equipment storage shall be conducted entirely within an enclosed structure.

c. Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum or hazardous products shall be provided.

5. Arterials, Collectors, and Neighborhood Access Streets and Bridges –

a. New street and bridge construction in shoreline jurisdiction shall be minimized and allowed only when related to and necessary for the support of permitted shoreline activities.

b. Streets other than those providing access to approved shoreline uses shall be located away from the shoreline, except when no reasonable alternate location exists.

c. Any street expansion affecting streams and waterways shall be designed to allow fish passage and minimum impact to habitat.

d. Drainage and surface runoff from streets and street construction or maintenance areas shall be controlled so that pollutants will not be carried into water bodies.

e. Streets within shoreline jurisdiction shall be designed with the minimum pavement area feasible.

f. Streets shall be designed to provide frequent safe crossings for pedestrians and bicycles seeking access to public portions of the shoreline.

g. Low impact development techniques shall be used where feasible for roadway or pathway and related drainage system construction.

h. Street alignments shall be designed to fit the topography so that alterations of the natural site conditions will be minimized.

i. New and expanded streets or bridges shall be designed to include pedestrian amenities, such as benches or view stations and public sign systems, if an area is available for the improvement that identifies significant features along the shoreline.

j. Vegetation and street trees shall be selected and located so that they do not impair public views of the lake from public rights of way to the maximum extent feasible.

k. Shoreline street ends may be used for public access or recreational purposes.

l. Shoreline street ends shall not be vacated except in compliance with RCW 35.79.035 or its successor, as well as KMC 19.16.090.

83.240 Utilities

1. General –

a. See KZC 83.360 for avoiding and minimizing impacts when locating, designing, constructing and operating the use

b. Whenever feasible, utility facilities shall be located outside the shorelines area. Whenever these facilities must be placed in a shoreline area, the location shall be chosen so as not to adversely impact shoreline ecological functions or obstruct scenic views.

c. Utilities shall be located in existing rights-of-way and utility corridors wherever feasible.

d. New utilities shall not be located waterward of the OHWM or in the Natural shoreline environment unless it is demonstrated that no feasible alternative exists.

e. Utility lines, pipes, conduits, cables, meters, vaults, and similar infrastructure and appurtenances shall be placed underground consistent with the standards of the serving utility to the maximum extent feasible.

f. Proposals for new utilities or new utility corridors in the shoreline jurisdiction must fully substantiate the infeasibility of existing routes or alternative locations outside of the shoreline jurisdiction.

g. Utilities that are accessory and incidental to a shoreline use shall be reviewed under the provisions of the use to which they are accessory.

h. Utilities shall provide screening of facilities from the lake and adjacent properties in a manner that is compatible with the surrounding environment. The City will determine the type of screening on a case-by-case basis.

i. Utility development shall, through coordination with local government agencies, provide for compatible, multiple use of sites and rights-of-way. Such uses include shoreline access points, trail systems and other forms of recreation and transportation, providing such uses will not unduly interfere with utility operations, or endanger public health and safety.

2. Construction and Maintenance –

   a. All shoreline areas disturbed by utility construction and maintenance shall be replanted and stabilized with approved vegetation by seeding, mulching, or other effective means immediately upon completion of the construction or maintenance activity. Such vegetation shall be maintained until established.

   b. Clearing of vegetation within utility corridors shall be the minimum necessary for installation, infrastructure maintenance and public safety.

   c. Construction of pipelines placed under aquatic areas shall be placed in a sleeve in order to avoid the need for excavation in the event of a failure in the future.

   d. Construction located near wetlands and streams shall use native soil plugs, collars or other techniques to prevent potential dewatering impacts.

   e. See KZC 83.480 for conducting maintenance activities that minimize impacts.

3. Utility production and processing facilities - Utility production and processing facilities not dependent on a shoreline location shall be located outside of the shoreline jurisdiction, unless it is demonstrated that no feasible alternative location exists.

4. Utility Transmission Facilities –

   a. Transmission facilities shall be located outside the shoreline jurisdiction where feasible, and when necessarily located within shoreline areas, shall assure no net loss of shoreline ecological functions.

   b. Pipelines transporting hazardous substances or other substances harmful to aquatic life or water quality are prohibited, unless it is demonstrated that no feasible alternative exists.

   c. Sanitary sewers shall be separated from storm sewers.

5. Personal Wireless Service Facilities – Personal Wireless Service Facilities shall use concealment strategies to minimize the appearance of antennas and other equipment from the lake and public pedestrian pathways or public use areas.

83.250 Land Division

1. New lots created through land division in the shoreline shall only be permitted when the following standards are met:

   a. The lots created will not require structural flood hazard reduction measures, such as dikes, levees, or stream channel realignment, during the life of the development or use.

   b. The lots created will not require hard structural shoreline stabilization measures in order for reasonable development to occur, as documented in a geotechnical analysis of the site and shoreline characteristics.

   c. In the Natural and Urban Conservancy environments, the lots created shall contain buildable land area located outside of the shoreland area.

2. Land Division, except those for lot line adjustment and lot consolidation purposes, shall provide public access as provided for in KZC Section 83.420, unless otherwise excepted or modified under the provisions of KZC 83.420.

3. Land Divisions shall establish a prohibition on new private piers and docks on the face of the plat. An area for joint use moorage may be approved if it meets all requirements for shared moorage in KZC Section 83.270.

4. View corridors, established as part of a land division, shall be depicted on the face of the recorded document.

Shoreline Modification Regulations

83.260 General

1. See KZC 83.360 for no net loss standard and mitigation sequencing.
2. KZC 83.370 for federal and state approval required prior to submittal of a building permit.
3. KZC 83.430 for in water construction.
4. Structures must be designed to preclude moorage in locations that would have insufficient water depth to avoid boats resting on the substrate at any time of year.

83.270 Piers, Docks, Moorage Buoys and Piles, Boatlifts and Boat Canopies Serving a Detached Dwelling Unit Use

1. General –
   a. Piers, Docks, Moorage Buoys and Piles, Boatlifts and Canopies may only be developed and used accessory to existing dwelling units on waterfront lots or upland lots with waterfront access rights. Use of these structures is limited to the residents and guests of the waterfront lots to which the moorage is accessory. Moorage space shall not be leased, rented, or sold unless otherwise approved as a Marina under the provisions of KZC 83.290.
   b. In the following circumstances, a joint use pier shall be required::
      1) On lots subdivided to create additional lots with waterfront access rights.
      2) New residential development of two or more dwelling units with waterfront access rights.
   c. Piers, docks, boatlifts and moorage piles shall be designed and located to meet KZC 83.360 for no net loss standard and mitigation sequencing.
   d. For structures proposed to be extended waterward of the Inner Harbor Lines, see KZC 83.370.
2. Setbacks
   a. All piers, docks, boatlifts and moorage piles for Detached Dwelling Unit Use shall comply with the following location standards:

New Pier, Dock, Boatlift and Moorage Pile for Detached Dwelling Unit	**Minimum Setback Standards**
Side property lines	10 ft.
Another moorage structure not on the subject property, excluding adjacent moorage structure that does not comply with required side property line setback	25 ft.
Outlet of a stream regulated under KZC 90, including piped streams	Maximum distance feasible while meeting other required setback standards established under this section
Public park	25 ft., except that this standard shall not apply within the Urban Mixed shoreline environment.

   b. Joint-use structures may abut property lines provided the property owners sharing the moorage facility have mutually agreed to the structure location. To insure that a pier is shared, each property owner must sign a statement in a form acceptable to the City Attorney,

stating that the pier or dock is used by the other property. The applicant must file this statement with the King County Recorder's Office to run with the properties.

3. General Standards –

   a. Proposed piers and docks that do not comply with the dimensional standards contained in this section or cannot be permitted through the Administrative Approval for Alternative Design process in this section may only be approved if they obtain a shoreline variance under the provisions of KZC Chapter 141.70.3.

   b. All piers and docks and other developments regulated by this section shall be constructed and maintained in a safe and sound condition. Abandoned or unsafe structures shall be removed or repaired promptly by the owner.

   c. Temporary moorages shall be permitted for vessels used in the construction of shoreline facilities. The design and construction of temporary moorages shall be such that upon termination of the project, the aquatic habitat in the affected area can be returned to its original (pre-construction) condition.

   d. The following structures and improvements are not permitted:

      a.) Covered moorage, boathouses, or other walled covered moorage, except boat canopies that comply with the standards in this subsection.

      b.) Skirting on any structure

      c.) Aircraft moorage

   e. See KZC 83.470 Lighting Standards for required lighting.

   f. Piers and docks must display the street address of the subject property. The address must be oriented to the lake with letters and numbers at least 4 inches high.

   g. Piers and docks shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night. Exterior finish of all structures and windows shall be generally non-reflective.

   h. Must provide at least one (1) covered and secured waste receptacle.

   i. All utility and service lines located waterward of the OHWM must be below the pier deck. All utility and service lines located upland of the OHWM shall be underground, where feasible.

4. New Pier or Dock Dimensional Standards –

   a. New piers or docks may be permitted, subject to the following regulations:

New Pier, Dock or Moorage Piles for Detached Dwelling Unit (single family)	**Dimensional and Design Standards**
Maximum Area: surface coverage, including all attached float decking, ramps, ells and fingers	480 sq. ft. for single property owner 700 sq. ft. for joint-use facility used by 2 residential property owners 1000 sq. ft. for joint-use facility used by 3 or more residential property owners These area limitations shall include platform lifts. Where a pier cannot reasonably be constructed under the area limitation above to obtain a moorage depth of 10 ft. measured above

	ordinary high water, an additional 4 sq. ft. of area may be added for each additional foot of pier length needed to reach 10 feet of water depth.
Maximum Length for piers, docks, ells, fingers and attached floats	150 ft, but piers or docks extending further waterward than adjacent piers or docks must demonstrate that they will not have an adverse impact on navigation. 26 ft. for ells 20 ft. for fingers and float decking attached to a pier
Maximum Width	4 ft. for pier or dock 6 ft. for ells 2 ft. for fingers 6 ft. for float decking attached to a pier, must contain a minimum of 2 ft. of grating down the center of the entire float.
Height of piers and diving boards	Minimum of 1.5 ft. above ordinary high water to bottom of pier stringers, except the floating section of a dock and float decking attached to a pier Maximum of 3 feet above deck surface for diving boards or similar features. Maximum of 3 feet above deck for safety railing, which shall be an open framework
Minimum Water Depth for ells and float decking attached to a pier	Must be in water with depths of 9 feet or greater at the landward end of the ell or finger. Must be in water with depths of 10 feet or greater at the landward end of the float
Decking for piers, docks walkways, platform lifts, ells and fingers	Piers and docks and platform lifts must be fully grated or contain other materials that allow a minimum of 40% light transmittance through the material. If float tubs for docks preclude use of fully grated decking material, then a minimum of 2 ft. of grating down the center of the entire float shall be provided.
Location of ells, fingers and deck platforms	No closer than 30 ft. waterward of the OHWM Within 30 ft. of the OHWM, only the access ramp portion of pier or dock is allowed.
Pilings, Moorage Piles, and Buoys	Piles shall not be treated with pentachlorophenol, creosote, chromated copper arsenate (CCA) or comparably toxic compounds. First set of piles located no closer than 18 ft from OHWM Maximum 2 moorage piles or buoys per detached dwelling unit, including existing piles Maximum 4 moorage piles or buoys for joint use piers or docks, including existing piles
Mitigation	Plantings or other mitigation as described below in KZC 83.270.5

b. The City shall approve the following modifications to a new pier proposal that deviates from the dimensional standards of KZC 83.270.4, subject to both U.S Army Corps of Engineer and Washington Department of Fish and Wildlife approval to an alternate project design. In addition, the following requirements and all other applicable provisions in this Chapter shall be met.

Administrative Approval for Alternative Design of New Pier or Dock for Detached Dwelling Unit (single family)	**Requirements**
State and Federal Agency Approval	U.S. Army Corps of Engineers, and the Washington Department of Fish and Wildlife have approved proposal.
Maximum Area	No larger than authorized through state and federal approval
Maximum Width	4 ft. for portion of pier or dock located within 30 feet of the OHWM; otherwise, 6 feet for walkways Otherwise, the pier and all components shall meet the standards noted in KZC 83.270.4
Minimum Depth	No shallower than authorized through state and federal approval

With submittal of a building permit, the applicant shall provide documentation that the U.S. Army Corps of Engineers, and the Washington Department of Fish and Wildlife have approved the alternative proposal design.

5. Mitigation. All proposals involving new piers or docks are subject to the following mitigation requirements:

   1) Any existing in-water and overwater structures shall be removed if they are associated with either a moorage structure or other recreational use that is located within 30 feet of the OHWM.

   2) Emergent vegetation shall be planted waterward of the OHWM, unless the City determines that it is not appropriate or feasible.

   3) Native riparian vegetation shall be planted in at least 75 percent of the nearshore riparian area located along the water's edge. The vegetated portion of the nearshore riparian area shall average ten (10) feet in depth from the OHWM, but may be a minimum of five (5) feet wide to allow for variation in landscape bed shape and plant placement. Joint-use piers required under the provisions of this Chapter shall require a vegetative riparian zone along all properties sharing the pier. Other joint-use piers shall be required to provide the same mitigation as required for one property, which can be slit evenly between the subject properties.

   4) Mitigation plantings shall be subject to the following requirements:

      a) Restoration of native vegetation shall consist of a mixture of trees, shrubs and groundcover and be designed to improve habitat functions. At least three (3) trees per 100 linear feet of shoreline and 60% shrubs must be included in the plan. Plant materials must be native and selected from the Kirkland Native Plant List, or other native or shoreline appropriate species approved by the Planning Official or Urban

Forester. Plant density and spacing shall be appropriate for the site and commensurate with spacing recommended for each individual species proposed. An alternative planting plan or mitigation measure in lieu of meeting these requirements shall be allowed if approved by other state and federal agencies.

In addition, the City shall accept existing native trees, shrubs and groundcover as meeting the requirements of this section, including vegetation previously installed as part of a prior development activity, provided that the existing vegetation provides a landscape strip at least as effective in protecting shoreline ecological functions as the required vegetation.

b) Vegetation placement – See the provisions contained in KZC 83.400.

5) In addition to a native planting plan, a 5 -year vegetation maintenance and monitoring plan shall be submitted to the City for approval. The monitoring plan shall include the following performance standards:

a) Preparation of as-built drawings after installation of the mitigation plantings;

b) Annual monitoring reports for 5 years, that include written and photographic documentation on tree and shrub mortality, subject to the following success criteria:

i. One-hundred (100) percent survival of all planted native trees and shrubs during the first two (2) years after planting; and

ii. One hundred (100) percent survival of trees and eighty (80) percent survival of remaining native plants in years three (3) through five (5).

Copies of reports that are submitted to state or federal agencies in compliance with permit approvals may be submitted in lieu of a separate report to the City, provided that the reports address a 5-year maintenance and monitoring plan.

6) Woody debris existing on-site or contributed to the site as part of the mitigation efforts shall not be removed.

6. Replacement of Existing Pier or Dock –

a. A replacement of an existing pier or dock shall meet the following requirements:

Replacement of Existing Pier or Dock for Detached Dwelling Unit (single family)	**Requirements**
Replacement of entire existing pier or dock, including piles OR more than 50 percent of the pier-support piles and more than 50 percent of the decking or decking substructure (e.g. stringers)	Must meet the dimensional decking and design standards for new piers as described in KZC 83.270.4, except the City may administratively approve an alternative design described in subsection b. below.
Mitigation	Existing skirting shall be removed and may not be replaced. Existing in-water and overwater structures located within 30 feet of the OHWM, except for existing or authorized shoreline stabilization measures or piers or docks, shall be removed.

b. Alternative Design - The City shall approve the following modifications to a pier replacement proposal that deviates from the dimensional standards of KZC 83.270.4, subject to both U.S Army Corps of Engineer and Washington Department of Fish and Wildlife approval to an alternate project design. In addition, the following requirements and all other applicable provisions in this Chapter shall be met.

Administrative Approval for Alternative Design of Replacement Pier or Dock for Detached Dwelling Unit	**Requirements**
State and Federal Agency Approval	U.S. Army Corps of Engineers and the Washington Department of Fish and Wildlife have approved proposal.
Maximum Area	No larger than existing pier
Maximum Length	26 ft. for fingers and float decking attached to a pier Otherwise, the pier and all components shall meet the standards noted in KZC 83.270.4
Maximum Width	4 ft. for portion of pier or dock located within 30 feet of the OHWM; otherwise, 6 feet for walkways 8 ft. for ells and float decking attached to a pier Otherwise, the pier and all components shall meet the standards noted in KZC 83.270.4
Minimum Depth	No shallower than authorized through state and federal approval

With submittal of a building permit, the applicant shall provide documentation that the U.S. Army Corps of Engineers, and the Washington Department of Fish and Wildlife have approved the alternative proposal design.

7. Additions to Pier or Dock –

Proposals involving the modification and/or enlargement of existing private piers or docks must comply with the following requirements:

Addition to Existing Pier or Dock for Detached Dwelling Unit (single family)	**Requirements**
Addition or enlargement	Must demonstrate that there is a need for the enlargement of an existing pier or dock. Examples of need include, but are not limited to safety concerns or inadequate depth of water.
Dimensional standards	Enlarged portions must comply with the new pier or dock standards for length and width,

	height, water depth, location, decking and pilings and for materials as described in KZC 83.270.
Decking for piers, docks walkways, ells and fingers	Must convert an area of existing nearshore decking to grated decking equivalent in size to the additional surface coverage. Grated or other materials must allow a minimum of 40% light transmittance through the material.
Mitigation	Planting and other mitigation as described in KZC 83.270.5. Existing skirting shall be removed and may not be replaced Existing in-water and overwater structures located within 30 feet of the OHWM, except for existing or authorized shoreline stabilization measures or pier or docks, shall be removed at a 1:1 ratio to the area of the addition

8. Repair of Existing Pier or Dock–

a. Repair proposals that replace only decking or decking substructure and less than 50 percent of the existing pier-support piles must comply with the following regulations:

Repair of Existing Pier or Dock for Detached Dwelling Unit (single family)	**Requirements**
Replacement piles	Must use materials as described under KZC 83.270.5 Must minimize the size of piles and maximize the spacing between pilings to the extent allowed by site-specific engineering or design considerations
Replacement of 50 percent or more of the decking or 50 percent or more of decking substructure	Must replace any solid decking surface located within the nearshore 30 feet of the pier or dock with a grated surface material that allows a minimum of 40% light transmittance through the material.

b. Other repairs to existing legally established moorage facilities where the nature of the repair is not described in the above subsections shall be considered minor repairs and are

permitted, consistent with all other applicable codes and regulations. If cumulative repairs of an existing pier or dock would make a proposed repair exceeds the threshold for a replacement pier established in KZC 83.270.5, above, the repair proposal shall be reviewed under KZC 83.270.4 for a new pier or dock, , except as described in KZC 83.270.5.b for administrative approval of alternative design.

9. Boatlifts, Boatlift Canopies and Moorage Piles –

Boatlifts, boatlift canopies and moorage piles may be permitted as an accessory to piers and docks, subject to the following regulations:

Boatlift, Boat Canopy and Moorages Buoy for Detached Dwelling Unit (single family)	**Requirements**
Location	Boat lifts shall placed as far waterward of the OHWM as feasible and safe, within the limits of the dimensional standards for piers established in KZC 83.270.4 Bottom of a boatlift canopy shall be elevated above the boatlift to the maximum extent feasible, the lowest edge of the canopy must be a least 4 ft. above the ordinary high water, and the top of the canopy must not extend more than 4 ft. above an associated pier. Moorage piles or buoys shall not be closer than 30 ft. from OHWM or any farther waterward than the end of the pier or dock Moorage piles or buoys shall be located no further than 12 ft. from a pier or dock
Maximum Number	1 free-standing or deck-mounted boatlift per detached dwelling unit 2 jet ski lifts or 1 fully grated platform lift per detached dwelling unit use 1 boatlift canopy per detached dwelling unit, including joint use piers 2 moorage piles per detached dwelling unit, including existing piles 4 moorage piles for joint use piers or docks, including existing piles
Canopy Materials	Must be made of translucent fabric materials. Must not be constructed of permanent structural material.
Fill for Boatlift	Maximum of 2 cubic yards of fill are permitted to anchor a boatlift, subject to the following requirements: • May only be used if the substrate prevents the use of anchoring devices which can be embedded into

	the substrate • Must be clean • Must consist of rock or pre-cast concrete blocks • Must only be used to anchor the boatlift • Minimum amount of fill is utilized to anchor the boatlift

83.280 Piers, Docks, Boat lifts and Canopies Serving Detached, Attached or Stacked Dwelling Units (Multi-family)

1. General –

   a. Piers, Docks, Moorage Buoy and Piles, Boatlifts and Canopies may only be developed and used accessory to existing dwelling units on waterfront lots or upland lots with waterfront access rights. Use of these structures is limited to the residents and guests of the waterfront lots to which the moorage is accessory. Moorage space shall not be leased, rented, or sold unless otherwise approved as a Marina under the provisions of KZC 83.290.

   b. Piers, docks, boatlifts and moorage piles shall be designed and located to meet KZC 83.360 Mitigation Sequencing.

   c. See KZC 83.370 for structures to be extended waterward of the Inner Harbor Line.

2. Setbacks –

   All piers, docks, boatlifts and moorage piles serving Detached, Attached or Stacked Dwelling Units shall comply with the following setback standards:

New Pier, Dock, Boatlift and Moorage Pile for Detached, Attached or Stacked Dwelling Units (multi-family)	**Minimum Setback Standards**
Side property lines	10 ft.
Lot containing a detached dwelling unit	The area defined by a line that starts where the OHWM of the lot intersects the side property line of the lot closest to the moorage structure and runs waterward toward the moorage structure and extends at a 30° angle from that side property line. This setback applies whether or not the subject property abuts the lot, but does not extend beyond any intervening overwater structure. This standard shall not apply within the Urban Mixed shoreline environment.
Another moorage structure not on the subject property, excluding adjacent moorage structure that does not comply with required north and south property line setback	25 ft.
Outlet of a stream regulated under KZC 90, including piped streams	Maximum distance feasible while meeting other required setback standards

	established under this section
Public park	100 feet; or The area defined by a line that starts where the OHWM of the park intersects with the side property line of the park closest to the moorage structure and extends at a 45° angle from the side property line. This setback applies whether or not the subject property abuts the park, but does not extend beyond any intervening over water structure. This standard shall not apply within the Urban Mixed shoreline environment.

3. Number of Moorage Spaces – The City will limit the total number of moorages to one per each dwelling unit on the subject property. In addition, each unit shall be allowed to moor jet skis or kayaks or similar watercraft on the property.

4. General Standards -

   a. Must provide at least two (2) covered and secured waste receptacles upland of the OHWM.

   b. All utility and service lines located waterward of the OHWM must be below the pier deck. All utility and service lines located upland of the OHWM shall be underground, where feasible.

   c. Moorage facilities shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night.

   d. Exterior finish shall be generally non-reflective.

   e. Moorage structures must display the street address of the subject property. The address must be oriented to the lake with letters and numbers at least four (4) inches high.

   f. See KZC 83.470 Lighting Standards for required lighting.

      h. The following structures and improvements are not permitted:

      a.) Covered moorage, boathouses, or other walled covered moorage, except boat canopies that comply with the standards in this subsection.

      b.) Skirting on any structure

      c.) Aircraft moorage

5. New Pier or Dock Dimensional Standards -

   a. Moorage structures shall 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;

      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 have a significant long-term adverse effect on ecological functions.

b. Piers and docks shall be the minimum size necessary to meet the needs of the proposed water-dependent use and shall observe the following standards:

New Pier, Dock or Moorage Piles for Detached, Attached or Stacked Dwelling Units (multi-family)	**Dimensional and Design Standards**
Maximum Width	4 ft. within 30 ft of the OHWM for pier, dock or floating deck 6 ft. for pier or dock more than 30 ft. waterward of the OHWM 8 ft. for ells 4 ft. for fingers, and shall be reduced to 2 feet in those instances where the projection provides secure boat moorage but is not necessary for boat-user access. 6 ft. for float decking attached to a pier An alternative design in lieu of meeting these requirements shall be allowed if approved by other state and federal agencies.
Height of piers and diving boards	Minimum of 1.5 ft above ordinary high water to bottom of pier stringers, except the floating section of a dock and float decking attached to a pier Maximum of 3 ft. above deck for diving boards or similar features above the deck surface Maximum of 3 feet above deck for safety railing, which shall be an open framework
Minimum Water Depth for ells and float decking attached to a pier	Must be in water with depths of 9 feet or greater at the landward end of the ell or finger. Must be in water with depths of 10 feet or more at the landward end of the float
Decking for piers, docks walkways, platform lifts, ells and fingers	Must be fully grated or contain other materials that allow a minimum of 40% light transmittance through the material If float tubs for docks preclude use of fully grated decking material, then a minimum of 2 ft. of grating down the center of the entire float shall be provided
Location of ells, fingers and deck platforms	No closer than 30 ft. waterward of the OHWM Within 30 ft. of the OHWM, only access ramp portion of pier or dock is allowed
Pilings and Moorage Piles	First set of piles located no closer than 18 ft from OHWM Pilings shall be composed of steel, concrete, plastic or untreated wood. Piles shall not be treated with pentachlorophenol, creosote, chromated

	copper arsenate (CCA) or comparably toxic compounds.
Mitigation	Plantings and other mitigation as described in KZC 83.280.6 below.

6. Mitigation –

All proposals involving new piers or docks are subject to the following mitigation requirements:

a. Any existing in-water and overwater structures shall be removed if they are associated with either a moorage structure or other recreational use that is located within 30 feet of the OHWM.

b. Emergent vegetation shall be planted waterward of the OHWM, unless the City determines that it is not appropriate or feasible.

c. Native riparian vegetation shall be planted in at least 75 percent of the nearshore riparian area located along the water's edge. The vegetated portion of the nearshore riparian area shall average ten (10) feet in depth from the OHWM, but may be a minimum of five (5) feet wide to allow for variation in landscape bed shape and plant placement. Joint-use piers will require a vegetative riparian zone along all properties sharing the pier.

d. Mitigation plantings shall be subject to the following requirements:

1) Restoration of native vegetation shall consist of a mixture of trees, shrubs and groundcover and be designed to improve habitat functions. At least three (3) trees per 100 linear feet of shoreline and 60% shrubs must be included in the plan. Plant materials must be native and selected from the Kirkland Native Plant List, or other native or shoreline appropriate species approved by the Planning Official or Urban Forester. Plant density and spacing shall be appropriate for the site and commensurate with spacing recommended for each individual species proposed.

2) An alternative planting plan or mitigation measure in lieu of meeting these requirements shall be allowed if approved by other state and federal agencies. In addition, the City shall accept existing native trees, shrubs and groundcover as meeting the requirements of this section, including vegetation previously installed as part of a prior development activity, provided that the existing vegetation provides a landscape strip at least as effective in protecting shoreline ecological functions as the required vegetation.

3) Vegetation placement – See the provisions contained in Section 83.400.

4) In addition to a native planting plan, a 5-year vegetation maintenance and monitoring plan shall be submitted to the City for approval. The monitoring plan shall include the following performance standards:

a) Preparation of as-built drawings after installation of the mitigation plantings;

b) Annual monitoring reports for five (5) years, that include written and photographic documentation on tree and shrub mortality, subject to the following success criteria:

i) One hundred (100) percent survival of all planted native trees and shrubs during the first two years after planting; and

ii) One hundred (100) percent survival of trees and eighty (80) percent survival of remaining native plants in years three through five.

Copies of reports that are submitted to state or federal agencies in compliance with permit approvals may be submitted in lieu of a separate report to the City, provided that the reports address a 5-year maintenance and monitoring plan.

c) Woody debris existing on-site or contributed to the site as part of the mitigation efforts shall not be removed.

7. Replacement, Additions and Repairs -

   a. Replacement - Replacement of Piers and Docks serving Detached, Attached or Stacked Dwelling Units shall be considered under the provisions for New Piers and Docks Serving Detached, Attached or Stacked Dwelling Units established in KZC 83.280.

   b. Additions – Proposals involving the modification and/or enlargement of existing piers or docks must comply with the following measures:

Additions to Pier, Dock or Moorage Piles for Detached, Attached or Stacked Dwelling Units (multi-family)	**Requirements**
Addition or enlargement	Must demonstrate that there is a need for the enlargement of an existing pier or dock. Examples of need include, but are not limited to, safety concerns or inadequate depth of water.
Dimensional standards	Enlarged portions must comply with the new pier or dock dimensional standards for length, width, height, water depth, location, decking material and pilings and for materials as described in KZC 83.280.
Decking for piers, docks walkways, ells and fingers	Must convert an area of existing nearshore decking to grated decking equivalent in size to the additional surface coverage. Grated or other materials must allow a minimum of 40% light transmittance through the material.
Mitigation	Plantings and other mitigation as described in KZC 83.280.6 above Existing skirting shall be removed and may not be replaced Existing in-water and overwater structures located within 30 feet of the OHWM, except for existing or authorized shoreline stabilization measures or pier or docks, shall be removed at a 1:1 ratio to the area of the addition.

   c. Repair– Repair proposals which replace only decking or decking substructure and less than 50 percent of the existing pier-support piles must comply with the following:

Repair to Pier, Dock or Moorage Piles for Detached, Attached or	**Requirements**

Stacked Dwelling Units (Multi-family)	
Replacement piles	Must use materials as described under KZC 83.280.5 Must minimize the size of piles and maximize the spacing between pilings to the extent allowed by site-specific engineering or design considerations
Replacement of 50 percent or more of the decking or 50 percent or more of decking substructure	Must replace any solid decking surface located within the nearshore 30 feet of the pier or dock with a grated surface material that allows a minimum of 40% light transmittance through the material

Other repairs to existing legally established moorage facilities where the nature of the repair is not described in the above subsections shall be considered minor repairs and are permitted, consistent with all other applicable codes and regulations. If cumulative repairs of an existing pier or dock would make a proposed repair exceeds the threshold established in KZC 83.280.5.b, above, the repair proposal shall be reviewed under KZC 83.280 for a new pier or dock.

8. Boatlifts, Boatlift Canopies and Moorage Piles for serving Detached, Attached or Stacked Dwelling Units –

Boatlifts, boatlift canopies and moorage piles may be permitted as an accessory to piers and docks, subject to the following regulations:

Boatlift, Boat Canopy and Moorages Buoy for Detached, Attached or Stacked Dwelling Units (Multi-family)	**Regulations**
Location	Boat lifts shall placed as far waterward of the OHWM as feasible and safe, within the limits of the dimensional standards for piers and docks established in KZC 83.280.5 Bottom of a boatlift canopy shall be elevated above the boatlift to the maximum extent feasible, the lowest edge of the canopy must be a least 4 ft. above the OHWM Moorage piles shall not be closer than 30 ft. from OHWM or any farther waterward than the end of the pier or dock Moorage piles shall be located within 12 ft. of a pier or dock
Maximum Number	1 freestanding or deck-mounted boatlift is allowed per dwelling unit on the subject property. 2 jet ski lifts or 1 fully grated platform lift is permitted per dwelling unit on the subject property.

	2 boatlift canopies or equal to 10 percent of the dwelling units on the subject property, whichever is greater.
Canopy Materials	Must be made of translucent fabric materials. Must not be constructed of permanent structural material.
Fill for Boatlift	Maximum of 2 cubic yards of fill are permitted to anchor a boatlift, subject to the following requirements: • May only be used if the substrate prevents the use of anchoring devices which can be embedded into the substrate • Must be clean • Must consist of rock or pre-cast concrete blocks • Must only be used to anchor the boatlift • Minimum amount of fill is utilized to anchor the boatlift

9. Submittal Requirements - In addition to submitting an application to construct a new, enlarged or replacement pier or dock, the applicant shall submit an assessment of the impacts and measures taken to avoid, minimize, and mitigate impacts. See Section 83.360 KZC for information on mitigation sequencing.

83.290 Marinas and Moorage Facilities Associated with Commercial Uses

1. General –
   a. Marinas shall not be approved in cases where it is reasonably foreseeable that the development or use would require maintenance dredging and/or installation of a breakwater during the life of the development or use.
   b. See KZC 83.370 for structures to be extended waterward of the Inner Harbor Line.
   c. Marinas shall be designed and located according to the following criteria:
      1) Shall not interfere with the public use and enjoyment of the water or create a hazard to navigation;
      2) Shall meet KZC 83.360 for mitigation sequencing; and
      3) Shall be located only at sites with sufficient water depth, adequate navigational and vehicular access, and not adjacent to an outlet of a stream.
2. Setback –

   Marinas and moorage facilities shall comply with the following location standards:

Marinas and Moorage Facilities Associated with Commercial Uses	Minimum Setback Standards
Side property lines	10 ft.
Lot containing a detached dwelling unit	The area defined by a line that starts where the OHWM of the lot intersects the

	side property line of the lot closest to the moorage structure and runs waterward toward the moorage structure and extends at a 30° angle from that side property line. This setback applies whether or not the subject property abuts the lot, but does not extend beyond any intervening overwater structure. This standard shall not apply within the Urban Mixed shoreline environment.
Another moorage structure not on the subject property, excluding adjacent moorage structure that does not comply with required north and south property line setback	25 ft.
Outlet of a stream regulated under KZC 90, including piped streams	Maximum distance feasible while meeting other required setback standards established under this section
Public park	100 feet; or The area defined by a line that starts where the OHWM of the park intersects with the side property line of the park closest to the moorage structure and extends at a 45° angle from the side property line. This setback applies whether or not the subject property abuts the park, but does not extend beyond any intervening over water structure. This standard shall not apply within the Urban Mixed shoreline environment.

3. Number of Moorage Slips –

The City will determine the maximum allowable number of moorages based on the following factors:

1) The suitability of the environmental conditions, such as, but not limited to: the presence of submerged aquatic vegetation, proximity to shoreline associated wetlands, critical nesting and spawning areas, water depth, water circulation, sediment inputs and accumulation, and wave action.

2) The ability of the land upland of the OHWM to accommodate the necessary support facilities.

3) The demand analysis submitted by the applicant to demonstrate anticipated need for the requested number of moorages.

4. General Standards -

a. See KZC 83.370 for required state and federal approval.

b. Structures, other than each moorage structure or public access pier, shall not be waterward of the OHWM. For regulations regarding public access piers, see KZC 83.220.

c. At least two (2) covered and secured waste receptacles shall be provided upland of the OHWM.

d. Utility and service lines located waterward of the OHWM must be below the pier deck. Utility and service lines located upland of the OHWM shall be underground, where feasible.

e. Public restrooms shall be provided upland of the OHWM.

f. At least one (1) pump-out facility for use by the general public shall be provided. This facility must be easily accessible to the general public and clearly marked for public use.

g. Transient moorage may be required as part of a marina if the site is in an area near commercial facilities generating commercial transient moorage demand.

h. Moorage facilities shall be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night.

i. Exterior finish shall be generally non-reflective.

j. Moorage structures must display the street address of the subject property. The address must be oriented to the lake with letters and numbers at least four (4) inches high.

k. See KZC 83.470 Lighting Standards for required lighting.

l. Covered moorage, including boatlift canopies, is not permitted.

m. Aircraft moorage is not permitted, except as associated with an approved float plane landing and mooring facility.

n. Marinas and other moorage facilities associated with commercial uses shall be designed and operated consistent with federal and state water quality laws and established Best Management Practices (BMPs) for Marina Operators, including BMPs for bilge water discharge, hazardous waste, waste oil and spills, sewer management, and spill prevention and response. Rules for spill prevention and response, including reporting requirements, shall be posted on site.

o. Boats moored within marinas shall comply with the mooring restrictions contained in Chapter 14.16 KMC.

5. New Pier or Dock Dimensional Standards –

a. Moorage structures shall 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) Must be designed to preclude moorage in locations that would have insufficient water depth to avoid boats resting at any time of year to on the substrate of the lake.

b. For public access piers, docks or boardwalks associated with public parks and other public facilities see KZC 83.220.5 for allowed width of the structure.

c. Piers and docks shall be the minimum size necessary to meet the needs of the proposed water-dependent use and shall meet the following dimensional and design standards:

New Marinas and Moorage Facilities Associated with Commercial Uses	**Dimensional and Design Standards**

Maximum Width	6 ft. for access ramp portion of pier or dock and primary walkways 8 ft. for ells 4 ft. for fingers, and shall be reduced to 2 feet in those instances where the projection provides secure boat moorage but is not necessary for boat-user access. 6 ft. for float decking attached to a pier. An alternative design in lieu of meeting these requirements may be allowed if approved by other state and federal agencies.
Height of piers, diving boards and railings	Minimum of 1.5 ft above ordinary high water to bottom of pier stringer, except the floating section of a dock and float decking attached to a pier Maximum of 3 ft. above deck for diving boards or similar features above the deck surface Maximum of 3 ft. above deck for safety railing, which shall be an open framework
Decking for piers, docks walkways, ells and fingers	Fully grated or contain other materials that allow a minimum of 40% light transmittance through the material If float tubs for docks preclude use of fully grated decking material, then a minimum of 2 ft. of grating down the center of the entire float shall be provided
Location of ells, fingers and deck platforms	No closer than 50 ft. waterward of the OHWM Within 50 ft. of the OHWM, only access ramp portion of pier or dock is allowed
Pilings	First set of piles located no closer than 18 ft from OHWM Pilings shall be composed of steel, concrete, plastic or untreated wood. Piles shall not be treated with pentachlorophenol, creosote, chromated copper arsenate (CCA) or comparably toxic compounds.
Mitigation	As required through mitigation sequencing in KZC 83.360.

6. Replacement, Additions and Repairs –

a. Replacement - Replacement of marinas or portions thereof shall be considered under the provisions for new marinas established in KZC 83.290.

b. Additions – Proposals involving the modification and/or enlargement of marinas must comply with the following measures:

Additions to Marinas and Moorage Facilities Associated with Commercial Uses	**Requirements**
Addition or enlargement	Must demonstrate that there is a need for the enlargement of an existing pier or dock based upon safety concerns or inadequate depth of water.

Dimensional standards	Enlarged portions must comply with the new pier dimensional standards for pier or dock length and width, height, water depth, location, decking and pilings and for materials.
Decking for piers, docks walkways, ells and fingers	Must convert an area of existing nearshore decking to grated decking equivalent in size to the additional surface coverage that allows a minimum of 40% light transmittance through the material
Mitigation	As determined through Mitigation Sequencing in KZC 83.360 Existing skirting shall be removed and may not be replaced Existing in-water and overwater structures located within 50 feet of the OHWM, except for existing or authorized shoreline stabilization measures or pier or docks, shall be removed at a 1:1 ratio to the area of the addition

c. Repair– Repair proposals which replace only decking or decking substructure and less than 50 percent of the existing pier-support piles must comply with the following:

Repair to Marinas and Moorage Facilities Associated with Commercial Uses	**Requirements**
Replacement piles	Must use materials as described under KZC 83.290.5 Must minimize the size of piles and maximize the spacing between pilings to the extent allowed by site-specific engineering or design considerations
Replacement of 10 percent or more of the decking or decking substructure	Must replace any solid decking surface located within the nearshore 30 feet of the pier or dock with a grated surface material
Repair of the roof structure of existing boathouses or other similar covered moorage	Must use translucent materials

Other repairs to existing legally established marinas where the nature of the repair is not described in the above subsections shall be considered minor repairs and are permitted, consistent with all other applicable codes and regulations. If cumulative repairs of an existing marina would make a

proposed repair exceeds the threshold established in KZC 83.290.5.b, above, the repair proposal shall be reviewed under KZC 83.290 for a new marina.

7. Submittal Requirements - In addition to submitting an application, the applicant shall submit the following as part of a request to construct a new, enlarged, or replacement marina or its associated facilities:

   a. An assessment of the anticipated need for the requested number of moorages and ability of the site to accommodate the proposal, considering such factors as environmental conditions, shoreline configuration, access, and neighboring uses.

   b. An assessment of the impacts and measures taken to avoid, minimize, and mitigate impacts. See KZC 83.360 for mitigation sequencing.

83.300 Shoreline Stabilization

1. General -

   a. The standards in this section apply to all developments and uses in shoreline jurisdiction.

   b. New development or redevelopment shall be located and designed to avoid the need for new or future soft or hard structural shoreline stabilization to the extent feasible.

   c. If structural stabilization is necessary to protect the primary structure, then the feasibility of soft structural measures shall be evaluated prior to consideration of hard structural measures. Soft structural stabilization measures must be used unless the City determines that it is not feasible based on information required in this section and provided by the applicant.

   d. Soft shoreline stabilization may include the use of gravels, cobbles, boulders, and logs, as well as vegetation.

   e. Plate XX provides guidance on different shoreline stabilization measures that may be considered, based upon the unique characteristics of the subject property and shoreline.

   f. During construction or repair work on a shoreline stabilization measure, areas of temporary disturbance within the shoreline setback shall be restored as quickly as feasible to their pre-disturbance condition or better to avoid impacts to the ecological function of the shoreline. Also see KZC 83.430 for in-water construction activity.

   g. The following is a summary of the key requirements found in KZC 83.300.2 through KZC 83.300.7:

Shoreline Stabilization Measures	**Requirements**
Structural and Nonstructural Methods	Nonstructural methods preferred, but if a structural stabilization measure is demonstrated to be needed to protect primary structure, then soft structural stabilization must be considered prior to hard structural stabilization.
New or Enlargement of Hard Shoreline Structural Measures (enlargement includes additions and increases in size, such as height, width, length, or depth, to existing shoreline stabilization measures)	Allowed when existing primary structure is 10 feet or less from OHWM When existing primary structure is greater than 10 feet from OHWM, requires geotechnical report to show need, an evaluation of the feasibility of soft rather than hard structural shoreline stabilization measures and design recommendations for

	minimizing structural shoreline measures. Requires mitigation plantings
Major Repair or Replacement of Hard Shoreline Structural Measures	A major repair is a collapsed or eroded structure or a demonstrated loss of structural integrity, or repair of toe rock or footings; and is more than 50% in continuous linear length; or A major repair is repair to more than 75 percent of the linear length of structure which involves replacement of top or middle course rocks or other similar repair Allowed when existing primary structure is 10 feet or less from OHWM For existing primary structure is more than 10 feet from the OHWM, requires a written narrative that provides a demonstration of need
Minor Repair of Hard Shoreline Stabilization Measure	Does not meet threshold of new, enlarged, major repair or replacement measurement. No geotechnical report or needs assessment required.
New, Enlarged, Repair or Replacement of Soft Shoreline Stabilization Measure	Allowed when existing primary structure is 10 feet or less from OHWM or for repair or replacement. For primary structure greater than 10 feet from the OHWM, new or enlarged requires a written narrative that provides a demonstration of need

2. New or Enlarged Structural Shoreline Stabilization –

a. For the purposes of this section, enlargement of an existing structural stabilization shall include additions to or increases in size (such as height, width, length, or depth). Primary structure includes appurtenances listed under WAC 173-14-040, but not tool sheds, greenhouses, swimming pools, spas and other ancillary residential improvements listed in KZC 83.80.5.

b. When allowed:-

The City may only approve a new or enlarged hard or soft structural stabilization measure in the following circumstances:

1) To protect an existing primary structure, including a detached dwelling unit, in either of the following circumstances:

   a) The existing primary structure is located ten (10) feet or less from the OHWM. For the purposes of the provision, the distance shall be measured to the most waterward location of the primary structure, or

   b) The existing primary structure is located more than ten (10) feet from the OHWM.

   In order to be approved, the applicant must demonstrate the following:

(1) For new or enlarged hard structural stabilization, conclusive evidence, documented by a geotechnical analysis, that the primary structure is in danger from shoreline erosion caused by waves The analysis must show that there is a significant possibility that an existing structure will be damaged within three (3) years as a result of shoreline erosion in the absence of hard structural stabilization measures, or where waiting until the need is immediate results in the loss of opportunity to use measures that would avoid impacts on ecological functions. Where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as three (3) years, the report may still be used to justify more immediate authorization to protect against erosion using soft structural stabilization measures.

(2) For new soft structural stabilization measures, demonstrate need for structural stabilization to protect the new primary structure.

(3) For hard and soft stabilization measures, any on-site drainage issues have been directed away from the shoreline edge prior to considering structural stabilization.

(4) For hard and soft shoreline stabilization measures, nonstructural measures, such as planting vegetation, or installing on-site drainage improvements are shown not to be feasible or sufficient to protect the primary structure.

2) To protect a new primary structure, including a detached dwelling unit, when all of the conditions below apply:

a) For new non water dependant uses, placing the new primary structure farther upland from the OHWM is not feasible or not sufficient to prevent damage to the primary structure,

b) Upland conditions, such as drainage problems and the loss of vegetation, are not causing the erosion;

c) Nonstructural measures, planting vegetation, or installing on-site drainage improvements are shown not to be feasible or sufficient to prevent damage to the primary structure; and

d) The need to protect the new primary structures from potential damage is due to erosion from wave action. For hard structural stabilization measures, a geotechnical report must be submitted demonstrating need. For soft structural stabilization measures, an assessment by a qualified professional must be submitted demonstrating need.

3) To protect projects for the restoration of ecological functions or for hazardous substance remediation projects pursuant to Chapter 70.105D RCW when nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

3. Submittal Requirements for New or Enlarged Structural Stabilization Measures -

In addition to the requirements described in KZC 83.300.2 above, the following shall be submitted to the City for an existing primary structure more than 10 feet from the OHWM or for a new primary structure:

1) For a hard structural shoreline stabilization measure, a geotechnical report prepared by a qualified professional with an engineering degree. The report shall include the following:

a) An assessment of the necessity for hard structural stabilization by estimating time frames and rates of erosion and documenting the urgency associated with the specific situation.

b) An assessment of the cause of erosion, looking at processes occurring both waterward and landward of the OHWM.

2) An assessment prepared by a qualified professional (e.g., shoreline designer or other consultant familiar with lakeshore processes and shore stabilization), containing the following:

a) For a hard structural shoreline stabilization measure, an evaluation of the feasibility of using soft shoreline stabilization measures in lieu of hard structural shoreline stabilization measures. The evaluation shall address the feasibility of implementing options presented in Plate XX based on an assessment of the subject property's characteristics.

b) For a soft structural stabilization measure, an assessment of:

i) The erosion potential resulting from the action of waves or other natural processes operating at or waterward of the OHWM in the absence of the soft structural stabilization.

ii) The feasibility of using nonstructural measures in lieu of soft structural shoreline stabilization measures.

c) For both hard and soft structural shoreline stabilization measures, design recommendations for minimum the sizing of shoreline stabilization materials, including gravel and cobble beach substrates necessary to dissipate wave energy, eliminate scour, and provide long-term shoreline stability.

d) See additional submittal requirements below in subsections 8, 9 and 10 for general submittal requirements, maintenance agreement and general design standards.

4. Replacement or Major Repair of Hard Structural Shoreline Stabilization -

a. For the purposes of this section, major repair or replacement of a hard shoreline stabilization measure shall include the following activities:

1) A repair needed to a portion of an existing stabilization structure that has collapsed, eroded away or otherwise demonstrated a loss of structural integrity, or in which the repair work involves modification of the toe rock or footings, and the repair is 50 percent or greater than the linear length of the shoreline stabilization measure; or

2) A repair to more than 75 percent of the linear length of the existing hard structural shoreline stabilization measure in which the repair work involves replacement of top or middle course rocks or other similar repair activities.

b. When allowed -

The City may only approve a major repair or replacement of an existing hard structural stabilization measure with a hard structural shoreline stabilization measure to protect existing primary structures or principle uses, including detached dwelling units, in either of the following circumstances:

1) The primary structure is located 10 feet or less from the OHWM. For the purposes of the provision, the distance shall be measured to the most waterward location of the primary structure; or

2) For a primary structure located more than 10 feet from the OHWM or a use, conclusive evidence is provided to the City that the primary structure or use is in danger from shoreline erosion caused by waves as required in KZC 83.300.4 below.

5. Submittal Requirements for Major Repairs or Replacements of Hard Stabilization Measures -

The following shall be submitted to the City when the primary structure is located more than 10 feet landward of the OHWM or for a use with no primary structure:

a. Written narrative that provides a demonstration of need shall be submitted. A qualified professional (e.g., shoreline designer or other consultant familiar with lakeshore processes

and shore stabilization), but not necessarily a licensed geotechnical engineer shall prepare a written narrative. The written narrative shall consist of the following:

1) An assessment of the necessity for hard structural stabilization, considering site-specific conditions such as water depth, orientation of the shoreline, wave fetch, and location of the nearest structure. The evaluation shall address the feasibility of implementing options presented in Plate XX, given an assessment of the subject property's characteristics.

2) An assessment of erosion potential resulting from the action of waves or other natural processes operating at or waterward of the OHWM in the absence of the hard structural shoreline stabilization.

3) An assessment of the feasibility of using soft structural stabilization measures in lieu of hard structural shoreline stabilization measures. Soft stabilization may include the use of gravels, cobbles, boulders, and logs, as well as vegetation.

b. Design recommendations for minimizing impacts and ensuring that the replacement or repaired stabilization measure is designed, located, sized, and constructed to assure no net loss of ecological functions.

c. See additional submittal requirements below in subsections 8, 9 and 10 for general submittal requirements, maintenance agreement and general design standards.

6. Minor Repairs of Hard Shoreline Stabilization –

Minor repairs of hard shoreline stabilization include those maintenance and repair activities not otherwise addressed in the subsection above. The City shall allow minor repair activities to existing hard structural shoreline stabilization measures.

7. Repair or Replacement of Soft Shoreline Stabilization and Submittal Requirements –

1. The City shall allow repair or replacement of soft shoreline stabilization.

2. The applicant shall submit to the City design recommendations for minimizing impacts and ensuring that the replacement or repaired stabilization measure is designed, located, sized, and constructed to assure no net loss of ecological functions.

3. See additional submittal requirements below in subsections 8, 9 and 10 for general submittal requirements, maintenance agreement and general design standards.

8. General Submittal Requirements for New, Enlarged, Replacement and Major Repair Measures -–

Detailed construction plans shall be submitted to the City, including the following:

a. Plan and cross-section views of the existing and proposed shoreline configuration, showing accurate existing and proposed topography and OHWM.

b. Detailed construction sequence and specifications for all materials, including gravels, cobbles, boulders, logs, and vegetation. The sizing and placement of all materials shall be selected to accomplish the following objectives:

1) Protect the property and structures from erosion and other damage over the long term, and accommodate the normal amount of alteration from wind- and boat-driven waves;

2) Allow safe passage and migration of fish and wildlife; and

3) Minimize or eliminate juvenile salmon predator habitat.

c. For hard structural stabilization measures when shoreline vegetation is required as part of mitigation, a detailed 5-year vegetation maintenance and monitoring program to include the following:

1) Goals and objectives of the shoreline stabilization plan;

2) Success criteria by which the implemented plan will be assessed;

3) A 5-year maintenance and monitoring plan, consisting of one (1) site visit per year by a qualified professional, with annual progress reports submitted to the Planning Official and all other agencies with jurisdiction;

4) A contingency plan in case of failure; and

5) Proof of a written contract with a qualified professional who will perform the monitoring.

d. Fee for a consultant selected by the City to review the shoreline stabilization plan, the monitoring and maintenance program, the narrative justification of demonstrated need, and drawings. In addition, the Planning Official may require a fee for a consultant to review the geotechnical report and recommendations. In the case of use of a consultant, the applicant shall sign the City's standard 3-party contract.

9. Maintenance Agreement for Hard and Soft Structural Stabilization -

The applicant shall complete and submit a 5-year period maintenance agreement, using the City's standard form, for recording to ensure maintenance of any structural shoreline stabilization measure.

10. General Design Standards - The following design standards shall be incorporated into the stabilization design:

a. Soft structural shoreline stabilization measures shall be used to the maximum extent feasible, limiting hard structural shoreline stabilization measures to the portion or portions of the site where necessary to connect to existing hard shoreline stabilization measures on adjacent properties. The length of hard structural shoreline stabilization connections to adjacent properties shall be minimized to the maximum extent feasible, and extend into the subject property from adjacent properties no more than needed.

b. For enlarged, major repair or replacement of hard structural shoreline stabilization measures, excavation and fill activities associated with the structural stabilization shall be landward of the existing OHWM, except when not feasible due to existing site constraints or to mitigate impacts of hard structural stabilization by increasing shallow water habitat with gravel, rocks and logs.

c. For short-term construction activities, hard and soft structural stabilization measures must minimize and mitigate any adverse impacts to ecological functions by compliance with appropriate timing restrictions, use of best management practices to prevent water quality impacts related to upland or in-water work, and stabilization of exposed soils following construction.

d. For long-term impacts, new, enlarged or major repair or replacement of hard structural shoreline stabilization shall incorporate the following measures into the design wherever feasible.

1) Limiting the size of hard structural shoreline stabilization measures to the minimum necessary, including height, depth, and mass.

2) Shifting hard stabilization measures landward and/or sloping the bulkhead landward to provide some dissipation of wave energy and increase the quality or quantity of nearshore shallow-water habitat.

e. For new and enlarged hard shoreline stabilization, the following additional measures shall be incorporated into the design:

1) To increase shallow-water habitat, install gravel/cobble beach fill waterward of the OHWM, grading slope to a maximum of 1 Vertical (V): 4 Horizontal (H). The material shall be sized and placed to remain stable and accommodate alteration from wind- and boat-driven waves.

2) Plant native riparian vegetation as follows:

a) At least 75 percent of the nearshore riparian area located along the edge of the OHWM shall be planted.

b) The vegetated portion of the nearshore riparian area shall average ten (10) feet in depth from the OHWM, but may be a minimum of 5 feet wide to allow for variation in landscape bed shape and plant placement provided that the total square footage of the area planted equals ten (10) feet along the water's edge.

c) Restoration of native vegetation shall consist of a mixture of trees, shrubs and groundcover and be designed to improve habitat functions. At least 3 trees per 100 linear feet of shoreline and 60% shrubs must be included in the plan.

d) Plant materials must be native and selected from the Kirkland Native Plant List, or other native or shoreline appropriate species approved by the Planning Official or Urban Forester.

e) An alternative planting plan or mitigation measure in lieu of meeting this section shall be allowed if approved by other state and federal agencies. In addition, the City shall accept existing native trees, shrubs and groundcover as meeting the requirements of this section, including vegetation previously installed as part of a prior development activity, provided that the existing vegetation provides a landscape strip at least as effective in protecting shoreline ecological functions as the required vegetation.

f) Standards for vegetation placement are provided in KZC 83.400.

f. Hard and soft shoreline stabilization measures shall be designed to not significantly interfere with normal surface and/or subsurface drainage into Lake Washington, constitute a hazard to navigation or extend waterward more than the minimum amount necessary to achieve effective stabilization.

g. Hard and soft stabilization measures are allowed to have gravel, logs and rocks waterward of the OHWM, as approved by the City and federal and state agencies, to provide enhancement of shoreline ecological functions through creation of nearshore shallow-water habitat.

h. Stairs or other water access measures may be incorporated into the shoreline stabilization, but shall not extend waterward of the shoreline stabilization measure.

i. The shoreline stabilization measures shall be designed to ensure that the measures do not restrict public access or make access unsafe to the shoreline, except where such access is modified under the provisions of KZC 83.420 for public access. Access measures shall not extend farther waterward than the face of the shoreline stabilization structure.

j. See KZC 83.300.11 and 12 below concerning additional design standards for hard structural stabilization and subsection 13 for soft structural stabilization.

11. <u>Specific Design Standards for New or Enlarged Hard Structural Stabilization</u> –

In addition to the general design standards in subsection 10 above-, the following design standards shall be incorporated:

a. Where hard stabilization measures are not located on adjacent properties, the construction of a hard stabilization measure on the site shall tie in with the existing contours of the adjoining properties, as feasible, such that the proposed stabilization will not cause erosion of the adjoining properties.

b. Where hard stabilization measures are located on adjacent properties, the proposed hard stabilization measure may tie in flush with existing hard stabilization measures on adjoining properties, but by no more than as reasonably required. The new hard stabilization measure shall not extend waterward of OHWM, except as necessary to make the connection to the adjoining hard stabilization measures. No net intrusion into the lake and no net creation of upland shall occur with the connection to adjacent stabilization measures.

c. Fill behind hard shoreline stabilization measures shall be limited to an average of one (1) cubic yard per running foot of bulkhead. Any filling in excess of this amount shall be considered a regulated activity subject to the regulations in this Chapter pertaining to fill activities and the requirement for obtaining a shoreline substantial development permit.

12. Specific Design Standards for Replacement of Hard Structural Stabilization –

Replacement hard structural stabilization measures shall not encroach waterward of the OHWM or waterward of the existing shoreline stabilization measure unless the primary structure was constructed prior to January 1, 1992 (RCW 90.58.100.6 and WAC 173.26.241 and WAC 173.26.231.3.j), and there is overriding safety or environmental concerns if the stabilization measure is moved landward of the OHWM. In such cases, the replacement structure shall abut the existing shoreline stabilization structure. All other replacement structures shall be located at or landward of the existing shoreline stabilization structure.

13. Specific Design Standards for Soft Structural Stabilization –

In addition to the general design standards in KZC 83.300.10, the following design standards shall be incorporated:

a. Provide sufficient protection of adjacent properties by tying in with the existing contours of the adjoining properties to prevent erosion at the property line. Proposals that include necessary use of hard structural stabilization measures only at the property lines to tie in with adjacent properties shall be permitted as soft structural shoreline stabilization measures. The length of hard structural stabilization connections to adjacent properties shall be the minimum needed and extend into the subject property from adjacent properties as reasonably required.

b. Size and arrange any gravels, cobbles, logs, and boulders so that the improvement remains stable in the long-term and dissipate wave energy, without presenting extended linear faces to oncoming waves.

14. Expansion of SMA Jurisdiction from Shift in OHWM -

If a shoreline stabilization measure from any action required by this Chapter or intended to improve ecological functions results in shifting the OHWM landward of the pre-modification location that expands the shoreline jurisdiction onto any property other than the subject property, then as part of the shoreline permit process found in KZC 141:

a.) The City shall notify the affected property owner in writing, and

b.) The City may propose to grant relief for the affected property owners from applicable shoreline regulations resulting in expansion of the shoreline jurisdiction. The proposal to grant relief must be submitted to the Department of Ecology with the shoreline permit under the procedures established in KZC 141.70.5. If approved, notice of the relief, in a form approved by the City Attorney, shall be recorded on the title of the affected property in the King County Office.

83.310 Breakwaters, Jetties, Groins

1. Breakwaters, jetties, and groins are not permitted in the Natural, Urban Conservancy, or Residential – L shoreline environments. Breakwaters, jetties, and groins may only be permitted in other shoreline environments where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purpose.

2. The City will permit the construction and use of a breakwater, jetty or groin only if:

a. The structure is essential to the safe operation of a moorage facility or the maintenance of other public water-dependent uses, such as swimming beaches;

b. The City determines that the location, size, design, and accessory components of the moorage facility or other public water-dependent uses to be protected by the breakwater are distinctly desirable and within the public interest; and

c. The benefits to the public provided by the moorage facility or other public water-dependent uses protected by the breakwater outweigh any undesirable effects or adverse impacts on the environment or nearby waterfront properties.

3. Design Standards

a. All breakwaters, jetties or groins must be designed and constructed under the supervision of a civil engineer or similarly qualified professional. As part of the application, the engineer or other professional designing the breakwater, jetty or groin must certify that it is the smallest feasible structure to meet the requirements of this Chapter and accomplish its purpose and that the design will result in the minimum feasible adverse impacts upon the environment, nearby waterfront properties and navigation.

b. Breakwaters may only use floating or open-pile designs.

83.320 Dredging and Dredge Material Disposal

1. New development shall be sited and designed to avoid or, if that is not feasible, to minimize the need for new and maintenance dredging.

2. Dredging waterward of the OHWM may be allowed for only the following purposes:

a. To establish, expand, relocate or reconfigure navigation channels and basins where necessary for assuring safe and efficient accommodation of existing navigational uses and then only when significant ecological impacts are minimized and when mitigation is provided. Maintenance dredging of established navigation channels and basins must be restricted to maintaining previously dredged and/or existing authorized location, depth, and width.

b. To maintain the use of existing private or public boat moorage, water-dependent use, or other public access use. Maintenance dredging is restricted to maintaining previously dredged and/or existing authorized location, depth, and width.

c. To restore ecological functions, provided the applicant can demonstrate a clear connection between the proposed dredging and the expected environmental benefits to water quality and/or fish and wildlife habitat.

d. To obtain fill or construction material when necessary for the restoration of ecological functions. Dredging waterward of the OHWM for the primary purpose of obtaining fill or construction materials is not permitted under other circumstances. When allowed, the site where the fill is to be placed must be located waterward of the OHWM. The project must be associated with a significant habitat enhancement project.

3. Depositing dredge materials waterward of the OHWM shall only be allowed in approved sites, only when the material meets or exceeds state pollutant standards, and only for the purposes of fish or wildlife habitat improvement or permitted beach enhancement.

4. Dredging Design Standards –

a. All permitted dredging must be the minimum area and volume necessary to accommodate the existing or proposed use, and must be implemented using practices that do not exceed state water quality standards.

b. Dredging projects shall be designed and carried out to prevent direct and indirect impacts on adjacent properties.

5. Submittal Requirements -

The following information shall be required for all dredging applications:

a. A description of the purpose of the proposed dredging.

b. A detailed description of the existing physical character, shoreline geomorphology and biological resources provided by the area proposed to be dredged, including:

1) A site plan map outlining the perimeter of the proposed dredge area. The map must also include the existing bathymetry depths based on the OHWM and have data points at a minimum of 2-foot depth increments.

2) A habitat survey identifying aquatic vegetation, potential native fish spawning areas, or other physical or biological habitat parameters.

2) Information on the stability of lakebed adjacent to proposed dredging area.

3) Information on the composition of the material to be removed.

c. A description of:

1) Dredging procedure, including length of time it will take to complete dredging, method of dredging, and amount of material removed.

2) Where the materials will be placed to allow for sediment to settle, by what means the materials will be transported away from the dredge site, and specific approved land or open-water disposal site.

3) Plan for anticipated future maintenance dredging and disposal, including frequency and quantity, for at least a 20-year period.

d. Copies of state and federal approvals.

83.330 Land Surface Modification

1. General – The following standards must be met for any approved land surface modification:

a. Land surface modification within required shoreline setback shall only be permitted upon approval of a land surface modification permit, under the provisions established in KMC Title 29.

b. The land surface modification shall be consistent with the provisions of this Chapter, including, but not limited to, the regulations regarding streams, wetlands and their buffers, geologically hazardous areas, shoreline vegetation, and trees.

c. The land surface modification is consistent with the provisions of the most current edition of the Public Works Department's Pre-Approved Plans and Policies.

d. All excess material resulting from land surface modification shall be disposed of in a manner that prevents the material entering into a waterbody through erosion or runoff. Where large quantities of plants are removed by vegetation control activities authorized under this section, plant debris shall be collected and disposed of in an appropriate location located outside of the shoreline setback.

e. Areas disturbed by permitted land surface modification in the shoreline setback shall be stabilized with approved vegetation.

f. All materials used as fill shall be non-dissolving and non-decomposing. Fill material shall not contain organic or inorganic material that would be detrimental to water quality or existing habitat, or create any other significant adverse impacts to the environment.

g. The land surface modification must be the minimum necessary to accomplish the underlying reason for the land surface modification.

h. Except as is necessary during construction, dirt, rocks and similar materials shall not be stockpiled on the subject property. If stockpiling is necessary during construction, it must be located as far as feasible from the lake and strictly contained to prevent erosion and runoff.

2. Permitted Activities -

a. Land surface modification is prohibited within the shoreline setback, except for the following:

1) For the purpose of shoreline habitat and natural systems enhancement projects, setting

back shoreline stabilization measures or portions of shoreline stabilization measures from the OHWM, or soft structural shoreline stabilization measures under a plan approved by the City.

2) As authorized by a valid shoreline permit or approval issued by the City.

3) Associated with the installation of improvements located within the shoreline setback or waterward of the OHWM, as permitted under KZC 83.190.2.

4) Removal of prohibited vegetation.

5) As performed in the normal course of maintaining existing vegetation on a lot associated with existing buildings, provided such work:

   a) Does not modify any drainage course.

   b) Does not involve the importation of fill material, except as needed for mulch or soil amendment.

   c) Does not involve removal of native vegetation or vegetation installed as part of an approved restoration or enhancement plan, unless approved by the Planning Official.

   d) Does not result in erosion of the shoreline or undermine stability of neighboring properties.

   e) Does not result in the compaction of existing soils in a manner that significantly decreases the ability of the soil to absorb rainfall.

   f) Is the minimum extent necessary to reasonably accomplish the maintenance activity.

6) Correction of storm drainage improvements when supervised by the Department of Public Works.

7) As necessary to maintain or upgrade the structural safety of a legally established structure.

8) For exploratory excavations under the direction of a professional engineer licensed in the state of Washington, as long as the extent of the land surface modification does not exceed the minimum necessary to obtain the desired information.

b. Land surface modification outside of the shoreline setback is regulated as land surface modifications throughout the City. See KMC Title 29 for those regulations.

83.340 Fill

1. Fill shall be permitted only where it is demonstrated that the proposed action will not:

   a. Result in significant damage to water quality, fish, aquatic habitat, and/or wildlife habitat; or

   b. Adversely alter natural drainage and circulation patterns, currents, or stream flows, or significantly reduce floodwater-holding capabilities.

2. Fills landward and waterward of the OHWM shall be designed, constructed, and maintained to prevent, minimize, and control all material movement, erosion, and sedimentation from the affected area.

3. Fills waterward of the OHWM shall be permitted only:

   a. In conjunction with an approved water-dependent use or public access use, including maintenance of beaches or

   b. As part of an approved mitigation or restoration project.

4. Any placement of materials landward of the OHWM shall comply with the provisions in KZC 83.330 for land surface modification.

5. No refuse disposal sites, solid waste disposal sites, or sanitary fills shall be permitted.

83.350 Shoreline Habitat and Natural Systems Enhancement Projects

1. Purpose - Shoreline habitat and natural systems enhancement projects include those activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines.

2. Covered Activities – The following actions are allowed under this section, provided they first meet the purpose stated in KZC 83.850.1 above:

   a. Establishment or enhancement of native vegetation.

   b. Removal of non-native or invasive plants upland of the OHWM, including only those identified as noxious weeds on King County's published Noxious Weed List, unless otherwise authorized by the City.

   c. Conversion of hard structural shoreline stabilization to soft shoreline stabilization, including associated clearing, dredging and filling necessary to implement the conversion, provided that the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline.

   d. Implementation of any project or activity identified in the City's Restoration Plan.

   e. Implementation of any project or activity identified in the *Final WRIA 8 Chinook Salmon Conservation Plan and related documents.*

General Regulations

83.360 No Net Loss Standard and Mitigation Sequencing

1. General –

   a. If specific standards, such as setbacks, pier dimensions and tree planting requirements, are provided in this Chapter, then the City shall not require additional mitigation sequencing analysis under these provisions.

   b. In the following circumstances, the applicant shall provide an analysis of measures taken to mitigate environmental impacts:

      a) Where specific regulations for a proposed use or activity are not provided in this Chapter;

      b) Where either a conditional use or variance application are proposed;

      c) Where the standards contained in this Chapter require an analysis of the feasibility of or need for an action or require analysis to determine whether the design has been minimized in size; and

      d) Where the standards provide for alternative compliance or mitigation measures.

   c. Under WAC Chapter 173-26, uses and shoreline modifications along Kirkland's shoreline shall be designed, located, sized, constructed and/or maintained to achieve no net loss of shoreline ecological functions.

   d. Maintenance activities shall be conducted in a manner that minimizes impacts to fish, wildlife, and their associated habitat and utilizes best management practices.

   e. Where evaluating the feasibility of a proposed action, the City shall consider whether the cost of avoiding disturbance is substantially disproportionate as compared to the environmental impact of the proposed disturbance, including any continued impacts on functions and values over time.

   f. Where mitigation is required, the City shall consider alternative mitigation measures that are proposed by the applicant that may be less costly than those prescribed in this Chapter, provided that the alternatives are as effective in meeting the requirements of no net loss.

2. Mitigation Analysis - In order to assure that development activities contribute to meeting the no net loss provisions by avoiding, minimizing, and mitigating for adverse impacts to ecological functions or ecosystem-wide processes, an applicant required to complete a mitigation analysis pursuant to KZC 83.360.1 above, shall utilize the following mitigation sequencing guidelines, which appear in order of preference, during the design, construction and operation of the proposal:

   a. Avoiding the impact altogether by not taking a certain action or parts of an action;

   b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;

   c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

   d. Reducing or eliminating the impact over time by preservation and maintenance operations;

   e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and

   f. Monitoring the impact and the compensation projects and taking appropriate corrective measures.

   Failure to demonstrate that the mitigation sequencing standards have been met may result in permit denial. The City may request necessary studies by qualified professionals to determine compliance with this standard and mitigation sequencing.

83.370 Federal and State Approval

1. All work at or waterward of the OHWM requires permits or approvals from one or more of the following state and federal agencies: U.S. Army Corps of Engineers, Washington Department of Fish and Wildlife, Washington Department of Natural Resources, or Washington Department of Ecology.
2. Documentation verifying necessary state and federal agency approvals must be submitted to the City prior to issuance of a building permit, including shoreline exemption. All activities within shoreline jurisdiction must comply with all other applicable laws and regulations.
3. If structures are proposed to extend waterward of the inner harbor line, the applicant must obtain an aquatic use authorization from the Washington State Department of Natural Resources and submit proof of authorization with submittal of a Building Permit.

83.380 Shoreline Setback Reduction

1. Improvements permitted within the Shoreline Setback - See standards contained in KZC Section 83.190.2.
2. Shoreline Setback Reductions –
    a. In the Residential – L shoreline environment, the shoreline setback may be reduced by two (2) feet if subject to the Historic Preservation provisions of KMC 22.28.048, but in no case closer than 25 feet with the exception in the Residential L - shoreline environment south of the Lake Ave West Street End where the minimum shoreline setback is 15 feet.
    b. The required shoreline setback may be reduced to a minimum of 25 feet when setback reduction impacts are mitigated using a combination of the mitigation options provided in the chart below to achieve an equal or greater protection of lake ecological functions. In the portion of the Residential-L environment located south of the Lake Ave W Street End Park, the required shoreline setback may be reduced to a minimum of 15 feet. The following standards shall apply to any reduced setback:
        1) The minimum setback that may be approved through this reduction provision is 25 feet in width, except that properties in the Residential L – shoreline environment south of the Lake Street Ave Street End may reduce to a minimum setback of 15 feet. Any further setback reduction below 25 feet or 15 feet, respectively, in width shall require approval of a shoreline variance application.
        2) The City shall accept previous actions that meet the provisions established in the setback reduction option chart in KZC 83.380.d. below as satisfying the requirements of this section, provided that all other provisions are completed, including but not limited to the agreement noted in Section 83.380.2.b.4 are completed. The reduction allowance for previously completed reduction actions may only be applied once on the subject property.
        3) Prior to issuance of a certificate of occupancy or final inspection, the applicant shall provide a final as-built plan of any completed improvements authorized or required under this subsection.
        4) Applicants who obtain approval for a reduction in the setback must record the final approved setback and corresponding conditions, including maintenance of the conditions throughout the life of the development, unless otherwise approved by the City, in a form acceptable to the City Attorney, and recorded with the King County Recorder's Office. The applicant shall provide land survey information for this purpose in a format approved by the Planning Official.
        5) The shoreline setback reduction mechanisms shall not apply within the Natural Environment.

c. The reduction allowance shall be applied to the required shoreline setback. For instance, if a reduction is proposed in the Residential – L environment, where the shoreline setback requirement is 30% of the average parcel depth, the shoreline setback could be reduced to 20% of the average parcel depth, but in no case less than 25 feet, if Reduction Options Item 1 in the chart below is used.

d. The chart below describes the setback reduction options:

Shoreline Setback Reduction Options		**Reduction Allowance**	
		Standard Reduction (min. 25' setback)	**Residential-L, south of Lake Ave W Street End Park (min. 15' setback)**
Water Related Conditions or Actions			
1	Presence of non-structural or soft structural shoreline stabilization measures located at, below, or within 5 feet landward of the lake's OHWM along at least 75 percent of the linear lake frontage of the subject property. This can include the removal of an existing hard structural shoreline stabilization measure and subsequent restoration of the shoreline to a natural or semi-natural state, including restoration of topography, and beach/substrate composition. This option cannot be used in conjunction with Option #2 below	Reduce required setback by 15 percentage points, or in cases where the required setback is 60' reduce setback by 30 feet	Reduce required setback by 15 feet
2	Presence of non-structural or soft structural shoreline stabilization measures located at, below, or within 5 feet landward of the lake's OHWM along at least 15 linear feet of the lake frontage of the subject property. This may include the removal of an existing hard structural shoreline stabilization measure and subsequent restoration of the shoreline to a natural or semi-natural state, including creation or enhancement of nearshore shallow-water habitat, beach/substrate composition. This option cannot be used in conjunction with Option #1 above;	Reduce required setback by 5 percentage points, or in cases where the required setback is 60' reduce setback by 10 feet	Reduce required setback by 5 feet
3	Opening of previously piped on-site watercourse to allow potential rearing opportunities for anadromous fish for a minimum of 25 feet in length. Opened watercourses must be provided with a native planted buffer at least 5 feet wide on both side of the stream, and must not encumber adjacent properties with a 5 foot wide buffer without express written permission of the adjacent property owner. A qualified professional must design opened watercourses. The opened watercourse shall be exempt from the buffer provisions of KZC 83.490. The opened watercourse is exempt from the buffer requirements and standards of KZC 83.510.	Reduce required setback by 5 percentage points, or in cases where the required setback is 60' reduce setback by 4 feet	Reduce required setback by 5 feet

Shoreline Setback Reduction Options		Reduction Allowance	
		Standard Reduction (min. 25' setback)	**Residential-L, south of Lake Ave W Street End Park (min. 15' setback)**
4	Hard structural shoreline stabilization measure is setback from the OHWM between 2 ft. to 4 ft based on feasibility and existing conditions and/are sloped at a maximum 3 Vertical (V): 1 Horizontal (H) angle to provide dissipation of wave energy and increase the quality or quantity of nearshore shallow-water habitat.	Reduce required setback by 5 percentage points, or in cases where the required setback is 60' reduce setback by 4 feet	Reduce required setback by 5 feet
5	Soft structural shoreline stabilization measures are installed waterward of the OHWM. They may include the use of gravels, cobbles, boulders, and logs, as well as vegetation. The material shall be of a size and placed to remain stable and accommodate alteration from wind- and boat-driven waves and shall be graded to a maximum slope of 1 Vertical (V): 4 Horizontal (H).	Reduce required setback by 2 percentage points, or in cases where the required setback is 60' reduce setback by 4 feet	Reduce required setback by 2 feet
Upland Related Conditions or Actions			
6	Installation of biofiltration/infiltration mechanisms in lieu of piped discharge to the lake, such as mechanisms that infiltrate or disperse surface water on the surface of the subject property, These mechanisms shall be sized to store a minimum of 70% of the annual volume of runoff water from the subject property, for sites with poor soils, or 99% of the annual volume of runoff water from the subject property, for sites with well-draining soils. This mechanism shall apply to sites where the total new or replaced impervious surface is less than or equal to 5,000 square feet. The mechanisms shall be designed to meet the requirements in the City's current surface water design manual.	Reduce required setback by 2 percentage points, or in cases where the required setback is 60' reduce setback by 4 feet	Reduce required setback by 2 feet
7	Increasing the width of the required landscape strip within the reduced shoreline setback a minimum of 5 additional feet in width.	Reduce required setback by 2 percentage points, or in cases where the required	Reduce required setback by 2 feet

Shoreline Setback Reduction Options		Reduction Allowance	
		Standard Reduction (min. 25' setback)	**Residential-L, south of Lake Ave W Street End Park (min. 15' setback)**
		setback is 60' reduce setback by 4 feet	
8	Installation of pervious material for all pollution generating surfaces such as driveways, parking or private roads that allows water to pass through at rates similar to pre-developed conditions. Excluded from this provision are the vehicular easement roads, such as 5th Ave West or Lake Ave W in the Residential – L shoreline environment.	Reduce required setback by 2 percentage points, or in cases where the required setback is 60' reduce setback by 4 feet	Reduce required setback by 2 feet
9	Limiting the lawn area within the shoreline setback to no more than 50 percent of the reduced setback area.	Reduce required setback by 2 percentage points, or in cases where the required setback is 60' reduce setback by 4 feet	Reduce required setback by 2 feet
10	Preserving or restoring at least 20 percent of the total lot area outside of the reduced setback and any critical areas and their associated buffers as native vegetation.	Reduce required setback by 2 percentage points, or in cases where the required setback is 60' reduce setback by 4 feet	Reduce required setback by 2 feet

83.390 Site and Building Design Standards

1. Water-enjoyment and non-water oriented commercial and recreational uses shall contain the following design features to provide for the ability to enjoy the physical and aesthetic qualities of the shoreline:

   a. Buildings are designed with windows that orient toward the shoreline.

   b. Buildings are designed to incorporate outdoor areas such as decks, patios, or viewing platforms that orient toward the shoreline.

   c. Buildings are designed with entrances along the waterfront façade and with connections between the building and required public pedestrian walkways.

   d. Service areas are located away from the shoreline.

   e. Site planning includes public use areas along waterfront public pedestrian walkways, if required under the provisions established in KZC 83.420, that will encourage pedestrian activity, including but not limited to:

      1) Permanent seating areas;

      2) Vegetation, including trees to provide shade cover; and

      3) Trash receptacles.

2. Exemptions – The following are exempt from the requirements of KZC 83.380.d.1:

   a) Non-water oriented commercial and recreational uses that are located on the east side of Lake Washington Blvd. NE/Lake Street or on the east side of 98th Avenue NE.

   b) Non-water oriented commercial and recreational uses where there is an intervening development between the shoreline and the subject property.

3. Buildings shall not incorporate materials that are reflective or mirrored.

83.400 Tree Management and Vegetation in Shoreline Setback

1. Tree Retention - – The following provisions shall apply to significant trees located within the shoreline jurisdiction, in addition to the provisions contained in Chapter 95 KZC. Provisions contained in Chapter 95 KZC that are not addressed in this section continue to apply.

   To maintain the ecological functions that trees provide to the shoreline environment, significant trees shall be retained or, if removed, the loss of shoreline ecological functions shall be mitigated for, subject to the following standards:

   a. For tree removal in the shoreline setback when no development activity is proposed or in progress, the following tree replacement standards shall apply:

      1) Healthy, diseased or nuisance trees that are removed or fallen trees in the shoreline setback shall be replaced as follows:

Removed Tree Type	**Replacement Requirement**
1 conifer tree less than 24 inches in diameter as measured at breast height	For removal of conifer tree up to 12” in diameter replace with: 1) 1 native conifer tree at least 6 feet in height measured from existing grade and 2) plant at least 40 square feet of native riparian vegetation or plant 1 additional tree. Riparian area shall contain at least 60% shrubs and be a minimum of 3 feet wide in all dimension at the time of planting.

	From removal of conifer tree greater than 12” in diameter but less than 24” in diameter, same replacement requirements as for conifer tree 12” in diameter or less, but riparian vegetation area shall be at least 80 square feet at the time of planting.
1 deciduous tree less than 24 inches in diameter as measured at breast height	For removal of deciduous tree up to 12” in diameter replace with: 1) 1 deciduous tree at least 2” in caliper measured 6” above existing grade or 1 native conifer tree at least 6 feet in height measured from existing grade; and 2) plant at least 40 square feet of native riparian vegetation or plant 1 additional tree. Riparian area shall contain at least 60% shrubs and be a minimum of 3 feet wide in all dimension at the time of planting. For removal of deciduous tree greater than 12” in diameter but less than 24” in diameter, same replacement requirements as for deciduous tree 12” in diameter or less, but riparian vegetation area shall be at least 80 square feet at the time of planting.
1 conifer or deciduous tree 24 inches in diameter or greater as measured at breast height	Only tree meeting the criteria found in KZC 95 for a nuisance or hazard tree may be removed. A report, prepared by a qualified professional certified arborist, must be submitted showing how tree meets the criteria. The City arborist shall make the final determination if tree meets the criteria and may be removed. If the City arborist approved removal of the tree, tree replacement shall be: For removal of 1 conifer tree, replace with 2 native confer trees at least 6 feet in height at the time of planting. For removal of 1 deciduous tree, replace with 2 trees of either type. Native conifer tree shall be at least 6 feet in height and deciduous tree shall be at least 2” in caliper measured 6” above existing grade at the time of planting.

2) An alternative replacement option shall be approved if an applicant can demonstrate that:

   a) It is not feasible to plant all of the required mitigation trees in the shoreline setback of the subject property, given the existing tree canopy coverage and location of trees on the property, the location of structures on the property, and minimum spacing requirements for the trees to be planted, or

   b) The required tree replacement will obstruct existing views to the lake, at the time of planting or upon future growth, which cannot otherwise be mitigated through tree

placement or maintenance activities. The applicant shall be responsible for providing sufficient information to the City to determine whether the tree replacement will obstruct existing views to the lake.

The alternate replacement option must be equal or superior to the provisions of this section in accomplishing the purpose and intent of maintaining shoreline ecological functions and processes. This may include, but shall not be limited to, a riparian restoration plan consisting of at least 60% shrubs and some groundcovers selected from the Kirkland Native Plant List that shall equal at a minimum 80 square feet for each tree to be replanted. The applicant shall submit a planting plan to be reviewed by the Planning Official or Urban Forester, who may approve, approve with conditions, or deny the request.

If the alternative plan is consistent with the standards provided in this subsection, the Planning Official or Urban Forester shall approve the plan or may impose conditions to the extent necessary to make the plan consistent with the provisions. If the alternative mitigation is denied, the applicant shall be informed of the deficiencies that caused its disapproval so as to provide guidance for its revision and re-submittal.

3) In circumstances where the proposed tree removal includes a tree that was required to be planted as a replacement tree under the provisions of this subsection or as part of the required vegetation in the shoreline setback established in subsection KZC 83.400.4 below, the required tree replacement shall be addressed under the provisions of below, which requires only a 1:1 replacement.

4) For required replacement trees, a planting plan showing the location, size and species of the new trees is required to be submitted and approved to by the Planning Official. All replacement trees in the shoreline setback must be selected from the Kirkland Native Plant List, or other native or shoreline appropriate species approved by the Planning Official or Urban Forester.

b. For tree removal in the shoreline setback when development activity is proposed or in progress.

1) <u>Submittal Requirements in the Shoreline Setback</u> –

a) A site plan showing the approximate location of significant trees, their size (DBH) and their species, along with the location of existing structures, driveways, access ways and easements and the proposed improvements.

b) An arborist report stating the size (DBH), species, and assessment of health of all significant trees located within the shoreline setback. This requirement may be waived by the Planning Official if it is determined that proposed development activity will not potentially impacts significant trees within the shoreline setback.

2) <u>Tree Retention Standards in the Shoreline Setback</u> - Within the shoreline setback, existing significant trees shall be retained, provided that the trees are determined to be healthy and windfirm by a qualified professional, and provided the trees can be safely retained consistent with the proposed development activity. The Planning Official is authorized to require site plan alterations to retain significant trees in the shoreline setback. Such alterations include minor adjustments to the location of building footprints, adjustments to the location of driveways and access ways, or adjustment to the location of walkways, easements or utilities. The applicant shall be encouraged to retain viable trees in other areas on-site.

3) <u>Replanting Requirements in the Shoreline Setback</u> –

a) If the Planning Official approves removal of a significant tree in the shoreline setback area, then the tree replacement requirements of KZC 83.400.1.a above shall be met. See alternative mitigation option in subsection 3) c. below that may be proposed.

b) For required replacement trees, a planting plan showing location, size and species of the new trees is required. All replacement trees in the shoreline setback must be selected from the Kirkland Native Plant List, or other native or shoreline appropriate species approved by the Planning Official or Urban Forester.

c) An alternative mitigation option may be approved if an applicant can demonstrates that:

i. It is not feasible to plant all of the required mitigation trees on the subject property, given the existing tree canopy coverage and location of trees on the property, the location of structures on the property, and minimum spacing requirements for the trees to be planted., or

ii. The required tree replacement will obstruct existing views to the lake, at the time of planting or upon future growth, which cannot otherwise be mitigated through tree placement or maintenance activities. The applicant shall be responsible for providing sufficient information to the City to determine whether the tree replacement will obstruct existing views to the lake.

The alternate mitigation must be equal or superior to the provisions of this section in accomplishing the purpose and intent of maintaining shoreline ecological functions and processes. This may include, but shall not be limited to, a riparian restoration plan consisting of at least 60% shrubs, perennials and groundcovers selected from the Kirkland Native Plant List that shall equal at minimum 80 square feet for each tree to be replanted. The applicants shall submit a planting plan to be reviewed by the Planning Official or Urban Forester, who may approve, approve with conditions, or deny the request.

If the alternative plan is consistent with the standards provided in this subsection, the Planning Official or Urban Forester shall approve the plan or may impose conditions to the extent necessary to make the plan consistent with the provisions. If the alternative mitigation is denied, the applicant shall be informed of the deficiencies that caused its disapproval so as to provide guidance for its revision and re-submittal.

2. Tree Pruning - Non-destructive thinning of lateral branches to enhance views or trimming, shaping, thinning or pruning of a tree necessary to its health and growth is allowed, consistent with the following standards:

a. In no circumstance shall removal of more than one-third (1/3) of the original crown be permitted;

b. Pruning shall not include topping, stripping of branches or creation of an imbalanced canopy;

c. Pruning shall retain branches that overhang the water to the maximum extent feasible

3. Required Vegetation in Shoreline Setback – Riparian vegetation contributes to shoreline ecological functions in a number of different ways, including maintaining temperature, removing excessive nutrients and toxic compounds, attenuating wave energy, removing and stabilizing sediment and providing woody debris and other organic matter. In order to minimizing potential impacts to shoreline ecological functions from development activities, the following shoreline vegetation standards are required:

a. For properties that do not comply with the shoreline vegetation standards contained in this subsection, refer to KZC 83.550 to determine when compliance is required.

b. Minimum Vegetation Standard Compliance –

1.) Location –

a) Water-dependent Uses or Activities - Those portions of water-dependent development that require improvements adjacent to the water's edge, such as fuel stations for retail establishments providing gas sales, haul-out areas for retail

establishments providing boat and motor repair and service, boat ramps for boat launches, swimming beaches or other similar activities shall plant native vegetation on portions of the nearshore riparian area located along the water's edge that are not otherwise being used for the water-dependent activity.

b) All Other Uses - The applicant shall plant native vegetation, as necessary, in at least 75 percent of the nearshore riparian area located along the water's edge.

2) Planting Requirements –

a) For uses other than those list below in KZC 83.400.2) b), the vegetated portion of the nearshore riparian area shall average 10 feet in depth from the OHWM, but may be a minimum of 5 feet wide to allow for variation in landscape bed shape and plant placement. Total square feet of landscaped area shall be equal to a continuous 10-foot wide area.

b) For Detached, Attached or Stacked Dwelling Units within the Residential – M/H shoreline environment, the vegetated portion of the nearshore riparian area shall average 15 feet in depth from the OHWM. Total square feet of landscaped area shall be equal to a continuous 15-foot wide area.

c) The public access walkway required under KZC 83.420 may extend into the required landscape strip as necessary to meet the public pedestrian access requirements, provided that the overall width of the landscape strip is maintained.

d) Installation of native vegetation shall consist of a mixture of trees, shrubs and groundcover and be designed to improve habitat functions. At least 3 trees per 100 linear feet of shoreline must be included in the plan, with portions of a tree rounded up to the next required tree. At least 60 % of the landscape bed shall consist of shrubs.

e) Plant materials must be native and selected from the Kirkland Native Plant List, or other native or shoreline appropriate species approved by the Planning Official or Urban Forester.

c. Use of Existing Vegetation - The City shall accept existing native trees, shrubs and groundcover as meeting the requirements of this subsection, including vegetation previously installed as part of a prior development activity, provided that the existing vegetation provides a landscape strip at least as effective in protecting shoreline ecological functions as the required vegetation. The City may require the applicant to plant trees, shrubs, and groundcover according to the requirements of this subsection to supplement the existing vegetation in order to provide a buffer at least as effective as the required buffer.

d Landscape Plan Required - The applicant shall submit a landscape plan that depicts the quantity, location, species, and size of plant materials proposed to comply with the requirements of this subsection, and shall address the plant installation and maintenance requirements set forth in KZC 95. Plant materials shall be identified with both their scientific and common names. Any required irrigation system must also be shown.

e. Vegetation Placement – When required either by this subsection or as a mitigation measure, such as for a new pier or dock or structural shoreline stabilization measure, vegetation selection and placement shall comply with the following standards:

1) Vegetation shall be selected and positioned on the property so as not to obscure the public view within designated view corridors from the public right-of-way to the Lake and the shoreline on the opposite side of the Lake at the time of planting or upon future growth.

2) Vegetation may be selected and positioned to maintain private views to the water by clustering vegetation in a selected area, provided that the minimum landscape standard is met, unless alternative compliance is approved.

f. Alternative Compliance - Vegetation required by this subsection shall be installed unless the applicant demonstrates one of the following:

1) The vegetation will not provide shoreline ecological function due to existing conditions, such as the presence of extensive shoreline stabilization measures that extend landward from the OHWM; or

2) It is not feasible to plant all of the required vegetation on the subject property, given the existing tree canopy coverage and location of trees on the property, the location of structures on the property, or minimum spacing requirements for the vegetation to be planted; or

3) The vegetation will substantially interfere with the use and enjoyment of the portion of the property located between the primary structure and OWHM, such as the existing structure is located in very close proximity to the OHWM; the area in between the primary structure and the OHWM is encumbered by a sanitary sewer or public pedestrian access easement or other constraining factors; or

4) The required vegetation placement will obstruct existing views to the lake, at the time of planting or upon future growth, which cannot otherwise be mitigated through placement or maintenance activities. The applicant shall be responsible for providing sufficient information to the City to determine whether the vegetation placement will obstruct existing views to the lake.

The alternate measures will be equal or superior to the provisions of this subsection in accomplishing the purpose and intent of maintaining and improving shoreline ecological functions and processes.

Requests to use alternative measures shall be reviewed by the Planning Official who may approve, approve with conditions, or deny the request. Cost of producing and implementing the alternative plan, and the fee to review the plan by City staff or the City's consultant shall be borne by the applicant.

If the alternative plan is consistent with the standards provided in this subsection, the Planning Official shall approve the plan or may impose conditions to the extent necessary to make the plan consistent with the provisions. If the alternative mitigation is denied, the applicant shall be informed of the deficiencies that caused its disapproval so as to provide guidance for its revision and re-submittal.

4. Other Standards

a. For other general requirements, see Chapter 95 KZC, Tree Management and Landscaping Requirements.

b. The applicant is encouraged to make significant trees removed under these provisions available for City restoration projects, as needed.

5. Responsibility for Regular Maintenance -

a. The applicant, landowner, or successors in interest shall be responsible for the regular maintenance of vegetation required under this section. Plants that die must be replaced in kind or with similar plants contained on the Native Plant List, or other native or shoreline appropriate species approved by the Planning Official or Urban Forester.

b. All required vegetation must be maintained throughout the life of the development. Prior to issuance of a certificate of occupancy or final inspection, the proponent shall provide a final as-built landscape plan and a recorded agreement, in a form approved by the City Attorney, to maintain and replace all vegetation that is required by the City.

83.410 View Corridors

1. General - Development within the shoreline areas located west of Lake Washington Boulevard and Lake Street South shall include public view corridors that provide the public with an

unobstructed view of the water. The intent of the corridor is to provide an unobstructed view from the adjacent public right-of-way to the lake and the shoreline on the opposite side of the lake.

2. Standards -

   a. For properties lying waterward of Lake Washington Boulevard and Lake Street South, a minimum view corridor of thirty (30) percent of the average parcel width must be maintained. A view of the shoreline edge of the subject property shall be provided if existing topography, vegetation, and other factors allow for this view to be retained.

   b. The view corridors approved for properties located in the UM Shoreline Environment established under an zoning Master Plan or zoning permit approved under the provisions of Chapter 152 KZC shall continue to ccomply with those requirements. Modifications to the proposed view corridor shall be considered under the standards established in the this Chapter and the zoning Master Plan.

3. Exceptions - The requirement for a view corridor does not apply to the following:

   a. The following water-dependent uses:

      1) Piers and docks associated with a marina or moorage facility for a commercial use;

      2) Piers, docks, moorage buoys, boatlifts and canopies associated with Detached, Attached and Stacked Unit uses; and

      3) Tour boat facility, ferry terminal or water taxi, including permanent structures up to 200 square feet in size housing commercial uses ancillary to the facility.

      4) Public Access Pier or Boardwalk

      5) Boat launch

   b. Public Parks

   c. Properties located in the UM Shoreline Environment within the Central Business District zone.

4. View corridor location - The location of the view corridor shall be designed to meet the following location standards and must be approved by the Planning Official.

   a. If the subject property does not directly abut the shoreline, the view corridor shall be designed to coincide with the view corridor of the properties to the west.

   b. The view corridor must be adjacent to either the north or south property line of the subject property, whichever will result in the widest view corridor, considering the following, in order of priority:

      1) Locations of existing view corridors.

      2) Existing development or potential development on adjacent properties, given the topography, access and likely location of future improvements.

      3) The availability of actual views of the water and the potential of the lot for providing those views from the abutting street.

      4) Location of existing sight-obscuring structures, parking areas or vegetation that is likely to remain in place in the foreseeable future.

   c. The view corridor must be in one continuous piece.

   d. For land divisions, the view corridor shall be established as part of the land division and shall be located to create the largest view corridor on the subject property.

5. Permitted encroachments -

   a. The following shall be permitted within a view corridor:

1) Areas provided for public access, such as public pedestrian walkways, public use areas, or viewing platforms.

2) Parking lots and subsurface parking structures, provided that the parking does not obstruct the view from the public right-of-way to the waters of the lake and the shoreline on the opposite side of the lake.

3) Structures if the slope of the subject property permits full, unobstructed views of the Lake and the shoreline on the opposite side of the lake over the structures from the public right-of-way.

4) Shoreline restoration plantings and existing specimen trees and native shoreline vegetation.

5) Vegetation, including required vegetation screening around parking and driving areas and land use buffers, provided it is designed and of a size that will not obscure the view from the public right-of-way to the water and the shoreline on the opposite side of the lake at the time of planting or upon future growth. In the event of a conflict between required site screening and view preservation. View preservation shall take precedents over buffering requirements found in KZC 95.

6) Open fencing that is designed not to obscure the view from the public right-of-way to the lake and the shoreline on the opposite side of the lake.

6. Dedication -The applicant shall execute a covenant or similar legal agreement, in a form acceptable to the City Attorney, and record the agreement with the King County Recorder's Office, to protect the view corridor. Land survey information shall be provided by the applicant for this purpose in a format approved by the Planning Official.

83.420 Public Access

1. General – Promoting a waterfront pedestrian corridor is an important goal within the City. Providing pedestrian access along Lake Washington enables the public to view and enjoy the scenic beauty, natural resources, and recreational activities that are found along the shoreline. This pedestrian corridor provides opportunities for physical recreation and leisure and serves as a movement corridor. Connections between the shoreline public pedestrian walkway and the public right-of-way serve to link the walkway with the larger city-wide pedestrian network.

   The applicant shall comply with the following pedestrian access requirements with new development for all uses and land divisions under KMC Chapter 22, pursuant to the standards of this section:

   a. Pedestrian Access Along the Water's Edge – Provide public pedestrian walkways along the water's edge.

   b. Pedestrian Access From Water's Edge to Right-of-Way – Provide public pedestrian walkways designed to connect the shoreline public pedestrian walkway to the abutting right-of-way.

2. Public Pedestrian Walkway Location – The applicant shall locate public pedestrian walkways pursuant to the following standards:

   a. The walkways shall be designed and sited to minimize the amount of native vegetation removal, impact to existing significant trees, soil disturbance, and disruption to existing habitat corridor structures and functions.

   b. The walkways shall be located along the water's edge between the development and the shoreline at an average of ten (10) feet but no closer than five (5) feet landward of the OHWM so that the walkway may meander and not be a straight line. In cases where the walkway on the adjoining property has been installed closer to the shoreline than allowed under this provision, the walkway extend within five (5) feet of the OHWM in order to connect to the existing walkway.

c. Locating the walkways adjacent to other public areas including street-ends, waterways, parks, and other public access and connecting walkways, shall maximize the public nature of the access.

d. The walkways shall be situated so as to minimize significant grade changes and the need for stairways.

e. The walkways shall minimize intrusions of privacy for occupants and residents of the site by avoiding locations directly adjacent to residential windows and outdoor private open spaces, or by screening or other separation techniques.

f. The walkways shall be located so as to avoid undue interference with the use of the site by water-dependent businesses.

g. The Planning Official shall determine the appropriate location of the walkway on the subject property when planning for the connection of a future waterfront walkway on an adjoining property.

3. Development Standards Required for Pedestrian Improvements - The applicant shall install pedestrian walkways pursuant to the following standards:

a. The walkways shall be at least 6 feet wide, but no more than 8 feet wide, and contain a permeable paved walking surface, such as unit pavers, grid systems, porous concrete, or equivalent material approved by the Planning Official.

b. The walkways shall be distinguishable from traffic lanes by pavement material, texture, or change in elevation.

c. The walkways shall not be included with other impervious surfaces for lot coverage calculations.

d. Permanent barriers which limit future extension of pedestrian access between the subject property and adjacent properties are not permitted.

e. Regulated public access shall be indicated by signs installed at the entrance of the public pedestrian walkway on the abutting right-of-way and along the public pedestrian pathway. The signs shall be located for maximum public visibility. Design, materials and location of the signage shall meet City specifications.

f. All public pedestrian walkways shall be provided through a minimum 6-foot wide easement or similar legal agreement, in a form acceptable to the City Attorney, and recorded with the King County Department of Records and Elections. Land survey information shall be provided by the applicant for this purpose in a format approved by the Planning Official.

4. Operation and Maintenance Requirements for Pedestrian Improvements – The following operation and maintenance requirements apply to all public pedestrian walkways required under this section:

a. Hours of operation and limitations on accessibility – Unless otherwise required by the City, all required pedestrian walkways shall be open to the public between the hours of 10 am to dusk from March 21st to September 21st and the remainder of the year between the hours of 10 am to 5 pm.

b. The applicant is permitted to secure the subject property outside of the hours of operation noted in subsection 4.a above by a security gate, subject to the following provisions:

a. The gate shall remain in an open position during hours of permitted public access; and

b. Signage shall be included noting the hours of permitted public access.

c. The Planning Official is authorized to approve a temporary closure when hazardous conditions are present that would affect public safety.

d. Performance and maintenance.

a. No certificate of occupancy or final inspection shall be issued until all required public access improvements are completed, except under special circumstances approved by the Planning Official and after submittal of an approved performance security.

b. The owner, its successor or assigns, shall be responsible for the completion and maintenance of all required waterfront public access areas and signage on the subject property.

5. Exceptions

a. The requirement for the dedication and improvement of public access does not apply to:

a. Development located within the Residential - L shoreline environment., except the following uses and developments that are required to comply with the public access provisions:

1) Public entities, such as government facilities and public parks; or

2) Divisions of land containing 5 or more new lots located within the shoreline jurisdiction.

b. Development located within the Natural shoreline environment.

c. Detached Dwelling unit on one lot and normal appurtenances associated with this use that is not part of a land division. For development involving land division, public pedestrian access is required, unless otherwise excepted under this subsection.

6. Modifications

a. The Planning Official may require or grant a modification to the nature or extent of any required improvement for any of the following reasons:

1) If the presence of critical areas, such as wetlands, streams, or geologically hazardous areas, preclude the construction of the improvements as required.

2) To avoid interference with the operations of water-dependant uses, such as marinas.

3) If the property contains unusual site constraints, such as size, configuration, topography, or location.

4) If the access would create unavoidable health or safety hazards to the public.

b. If a modification is granted, the Planning Official may require that an alternate method of providing public access, such as a public use area or viewing platform, be provided.

c. Access from the right-of-way to the shoreline public access walkway may be waived by the Planning Official if all of following criteria are met:

1) If public access along the shoreline of the subject property can be reached from an adjacent property,

2) If the adjacent property providing access to the shoreline contains an existing public access walkway connecting with the public right-of-way and the maximum separation between public access entry points along the public right-of-way is 300 feet or less; and

3) If the subject property does not contain a public use area required as a condition of development by the Planning Official under the provisions of this Chapter.

83.430 In-Water Construction

1. Standards – The following standards shall apply to in-water work, including, but not limited to, installation of new structures, repair of existing structures, restoration projects, and aquatic vegetation removal:

a. In-water structures and activities shall be sited and designed to avoid the need for future shoreline stabilization activities and dredging, giving due consideration to watershed functions and processes, with special emphasis on protecting and restoring priority habitat and species.

b. In-water structures and activities are not subject to the shoreline setbacks established in KZC 83.180.

c. See KZC 83.370 for federal and state approval and timing restrictions.

d. Removal of existing structures shall be accomplished so the structure and associated material does not re-enter the lake.

e. Waste material and unauthorized fill, such as construction debris, silt or excess dirt resulting from in-water structure installation, concrete blocks or pieces, bricks, asphalt, metal, treated wood, glass, paper and any other similar material upland of or below the OHWM shall be removed.

f. Measurements shall be taken in advance and during construction to ensure that no petroleum products, hydraulic fluid, cement, sediments, sediment-laden water, chemicals, or any other toxic or deleterious materials are allowed to enter or leach into the lake during in-water activities. Appropriate spill clean-up materials must be on-site at all times, and any spills must be contained and cleaned immediately after discovery.

g. In-water work shall be conducted in a manner that causes little or no siltation to adjacent areas. A sediment control curtain shall be used in those instances where siltation is expected. The curtain shall be maintained in a functional manner that contains suspended sediments during project installation.

h. Any trenches, depressions, or holes created below the OHWM shall be backfilled prior to inundation by high water or wave action.

i. Fresh concrete or concrete by-products shall not be allowed to enter the lake at any time during in-water installation. All forms used for concrete shall be completely sealed to prevent the possibility of fresh concrete from entering the lake.

j. Alteration or disturbance of the bank and bank vegetation shall be limited to that necessary to perform the in-water work. All disturbed areas shall be protected from erosion using vegetation or other means.

k. If at any time, as a result of in-water work, water quality problems develop, immediate notification shall be made to the Department of Ecology.

83.440 Parking

1. General -

   a. Only parking associated with a permitted or conditional shoreline use shall be allowed, except that within the Urban Mixed shoreline environment, surface or structured parking facilities may accommodate parking for surrounding uses and commercial parking uses.

   b. Parking as a primary use on a subject property is prohibited.

2. Number of Parking Spaces -

   Uses must provide sufficient off-street parking spaces. The required number of parking stalls established in KZC Chapter 105, KZC 50.60 and with the applicable parking standards for each use shall be met.

3. Parking Location -

   a. Intent – To reduce the negative impacts of parking and circulation facilities on public spaces within the shoreline, such as shoreline public pedestrian walkways, public use areas, and view corridors along public rights-of-way.

b. Standards - The applicant shall locate parking areas on the subject property according to the following requirements:

1) Parking is prohibited in the shoreline setback established in KZC 83.180, except as follows:

a) Subsurface parking is allowed, provided that:

i) The structure is designed to avoid the need for future shoreline stabilization as documented in a geotechnical report, prepared by a qualified geotechnical engineer or engineering geologist.

ii) The structure is designed to comply with shoreline vegetation standards established in KZC 83.400. As part of any proposal to install subsurface parking within the shoreline setback, the applicant shall submit site-specific documentation prepared by a qualified expert to establish that the design will adequately support the long-term viability of the required vegetation.

iii) The structure is designed to not impact public access and views to the lake from the public right-of-way.

iv) Public access over subsurface parking structures shall be designed to minimize significant changes in grade.

b) The parking is designed as a short-term loading area to support a water-dependent use.

2) Parking is prohibited on structures located over water.

3) Parking, loading, and service areas for a permitted use activity shall not extend closer to the shoreline than a permitted structure unless:

a) The parking is incorporated within a structure, subject to the following standards:

i) The parking is subsurface, or

ii) The design of any above-grade structured parking incorporates vegetation and/or building surface treatment to provide an appearance comparable to the remainder of the building not used for parking.

b) The parking is accessory to a public park.

c) The parking is designed as a short-term loading area to support a water-dependent use.

4. Design of Parking Areas -

a. Pedestrian Connections

1) Parking areas shall be designed to contain pedestrian connections to public pedestrian walkways and building entrances. Pedestrian connections shall either be a raised sidewalk or composed of a different material than the parking lot material.

2) Pedestrian connections must be at least 5 feet wide, excluding vehicular overhang.

b. Design of Surface Parking Lots – In addition to the perimeter buffering and internal parking lot landscaping provisions established in KZC Chapter 95, the applicant shall buffer all parking areas and driveways visible from required public pedestrian pathways or public use areas with appropriate landscaping screening that is consistent with the landscaping and buffering standards for driving and parking areas contained in KZC Chapter 95.

c. Design of Structured Parking Facilities - Each facade of a garage or a building containing above-grade structured parking visible from a required view corridor, or is facing a public pedestrian walkway, public use area, or public park must incorporate vegetation and/or building surface treatment to mitigate the visual impacts of the structured parking.

83.450 Screening of Storage and Service Areas, Mechanical Equipment and Garage Receptacles

1. Outdoor Use, Activity and Storage. Outdoor Use, Activity and Storage areas must comply with the following:

   a. Comply with the shoreline setback established for the use with which they are associated.

   b. Be located to minimize visibility from any street, Lake Washington, required public pedestrian walkway, public use area or public park.

   c. Be screened from view from the street, adjacent properties, Lake Washington, required public pedestrian walkways, and other public use areas by a solid screening enclosure or within a building.

   d. Outdoor dining areas and temporary storage for boats undergoing service or repair that are accessory to a marina are exempt from the placement and screening requirements of subsection (2) and (3) above.

2. Mechanical and similar equipment or appurtenances.

   a. At-grade mechanical and similar equipment or appurtenances are not permitted within the shoreline setback.

   b. Rooftop appurtenances and at or below grade appurtenances shall be screened with vegetation or a solid screening enclosure or located in such a manner as to not be visible from Lake Washington, required public pedestrian walkways, or public use areas.

3. Garbage and trash receptacles. Garbage and recycling receptacles must comply with the following:

   a. Comply with the shoreline setback established for the use with which they are associated.

   b. Be located to minimize visibility from any street, Lake Washington, required public pedestrian walkway, public use area or public parks.

   c. Be screened from view from Lake Washington, required public pedestrian walkways, and other public use areas by a solid screening enclosure, such as a wooden fence without gaps, or within a building.

   d. Exemptions – Garbage receptacles for detached dwelling units, duplexes, moorage facilities, parks, and construction sites, but not including dumpsters or other containers larger than a typical individual trash receptacle, are exempt from the placement and screening requirements of this subsection.

83.460 Signage

1. <u>Standards</u> – The following standards shall apply to signs within the shoreline jurisdiction:

   a. Signage shall not interfere or block designated view corridors within the shoreline jurisdiction.

   b. Signs shall comply with the shoreline setback standards contained in KZC 83.180.

   c. Signage shall not be permitted to be constructed over water, except as follows:

      1) For retail establishments providing gas and oil sales for boats, where the facility is accessible from the water:

         a) One sign, not exceeding 20 square feet per sign face, is permitted. The sign area for the water-oriented sign shall be counted towards the maximum sign area permitted in KZC Chapter 100.

         b) Internally-illuminated signs are not permitted. Low-wattage external light sources that are not directed towards neighboring properties or Lake Washington are permitted, subject to approval by the Planning Official.

c) Signs shall be affixed to a pier or wall-mounted. The maximum permitted height of a freestanding sign is 5 feet above the surface of the pier. A wall-mounted sign shall not project above the roofline of the building to which it is attached.

2) Boat traffic signs, directional signs, and signs displaying a public service message.

3) Interpretative signs in coordination with public access and recreation amenities.

4) Building addresses mounted flush to the end of a pier, with letters and numbers at least 4 inches high.

83.470 Lighting

1. General - Exterior lighting shall be controlled using limits on height, light levels of fixtures, lights shields, time restrictions and other mechanisms in order to:

   a. Prevent light pollution or other adverse effects that could infringe upon public enjoyment of the shoreline;

   b. Protect residential uses from adverse impacts that can be associated with light trespass from higher-intensity uses; and

   c. Prevent adverse effects on fish and wildlife species and their habitats.

2. Exceptions –

   a. The following development activities are exempt from the submittal and lighting standards established in this section:

      1) Emergency lighting required for public safety;

      2) Lighting for public rights-of-way;

      3) Outdoor lighting for temporary or periodic events (e.g. community events at public parks);

      4) Seasonal decoration lighting; and

      5) Sign lighting, which is governed by KZC 83.460.

   b. The following development activities are exempt from the submittal standards established in (3) below, but are still subject to the lighting standards contained in (4) below:

      1) Development of a detached dwelling unit or associated appurtenances;

      2) Piers and docks;

      3) Public access pier or boardwalk; and

      4) Moorage buoy.

3. Submittal Requirements - All development proposing exterior lighting within the shoreline jurisdiction, except as otherwise indicated in subsection 2) above, shall submit a lighting plan and photometric site plan for approval by the Planning Official. The plan shall contain the following:

   a. A brief written narrative, with accompanying plan or sketch, which demonstrates the objectives of the lighting.

   b. The location, fixture type, mounting height, and wattage of all outdoor lighting and building security lighting, including exterior lighting mounted on piers or illuminating piers.

   c. A detailed description of the fixtures, lamps, supports, reflectors, and other devices. The description shall include manufacturer's catalog specifications and drawings, including sections when requested.

   d. If building elevations are proposed for illumination, drawings shall be provided for all relevant building elevations showing the fixtures, the portions of the elevations to be illuminated, and the illuminate levels of the elevations.

e. Photometric data, such as that furnished by manufacturers, showing the angle of light emissions.

f. Computer generated photometric grid showing footcandle readings every 20 feet within the property or site, and 15 feet beyond the property lines, including Lake Washington, if applicable. Iso-footcandle contour line style plans are also acceptable.

4. Standards –

a. Direction and Shielding –

1) All exterior building-mounted and ground-mounted light fixtures 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 measure to conceal the light source from adjoining uses, to direct the light towards the ground and away from the shoreline, and to prevent lighting from spilling on to the lake water. For detached dwelling unit or associated appurtenances, this requirement shall apply to any light fixtures which are directed towards or face Lake Washington.

2) Exterior lighting mounted on piers, docks or other water-dependent uses located at the shoreline edge shall be at ground or dock level, be directed away from adjacent properties and the water, and designed and located to prevent lighting from spilling onto the lake water.

3) For properties located within the Natural shoreline environment, exterior lighting installations shall incorporate motion-sensitive lighting and lighting shall be limited to those areas where it is needed for safety, security, and operational purposes.

b. Lighting Levels –

1) Exterior lighting installations shall be designed to avoid harsh contrasts in lighting levels.

2) For properties located adjacent to a Natural shoreline environment, exterior lighting fixtures shall produce a maximum initial luminance value of 0.1 foot-candles (as measured at three feet above grade) at the site or environment boundary.

3) For properties in the Urban Mixed shoreline environment located adjacent to residential uses in another shoreline environment or for commercial uses located adjacent to residential uses in the Urban Residential environment, exterior lighting fixtures shall produce a maximum initial luminance value of 0.6 horizontal and vertical foot-candles (as measured at three feet above grade) at the site boundary, and drop to 0.1 foot-candles onto the abutting property as measured within 15 feet of the property line.

4) Exterior lighting shall not exceed a strength of 1 foot-candle at the water surface of Lake Washington, as measured waterward of the OHWM.

c. Height of Light Fixtures - The maximum mounting height of ground-mounted light fixtures shall be 12 feet. 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.

d. Other –

1) Illumination of a building façade to enhance architectural features is not permitted.

2) Where feasible, exterior lighting installations shall include timers, dimmers, sensors, or photocell controllers that turn the lights off during daylight hours or hours when lighting is not needed, to reduce overall energy consumption and eliminate unneeded lighting.

83.480 Water Quality, Stormwater, and Nonpoint Pollution

1. General - Shoreline development and use shall incorporate all known, available, and reasonable methods of prevention, control, and treatment to protect and maintain surface and/or ground water quantity and quality in accordance with KMC 15.52 and other applicable laws.

2. Submittal Requirements - All proposals for development activity or land surface modification located within the shoreline jurisdiction shall submit for approval a storm water plan with their application and/or request, unless exempted by the Public Works Official. The storm water plan shall include the following:

   a. Provisions for temporary erosion control measures; and

   b. Provisions for storm water detention, water quality treatment and storm water conveyance facilities, in accordance with the City's adopted surface water design manual in effect at the time of permit application.

3. Standards -

   a. Shoreline development shall comply with the standards established in the City's adopted surface water design manual in effect at the time of permit application.

   b. Shoreline uses and activities shall apply Best Management Practices (BMPs) to minimize any increase in surface runoff and to control, treat and release surface water runoff so that receiving properties, wetlands or streams, and Lake Washington are not adversely affected, consistent with the City's adopted surface water design manual. All types of BMPs require regular maintenance to continue to function as intended.

      Low Impact Development techniques shall be considered and implemented to the greatest extent practicable, consistent with the City's adopted surface water design manual.

   c. New outfalls or discharge pipes to Lake Washington shall be avoided, where feasible. If a new outfall or discharge pipe is demonstrated to be necessary, it shall be designed so that the outfall and energy dissipation pad is installed above the OHWM.

   d. In addition to providing storm water quality treatment facilities as required in this section and the City's Surface Water Master Plan, the developer and/or property owner shall provide source control BMPs designed to treat or prevent storm water pollution arising from specific activities expected to occur on the site. Examples of such specific activities include, but are not limited to, carwashing at Detached, Attached Stacked (multifamily) residential sites and oil storage at marinas providing service and repair.

   e. No release of oils, hydraulic fluids, fuels, paints, solvents or other hazardous materials shall be permitted into Lake Washington. If water quality problems occur, including equipment leaks or spills, work operations shall cease immediately and the Public Works Department and other agencies with jurisdiction shall be contacted immediately to coordinate spill containment and cleanup plans.

      It shall be the responsibility of property owner to fund and implement the approved spill containment and cleanup plans and to complete the work by the deadline established in the plans.

   f. All materials that come into contact with water shall be constructed of untreated wood, cured concrete, steel or other approved non-toxic materials. Materials used for over-water decking or other structural components that may come into contact with water shall comply with regulations of responsible agencies (i.e. Washington State Department of Fish and Wildlife or Department of Ecology) to avoid discharge of pollutants.

   g. The application of pesticides, herbicides, or fertilizers shall comply with the following standards:

      1) The application of pesticides, herbicides or fertilizers within shoreline setbacks shall utilize Best Management Practices (BMPs) outlined in the BMPs for Landscaping and Lawn/Vegetation Management Section of the 2005 Stormwater Management Manual for Western Washington, to prevent contamination of surface and ground water and/or soils, and adverse effects on shoreline ecological functions and values.

2) Pesticides, herbicides, or fertilizers shall be applied in a manner that minimizes their transmittal to adjacent water bodies. The direct runoff of chemical-laden waters into adjacent water bodies is prohibited. Spray application of pesticides shall not occur within 100 feet of open waters including wetlands, ponds, and streams, sloughs and any drainage ditch or channel that leads to open water except when approved by the City.

3) The use of pesticides, herbicides or fertilizers within the shoreline jurisdiction, including applications of herbicides to control noxious aquatic vegetation, shall comply with regulations of responsible federal and state agencies.

4) A copy of the applicant's National Pollutant Discharge Elimination System (NPDES) permit, issued from Washington State Department of Ecology, authorizing aquatic pesticide (including herbicides) to Lake Washington must be submitted to the Planning Department prior to the application.

83.490 Critical Areas – General Standards

1. The provisions of this Chapter do not extend beyond the shoreline jurisdiction limits specified in this Chapter and the Act. For regulations addressing critical area buffers that are outside of the shoreline jurisdiction, see KZC Chapter 85 and 90.

2. <u>Avoiding impacts to critical areas.</u>

   a. An applicant for a land surface modification or development permit within a critical area or its associated buffer shall utilize the following mitigation sequencing guidelines, which appear in order of preference, during design of the proposed project:

      1) Avoiding the impact or hazard by not taking a certain action, or redesigning the proposal to eliminate the impact. The applicant shall consider reasonable, affirmative steps and make best efforts to avoid critical area impacts. If impacts cannot be avoided through redesign, or because of site conditions or project requirements, the applicant shall then proceed with the sequence of steps in subsection (2)(a)(2) through (7) of this subsection.

      2) Minimizing the impact or hazard by limiting the degree or magnitude of the action or impact with appropriate technology or by changing the timing of the action.

      3) Restoring the impacted critical areas by repairing, rehabilitating or restoring the affected critical area or its buffer.

      4) Minimizing or eliminating the hazard by restoring or stabilizing the hazard area through plantings, engineering or other methods.

      5) Reducing or eliminating the impact or hazard over time by preservation or maintenance operations during the life of the development proposal, activity or alteration.

      6) Compensating for the adverse impact by enhancing critical areas and their buffers or creating substitute critical areas and their buffers as required in the KZC 83.500 and 510.

      7) Monitoring the impact, hazard or success of required mitigation and taking remedial action based upon findings over time.

      In the required critical areas study, the applicant shall include a discussion of how the proposed project will utilize mitigation sequencing to avoid, minimize, and mitigate impacts to critical areas and associated buffers. The applicant shall seek to avoid, minimize and mitigate overall impacts based on the functions and values of all relevant critical areas.

   b. In addition to the above steps, the specific development standards, permitted alteration requirements, and mitigation requirements of this Chapter and elsewhere in this code apply.

   c. In determining the extent to which the proposal shall be further redesigned to avoid and minimize the impact, the City may consider the purpose, effectiveness, engineering feasibility, commercial availability of technology, best management practices, safety and cost

of the proposal and identified modifications to the proposal. The City may also consider the extent to which the avoidance of one type or location of a critical area could require or lead to impacts to other types or locations of nearby or adjacent critical areas. The City shall document the decision-making process used under this subsection as a part of the critical areas review conducted pursuant to KZC 83. 500 and 83.510.

3. Trees in Critical Areas or Critical Area Buffers

   a. General - The intent of preserving vegetation in and near streams and wetlands and in geologically hazardous areas is to support the functions of healthy sensitive areas and sensitive area buffers and/or avoid disturbance of geologically hazardous areas.

   b. Submittal Requirements – When proposing to trim or remove any tree located within critical areas or critical area buffers, the property owner must submit a report to the City containing the following:

      1) A site plan showing the approximate location of significant trees, their size (DBH) and their species, along with the location of structures, driveways, access ways and easements.

      2) An arborist report explaining how the tree(s) fit the criteria for a nuisance or hazard tree. This requirement may be waived by the Planning Official if it is determined that the nuisance or hazard condition is obvious.

      3) A proposal detailing how the trees will be made into a snag or wildlife tree, including access and equipment, snag height, and placement of woody debris.

      4) For required replacement trees, a planting plan showing location, size and species of the new trees.

   c. Tree Removal Standards

      1) If a tree meets the criteria of a nuisance or hazard in a critical area or its buffer as described below, then a “snag” or wildlife tree shall be created. If creation of a snag is not feasible, then the felled tree shall be left in place unless the Planning Official permits its removal in writing.

         a) Hazard Tree Criteria. A hazard tree must meet the following criteria:

            i) The tree must have a combination of structural defects and/or disease that makes it subject to a high probability of failure and is in proximity to moderate-high frequency of persons or property; and

            ii) The hazard condition of the tree cannot be lessened with reasonable and proper arboricultural practices.

         b) Nuisance Tree Criteria. A nuisance tree must meet the following criteria:

            i) The tree is causing obvious, physical damage to private or public structures, including but not limited to: sidewalk, curb, road, driveway, parking lot, building foundation, roof;

            ii) The tree has been damaged by past maintenance practices that cannot be corrected with proper arboricultural practices; or

            iii) The problems associated with the tree must be such that they cannot be corrected by any other reasonable practice including, but not limited to, the following:

               - Pruning of the crown or roots of the tree and/or small modifications to the site improvements, including but not limited to a driveway, parking lot, patio or sidewalk, to alleviate the problem.

               - Pruning, bracing, or cabling to reconstruct a healthy crown.

2) The removal of any tree will require the planting of a native tree of a minimum of 6 feet in height in close proximity to where the removed tree was located. The Planning Official shall approve the selection of native species and timing of installation.

4. Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers.

a. Plants intended to mitigate for the loss of natural resource values are subject to the following requirements.

1) Plant Source. Plant materials must be native and selected from the Kirkland Plant List or otherwise approved by the City's Urban Forester. Seed source must be as local as feasible, and plants must be nursery propagated unless transplanted from on-site areas approved for disturbance. These requirements must be included in the Mitigation Plan specifications.

2) Installation. Plant materials must be supported only when necessary due to extreme winds at the planting site. Where support is necessary, stakes, guy wires, or other measures must be removed as soon as the plant can support itself, usually after the first growing season. All fertilizer applications to turf or trees and shrubs shall follow Washington State University, National Arborist Association or other accepted agronomic or horticultural standards.

3) Fertilizer Applications. Fertilizers shall be applied in such a manner as to prevent their entry into waterways and wetlands and minimize entry into storm drains. No applications shall be made within 50 feet of a waterway or wetland, or a required buffer, whichever is greater, unless specifically authorized in an approved mitigation plan or otherwise authorized in writing by the Planning Official.

83.500 Wetlands

1. Applicability – The following provisions shall apply to wetlands and wetland buffers located within the shoreline jurisdiction, in place of provisions contained in Chapter 90 KZC. Provisions contained in Chapter 90 KZC that are not addressed in this section continue to apply, with the exception of the following subsections that shall not apply within the shoreline jurisdiction:

a. KZC 90.20 – General Exceptions

b. KZC 90.30 – Definitions

c. KZC 90.75 – Minor Lakes

d. KZC 90.140 – Reasonable Use Exception

e. KZC 90.160 – Appeals

f. KZC 90.170 – Planning/Public Works Official Decisions – Lapse of Approval

2. Wetland Determinations, Delineations, Regulations, Criteria, and Procedures - All determinations and delineations of wetlands shall be made using the criteria and procedures contained in the Washington State Wetlands Identification and Delineation Manual (Washington Department of Ecology, 1997). All determinations, delineations, and regulations of wetlands shall be based on the entire extent of the wetland, irrespective of property lines, ownership patterns, or other factors.

3. Wetland Determinations - Either prior to or during review of a development application, the Planning Official shall determine whether a wetland or its buffer is present on the subject property using the following provisions:

a. During or immediately following a site inspection, the Planning Official shall make an initial assessment as to whether any portion of the subject property or surrounding area (which shall be the area within 250 feet of the subject property) meets the definition of a wetland. If this initial site inspection does not indicate the presence of a wetland on the subject property or surrounding area, no additional wetland studies will be required at that time.

However, if the initial site inspection or information subsequently obtained indicates the presence of a wetland on the subject property or surrounding area, then the applicant shall follow the procedure in subsection (b) of this section.

b. If the initial site inspection or information subsequently obtained indicates that a wetland may exist on or near the subject property or surrounding area, the applicant shall either (a) fund a study and report prepared by the City's consultant; or (b) submit a report prepared by a qualified professional approved by the City, and fund a review of this report by the City's wetland consultant.

c. If a wetlands study and report are required, at a minimum the report shall include the following:

1) A summary of the methodology used to conduct the study;

2) A professional survey which is based on the KCAS or plat-bearing system and tied to a known monument, depicting the wetland boundary on a map of the surrounding area which shows the wetland and its buffer;

3) A description of the wetland habitat(s) found throughout the entire wetland (not just on the subject property) using the U.S. Fish & Wildlife Service classification system (Classification of Wetlands and Deepwater Habitats in the U.S., Cowardin et al., 1979);

4) A description of nesting, denning, and breeding areas found in the wetland or its surrounding area;

5) A description of the surrounding area, including any drainage systems entering and leaving the wetland, and a list of observed or documented plant and wildlife species;

6) A description of historical, hydrologic, vegetative, topographic, and soil modifications, if any;

7) A proposed classification of the wetland as Category I, II, III, or IV wetland; and

8) A completed rating form using the *Washington State Wetland Rating System for Western Washington – Revised* (Washington State Department of Ecology Publication # 04-06-025, or latest version). [Note: When a wetland buffer outside of shoreline jurisdiction is proposed to be modified, the wetland in shoreline jurisdiction must be rated using the methodology required by KZC 90 to determine the appropriate buffer width. Ecology's rating system and the corresponding buffers only apply to those wetlands and buffers located in shoreline jurisdiction.]

d. Formal determination of whether a wetland exists on the subject property, as well as its boundaries and rating, shall be made by the Planning Official after preparation and review of the report, if applicable, by the City's consultant. The Planning Official's decision under this section shall be used for review of any development permit or activity proposed on the subject property for which an application is received within two (2) years of the decision; provided, that the Planning Official may modify any decision whenever physical circumstances have markedly and demonstrably changed on the subject property or the surrounding area as a result of natural processes or human activity.

4. <u>Wetland Buffers and Setbacks</u>

a. No land surface modification shall occur and no improvement may be located in a wetland or its buffer, except as provided in KZC 83.500.4 through 83.500.10. See also KZC 83.490, Trees in Critical Areas or Critical Area Buffers; and KZC 83.490, Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers. Required or standard, buffers for wetlands are as follows and are measured from the outer edge of the wetland boundary:

Wetland Buffers

WETLAND CATEGORY AND CHARACTERISTICS	BUFFER

Category I	
Natural Heritage Wetlands	215 feet
Bog	215 feet
Habitat score[1] from 29 to 36 points	225 feet
Habitat score from 20 to 28 points	150 feet
Other Category I wetlands	125 feet
Category II	
Habitat score from 29 to 36 points	200 feet
Habitat score from 20 to 28 points	125 feet
Other Category II wetlands	100 feet
Category III	
Habitat score from 20 to 28 points	125 feet
Other Category III wetlands	75 feet
Category IV	50 feet

[1] Habitat score is one of three elements of the rating form.

Note: Buffer widths were developed by King County for its urban growth areas using the best available science information presented in *Chapter 9: Wetlands* of *Best Available Science – Volume 1: A Review of Scientific Literature*

Modification to Buffer for Divided Wetland Buffer - Where a legally established, improved road right-of-way or structure divides a wetland buffer, the Planning Official may approve a modification of the required buffer in that portion of the buffer isolated from the wetland by the road or structure, provided the isolated portion of the buffer:

1) Does not provide additional protection of the wetland from the proposed development; and

2) Provides insignificant biological, geological or hydrological buffer functions relating to the portion of the buffer adjacent to the wetland.

b. Buffer Setback – Structures shall be set back at least 10 feet from the designated or modified wetland buffer. The City may allow minor improvements within this setback that would clearly have no adverse effect during their construction, installation, use, or maintenance, on fish, wildlife, or their habitat or any vegetation in the buffer or adjacent wetland.

c. Storm Water Discharge– Necessary surface discharges of storm water through wetland buffers and buffer setbacks may be allowed on the surface, but piped system discharges are prohibited unless approved pursuant to this section.

Storm water outfalls (piped systems) may be located within the buffer setback specified in subsection (b) of this section and within the buffers specified in subsection (a) of this section only when the City determines, based on a report prepared by a qualified professional under contract to the City and paid for by the applicant, that:

1) Surface discharge of storm water through the buffer would clearly pose a threat to slope stability, and

2) The storm water outfall will not:

a) Adversely affect water quality;

b) Adversely affect fish, wildlife, or their habitat;

c) Adversely affect drainage or storm water detention capabilities;

d) Lead to unstable earth conditions or create erosion hazards or contribute to scouring actions; and

e) Be materially detrimental to any other property in the area of the subject property or to the City as a whole, including the loss of significant open space or scenic vistas.

Storm water outfalls shall minimize potential impacts to the wetland or wetland buffer by meeting the following design standards:

1) Catch basins must be installed as far as feasible from the buffer boundary.

2) Outfalls must be designed to reduce the chance of adverse impacts as a result of concentrated discharges from pipe systems. This may include:

a) Installation of the discharge end as far as feasible from the sensitive area; and

b) Use of appropriate energy dissipation at the discharge end.

d. Water Quality Facilities –Water quality facilities, as determined by the City, may be located within the required wetland buffers of KZC 83.500.4. The City may only approve a proposal to install a water quality facility within the outer one-half (1/2) of a wetland buffer if a feasible location outside of the buffer is not available and only if:

1) It will not adversely affect water quality;

2) It will not adversely affect fish, wildlife, or their habitat;

3) It will not adversely affect drainage or storm water detention capabilities;

4) It will not lead to unstable earth conditions or create erosion hazards or contribute to scouring actions;

5) It will not be materially detrimental to any other property in the area of the subject property or to the City as a whole, including the loss of significant open space or scenic vistas;

6) The existing buffer is already degraded as determined by a qualified professional;

7) Installation would be followed immediately by enhancement of an area equal in size and immediately adjacent to the affected portion of the buffer; and

8) Once installed, it would not require any further disturbance or intrusion into the buffer.

The City may only approve a proposal by a public agency to install a water quality facility elsewhere in a wetland buffer if criteria 9 – 12 (below) are met in addition to 1 – 8 (above):

9) The project includes enhancement of the entire buffer;

10) The project would provide an exceptional ecological benefit off-site;

11) The water quality facility, once installed, would not require any further disturbance or intrusion into the buffer; and

12) There is no feasible alternative proposal that results in less impact to the buffer.

f. Utilities and Rights-of-Way –The following work may only be allowed in critical areas and their buffers subject to City review after appropriate mitigation sequencing in KZC 83.490.2 has been considered and implemented, provided that activities will not increase the impervious area or reduce flood storage capacity:

1) All utility work in improved City rights-of-way;

2) All normal and routine maintenance, operation and reconstruction of existing roads, streets, and associated rights-of-way and structures; and

3) Construction of sewer or water lines that connect to existing lines in a sensitive area or buffer where no feasible alternative location exists based on an analysis of technology and system efficiency.

All affected critical areas and buffers shall be expeditiously restored to their pre-project condition or better. For purposes of this subsection only, "improved City rights-of-way" include those rights-of-way that have improvements only underground, as well as those with surface improvements.

g. Minor Improvements – Minor improvements may be located within the sensitive area buffers specified in subsection (a) of this section. These minor improvements shall only be located within the outer one-half (1/2) of the sensitive area buffer, except where approved stream crossings are made.

The City may only approve a proposal to construct a minor improvement within an environmentally sensitive area buffer if:

1) It will not adversely affect water quality;

2) It will not adversely affect fish, wildlife, or their habitat;

3) It will not adversely affect drainage or storm water detention capabilities;

4) It will not lead to unstable earth conditions or create erosion hazards or contribute to scouring actions;

5) It will not be materially detrimental to any other property in the area of the subject property or to the City as a whole, including the loss of significant open space or scenic vistas; and

6) It supports public or private shoreline access.

The City may require the applicant to submit a report prepared by a qualified professional that describes how the proposal will or will not comply with the criteria for approving a minor improvement.

5. Wetland Buffer Fence or Barrier - Prior to beginning development activities, the applicant shall install a six (6) foot high construction-phase chain link fence or equivalent fence with silt screen fabric, as approved by the Planning Official and consistent with City standards, along the upland boundary of the entire wetland buffer. The construction-phase fence shall remain upright in the approved location for the duration of development activities.

Upon project completion, the applicant shall install between the upland boundary of all wetland buffers and the developed portion of the site, either (1) a permanent three (3) to four (4) foot-tall split rail fence; or (2) equivalent barrier, as approved by the Planning Official. Installation of the permanent fence or equivalent barrier must be done by hand where necessary to prevent machinery from entering the wetland or its buffer.

6. Permit Process -

The City shall consolidate and integrate the review and processing of the critical areas aspects of the proposal with the shoreline permit required for the proposed development activity, except as follows:

Development Proposal	**Permit Process**
Wetland Modifications, or Wetland Buffer Modifications affecting greater than 25% of the standard buffer	Shoreline Variance pursuant to Process IIA, described in Chapter 141
Wetland Buffer Modifications affecting 25% or less of the standard buffer ~~or Reasonable Use~~	Underlying development permit or

~~Exceptions~~	development activity
Wetland Restoration Plans	Underlying development permit or development activity

7. Modification of Wetlands –

   a. No land surface modification shall occur and no improvement shall be located in a wetland, except as provided in this subsection. Furthermore, all modifications of a wetland shall be consistent with *Kirkland's Streams, Wetlands and Wildlife Study* (The Watershed Company, 1998) and the *Kirkland Sensitive Areas Regulatory Recommendations Report* (Adolfson Associates, Inc., 1998).

   b. Submittal Requirements - The applicant shall submit a report prepared by a qualified professional and fund a review of this report by the City's consultant. The report shall include the following:

      1) A determination and delineation of the sensitive area and sensitive area buffer containing all the information specified in KZC 83.500 3) for a wetland;

      2) A description of the area of the site that is within the sensitive area or within the setbacks or buffers required by this Chapter;

      3) An analysis of the impact that the amount of development proposed would have on the sensitive area and the sensitive area buffer;

      4) An analysis of the mitigation sequencing as outlined in KZC 83.490.2;

      5) An assessment of the habitat, water quality, storm water detention, ground water recharge, shoreline protection, and erosion protection functions of the wetland and its buffer. The report shall also assess the effects of the proposed modification on those functions:

      6) Sensitive site design and construction staging of the proposal so that the development away from the sensitive area and/or sensitive area buffer and will minimizes net loss of sensitive area and/or sensitive area buffer functions to the greatest extent feasible;

      7) A description of protective measures that will be undertaken, such as siltation curtains, hay bales and other siltation prevention measures, and scheduling the construction activity to avoid interference with wildlife and fisheries rearing, nesting or spawning activities;

      8) Information specified in KZC 83.500 8);

      9) An evaluation of the project's consistency with the shoreline variance criteria contained in WAC 173-27-170; and

      10) Such other information or studies as the Planning Official may reasonably require.

   c. Decisional Criteria - The City may only approve an improvement or land surface modification in a wetland if:

      1) The project demonstrates consideration and implementation of appropriate mitigation sequencing as outlined in KZC 83.490.2;

      2) It will not adversely affect water quality;

      3) It will not adversely affect fish, wildlife, or their habitat;

      4) It will not have an adverse effect on drainage and/or storm water detention capabilities;

      5) It will not lead to unstable earth conditions or create an erosion hazard or contribute to scouring actions;

6) It will not be materially detrimental to any other property or the City as a whole;
7) Compensatory mitigation is provided in accordance with the table in subsection 8;
8) Fill material does not contain organic or inorganic material that would be detrimental to water quality or fish and wildlife habitat;
9) All exposed areas are stabilized with vegetation normally associated with native wetlands and/or buffers, as appropriate; and
10) There is no feasible alternative development proposal that results in less impact to the wetland and its buffer.

8. Compensatory Mitigation –All approved impacts to regulated wetlands require compensatory mitigation so that the goal of no net loss of wetland function, value, and acreage is achieved. A mitigation proposal must utilize the mitigation ratios specified below as excerpted from: Washington State Department of Ecology, U.S. Army Corps of Engineers Seattle District, and U.S. Environmental Protection Agency Region 10. March 2006. *Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance (Version 1)*. Washington State Department of Ecology Publication #06-06-011a. Olympia, WA.

Compensatory Mitigation

Category and Type of Wetland Impacts	Re-establishment or Creation	Rehabilitation Only[15]	Re-establishment or Creation (R/C) and Rehabilitation (RH)[1]	Re-establishment or Creation (R/C) and Enhancement (E)[1]	Enhancement Only[1]
All Category IV	1.5:1	3:1	1:1 R/C and 1:1RH	1:1 R/C and 2:1 E	6:1
All Category III	2:1	4:1	1:1 R/C and 2:1 RH	1:1 R/C and 4:1 E	8:1
Category II	3:1	6:1	1:1 R/C and 4:1 RH	1:1 R/C and 8:1 E	12:1
Category I Forested	6:1	12:1	1:1 R/C and 10:1 RH	1:1 R/C and 20:1 E	24:1
Category I - based on score for functions	4:1	8:1	1:1 R/C and 6:1 RH	1:1 R/C and 12:1 E	16:1
Category I Natural Heritage site	Not allowed	6:1 Rehabilitati on of a Natural	Not allowed	Not allowed	Case-by-case

[15] These ratios are based on the assumption that the rehabilitation or enhancement actions implemented represent the average degree of improvement possible for the site. Proposals to implement more effective rehabilitation or enhancement actions may result in a lower ratio, while less effective actions may result in a higher ratio. The distinction between rehabilitation and enhancement is not clear-cut. Instead, rehabilitation and enhancement actions span a continuum. Proposals that fall within the gray area between rehabilitation and enhancement will result in a ratio that lies between the ratios for rehabilitation and the ratios for enhancement.

Category and Type of Wetland Impacts	Re-establishment or Creation	Rehabilitation Only[15]	Re-establishment or Creation (R/C) and Rehabilitation (RH)[1]	Re-establishment or Creation (R/C) and Enhancement (E)[1]	Enhancement Only[1]
		Heritage site			
Category I Bog	Not allowed	6:1 Rehabilitation of a bog	Not allowed	Not allowed	Case-by-case

9. Wetland Buffer Modification

   a. Departures from the standard buffer requirements shall be approved only after the applicant has demonstrated consideration and implementation of appropriate mitigation sequencing as outlined in KZC 83.490.2.

   b. Approved departures from the standard buffer requirements of KZC 83.500.4 allow applicants to modify the physical and biological conditions of portions of the standard buffer for the duration of the approved project. These approved departures from the standard buffer requirements do not permanently establish a new regulatory buffer edge. Future development activities on the subject property may be required to reestablish the physical and biological conditions of the standard buffer.

   c. Modification of Wetland Buffers When Wetland Is Also To Be Modified – Wetland buffer impact is assumed to occur when wetland fill or modification is proposed. Any proposal for wetland fill/modification shall include provisions for establishing a new wetland buffer to be located around the compensatory mitigation sites and to be equal in width to its standard buffer specified in KZC 83.500.4(a) or a buffer reduced in accordance with this section by no more than twenty-five percent (25%) of the standard buffer width in all cases, regardless of wetland category or basin type.

   d. Modification of Wetland Buffers When Wetland Is Not To Be Modified – No land surface modification may occur and no improvement may be located in a wetland buffer, except as provided for in this subsection.

      1) Types of Buffer Modifications – Buffers may be reduced through one of two means, either (a) buffer averaging, or (b) buffer reduction with enhancement. A combination of these two buffer reduction approaches shall not be used:

         a) Buffer averaging requires that the area of the buffer resulting from the buffer averaging is equal in size and quality to the buffer area calculated by the standards specified in KZC 83.500.4. Buffers may not be reduced at any point by more than twenty-five (25%) percent of the standards specified in KZC 83.500.4, unless approved through a shoreline variance. Buffer averaging calculations shall only consider the subject property.

         b) Buffers may be decreased through buffer enhancement. The applicant shall demonstrate that through enhancing the buffer (by removing invasive plants, planting native vegetation, installing habitat features, such as downed logs or snags, or other

means), the reduced buffer will function at a higher level than the existing standard buffer.

The reduced on-site buffer area must be planted and maintained as needed to yield over time a reduced buffer that is equivalent to undisturbed Puget Lowland forests in density and species composition. At a minimum, a buffer enhancement plan shall provide the following: (a) a map locating the specific area of enhancement; (b) a planting plan that uses native species, including groundcover, shrubs, and trees; and (c) a monitoring and maintenance program prepared by a qualified professional consistent with the standards specified in KZC 83.500.8.

Buffers may not be reduced at any point by more than 25% of the standards in KZC 83.500.3(a). Buffer reductions of more than 25% approved through a shoreline variance will be assumed to have direct wetland impacts that must be compensated for as described above under KZC 83.500.8.

2) Decisional Criteria – An improvement or land surface modification may only be approved in a wetland buffer only if:

a) The development activity or buffer modification demonstrates consideration and implementation of appropriate mitigation sequencing as outlined in KZC 83.490.2.

b) It is consistent with *Kirkland's Streams, Wetlands and Wildlife Study* (The Watershed Company, 1998) and the *Kirkland Sensitive Areas Regulatory Recommendations Report* (Adolfson Associates, Inc., 1998);

c) It will not adversely affect water quality;

d) It will not adversely affect fish, wildlife, or their habitat;

e) It will not have an adverse effect on drainage and/or storm water detention capabilities;

f) It will not lead to unstable earth conditions or create an erosion hazard;

g) It will not be materially detrimental to any other property or the City as a whole;

h) Fill material does not contain organic or inorganic material that would be detrimental to water quality or to fish, wildlife, or their habitat;

i) All exposed areas are stabilized with vegetation normally associated with native wetland buffers, as appropriate; and

j) There is no feasible alternative development proposal that results in less impact to the buffer.

As part of the modification request, the applicant shall submit a report prepared by a qualified professional and fund a review of this report by the City's consultant. The report shall assess the habitat, water quality, storm water detention, ground water recharge, shoreline protection, and erosion protection functions of the buffer; assess the effects of the proposed modification on those functions; and address the ten (10) criteria listed in this subsection 9 d)(2) of this section.

10. On-Site versus Off-Site Mitigation

On-site mitigation for a wetland or its buffer is preferable to off-site mitigation. Given on-site constraints, the City may approve a plan to implement all or a portion of the required mitigation off-site, if the off-site mitigation is within the same drainage basin as the property that will be impacted by the project. The applicant shall demonstrate that the off-site mitigation will result in higher wetland functions, values, and/or acreage than on-site mitigation. Required compensatory mitigation ratios shall be the same for on-site or off-site mitigation, or a combination of both.

If the proposed on-site or off-site mitigation plan will result in the creation or expansion of a wetland or its buffer on any property other than the subject property, the plan shall not be approved until the applicant submits to the City a copy of a statement signed by the owners of all affected properties, in a form approved by the City Attorney and recorded in the King County Recorder's Office, consenting to the wetland and/or buffer creation or increase on such property and to the required maintenance and monitoring that may follow the creation or expansion of a wetland or its buffer.

11. Mitigation Plan and Monitoring and Maintenance Program

Applicants proposing to alter wetlands or their buffers shall submit a mitigation plan prepared by a qualified professional. The mitigation plan shall consist of a description of the existing functions and values of the wetlands and buffers affected by the proposed project, the nature and extent of impacts to those areas, and the mitigation measures to offset those impacts. The mitigation plan shall also contain a drawing that illustrates the compensatory mitigation elements. The plan and/or drawing shall list plant materials and other habitat features to be installed.

To ensure success of the mitigation plan, the applicant shall submit a monitoring and maintenance program prepared by a qualified professional. At a minimum, the monitoring and maintenance plan shall include the following:

1) The goals and objectives for the mitigation plan;
2) Success criteria by which the mitigation will be assessed;
3) Plans for a five (5) year monitoring and maintenance program;
4) A contingency plan in case of failure; and
5) Proof of a written contract with a qualified professional who will perform the monitoring program.

The monitoring program shall consist of at least two site visits per year by a qualified professional, with annual progress reports submitted to the City and all other agencies with jurisdiction.

The cost of producing and implementing the mitigation plan, the monitoring and maintenance program, reports, and drawing, as well as the review of each component by the City's wetland consultant, shall be borne by the applicant.

12. Shoreline Variance for Wetland Modification or Wetland Buffer Modification

An applicant who is unable to comply with the specific standards of KZC 83.500 must obtain a shoreline variance, pursuant to KZC 141.70.3 and meet the criteria set forth in WAC 183-27-170. In additional, the following City submittal requirements and criteria must also be met:

a. Submittal Requirements – As part of the shoreline variance request, the applicant shall submit a report prepared by a qualified professional and fund a review of this report by the City's qualified professional. The report shall include the following:

1) A determination and delineation of the sensitive area and sensitive area buffer containing all the information specified in KZC 83.500 3) for a wetland;
2) An analysis of whether any other proposed development with less impact on the sensitive area and sensitive area buffer is feasible;
3) Sensitive site design and construction staging of the proposal so that the development will have the least feasible impact on the sensitive area and sensitive area buffer;

4) A description of the area of the site which is within the sensitive area or within the setbacks or buffers required by this Chapter;

5) A description of protective measures that will be undertaken, such as siltation curtains, hay bales and other siltation prevention measures, and scheduling the construction activity to avoid interference with wildlife and fisheries rearing, nesting or spawning activities;

6) An analysis of the impact that the proposed development would have on the sensitive area and the sensitive area buffer;

7) How the proposal minimizes net loss of sensitive area and/or sensitive area buffer functions to the greatest extent feasible;

8) Whether the improvement is located away from the sensitive area and the sensitive area buffer to the greatest extent feasible;

9) Information specified in KZC 83.500.8 for Compensatory Mitigation;

10) Such other information or studies as the Planning Official may reasonably require.

b. Decisional Criteria – The City shall may grant approval of a shoreline variance only if all of the following criteria are met:

1) No other permitted type of land use for the property with less impact on the sensitive area and associated buffer is feasible;

2) The proposal has the minimum area of disturbance;

3) The proposal maximizes the amount of existing tree canopy that is retained;

4) The proposal utilizes to the maximum extent feasible innovative construction, design, and development techniques, including pervious surfaces, which minimize to the greatest extent feasible net loss of sensitive area functions and values;

5) The proposed development does not pose an unacceptable threat to the public health, safety, or welfare on or off the property;

6) The proposal meets the mitigation, maintenance, and monitoring requirements of this Chapter;

7) The granting of the shoreline variance will not confer on the applicant any special privilege that is denied by this Chapter to other lands, buildings, or structures under similar circumstances.

~~12. Reasonable Use Exception –~~

~~An applicant for a detached dwelling unit who is unable to comply with the specific standards of this section may seek approval pursuant to the following standards and procedures:~~

~~a. When allowed - A reasonable use exception may be granted if the strict application of this section would preclude all reasonable use of a site. The reasonable use process within the shoreline jurisdiction area applies to lots that are significantly constrained by critical area and critical area buffers, but still contain a minimum of 20 percent of the land area of the subject property outside of wetlands, either in wetland buffer or as upland area.~~

~~b. Location Standards – This provision shall be limited to the following geographic areas within the City's shoreline jurisdiction:~~

~~i. Properties encumbered by wetlands or associated buffers in the Yarrow Bay Wetland complex.~~

ii. Properties located along Rose Point Lane that are encumbered by wetlands or wetland buffers in the Juanita Bay wetland complex.

c. Submittal Requirements – As part of the reasonable use request, the applicant shall submit a report prepared by a qualified professional and fund a review of this report by the City's qualified professional. The report shall include the following:

1) A determination and delineation of the sensitive area and sensitive area buffer containing all the information specified in KZC 83.500 3) for a wetland;

2) An analysis of whether any other reasonable use with less impact on the sensitive area and sensitive area buffer is feasible;

3) Sensitive site design and construction staging of the proposal so that the development will have the least feasible impact on the sensitive area and sensitive area buffer;

4) A description of the area of the site which is within the sensitive area or within the setbacks or buffers required by this Chapter;

5) A description of protective measures that will be undertaken, such as siltation curtains, hay bales and other siltation prevention measures, and scheduling the construction activity to avoid interference with wildlife and fisheries rearing, nesting or spawning activities;

6) An analysis of the impact that the proposed development would have on the sensitive area and the sensitive area buffer;

7) How the proposal minimizes net loss of sensitive area and/or sensitive area buffer functions to the greatest extent feasible;

8) Whether the improvement is located away from the sensitive area and the sensitive area buffer to the greatest extent feasible;

9) Information specified in KZC 83.500.8 for Compensatory Mitigation;

10) Such other information or studies as the Planning Official may reasonably require.

d. Decisional Criteria – The City shall grant approval of a reasonable use exception only if all of the following criteria are met:

1) No permitted type of land use for the property with less impact on the sensitive area and associated buffer is feasible and reasonable, which in the Natural shoreline environment shall be one single-family dwelling;

2) There is no feasible on-site alternative to the proposed activities, including reduction in size, density or intensity, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to the sensitive area and buffer;

3) Unless the applicant can demonstrate unique circumstances related to the subject property, the amount of site area that will be disturbed by structure placement or other land alteration, including but not limited to grading, utility installation, decks, driveways, paving, and vegetation, shall not exceed 3,000 square feet. The amount of allowable disturbance shall be the minimum feasible with the least impact on the sensitive area and the sensitive area buffer, given the characteristics and context of the subject property, sensitive area, and buffer;

4) The applicant shall pay for a qualified professional to assist the City's determination of the appropriate limit for disturbance;

~~5) The proposal is compatible in scale and use with other legally established development in the immediate vicinity of the subject property in the same zone and with similar site constraints;~~

~~6) The proposal maximizes the amount of existing tree canopy that is retained;~~

~~7) The proposal utilizes to the maximum extent feasible innovative construction, design, and development techniques, including pervious surfaces, which minimize to the greatest extent feasible net loss of sensitive area functions and values;~~

~~8) The proposed development does not pose an unacceptable threat to the public health, safety, or welfare on or off the property;~~

~~9) The proposal meets the mitigation, maintenance, and monitoring requirements of this Chapter;~~

~~10) The inability to derive reasonable use is not the result of actions by the applicant after the effective date of the ordinance of this Chapter or its predecessor; and~~

~~11) The granting of the exception will not confer on the applicant any special privilege that is denied by this Chapter to other lands, buildings, or structures under similar circumstances.~~

~~e. Modifications and Conditions – The City may approve a reduction in required yards or buffer setbacks and may allow the maximum height of structures to be increased up to 5 feet to reduce the impact on the sensitive area and sensitive area buffer. The required front yard may be reduced by up to 50 percent where the applicant demonstrates that the development cannot meet the City's code requirements without encroaching into the sensitive area buffer.~~

~~The City shall include in the written decision any conditions and restrictions that the City determines are necessary to eliminate or minimize any undesirable effects of approving an exception.~~

13. Wetland Restoration - City approval is required prior to wetland restoration. The City may permit or require the applicant or property owner to restore and maintain a wetland and/or its buffer by removing material detrimental to the area, such as debris, sediment, or vegetation. The City may also permit or require the applicant to restore a wetland or its buffer through the addition of native plants and other habitat features. See also KZC 83.490.3, Trees in Critical Areas or Critical Area Buffers; and KZC 83.490.4, Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers. Restoration may be required whenever a condition detrimental to water quality or habitat exists. When the City requires wetland restoration, the requirements of KZC 83.500.8, Compensatory Mitigation, shall apply.

14. Wetland Access - The City may develop access through a wetland and its buffer in conjunction with a public park, provided the purpose supports education or passive recreation, and is designed to minimize environmental impacts during construction and operation.

83.510 Streams

1. Applicability – The following provisions shall apply to streams and stream buffers located within the shoreline jurisdiction, in place of provisions contained in Chapter 90 KZC. Provisions contained in Chapter 90 KZC that are not addressed in this section continue to apply, with the exception of the following subsections that shall not apply within the shoreline jurisdiction:

   a. KZC 90.20 – General Exceptions

   b. KZC 90.30 – Definitions

   c. KZC 90.75 – Minor Lakes

   d. KZC 90.140 – Reasonable Use Exception

e. KZC 90.160 – Appeals

f. KZC 90.170 – Planning/Public Works Official Decisions – Lapse of Approval

2. Activities in or Near Streams – No Land surface modification shall occur and no improvements shall be located in a stream or its buffer except as provided in KZC 83.510.3 through 83.510.11.

3. Stream Determinations - The Planning Official shall determine whether a stream or stream buffer is present on the subject property using the following provisions. During or immediately following a site inspection, the Planning Official shall make an initial assessment as to whether a stream exists on any portion of the subject property or surrounding area (which shall be the area within approximately 100 feet of the subject property).

   If the initial site inspection indicates the presence of a stream, the Planning Official shall determine, based on the definitions contained in this Chapter and after a review of all information available to the City, the classification of the stream.

   If this initial site inspection does not indicate the presence of a stream on or near the subject property, no additional stream study will be required.

   If an applicant disagrees with the Planning Official's determination that a stream exists on or near the subject property or the Planning Official's classification of a stream, the applicant shall submit a report prepared by a qualified professional approved by the Planning Official that independently evaluates the presence of a stream or the classification of the stream, based on the definitions contained in this Chapter.

   The Planning Official shall make final determinations regarding the existence of a stream and the proper classification of that stream. The Planning Official's decision under this section shall be used for review of any development activity proposed on the subject property for which an application is received within 2 years of the decision; provided, that the Planning Official may modify any decision whenever physical circumstances have markedly and demonstrably changed on the subject property or the surrounding area as a result of natural processes or human activity.

4. Stream Buffers and Setbacks

   a. Stream Buffers – No land surface modification shall occur and no improvement shall be located in a stream or its buffer, except as provided in this section. See also KZC 83.490(3), Trees in Critical Areas or Critical Area Buffers; and KZC 83.490(4), Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers.

      Required or standard buffers for streams are as follows:

      Stream Buffers

Stream Class	Primary Basins	Secondary Basins
A	75 feet	N/A
B	60 feet	50 feet
C	35 feet	25 feet

      Stream buffers shall be measured from each side of the OHWM of the stream, except that where streams enter or exit pipes, the buffer shall be measured in all directions from the pipe opening. Essential improvements to accommodate required vehicular, pedestrian, or utility access to the subject property may be located within those portions of stream buffers that are measured toward culverts from culvert openings.

      Where a legally established, improved road right-of-way or structure divides a stream buffer, the Planning Official may approve a modification of the required buffer in that portion of the buffer isolated from the stream by the road or structure, provided the isolated portion of the buffer:

1) Does not provide additional protection of the stream from the proposed development; and

2) Provides insignificant biological, geological or hydrological buffer functions relating to the portion of the buffer adjacent to the stream.

b. Buffer Setback – Structures shall be set back at least 10 feet from the designated or modified stream buffer. The City may allow within this setback minor improvements that would have no potential adverse effect during their construction, installation, use, or maintenance to fish, wildlife, or their habitat or to any vegetation in the buffer or adjacent stream.

c. Storm Water Discharge – Necessary discharge of storm water through stream buffers and buffer setbacks may be allowed on the surface, but a piped system discharge is prohibited unless approved pursuant to this section. Storm water outfalls (piped systems) may be located within the buffer setback specified in subsection (b) of this section and within the buffers specified in subsection (a) of this section only when the City determines, based on a report prepared by a qualified professional under contract to the City and paid for by the applicant, that surface discharge of storm water through the buffer would clearly pose a threat to slope stability; and if the storm water outfall will not:

1) Adversely affect water quality;

2) Adversely affect fish, wildlife, or their habitat;

3) Adversely affect drainage or storm water detention capabilities;

4) Lead to unstable earth conditions or create erosion hazards or contribute to scouring actions; and

5) Be materially detrimental to any other property in the area of the subject property or to the City as a whole, including the loss of significant open space or scenic vistas.

Storm water facilities shall minimize potential impacts to the stream or stream buffer by meeting the following design standards:

1) Catch basins must be installed as far as feasible from the buffer boundary.

2) Outfalls must be designed to reduce the chance of adverse impacts as a result of concentrated discharges from pipe systems. This may include:

a.) Installation of the discharge end as far as feasible from the sensitive area, and

b.) Use of appropriate energy dissipation at the discharge end.

d. Water Quality Facilities –The City may only approve a proposal to install a water quality facility within the outer one-half (1/2) of a stream buffer if a suitable location outside of the buffer is not available and only if:

1) It will not adversely affect water quality;

2) It will not adversely affect fish, wildlife, or their habitat;

3) It will not adversely affect drainage or storm water detention capabilities;

4) It will not lead to unstable earth conditions or create erosion hazards or contribute to scouring actions;

5) It will not be materially detrimental to any other property in the area of the subject property or to the City as a whole, including the loss of significant open space or scenic vistas;

6) The existing buffer is already degraded as determined by a qualified professional;

7) The installation of the water quality facility would be followed immediately by enhancement of an area equal in size and immediately adjacent to the affected portion of the buffer; and

8) Once installed, it would not require any further disturbance or intrusion into the buffer.

The City may only approve a proposal by a public agency to install a water quality facility elsewhere in a stream buffer if Criteria 9 – 12 (below) are met in addition to 1 – 8 (above):

9) The project includes enhancement of the entire on-site buffer;

10) The project would provide an exceptional ecological benefit off-site;

11) The water quality facility, once installed, would not require any further disturbance or intrusion into the buffer; and

12) There is no feasible alternative proposal that results in less impact to the buffer.

e. Utilities and Rights-of-Way – Provided that activities will not increase the impervious surface area or reduce flood storage capacity, the following work shall be allowed in critical areas and their buffers subject to City review after appropriate mitigation sequencing per KZC 83.490.2 has been considered and implemented:

1) All utility work in improved City rights-of-way;

2) All normal and routine maintenance, operation and reconstruction of existing roads, streets, and associated rights-of-way and structures; and

3) Construction of sewer or water lines that connect to existing lines in a sensitive area or buffer where no feasible alternative location exists based on an analysis of technology and system efficiency.

All affected critical areas and buffers shall be expeditiously restored to their pre-project condition or better. For purposes of this subsection only, “improved City rights-of-way” include those rights-of-way that have improvements only underground, as well as those with surface improvements.

f. Minor Improvements – Minor improvements may be located within the sensitive area buffers specified in subsection 83.510.4. These minor improvements shall be located within the outer one-half (1/2) of the sensitive area buffer, except where approved stream crossings are made. The City may only approve a proposal to construct a minor improvement within a sensitive area buffer if:

1) It will not adversely affect water quality;

2) It will not adversely affect fish, wildlife, or their habitat;

3) It will not adversely affect drainage or storm water detention capabilities;

4) It will not lead to unstable earth conditions or create erosion hazards or contribute to scouring actions;

5) It will not be materially detrimental to any other property in the area of the subject property or to the City as a whole, including the loss of significant open space or scenic vistas; and

6) It supports public or private shoreline access.

The City may require the applicant to submit a report prepared by a qualified professional that describes how the proposal will or will not comply with the criteria for approving a minor improvement.

5. Stream Buffer Fence or Barrier - Prior to beginning development activities, the applicant shall install a 6-foot-high construction-phase chain link fence or equivalent fence, as approved by the Planning Official and consistent with City standards, along the upland boundary of the entire stream buffer with silt screen fabric. The construction-phase fence shall remain upright in the approved location for the duration of development activities.

Upon project completion, the applicant shall install between the upland boundary of all stream buffers and the developed portion of the site, either (1) a permanent three- to four-foot-tall split rail fence; or (2) equivalent barrier, as approved by the Planning Official. Installation of the permanent fence or equivalent barrier must be done by hand where necessary to prevent machinery from entering the stream or its buffer.

6. Permit Process -

The City shall consolidate and integrate the review and processing of the critical areas aspects of the proposal with the shoreline permit required for the proposed development activity, except as follows:

Development Proposal	**Permit Process**
Steam Relocations or Modifications, or Stream Buffer Modifications affecting more than one-third (1/3) of the standard buffer	Shoreline Variance pursuant to Process IIA, described in Chapter 141
Stream Buffer Modifications affecting less than one-third (1/3) of the standard buffer ~~or Reasonable Use Exceptions~~	Underlying development permit or development activity
Bulkheads in Stream, Stream Crossings or Stream Rehabilitation	Underlying development permit or development activity

7. Stream Buffer Modification

a. Departures from the standard buffer requirements shall be approved only after the applicant has demonstrated consideration and implementation of appropriate mitigation sequencing as outlined in KZC 83.490.2.

b. Approved departures from the standard buffer requirements of KZC 83.510.4(a) allow applicants to modify the physical and biological conditions of portions of the standard buffer for the duration of the approved project. These approved departures from the standard buffer requirements do not permanently establish a new regulatory buffer edge. Future development activity on the subject property may be required to reestablish the physical and biological conditions of the standard buffer.

c. Types of Buffer Modification – Buffers may be reduced through one of two means, either (1) buffer averaging; or (2) buffer reduction with enhancement. A combination of these two buffer reduction approaches shall not be used.

1) Buffer averaging requires that the area of the buffer resulting from the buffer averaging be equal in size and quality to the buffer area calculated by the standards specified in KZC 83.510.4(a). Buffers may not be reduced at any point by more than one-third (1/3) of the standards in KZC 83.510.4(a). Buffer averaging calculations shall only consider the subject property.

2) Buffers may be decreased through buffer enhancement. The applicant shall demonstrate that through enhancing the buffer (by removing invasive plants, planting native vegetation, installing habitat features such as downed logs or snags, or other means) the reduced buffer will function at a higher level than the standard existing buffer. The reduced on-site buffer area must be planted and maintained as needed to yield over time a reduced buffer that is equivalent to an undisturbed Puget Lowland forests in density and species composition.

A buffer enhancement plan shall at a minimum provide the following: (1) a map locating the specific area of enhancement; (2) a planting plan that uses native species, including groundcover, shrubs, and trees; and (3) a monitoring and maintenance program prepared by a qualified professional consistent with the standards specified in KZC 83.500.8.

Buffers may not be reduced at any point by more than one-third (1/3) of the standards in KZC 83.510.4(a).

d. Decisional Criteria – An improvement or land surface modification may only be approved in a stream buffer only if:

1) The project demonstrates consideration and implementation of appropriate mitigation sequencing as outlined in KZC 83.490.2.

2) It is consistent with *Kirkland's Streams, Wetlands and Wildlife Study* (The Watershed Company, 1998) and the *Kirkland Sensitive Areas Regulatory Recommendations Report* (Adolfson Associates, Inc., 1998);

3) It will not adversely affect water quality;

4) It will not adversely affect fish, wildlife, or their habitat;

5) It will not have an adverse effect on drainage and/or storm water detention capabilities;

6) It will not lead to unstable earth conditions or create an erosion hazard or contribute to scouring actions;

7) It will not be materially detrimental to any other property or the City as a whole;

8) Fill material does not contain organic or inorganic material that would be detrimental to water quality or to fish, wildlife, or their habitat;

9) All exposed areas are stabilized with vegetation normally associated with native stream buffers, as appropriate; and

10) There is no practicable or feasible alternative development proposal that results in less impact to the buffer.

As part of the modification request, the applicant shall submit a report prepared by a qualified professional and fund a review of this report by the City's consultant. The report shall assess the habitat, water quality, storm water detention, ground water recharge, and erosion protection functions of the buffer; assess the effects of the proposed modification on those functions; and address the 10 criteria listed in this subsection above.

8. Shoreline Variance for Stream Relocation or Modification or Stream Buffer Modification

An applicant who is unable to comply with the specific standards of KZC 83.510 must obtain a shoreline variance, pursuant to KZC 141.70.3 and meet the criteria set forth in WAC 183-27-170. In additional, the following City submittal requirements and criteria must also be met:

a) Submittal Requirements – As part of the shoreline variance request, the applicant shall submit a report prepared by a qualified professional and fund a review of this report by the City's qualified professional. The report shall include the following:

1) A determination and delineation of the sensitive area and sensitive area buffer containing all the information specified in KZC 83.510 3) for a wetland;

2) An analysis of whether any other proposed development with less impact on the sensitive area and sensitive area buffer is feasible;

3) Sensitive site design and construction staging of the proposal so that the development will have the least feasible impact on the sensitive area and sensitive area buffer;

4) A description of the area of the site which is within the sensitive area or within the setbacks or buffers required by this Chapter;

5) A description of protective measures that will be undertaken, such as siltation curtains, hay bales and other siltation prevention measures, and scheduling the

construction activity to avoid interference with wildlife and fisheries rearing, nesting or spawning activities;

6) An analysis of the impact that the proposed development would have on the sensitive area and the sensitive area buffer;

7)How the proposal minimizes net loss of sensitive area and/or sensitive area buffer functions to the greatest extent feasible;

8) Whether the improvement is located away from the sensitive area and the sensitive area buffer to the greatest extent feasible;

9) Information specified in KZC 83.500.8 for Compensatory Mitigation;

10 Such other information or studies as the Planning Official may reasonably require.

b. Decisional Criteria – The City shall may grant approval of a shoreline variance only if all of the following criteria are met:

1) No other permitted type of land use for the property with less impact on the sensitive area and associated buffer is feasible;

2) The proposal has the minimum area of disturbance;

3) The proposal maximizes the amount of existing tree canopy that is retained;

4) The proposal utilizes to the maximum extent feasible innovative construction, design, and development techniques, including pervious surfaces, which minimize to the greatest extent feasible net loss of sensitive area functions and values;

5) The proposed development does not pose an unacceptable threat to the public health, safety, or welfare on or off the property;

6) The proposal meets the mitigation, maintenance, and monitoring requirements of this Chapter;

7) The granting of the shoreline variance will not confer on the applicant any special privilege that is denied by this Chapter to other lands, buildings, or structures under similar circumstances.

~~8. Reasonable Use Exception –~~

~~An applicant for a detached dwelling unit who is unable to comply with the specific standards of this section may seek approval pursuant to the following standards and procedures:~~

~~a. When allowed - A reasonable use exception may be granted if the strict application of this section would preclude all reasonable use of a site. The reasonable use process within the shoreline jurisdiction area applies to lots that are significantly constrained by critical area and critical area buffers, but still contain a minimum of 20 percent of the land area of the subject property outside of stream, either in stream buffer or as upland area.~~

~~b. Location Standards – This provision shall be limited to properties encumbered by wetlands or associated buffers in the Yarrow Bay Wetland complex.~~

~~c. Submittal Requirements – As part of the reasonable use request, the applicant shall submit a report prepared by a qualified professional and fund a review of this report by the City's qualified professional. The report shall include the following:~~

~~1) A determination and delineation of the sensitive area and sensitive area buffer containing all the information specified in KZC 83.510.3) for a stream based on the definitions contained in this Chapter for a stream;~~

2) An analysis of whether any other reasonable use with less impact on the sensitive area and sensitive area buffer is feasible;

3) Sensitive site design and construction staging of the proposal so that the development will have the least feasible impact on the sensitive area and sensitive area buffer;

4) A description of the area of the site which is within the sensitive area or within the setbacks or buffers required by this Chapter;

5) A description of protective measures that will be undertaken, such as siltation curtains, hay bales and other siltation prevention measures, and scheduling the construction activity to avoid interference with wildlife and fisheries rearing, nesting or spawning activities;

6) An analysis of the impact that the amount of proposed development would have on the sensitive area and the sensitive area buffer;

7) How the proposal minimizes net loss of sensitive area and/or sensitive area buffer functions to the greatest extent feasible;

8) Whether the improvement is located away from the sensitive area and the sensitive area buffer to the greatest extent feasible;

9) Information specified in KZC 83.500.8 for Compensatory Mitigation;

10) Such other information or studies as the Planning Official may reasonably require.

d. Decisional Criteria – The City shall grant approval of a reasonable use exception only if all of the following criteria are met:

1) No permitted type of land use for the property with less impact on the sensitive area and associated buffer is feasible and reasonable, which in the Natural shoreline environment shall be one single-family dwelling;

2) There is no feasible on-site alternative to the proposed activities, including reduction in size, density or intensity, phasing of project implementation, change in timing of activities, revision of road and lot layout, and/or related site planning considerations, that would allow a reasonable economic use with less adverse impacts to the sensitive area and buffer;

3) Unless the applicant can demonstrate unique circumstances related to the subject property, the amount of site area that will be disturbed by structure placement or other land alteration, including but not limited to grading, utility installation, decks, driveways, paving, and vegetation, shall not exceed 3,000 square feet. The amount of allowable disturbance shall be the minimum feasible with the least impact on the sensitive area and the sensitive area buffer, given the characteristics and context of the subject property, sensitive area, and buffer;

4) The applicant shall pay for a qualified professional to assist the City's determination of the appropriate limit for disturbance;

5) The proposal is compatible in scale and use with other legally established development in the immediate vicinity of the subject property in the same zone and with similar site constraints;

6) The proposal maximizes the amount of existing tree canopy that is retained;

7) The proposal utilizes to the maximum extent feasible innovative construction, design, and development techniques, including pervious surfaces, which minimize to the greatest extent feasible net loss of sensitive area functions and values;

8) The proposed development does not pose an unacceptable threat to the public health, safety, or welfare on or off the property;

~~9) The proposal meets the mitigation, maintenance, and monitoring requirements of this Chapter;~~

~~10) The inability to derive reasonable use is not the result of actions by the applicant after the effective date of the ordinance of this Chapter or its predecessor; and~~

~~11) The granting of the exception will not confer on the applicant any special privilege that is denied by this Chapter to other lands, buildings, or structures under similar circumstances.~~

~~e. Modifications and Conditions – The City may approve a reduction in required yards or buffer setbacks and may allow the maximum height of structures to be increased up to 5 feet to reduce the impact on the sensitive area and sensitive area buffer. The required front yard may be reduced by up to 50 percent where the applicant demonstrates that the development cannot meet the City's code requirements without encroaching into the sensitive area buffer.~~

~~The City shall include in the written decision any conditions and restrictions that the City determines are necessary to eliminate or minimize any undesirable effects of approving an exception.~~

9. Stream Relocation or Modification - The City may only permit a stream to be relocated or modified if water quality, conveyance, fish and wildlife habitat, wetland recharge (if hydrologically connected to a wetland), and storm water detention capabilities of the stream will be significantly improved by the relocation or modification. Convenience to the applicant in order to facilitate general site design shall not be considered.

A proposal to relocate or modify a Class A stream may only be approved if the Washington Department of Fish and Wildlife issues a Hydraulic Project Approval for the project. Furthermore, all modifications shall be consistent with *Kirkland's Streams, Wetlands and Wildlife Study* (The Watershed Company, 1998) and the *Kirkland Sensitive Areas Regulatory Recommendations Report* (Adolfson Associates, Inc., 1998).

If the proposed stream activity will result in the creation or expansion of a stream or its buffer on any property other than the subject property, the City shall not approve the plan until the applicant submits to the City a copy of a statement signed by the owners of all affected properties, in a form approved by the City Attorney and recorded in the King County Recorder's Office, consenting to the sensitive area and/or buffer creation or increase on such property.

Prior to the City's decision to authorize approval of a stream relocation or modification, the applicant shall submit a stream relocation/modification plan prepared by a qualified professional approved by the City. The cost of producing, implementing, and monitoring the stream relocation/modification plan, and the cost of review of that plan by the City's stream consultant shall be borne by the applicant. This plan shall contain or demonstrate the following:

a. A topographic survey showing existing and proposed topography and improvements;

b. The filling and revegetation of the existing stream channel;

c. A proposed phasing plan specifying time of year for all project phases;

d. The ability of the new stream channel to accommodate flow and velocity of 100-year storm events; and

e. The design and implementation features and techniques listed below, unless clearly and demonstrably inappropriate for the proposed relocation or modification:

   1) The creation of natural meander patterns;

   2) The formation of gentle and stable side slopes, no steeper than two feet horizontal to one-foot vertical, and the installation of both temporary and permanent erosion-control features (the use of native vegetation on stream banks shall be emphasized);

3) The creation of a narrow sub-channel (thalweg) against the south or west stream bank;

4) The utilization of native materials;

5) The installation of vegetation normally associated with streams, emphasizing native plants with high food and cover value for fish and wildlife;

6) The creation of spawning areas, as appropriate;

7) The re-establishment of fish population, as appropriate;

8) The restoration of water flow characteristics compatible with fish habitat areas;

9) Demonstration that the flow and velocity of the stream after relocation or modification shall not be increased or decreased at the points where the stream enters and leaves the subject property, unless the change has been approved by the City to improve fish and wildlife habitat or to improve storm water management;

10) A written description of how the proposed relocation or modification of the stream will significantly improve water quality, conveyance, fish and wildlife habitat, wetland recharge (if hydrologically connected to a wetland), and storm water detention capabilities of the stream; and

11) A monitoring and maintenance plan consistent with KZC 83.500.8 for wetlands.

Prior to diverting water into a new stream channel, a qualified professional approved by the City shall inspect the completed new channel and issue a written report to the City stating that the new stream channel complies with the requirements of this section. The cost for this inspection and report shall be borne by the applicant.

10. Stream Bank Protection

a. General –

1) Stream bank protection measures shall be selected to address site- and reach-based conditions and to avoid habitat impacts.

2) The selection of the streambank protection technique shall be based upon an evaluation of site conditions, reach conditions and habitat impacts.

3) Nonstructural or soft structural streambank protection measures shall be implemented unless demonstrated to not be feasible.

b. Submittal Requirements for Streambank Protection Measures – The following shall be submitted to the City:

An assessment prepared by a qualified professional containing the following:

1) An evaluation of the specific mechanism(s) of streambank failure as well as the site and reach-based causes of erosion.

2) An evaluation of the considerations used in identifying the preferred streambank solution technique. The evaluation shall address the provisions established in the Washington Department of Fish and Wildlife's *Integrated Streambank Protection Guidelines* (2003, or as revised).

c. Bulkheads or other erosion control practices using hardened structures that armor and stabilize the streambank from further erosion are not permitted along a stream, except as provided in this subsection. The City shall allow a bulkhead to be constructed only if:

1) It is not located within a wetland or between a wetland and a stream;

2) It is needed to prevent significant erosion;

3) I The use of vegetation and/or other biological materials would not sufficiently stabilize the stream bank to prevent significant erosion;

4) The applicant submits a plan prepared by a qualified professional approved by the City that shows a bulkhead and implementation techniques that meet the following criteria:

a) There will be no adverse impact to water quality;

b) There will be no adverse impact to fish, wildlife, and their habitat;

c) There will be no increase in the velocity of stream flow, unless approved by the City to improve fish habitat;

d) There will be no decrease in flood storage volumes;

e) The installation, existence, nor operation of the bulkhead will lead to unstable earth conditions or create erosion hazards or contribute to scouring actions; and

f) The installation, existence nor operation of the bulkhead will be detrimental to any other property or the City as a whole.

5) The Washington Department of Fish and Wildlife issues a Hydraulic Project Approval for the project.

d. The stream bank protection shall be designed consistent with Washington Department of Fish and Wildlife's *Integrated Streambank Protection Guidelines* (2003, or as revised). The stabilization measure shall be designed and constructed to minimize the transmittal of water current and energy to other properties. Changes in the horizontal or vertical configuration of the land shall be kept to a minimum. Fill material used in construction of a bulkhead shall be non-dissolving and non-decomposing. The applicant shall also stabilize all exposed soils by planting native riparian vegetation with high food and cover value for fish and wildlife.

11. Stream Crossings - Stream crossings are not permitted, except as specified in this section. The City shall review and decide upon an application to cross a stream with an access drive, driveway, or street. A stream crossing shall be allowed only if:

a. The stream crossing is necessary to provide required vehicular, pedestrian, or utility access to the subject property. Convenience to the applicant in order to facilitate general site design shall not be considered;

b. The Washington Department of Fish and Wildlife issues a Hydraulic Project Approval for the project; and

c. The applicant submits a plan prepared by a qualified professional approved by the City that shows the crossing and implementation techniques that meet the following criteria:

1) There will be no adverse impact to water quality;

2) There will be no adverse impact to fish, wildlife, and their habitat;

3) There will be no increase in the velocity of stream flow, unless approved by the City to improve fish habitat;

4) There will be no decrease in flood storage volumes;

5) The installation, existence, nor operation of the stream crossing will lead to unstable earth conditions or create erosion hazards or contribute to scouring actions; and

6) The installation, existence nor operation of the stream crossing will be detrimental to any other property or to the City as a whole.

d. The stream crossing shall be designed and constructed to allow passage of fish inhabiting the stream or which may inhabit the stream in the future. The stream crossing shall be designed to accommodate a 100-year storm event. The applicant shall at all times maintain the crossing so that debris and sediment do not interfere with free passage of water, wood

and fish. The City shall require a security or perpetual maintenance agreement under KZC 90.145 for continued maintenance of the stream crossing.

e. A bridge is the preferred stream crossing method. If a bridge is not economically or technologically feasible, or would result in greater environmental impacts than a culvert, a proposal for a culvert may be approved if the culvert complies with the criteria in this subsection must be designed consistent with Washington Department of Fish and Wildlife's *Design of Road Culverts for Fish Passage* (2003, or as revised).

f. If a proposed project requires approval through a shoreline conditional use, the City may require that any stream in a culvert on the subject property be opened, relocated, and restored consistent with the provisions of this subsection.

12. Stream Rehabilitation - City approval is required prior to stream rehabilitation. The City may permit or require the applicant or property owner to restore and maintain a stream and/or its buffer by removing material detrimental to the stream and its surrounding area such as debris, sediment, or vegetation. The City may also permit or require the applicant to restore a stream or its buffer through the addition of native plants and other habitat features. See also KZC 83.490, Trees in Critical Areas or Critical Area Buffers; and KZC 83.490, Mitigation and Restoration Plantings in Critical Areas and Critical Area Buffers. Restoration may be required at any time that a condition detrimental to water quality or habitat exists. When the City requires stream rehabilitation, the mitigation plan and monitoring requirements of KZC 83.500.8 shall apply.

83.520 Geologically Hazardous Areas

1. General - Uses, developments, activities and shoreline modifications within geologically hazardous areas must be limited to prevent significant adverse impacts to property or public improvements and/or result in a net loss of ecological functions and ecosystem-wide processes.

2. Standards –

a. New use, development or activities or creation of new lots that would cause foreseeable risk to people or improvement from geological conditions during the life of the use, development or activities shall not be allowed.

b. New use, development or activities that would require structural shoreline stabilization over the life of the development shall not be allowed, except for the limited instances where stabilization is necessary to protect allowed uses where no alternative locations are available.

c. For protection of existing primary residential structures, stabilization structures or measures may be allowed when no alternatives, including relocation or reconstruction of existing structures, are found to be feasible.

d. Stabilization structures or measures must be consistent with KZC 83.300 for shoreline stabilization and with KZC 83.380 for no net loss of ecological function.

e. Uses, developments, activities and shoreline modifications within geologically hazardous areas must be consistent with Chapter 85 KZC..

f. In addition to the required information contained in KZC 85.15, any required geotechnical report shall also contain any additional information specified under the definition of Geotechnical Report contained in KZC Section 83.80.

83.530 Flood Hazard Reduction

1. General - Uses, developments, activities and shoreline modifications within channel migration zone must be limited to prevent interference with the process of channel migration that may cause significant adverse impacts to property or public improvements and/or result in a net loss of ecological functions associated with critical areas.

2. Standards –

a. New uses, development or activities or expansions shall not be allowed when it would be reasonable foreseeable that the use, development or activities would require structural flood hazard reduction measures within the channel migration or floodway.

b. The uses and activities specifically identified in WAC 173-26-221(3)(c)(I) may be allowed within the channel migration zone if the City determines that they are appropriate and/or necessary.

c. Flood hazard measures shall not result in a net loss of ecological functions associated with critical areas. See KZC 83.360.

d. Flood hazard reduction measures shall only be allowed if it is determined that no other alternative is feasible to reduce flood hazard to existing development. Where feasible, non structural flood hazard reduction measures shall be utilized over structural measures.

e. When evaluating alternative flood control measures, structures in flood-prone areas shall be removed or relocated where feasible.

f. New structural flood hazard reduction measures may be allowed only when it can be demonstrated by scientific and engineering analysis that:

    1) They are necessary to protect existing development;
    2) Non structural measures are not feasible;
    3) Impacts to ecological functions and priority species and habitats can be successfully mitigated to assure no net loss; and
    4) Vegetation retention is provided consistent with KZC 83.400, KZC 83.500 and KZC 83.510 as applicable.

g. New structural flood hazard reduction measures shall be placed landward of wetlands and associated buffers areas, except for actions that increase ecological functions, such as wetland restoration.

h. For new structural flood hazard reduction measures, such as dikes and levees, improved public access walkways shall be provided, unless public access improvements would cause unavoidable health and safety hazards to the public, inherent or unavoidable security problems, or ecological impacts that are significant and cannot be mitigated.

i. Removal of gravel for flood management is not permitted, unless a biological and geomorphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a new loss of ecological functions and is part of a comprehensive flood management solution.

j. Where feasible, stream corridors shall be returned to more natural hydrological conditions, recognizing that seasonal flooding is an essential natural process. This includes removal of artificial restrictions to natural channel migration, restoration of off channel hydrological connections and returning stream processes to a more natural state were appropriate and feasible.

k. Associated wetland restorations must be consistent with KZC 83.490, KZC 83.500 and KZC 83.510. Stream restoration or relocations must be consistent with KZC 90.

l. The requirements of Chapter 21.56 KMC - Flood Damage Prevention, Chapter 15.52 KMC - Surface Water Management and the National Flood Insurance Program must be met.

83.540 Archaeological and Historic Resources

1. General - Uses, developments and activities on sites of historic or archeological significance or sites containing items of historic or archeological significance must not unreasonably disrupt or destroy the historic or archeological resource.

2 Standards -

a. Permits submitted for land surface modification or development activity in areas documented by the Washington State Office of Archaeology and Historic Preservation to contain archaeological resources shall include a site inspection and a draft written report prepared by a qualified professional archaeologist, approved by the City, prior to the issuance of a permit. In addition, the archaeologist will provide copies of the draft report to the affected tribe(s) and the State Office of Archaeology and Historic Preservation.

   After consultation with these agencies, the archaeologist shall provide a final report that includes any recommendations from the affected tribe(s) and the State Office of Archaeology and Historic Preservation on avoidance or mitigation of the proposed project's impacts. The Planning Official shall condition project approval, based on the final report from the archaeologist, to ensure that impacts to the site are avoided or minimized consistent with federal and state law.

b. Shoreline permits shall contain provisions that require developers to immediately stop work and notify the City if any potential archaeological resources are uncovered during land surface modification or development activity. In such cases, the developer shall be required to provide for a site inspection and evaluation by a qualified professional archaeologist, approved by the City, to ensure that all feasible valuable archaeological data is properly handled. The City shall subsequently notify the affected tribe and the State Office of Archaeology and Historic Preservation. Failure to comply with this requirement shall be considered a violation of the shoreline permit.

c If identified historical or archaeological resources are present, site planning and access to such areas shall be designed and managed to give maximum protection to the resource and surrounding environment.

d. Interpretative signs, historical markers and other similar exhibits providing information about historical and archaeological features and natural areas shall be provided when appropriate.

e. In the event that unforeseen factors constituting an emergency as defined in RCW 90.58.030 that necessitate rapid action to retrieve or preserve artifacts or data identified above, the project may be exempted from the permit requirement of these regulations. The City shall notify the State Department of Ecology, the State Attorney General's Office and the State Historic Preservation Office of such a waiver in a timely manner.

f. Archaeological sites are subject to RCW 27.44 (Indian Graves and Records) and RCW 27.53 (Archaeological Sites and Records) and shall comply with WAC 25-48 or its successor as well as the provisions of this Chapter.

g. Proposed changes to historical properties that are registered on the State or National Historic Register are subject to review under the National and State Registers' review process.

83.550 Nonconformances

1. General - This section establishes when and under what circumstances nonconforming aspects of a use or development must be brought into conformance with this Chapter. You need to consult the provisions of this section if there is some aspect of the use or development on the subject property that is not permitted under this Chapter.

2. When Conformance is Required - If an aspect, element or activity of or on the subject property conformed to the applicable shoreline regulations in effect at the time the aspect, element or activity was constructed or initiated, that aspect, element or activity may continue and need not be brought into conformance with this Chapter unless a provision of this section requires conformance. Further, nonconforming structures may be maintained, altered, remodeled, repaired and continued; provided that nonconforming structures shall not be enlarged, intensified, increased or altered in any way that increases the extent of the nonconformity, except as specifically permitted under this section.

3. Abatement of Nonconformance That Was Illegal When Initiated - Any nonconformance that was illegal when initiated must immediately be brought into conformance with this Chapter. The City

may, using the provisions of WAC 173-27, abate any nonconformance that was illegal when initiated.

4. Special Provision for Damaged Improvements - Non-conforming structures that are damaged or destroyed by fire, explosion, flood, earthquake or other casualty may be restored or replaced in kind, provided that, the following are met:

   a. The permit process is commenced within twenty-four (24) months of the date of such damage; and

   b. The reconstruction does not expand, enlarge, or otherwise increase the non-conformity, except as provided for in this section; and

   c. The reconstruction locates the structure in the same place where it was, or alternatively if moved, then the least environmentally damaging location relative to the shoreline and any critical areas; and

   d. For existing residential structures built over the water, appropriate measures are taken to mitigate adverse impacts to the maximum extent feasible while still retaining the existing residential density, including but not limited to:

      1) Reducing the overwater footprint;

      2) Reducing the number or size of pilings to the extent allowed by site-specific engineering or design considerations;

      3) Softening existing hard shoreline stabilization measures to the extent allowed by site-specific characteristics;
      4) Raising the height of the structure off the water, provided that the height of the existing building is not increased; and
      5) Incorporating grating into the re-built structure where feasible.

5. Certain Nonconformances Specifically Regulated –

   a. General –

      1) The provisions of this section specify when and under what circumstances certain nonconformances must be corrected. If a nonconformance must be corrected under this section, the applicant must submit all information necessary for the City to review the correction as part of the application for any development permit. In addition, the City will not permit occupancy until the correction is made.

      2) If KZC 83.550.4 above of this section applies to a specific nonconformance, then the provisions of this section do not apply to that same nonconformance.

   b. Non-conforming structure –

      1) A nonconforming structure that is moved any distance must be brought into conformance.

      2) Any structural alteration of a roof or exterior wall that does not comply with height, shoreline setback, or view corridor standards shall be required to be brought into conformance for the nonconforming height, setback or view corridor, except as provided otherwise in this Chapter. Excepted from this subsection is the repair or maintenance of structural members.

      3) Increases in structure footprint outside of the shoreline setback or wetland or stream buffer shall be allowed, even if all or a portion of the previously approved footprint is within the shoreline setback, wetland or stream buffer.

      4) If accessory structures are located within the shoreline setback, these existing nonconforming structures must be brought into conformance if the applicant is making an alteration to the primary structure, the cost of which exceeds 50 percent of the replacement cost of the structure.

5) Non-conforming structures that are expanded or enlarged within the shoreline setback must obtain a shoreline variance; provided that, a non-conforming detached dwelling unit use may be enlarged without a shoreline variance where the following provisions apply:

   a) The non-conforming structure must have been constructed prior to December 1, 2006, the date of the City's *Final Shoreline Analysis Report.*

   b) Before implementing this provision, the applicant shall determine whether the provisions of Section 83.380 would allow for a reduced setback, based upon existing conditions on the subject property.

   c) The structure must be located landward of the OHWM.

   d) Any enlargement of the building footprint within the shoreline setback shall not exceed 10 percent of the gross floor area of the existing dwelling unit prior to the expansion. Other enlargements, such as upper floor additions, may be permitted if the addition is consistent with other provisions contained in this subsection.

   e) The enlargement shall not extend further waterward than the existing primary residential structure. For purposes of this subsection, the improvements allowed within the shoreline setback as established in KZC 83.180, such as bay windows, chimneys, greenhouse windows, eaves, cornices, awnings and canopies shall not be used in determining the most waterward location of the building (see Plate XX).

   f) The applicant must restore a portion of the shoreline setback area with riparian vegetation to offset the impact, such that the shoreline setback area will function at an equivalent or higher level than the existing conditions. The restoration plan shall be prepared by a qualified professional and shall be reviewed by the Planning Official and/or a consultant who may approve, approve with conditions, or deny the request.

      If the proposal is consistent with the standards provided in this subsection, the Planning Official shall approve the plan or may impose conditions to the extent necessary to make the plan consistent with the provisions. If the proposal is denied, the applicant shall be informed of the deficiencies that caused its disapproval so as to provide guidance for its revision and resubmittal. The cost of producing and implementing the restoration plan and the review by City staff and/or a consultant shall be borne by the applicant. Examples include, but are not limited to:

      i) Installation of additional native vegetation within the shoreline setback that would otherwise not be required under this Chapter. At a minimum, the area of shoreline setback restoration and/or enhancement shall be equivalent to the area impacted by the improvement.

      ii) Removal of an existing hard shoreline stabilization structure covering at least 15 linear feet of the lake frontage which is located at, below, or within 5 feet landward of the OHWM and subsequent restoration of the shoreline to a natural or semi-natural state, including creation or enhancement of nearshore shallow-water habitat.

      iii) Setting back hard shoreline stabilization structures or portions of hard shoreline stabilization structures from the OHWM and subsequent restoration of the shoreline to a natural or semi-natural state, including restoration of topography and beach/substrate composition.

      iv) Other shoreline restoration projects that are demonstrated to result in an improvement to existing shoreline ecological functions and processes.

   g) The applicant must comply with the best management practices contained in KZC 83.480 addressing the use of fertilizer, herbicides and pesticides as needed to protect lake water quality.

h) The applicant shall use “fully shielded cut off” light fixtures as defined by the Illuminating Engineering Society of North America (IESNA), or other appropriate measure to conceal the light source from adjoining uses and the lake, and direct the light toward the ground for any exterior light sources located on the west façade of the residence or other façades with exterior light sources that is directed towards the lake.

i) The remodel or expansion will not cause adverse impacts to shoreline ecological functions and/or processes as described on KZC 83.360.

j) The provision contained in KZC 83.550.5.b.5 shall only be used once within any 5-year period.

6) A nonconforming detached dwelling unit that is located on a lot that has less than 3,000 square feet of building area lying landward of the required shoreline setback and upland of required wetland or stream buffers, may be rebuilt or otherwise replaced within the shoreline setback and required wetland or stream buffer without a shoreline variance, provided the following standards are met:

a) The structure must be located landward of the OHWM.

b) The size of the building footprint shall not be increased and the reconstructed structure shall not extend further waterward than the existing primary residential structure. For purposes of this subsection, the improvements allowed within the shoreline setback as established in KZC 83.180, such as bay windows, chimneys, greenhouse windows, eaves, cornices, awnings and canopies shall not be used in determining the most waterward location of the building (see Plate XX)..

c) The reconstruction does not expand, enlarge, or otherwise increase the non-conformity.

d) The reconstruction locates the structure in the least environmentally damaging location relative to the shoreline and the critical areas.

e) The structure must comply with any requirements of this Chapter, zoning, building, or fire codes in effect when the structure is built, other than allowed in the subsection.

7) A primary structure that does not conform to the required shoreline setback and is located on a lot that has less than 3,000 square feet of building area lying landward of the shoreline setback, not including the area located within the required side yard setbacks and up to 10 feet of a required front yard, may be rebuilt or otherwise replaced in its current location within the shoreline setback, provided the following standards are met:

a) The structure must be located landward of the OHWM.

b) The size of the building footprint shall not be increased and the reconstructed structure shall not extend further waterward than the existing primary residential structure. For purposes of this subsection, the improvements allowed within the shoreline setback as established in KZC 83.180, such as bay windows, chimneys, greenhouse windows, eaves, cornices, awnings and canopies shall not be used in determining the most waterward location of the building (see Plate XX)..

c) The reconstruction does not expand, enlarge, or otherwise increase the non-conformity.

d) The structure must comply with any requirements of this Chapter, zoning, building, or fire codes in effect when the structure is built, other than allowed in this subsection.

c. <u>Nonconforming Use</u> –

1) A nonconforming use may be continued by successive owners or tenants.

2) Any nonconforming use, except for a detached dwelling, unit must be brought into conformance or discontinued if:

   a) The applicant is making an alteration that increases the extent of the non-conformity, such as increasing the gross floor area of any structure that houses or supports the nonconforming use; or

   b) The nonconforming use has ceased for 90 or more consecutive days. It shall not be necessary to show that the owner of the property intends to abandon such nonconforming use in order for the nonconforming rights to expire; or

   c) The nonconforming use is replaced by another use. The City may allow a change from one nonconforming use to another such use if, through a shoreline conditional use process, the City determines that the proposed new use will comply with the following standards:

      i) The proposed use will be consistent with the policies and provisions of the Act and this Chapter and is compatible with the uses in the area as the preexisting use;

      ii) The use or activity is not enlarged, intensified, increased or altered in a manner that increases the extent of the non-conformity;

      iii) The structure(s) associated with the non-conforming use shall not be expanded in a manner that increases the extent of the non-conformity, including encroachment into areas, such as setbacks, and any wetlands, streams and/or associated buffers established by this Chapter, where new structures, development or use would not be allowed;

      iv) The change in use will not create adverse impacts to shoreline ecological functions and/or processes as described in KZC 83.360; and

      v) Uses that are specifically prohibited or which would thwart the intent of the Act or this Chapter shall not be authorized.

d. <u>Non-conforming wetland or stream buffer</u> –

   1) If existing structures or other improvements are located within the wetland, stream or associated buffers, these structures and improvements must be brought into conformance if the applicant is making an alteration, change or any other work on the subject property in a consecutive 12-month period and the cost of the alteration, change or work exceeds 50 percent of the replacement cost of all existing structure and improvements on the subject property.

   2) If the cost threshold of subsection d above is not exceeded, the alterations or changes may occur provided that the alterations or changes comply with this code and no exterior alterations or changes are made to the nonconforming portion of the structure or improvement, unless otherwise authorized by this Chapter.

e. <u>Non-conforming lot size</u> - An undeveloped lot, tract, parcel, site or division which was created or segregated pursuant to all applicable laws, ordinances and regulations in effect at the time, but which is nonconforming as to the present lot size or density standards may be developed so long as such development conforms to other requirements of this Chapter and the Act.

f. <u>Nonconforming public pedestrian walkway</u> -

   1) If a previously installed pubic shoreline access walkway is subsequently found to have not been installed to the property line, the walkway shall be extended to the property line consistent with conditions established in the original permit.

   2) If a previously installed shoreline access trail was subsequently found to have vegetation, fencing, other improvements or accessory structures installed that block connection to an adjacent shoreline access walkway, the blockage shall be removed.

3) Nonconforming shoreline pedestrian access walkways that were legally created shall not be required to comply with the dimensional standards or setback standards of this Chapter.

4) The shoreline public access walkway requirements established in this Chapter must be brought into conformance as much as is feasible, based on available land area if the applicant completes an alteration to all primary habitable structure(s) in shoreline jurisdiction, the cost of which exceeds 50 percent of the replacement cost of all structures and improvements on the subject property.

g. Nonconforming Shoreline Setback Vegetation- The vegetation requirements of this Chapter must conform as much as is feasible, based on available land area, in either of the following situations:

1) An increase of at least 10 percent in gross floor area of any structure located in shoreline jurisdiction; or

2) An alteration to any structure(s) in shoreline jurisdiction, the cost of which exceeds 50 percent of the replacement cost of all structures on the subject property.

h. Nonconforming Lighting - Exterior lighting must be brought into compliance with the requirements of this Chapter under the following circumstances:

1) The shielding requirements of KZC 83.470 shall be met when any nonconforming light fixture is replaced or moved.

2) All other requirements of KZC 83.470 shall be met when there is an increase in gross floor area of more than 50 percent of the primary structures on the subject property.

i. Prior approval of Shoreline Variance - A structure for which a shoreline variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.

j. Prior approval of Shoreline Conditional Use - A use which is listed in this Chapter as a conditional use, but existed prior to adoption of this Chapter or any relevant amendment and for which a conditional use permit has not been obtained shall be considered a nonconforming use.

k. Any Other Nonconformance -

1) If any nonconformance exists on the subject property, other than as specifically listed in the prior subsections of this section, these must be brought into conformance if:

a) 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 percent of the replacement cost of that improvement; or

b) The use on the subject property is changed and this Chapter establishes more stringent or different standards or requirements for the nonconforming aspect of the new use than this code establishes for the former use.

c) Replacement costs shall not include costs relating to non-structural interior elements, such as but not limited to appliances, heating and cooling systems, electrical systems, and interior finishes.

83.560 Emergency Actions

1. When Allowed –

a. Emergency actions are those that pose an unanticipated and imminent threat to public health, safety, or the environment and which require immediate action or within a time too short to

allow full compliance with the provisions of this Chapter. The Planning Official shall designate when such an action constitutes an emergency.

2. Standards –

a. Emergency actions shall meet the following standards:

1) Use reasonable methods to address the emergency;

2) Be designed to have the least possible impacts on shoreline ecological functions and processes; and

3) Be designed to comply with the provisions of this Chapter, to the extent feasible.

b. Notice –

1) The party undertaking the emergency action shall notify the Planning Department of the existence of the emergency and emergency action(s) within two (2) working days following commencement of the emergency action.

2) Within seven days following completion of emergency activity, the party shall provide the Planning Department a written description of the work undertaken, site plan, description of pre-emergency conditions and other information requested by the City to determine whether the action was permitted within the scope of an emergency action.

c. Decision –

1) The Planning Official shall evaluate the action for consistency with the provisions contained in WAC 173-37-040(2)(d).

2) The Planning Official shall determine whether the action taken, or any part of the action taken, was within the scope of the emergency actions allowed in this section. The Planning Official may require mitigation for impacts to shoreline ecological functions.

3) If the Planning Official determines that the emergency action was not warranted, he or she may require that the party obtain a permit and/or require remediation of or mitigation for the actions taken,

Council Meeting: 11/02/2009
Agenda: Special Presentations
Item #: 5. b.

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

MEMORANDUM

To: David Ramsay, City Manager

From: Deb Powers, Urban Forester

Date: November 2, 2009

Subject: Kirkland Arbor Day 2009 Proclamation and Invitation

RECOMMENDATION
Approve attached proclamation.

BACKGROUND
Attached is the proclamation declaring **Saturday, November 14, 2009** as Arbor Day in the City of Kirkland. The Mayor, City Council and the public are invited to attend a natural area restoration planting and commemorative tree planting ceremony in Cotton Hill Park from 9am to noon.

The event is being co-hosted by the City of Kirkland and the Green Kirkland Partnership. Participants and volunteers are welcome to join the Green Kirkland Partnership in planting native trees and shrubs in areas of Cotton Hill Park that have been previously cleared of invasive vegetation. The Arbor Day festivities conclude at noon with Kirkland Mayor Jim Lauinger planting a native conifer to celebrate Arbor Day.

This proclamation, along with the Arbor Day Ceremony, will fulfill one of the four standards required for Kirkland to become a Tree City USA for the Year 2009. The Tree City USA designation from the National Arbor Day Foundation requires annual renewal in order to show that the City has met all four standards:

1. Urban forest budget of at least $2 per capita
2. An urban forestry board or related body
3. Tree regulation
4. Proclamation and celebration of Arbor Day.

Arbor Day 2009 will provide the criteria for Kirkland's 8th consecutive year as Tree City USA.

cc: Sharon Rodman

A PROCLAMATION OF THE CITY OF KIRKLAND

Designating November 14, 2009 as "Kirkland Arbor Day"

WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

WHEREAS, this celebration, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and

WHEREAS, Washington, the "Evergreen State," has celebrated Arbor Day since 1917; and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen, and provide habitat for wildlife; and

WHEREAS, trees in our city increase property values, enhance the economic vitality of business areas, beautify our community which improves the quality of life; and

WHEREAS, trees wherever planted in Kirkland can be enjoyed by citizens and visitors, making Kirkland the place to be;

WHEREAS, Kirkland received its 7th Tree City USA award from the National Arbor Day Foundation in 2009; and

WHEREAS, Kirkland's Arbor Day is a ceremony with the Green Kirkland Partnership to plant a native conifer in Cotton Hill Park on Saturday, November 14, 2009, at noon in honor of the City of Kirkland's commitment to urban forestry and native areas restoration;

NOW THEREFORE, I, James Lauinger, Mayor of the City of Kirkland, Washington, do hereby proclaim November 14, 2009 as Kirkland Arbor Day.

FURTHER, I urge all citizens to celebrate Arbor Day by planting a tree today, so others may live tomorrow.

Signed this 2nd day of November, 2009

_____

James L. Lauinger, Mayor

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

MEMORANDUM

To: Dave Ramsay, City Manager

From: Kari Page, Neighborhood Services Coordinator

Date: October 22, 2009

Subject: City Council Meeting with the Highlands Neighborhood

RECOMMENDATION:

City Council assigns topic areas for the upcoming neighborhood Council meeting with the Highlands Neighborhood.

BACKGROUND:

As part of the City Council's continuing effort to remain in touch with the interests and needs of the community, the Council will meet with the Highlands Neighborhood on Wednesday, November 18, 2009. The meeting will begin at 7:00 p.m. at the Maintenance Center (915 8th Street). Staff will continue to structure the format of the meeting and invitations the same as the past, unless instructed by Council to change.

Potential topic areas suggested by the Highlands Neighborhood Association Board include:

1. Budget:
    a. Sales tax is too volatile for the city budget. Is the city doing anything to encourage the State to adopt alternative taxing mechanisms (like an income tax)? What can citizens do to further this cause?
    b. Status of the City's budget. How will the outcome of the utility tax measure impact the City's budget? How can citizens help fill the gaps, perhaps through expanded volunteer opportunities?

2. Parks: Status of the railroad trail, and can we make improvements to the railroad crossing by Cotton Hill Park for the junior high kids?

3. Planning:
    a. Status of Parkplace redevelopment, opportunities for citizen input, and timeline for completion.
    b. Status of downtown redevelopments and timeline for completion.

4. Police: Crime statistics. Are crime rates rising? What can citizens do?

5. City Manager's Office:
    a. Status of neighborhood matching grant funds.
    b. If the Annexation vote passed, what's next? If it didn't pass, what happens?

Council has invited three questions after each Council presentation/topic to break up the "lecture style" format and involve the audience more. Time is reserved at the end for the remaining questions and answers. The proposed agenda follows this same format.

7:00-7:05 p.m.	I.	Greeting and Introduction—Mayor James Lauinger
7:05-7:10 p.m.	II.	Comments from the Neighborhood Association—Chair Karen Story
7:10-8:15 p.m.	III.	Comments, Questions and Discussion—Neighborhood and City Council
		A. Budget Update—Mayor James Lauinger
		B. Key Issues Update—City Councilmembers
8:15-8:45 p.m.		General Discussion and Questions from Audience
8:45 p.m.	IV.	Adjourn

The schedule below outlines the timeline for receiving the questions and answers in advance of the meeting. If you have any suggestions or changes to this schedule, please let us know.

	Task	Highlands
	Council Meeting (assign topics)	November 2
	Residents receive mailing and submit questions	October 16–31
	Directors answer questions	November 2–11
	City Council receives questions and answers	November 12
	Meeting date	November 18

October						
M	T	W	T	F	S	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

November						
M	T	W	T	F	S	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

KIRKLAND CITY COUNCIL REGULAR MEETING MINUTES
October 20, 2009

1. CALL TO ORDER

2. ROLL CALL

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

3. STUDY SESSION

Joining Councilmembers for this discussion in addition to City Manager Dave Ramsay were Senior Council members Doris Ford, Kathy Iverson, Caolyn Kelso, Stuart Ostfeld, Barbee Pigott, Chair Don Bartleson and Peter Kirk Community Center Supervisor Dana LaRue. Senior Council members also present were Sheryl Henry, Joan Lester and Bob MCCrory.

4. EXECUTIVE SESSION

a. To Discuss Potential Litigation

5. SPECIAL PRESENTATIONS

a. Planning and Community Development Department Service Awards:

25 Years of Service:
Development Review Manager Nancy Cox
Senior Planner Joan Lieberman Brill
20 Years of Service:
Planning Supervisor Dawn Nelson
Senior Planner Dorian Collins
Senior Planner Angela Ruggeri
Senior Planner Janice Soloff
Code Enforcement Officer Judd Tuberg

b. Community Planning Month Proclamation

c. Community Wildlife Habitat Certification

Co Chairs Beth and John McCaslin introduced their team members, explained the process for becoming a certified Community Wildlife Habitat and introduced Courtney Sullivan, National Wildlife Federation representative, who presented a certificate to the Mayor.

d. King County Veterans and Human Services Levy Update

King County Veterans and Human Services Levy Manager Sadikifu Akina-James provided updates on the efforts and activities related to the levy. Also presenting information were Co-Chair of Regional Human Services Levy Citizens Oversight Board Joe Ingraham, Chair of the Veterans Citizen Levy Oversight Board Doug Hoople, and Regional Veterans Services Liaison Joel Estey.

6. REPORTS

a. City Council

(1) Regional Issues

Councilmembers shared information regarding the Hopelink Benefit luncheon; Hopelink build an emergency kit event; Kirkland Transit Center groundbreaking; Cultural Council meeting; UW School of Public Affairs Panel on Sustainable Urbanization; Public Works pilot project of solar powered compactors for downtown garbage; Kirkland Economic Roundtable; Suburban Cities Association Board and Public Issues Committee meetings; Redmond Family Resource Center grand opening; and the King Conservation District.

b. City Manager

(1) 2010 King County Budget

Intergovernmental Relations Manager Erin Leonhart and Deputy Director of Parks and Community Services Carries Hite reviewed impacts of the King County Budget on Kirkland services.

(2) Calendar Update

7. COMMUNICATIONS

a. Items from the Audience

Armene Wegener
Mehrdad Karimi

Michael Heslop

b. Petitions

None

8. CONSENT CALENDAR

a. Approval of Minutes: October 6, 2009

b. Audit of Accounts:
Payroll $2,087,260.53
Bills $1,868,534.41
run # 861 check #'s 512171 - 512305
run # 862 check #'s 512306 - 512450
run # 863 check #'s 512451 - 512460

c. General Correspondence

(1) Glenda Schmidt, Regarding Parking in Downtown Kirkland

d. Claims

(1) Mark K. Blakeley

(2) Janice Cowen

(3) Joene LaBou

(4) Nationwide Insurance for Ryan and Aimee Meats

(5) Puget Sound Energy

e. Award of Bids

f. Acceptance of Public Improvements and Establishing Lien Period

(1) Water Supply Station No. 2 Improvements Project

g. Approval of Agreements

(1) Resolution R-4780, entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO SIGN THE INTERLOCAL BRIDLE VIEW ANNEXATION AGREEMENT REGARDING WATER FACILITIES BETWEEN THE CITIES OF KIRKLAND AND

REDMOND"

h. Other Items of Business

(1) Ordinance No. 4209, entitled "AN ORDINANCE OF THE CITY OF KIRKLAND AMENDING CHAPTER 11.16A OF THE KIRKLAND MUNICIPAL CODE, "DEFENSES," AND AMENDING KIRKLAND MUNICIPAL CODE 11.36A.080 DEFINING ASSAULT"

(2) Ordinance No. 4210 and its Summary, entitled "AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO POLICE FALSE ALARMS; AND AMENDING KIRKLAND MUNICIPAL CODE CHAPTER 21.35A"

(3) Ordinance No. 4211, entitled "AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO PENALTIES ON DELINQUENT ACCOUNTS FOR WATER AND SEWER UTILITIES AND AMENDING SECTION 15.20.020 OF THE KIRKLAND MUNICIPAL CODE"

(4) Surplus Equipment Rental Vehicles/Equipment for Sale

Fleet #	Year	Make	VIN/Serial Number	License #
BG-5	2004	Turf Gator Utility Vehicle (4x2)	W00TURF019555	N/A
M-8	2004	John Deere 1445 Mower	TC1445D040434	N/A
PU-03	2001	Chevrolet Silverado 1500	1GCEC14V41E269373	31820D
PU-44X	1998	Ford Winstar Van	2ETZA5445WBD99462	24000D
TL-07	1993	Garland Trailer	2183	N/A

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

Council recessed for a short break.

9. PUBLIC HEARINGS

None

10. UNFINISHED BUSINESS

a. Ordinance No. 4212 and its Summary, Relating to Comprehensive Planning and Land Use and Amending the Comprehensive Plan Ordinance 3481 as Amended and Amending Ordinance 3710 as Amended, the Kirkland Zoning Map, as Required by RCW 36.70A.130 to Ensure Continued Compliance with the Growth Management Act, and Approving a Summary for Publication, File No ZON09-00001

Motion to Approve Ordinance No. 4212 and its Summary, entitled "AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO COMPREHENSIVE PLANNING AND LAND USE AND AMENDING THE COMPREHENSIVE PLAN ORDINANCE 3481 AS AMENDED AND AMENDING ORDINANCE 3710 AS AMENDED, THE KIRKLAND ZONING MAP, AS REQUIRED BY RCW 36.70A.130 TO ENSURE CONTINUED COMPLIANCE WITH THE GROWTH MANAGEMENT ACT, AND APPROVING A SUMMARY FOR PUBLICATION, FILE NO. ZON09-00001" including the amendment on Policy LU 5.4.
Moved by Councilmember Dave Asher, seconded by Councilmember Mary-Alyce Burleigh
Vote: Motion carried 7-0
Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

b. Revised Surface Water Development Regulations

After an overview by Public Works Director Daryl Grigsby, Public Works Storm Water Utility Engineer Stacey Rush and Environmental Services Supervisor Jenny Gaus reviewed the regulation changes and received Council feedback for return at Council's November 17th meeting with an Ordinance to adopt the manual and addendum through changes to the stormwater code.

c. Sherman Report

Mayor Lauinger noted that a temporary restraining order had been received.

d. Bank of America Project Review

Motion to waive the attorney client privilege with respect to a portion of the contents of a memorandum by Bob Sterbank but to maintain the privilege with respect to the attorney-client privileged documents attached to the Sterbank memorandum and the memos of discussion contents of those

attorney-client privileged documents and further move that the Council direct Mr. Sterbank to provide a revised memorandum redacting the discussion of the content of the attorney-client privileged document and make a presentation of the revised memorandum at a future Council meeting.

Moved by Councilmember Dave Asher, seconded by Councilmember Mary-Alyce Burleigh
Vote: Motion carried 6-1
Yes: Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.
No: Mayor Jim Lauinger.

11. NEW BUSINESS

a. Plaza at Yarrow Bay Office Building Zoning and Planned Unit Development Permits: Ordinance No. 4213, Relating to Land Use, Approval of Zoning Permits, Preliminary PUD, and Final PUD as Applied for by Keith Maehlum of HAL Real Estate Investments Incorprated in Department of Planning and Community Development File No. ZON08-00017 and Setting Forth Conditions of Said Approval

Motion to suspend the rule to vote on the matter at the next meeting and vote on the application at this meeting.
Moved by Councilmember Mary-Alyce Burleigh, seconded by Councilmember Bob Sternoff
Vote: Motion carried 7-0
Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

Motion to Approve Ordinance No. 4213, entitled "AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LAND USE, APPROVAL OF ZONING PERMITS, PRELIMINARY PUD, AND FINAL PUD AS APPLIED FOR BY KEITH MAEHLUM OF HAL REAL ESTATE INVESTMENTS INCORPORATED, IN DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT FILE NO. ZON08-00017 AND SETTING FORTH CONDITIONS OF SAID APPROVAL"
Moved by Councilmember Dave Asher, seconded by Councilmember Mary-Alyce Burleigh
Vote: Motion carried 7-0
Yes: Mayor Jim Lauinger, Deputy Mayor Joan McBride, Councilmember Dave Asher, Councilmember Mary-Alyce Burleigh, Councilmember Jessica Greenway, Councilmember Tom Hodgson, and Councilmember Bob Sternoff.

b. Armene Wegener Comments

12. ANNOUNCEMENTS

None

13. ADJOURNMENT

The Kirkland City Council regular meeting of October 20, 2009 was adjourned at 11:45 p.m.

City Clerk Mayor

KIRKLAND CITY COUNCIL SPECIAL STUDY SESSION MINUTES
October 22, 2009

1. CALL TO ORDER

The Kirkland City Council special study session of October 22, 2009 was called to order at 6:00 p.m.

2. ROLL CALL

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

3. STUDY SESSION

a. Shoreline Master Program

Joining Councilmembers for this discussion were Planning Commission members Jay Arnold, Carolyn Hayek, Byron Katsuyama, Vice Chair Ray Allshouse, Chair Andy Held, as well as Director of Planning and Community Development Eric Shields, Deputy Director Paul Stewart, Senior Planner Teresa Swan, Shoreline Management Program Project Consultant Stacy Clausen, Watershed Company Environmental Planner Amy Summe and Department of Ecology Shoreline Planner Joe Burcar.

Council recessed for a short break.

4. ADJOURNMENT

The Kirkland City Council October 22, 2009 special study session adjourned at 8:58 p.m.

City Clerk Mayor

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

MEMORANDUM

To: David Ramsay, City Manager

From: Erin Leonhart, Intergovernmental Relations Manager

Date: October 22, 2009

Subject: LETTER TO KING COUNTY COUNCIL REGARDING THE EXECUTIVE'S PROPOSED 2010 BUDGET – ANIMAL CARE & CONTROL AND PARKS IN THE POTENTIAL ANNEXATION AREA

RECOMMENDATION:
It is recommended that the Council authorize the Mayor to sign the attached letter to the King County Council related to Animal Care & Control and Parks funding in Executive Triplett's proposed 2010 budget.

BACKGROUND DISCUSSION:
As presented at the October 20th City Council meeting, King County is projecting a $56.4 million deficit in the 2010 General Fund. To address the deficit, King County Executive Kurt Triplett proposed a $620.9 million budget that includes significant programmatic cuts. Some of the Executive's proposed cuts, if adopted, will have an impact on Human Services and Animal Care and Control currently provided to citizens in the city and the Potential Annexation Area. The Executive has also proposed elimination of funding for local parks in unincorporated areas, including six in Kirkland's Potential Annexation Area.

As requested during the meeting, Carrie Hite coordinated a joint letter from Kirkland, Redmond and Bellevue specific to Human Services funding. The attached letter addresses Kirkland's concerns about funding for Animal Care & Control and parks in Kirkland's PAA.

Attachment

November 3, 2009 **DRAFT**

Dow Constantine, Chair, King County Council
516 3rd Avenue
Seattle, WA 98104

RE: Executive Triplett's Proposed 2010 Budget

Dear Chair Constantine:

The City of Kirkland is writing regarding King County Executive Triplett's Proposed 2010 Budget and to request your leadership and support for the Animal Care and Control program and parks located in the Kirkland Potential Annexation Area. We recognize the severe budget challenges facing King County at this time and appreciate Executive Triplett's hard work to develop a strategy to overcome the $56.4 million general fund deficit. We believe, given adequate time and working together, we can develop solutions to both issues.

Regarding the Animal Care and Control Program, Kirkland would like to request approval of funding through at least June 2010 to allow time for cities and the County to determine the best future direction in the interest of public health and safety. This is an important opportunity to address the needs of people and animals in King County for the long term that should not be rushed.

As you are aware, voters in the Kirkland Potential Annexation Area are considering annexation on the current ballot. If the voters elect to proceed with annexation, the Kirkland City Council will set an effective date and Kirkland and King County will begin negotiations related to infrastructure and services in the area. These negotiations will include discussions about near- and long-term maintenance of parks in the PAA. The City of Kirkland does not have adequate funding to maintain the parks prior to an annexation effective date. If annexation is to take place within the next two years, we request that the County budget one-time funding to continue maintenance of the parks until they become the City of Kirkland's responsibility.

Thank you for considering these requests during your 2010 Budget deliberations. If you have any questions, please contact Erin Leonhart, Intergovernmental Relations Manager at (425)587-3009 or ELeonhart@ci.kirkland.wa.us.

Sincerely,
Kirkland City Council

by James Lauinger, Mayor

Council Meeting: 11/02/2009
Agenda: Claims
Item #: 8. d.

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

MEMORANDUM

To: David Ramsay, City Manager

From: Kathi Anderson, City Clerk

Date: October 22, 2009

Subject: CLAIM(S) FOR DAMAGES

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

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

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

(1) Kathryn A. Greve
23144 NE 14th Court
Sammamish, WA 98074

Amount: $581.94

Nature of Claim: Claimant states damage to vehicle resulted from driving over steel plates in roadway.

(2) Mark Niklason
17314 191st Avenue NE
Woodinville, WA 98072

Amount: $366.83

Nature of Claim: Claimant states damage to vehicle resulted from paint spray used during street striping.

(3) Heather Wickman
13041 NE 94th Street
Kirkland, WA 98033

Amount: Unspecified Amount

Nature of Claim: Claimant states damage resulted when a sign dislodged and hit her head.

(4) Jennifer Zyris
17132 SE 29th Place
Bellevue, WA 98008

Amount: $1,301.24

Nature of Claim: Claimant states damage to vehicle resulted from paint spray used during street striping.

Council Meeting: 11/02/2009
Agenda: Establishing Lien Period
Item #: 8. f. (1).

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

MEMORANDUM

To: David Ramsay, City Manager

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

Date: October 22, 2009

Subject: 2008 SIDEWALK MAINTENANCE PROGRAM – ACCEPT CONSTRUCTION

RECOMMENDATION:
It is recommended that City Council accept the construction work for the 2008 Sidewalk Maintenance Project, as completed by, Merlino Brothers, LLC of Renton, Washington and establish the statutory lien period.

6520 103rd Ave (before & after)

BACKGROUND DISCUSSION:
The Annual Sidewalk Maintenance Program Project consists of removing and replacing broken or damaged segments of cement concrete sidewalk at various locations throughout the City. The 2008 project resulted in the repair of sidewalk segments in the North Juanita, South Juanita, Highlands, Norkirk and Lakeview Neighborhoods (Attachment A).

The annual budget for the Sidewalk Maintenance Program is $200,000. At their regular meeting of October 16, 2007 Council approved the carry-over of the remaining funds in the 2007 Sidewalk Maintenance Project resulting in an approved budget for the 2008 Project of $261,850 (Attachment B).

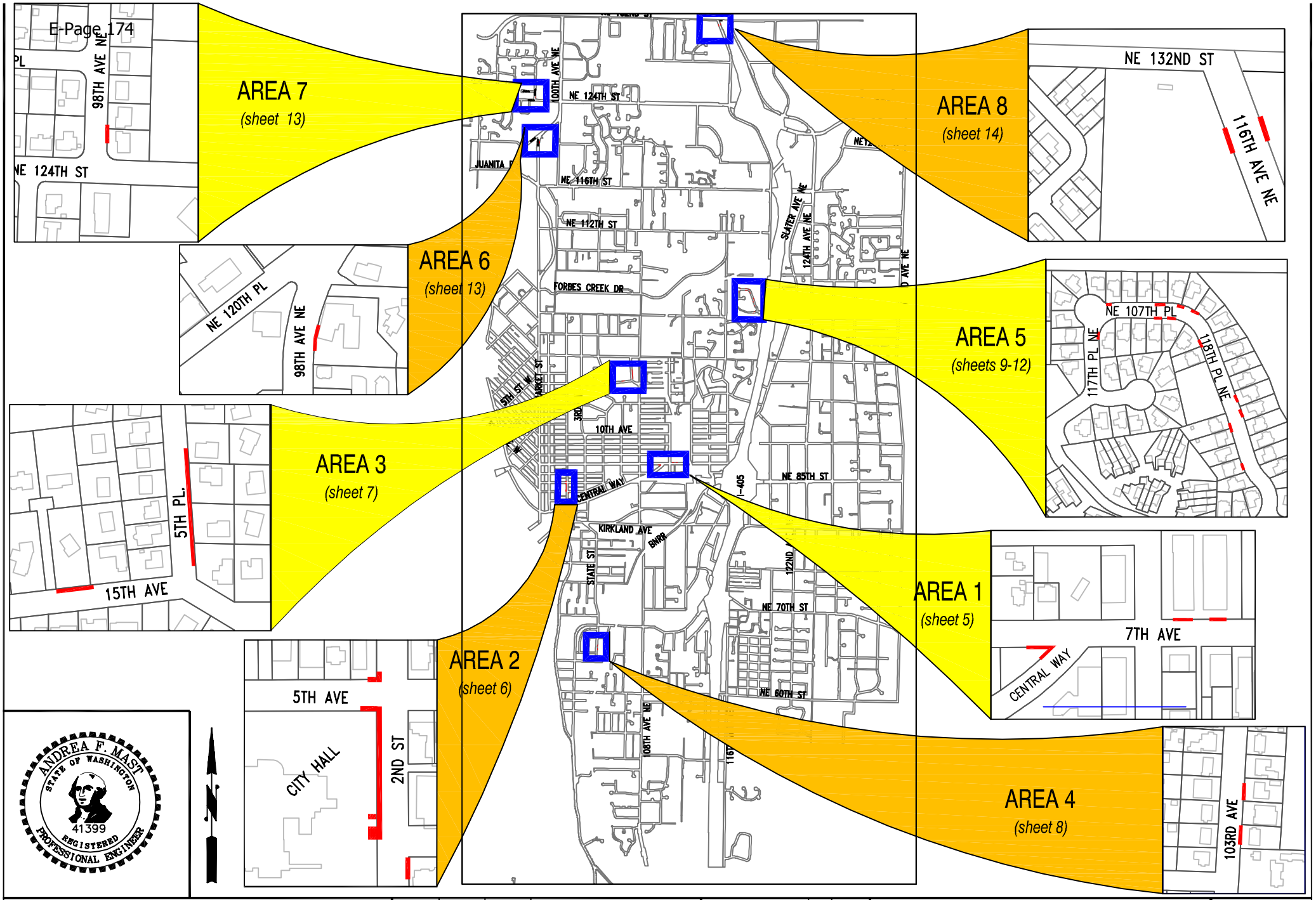
Terrewalk® Installation in Issaquah

At their regular meeting of June 2, 2009 Council awarded the contract for the Project to Merlino Brothers, LLC in the amount of $126,622.00. Construction began on July 16, 2009 and was completed on October 9, 2009 and the total payment to the contractor was $117,171.56 (Attachment B).

This year's Sidewalk Maintenance Program repaired approximately 530 square yards of sidewalk at a construction cost of approximately $221 a square yard. The cost of repair in 2007 was approximately $337 a square yard; 34.5% above the 2008 construction costs (Attachment C). Due to the significant decrease in construction costs from prior years, the net surplus for the 2008 Sidewalk Maintenance Program came to approximately $76,000, and staff recommends using a portion of the remaining budget to purchase Terrewalk® pavers.

Terrewalk® pavers are the newest generation of the rubber sidewalk product and, similar to the rubber sidewalks installed during the 2006 Sidewalk Maintenance Program in the Central Houghton neighborhood, the Terrewalk® pavers are interlocking pavers that are designed to flex over tree roots. In addition to recycled rubber, the Terrewalk® pavers incorporate recycled plastic and look more similar in color to concrete than the older rubber sidewalk pavers. These pavers are proposed to be installed by the Street Division crews along the south side of Kirkland Way between Kirkland Avenue and 6th Street. Sidewalk along this section of Kirkland Avenue has significant root intrusion and tree removal is not a preferred alternative. After the Terrewalk® installation is complete, remaining funds will be utilized in the 2009 Sidewalk Maintenance Program which is currently being scoped.

Attachments (3)



ANDREA F. MAST
STATE OF WASHINGTON
41399
REGISTERED
PROFESSIONAL ENGINEER

CITY OF KIRKLAND WASHINGTON

CITY OF KIRKLAND
DEPARTMENT OF PUBLIC WORKS
123 FIFTH AVE KIRKLAND, WA 98033
(425) 587-3800 www.ci.kirkland.wa.us

DATE	BY	APPR.	REVISION

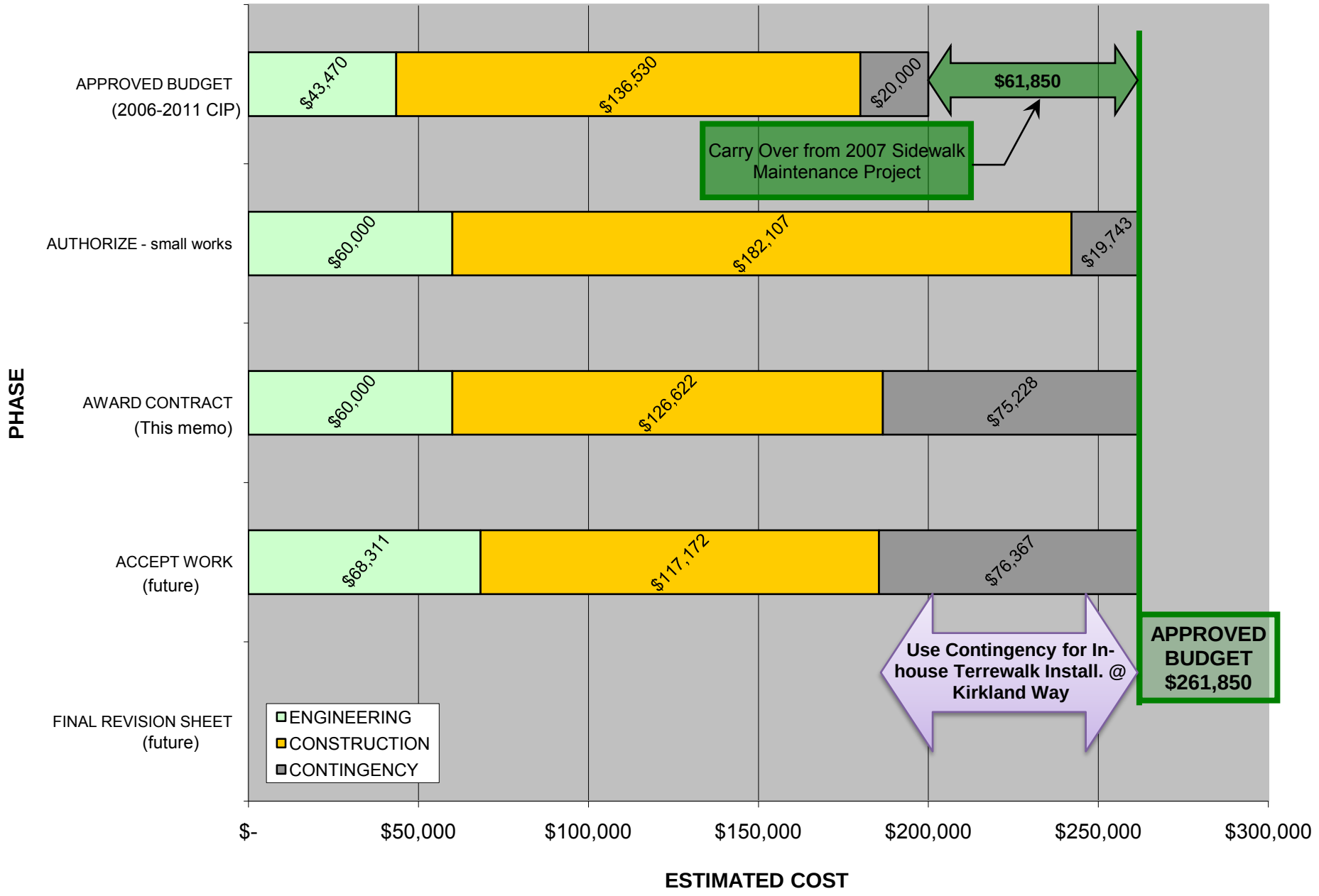
PMM 07/16/2008
JCS 12/17/2008
DRAWN BY: DATE
REVIEWED BY: DATE
CHECKED BY: DATE

2008 SIDEWALK MAINTENANCE PROGRAM
PROJECT AREAS

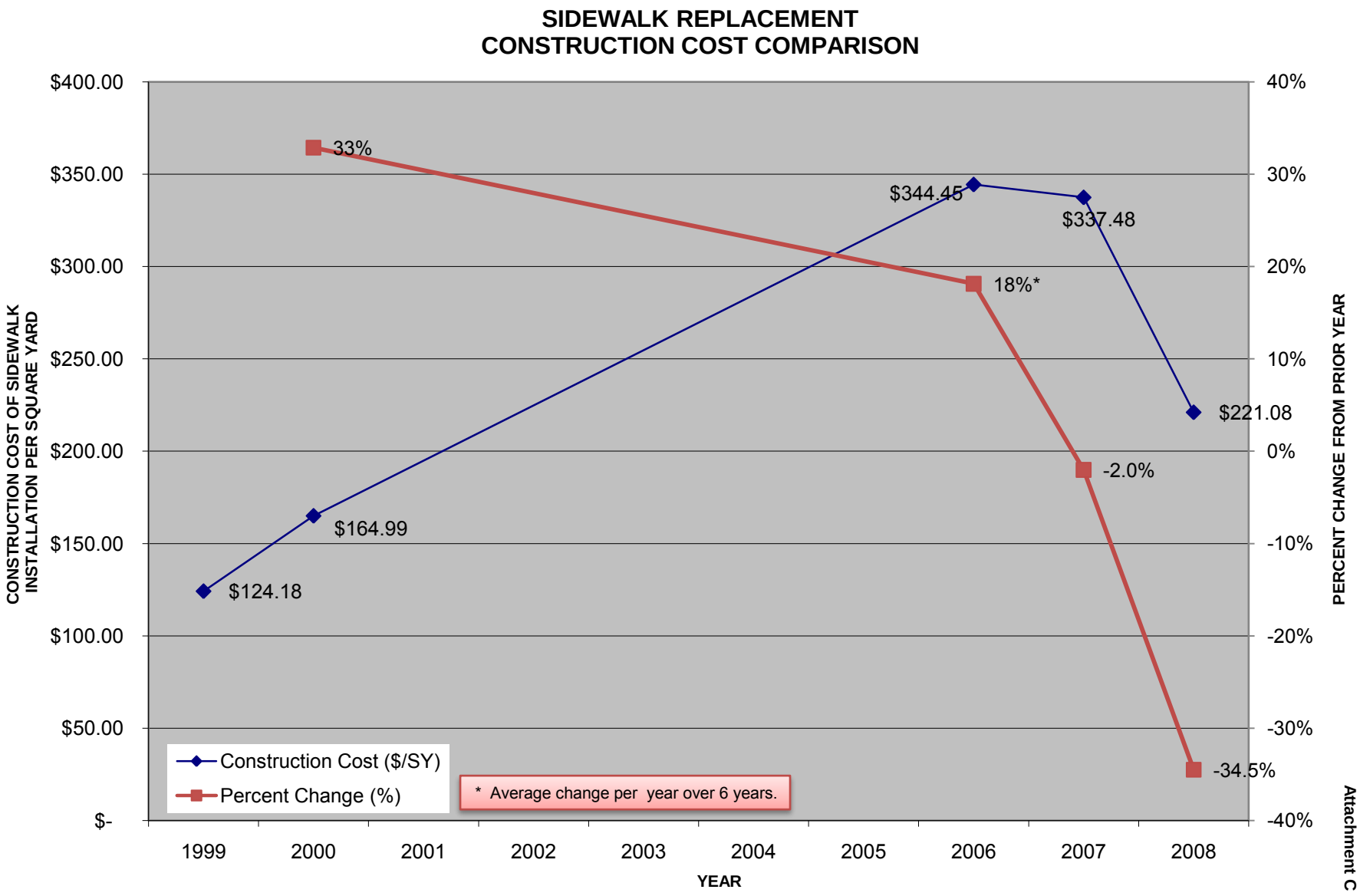
SHEET: 1 OF 14
SCALE: NTS
FILENAME: SW08-D-D02.DWG

2008 SIDEWALK MAINTENANCE PROJECT (CNM 0857)

PROJECT BUDGET REPORT



Attachment B



Attachment C

10/20/2009 10:47 AM
H:\Pw\CIP group\Bid Tabs (by CIP #)\Historical Costs of sidewalk panel replacements.xls

Council Meeting: 11/02/2009
Agenda: Establishing Lien Period
Item #: 8. f. (2).

CITY OF KIRKLAND
Department of Public Works
123 Fifth Avenue, Kirkland, WA 98033 425.587.3809
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

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

Date: November 2, 2009

Subject: 2008 WATER SYSTEM IMPROVEMENT PROJECT (SOUTH) – ACCEPT WORK

RECOMMENDATION:

It is recommended that Council accept the construction of the 2008 Water System Improvement Project (South) completed by Shoreline Construction Company of Woodinville, WA and establish the statutory lien period.

BACKGROUND AND DISCUSSION:

The 2008 Water System Improvement Project (South) replaced approximately 2900 lineal feet of asbestos cement (AC) water main with 8-inch and 12-inch ductile iron pipe at two separate locations (Attachment A). The existing AC water main was susceptible to breaks, and in some sections it was not capable of providing adequate fire flow. The replacement of individual water service lines, fire hydrant connections, and an asphalt overlay along the project limits was also included in the work.

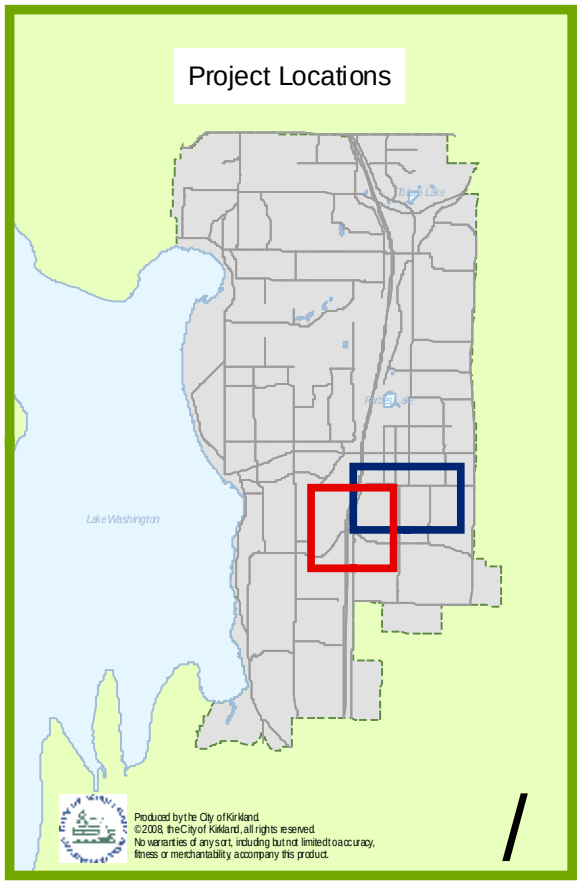
As part of the remodel of Lake Washington High School, fire flow requirements determined there was a need to upsize the water main from 8-inch to -12-inch diameter on NE 75th Street between 120th – 122nd Ave NE. Since a portion of the 2008 Water System Improvement Project was slated to replace the water main on NE 75th, the Lake Washington School District agreed to contribute to the cost of the upsize from 8-inch to 12-inch in order to meet this requirement. The District's final contribution to the project is $24,409.

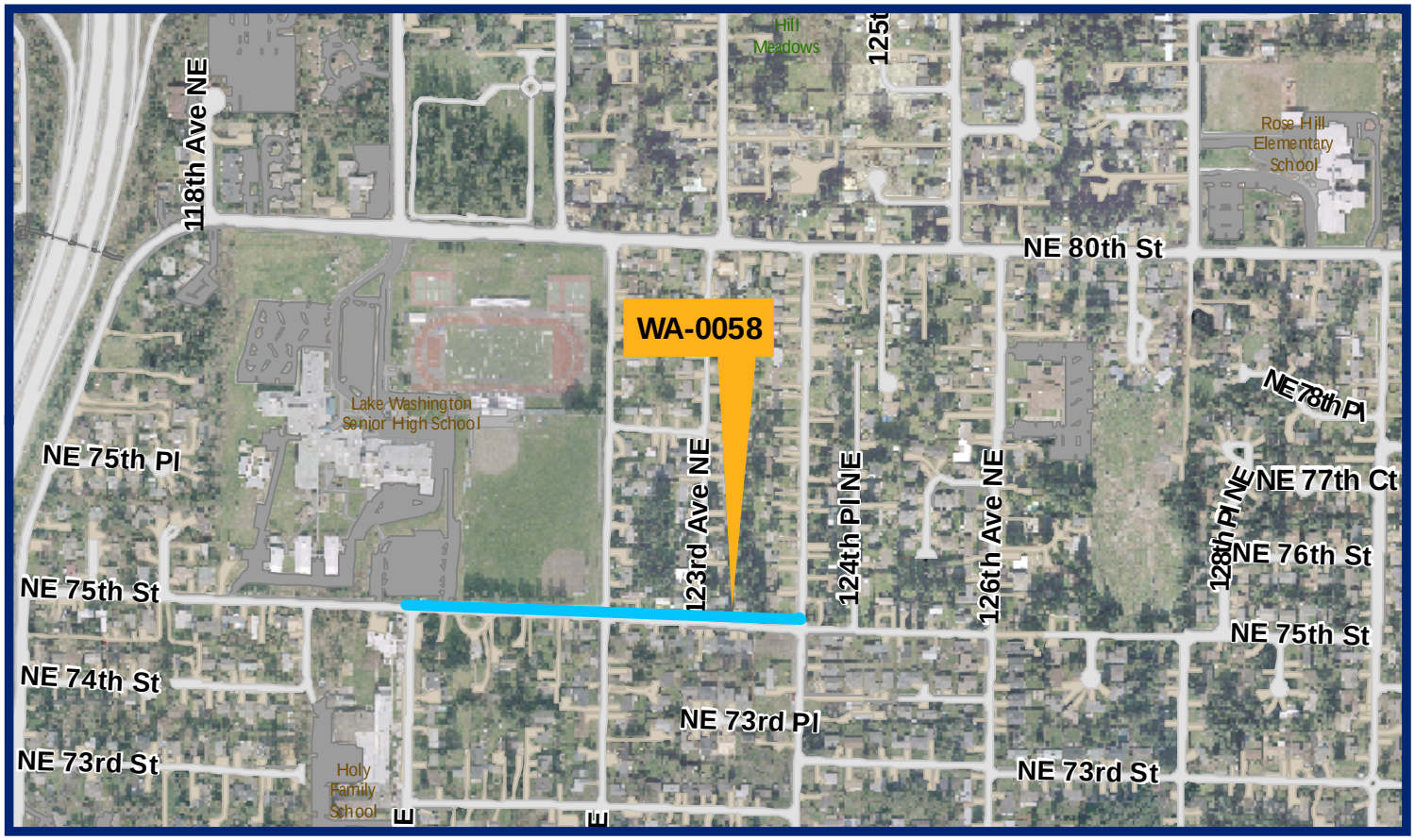
At their regular meeting on February 17, 2009 Council awarded the contract for this project to Shoreline Construction in the amount of $428,713; the engineer's estimate was $700,000. Construction began February 23, 2009, and the project was substantially complete on May 13, 2009; various punchlist items and final clean up have delayed construction acceptance until this time. With an available budget of $644,000, the total project expenses equaled $637,424 of which $427,114 was paid to the Contactor (Attachment B). Remaining funds will be returned to the utility reserve.

Attachments (2)

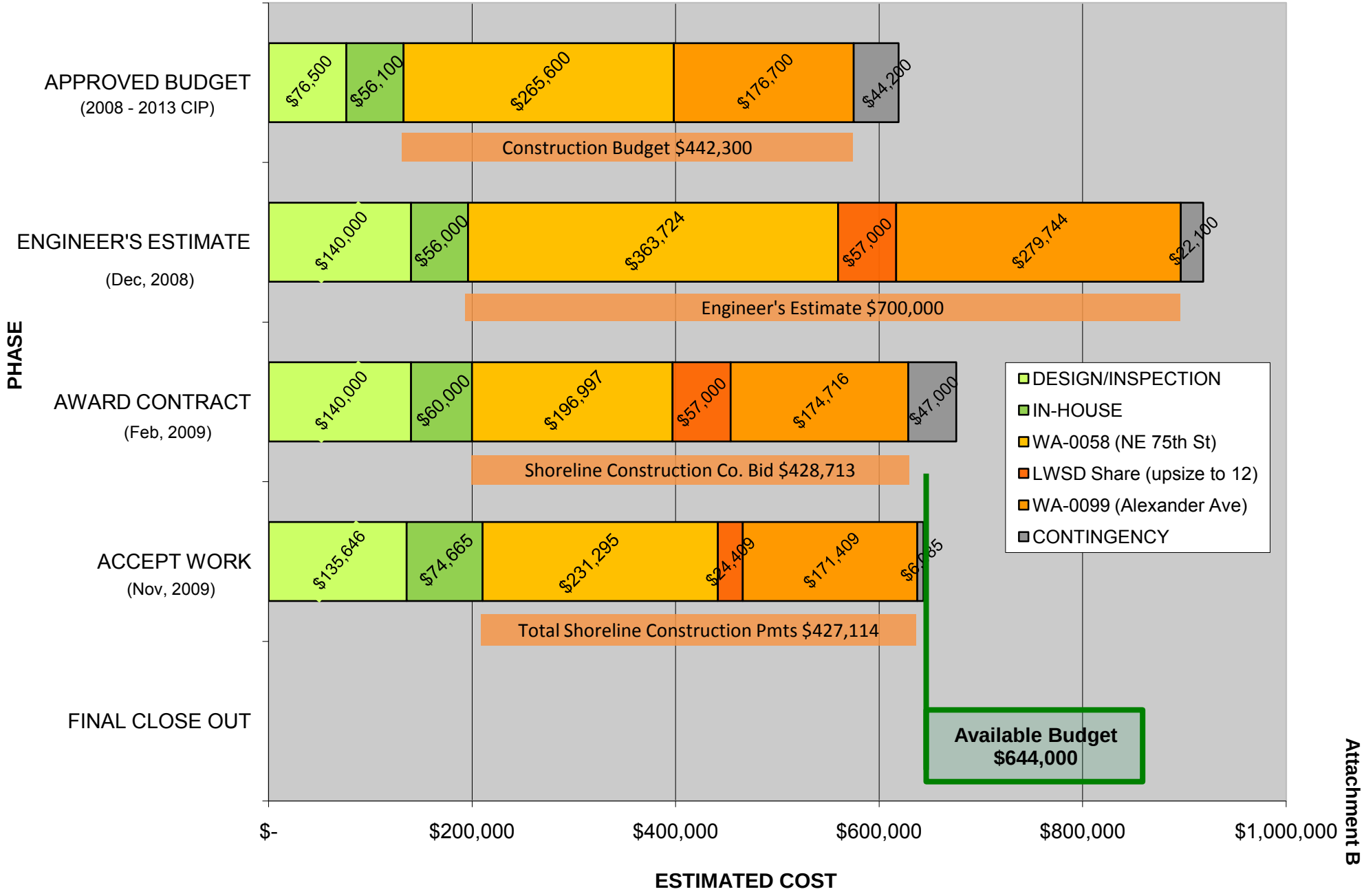
Site Map

2008 Water System Improvements Project - South
WA-0058 WA-0099





2008 Water System Improvements Project - South
(WA-0058, WA-0099)
Project Budget Report



Attachment B

Council Meeting: 11/02/2009
Agenda: Approval of Agreements
Item #: 8. g. (1).

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

MEMORANDUM

To: David Ramsay, City Manager

From: Tami White, Parking Coordinator

Date: October 28, 2009

Subject: Simmons Construction Parking Agreement

RECOMMENDATION**:**

Council approves the attached resolution which would authorize the City Manager to enter into a parking agreement with Simmons Construction, Inc., for the use of eight parking stalls in the City-owned Auxiliary parking lot at Lakeshore Plaza.

BACKGROUND DISCUSSION:

Simmons Construction would like the use of eight parking stalls in the Auxiliary parking lot at Lakeshore Plaza beginning approximately November 9, 2009, for a minimum of five months. Simmons needs the parking stalls to use as a construction staging and mobilization area for its project at 13 Central Way. The parking spaces will be fenced off from public use.

Simmons Construction will rent the parking stalls for $125.00 per space for a total of $1,000.00 per month. The current monthly permit parkers will be permanently relocated to the west side of the parking lot. The proposed parking agreement is attached.

RESOLUTION R-4785

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR THE USE OF EIGHT STALLS OF THE AUXILIARY PARKING LOT AT LAKESHORE PLAZA FOR A CONSTRUCTION STAGING AND MOBILIZATION AREA.

WHEREAS, Simmons Construction, Inc., is interested in securing the temporary use of eight parking stalls for construction staging and mobilization while constructing a project in downtown Kirkland; and

WHEREAS, the City is willing to make eight parking stalls at its Auxiliary lot at Lakeshore Plaza available for such purposes;

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

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City a parking agreement substantially similar to the Agreement attached as Exhibit A.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2009.

Signed in authentication thereof this ____ day of _____, 2009.

_____
MAYOR

Attest:

_____
City Clerk

PARKING AGREEMENT

This Parking Agreement ("Agreement"), is made and entered into on this _____ day of _____, 2009, between the City of Kirkland, a municipal corporation of the state of Washington (referred to as "City"), and Joseph S. Simmons Construction, Inc., (referred to as "Simmons Construction").

WITNESSETH

WHEREAS, Simmons Construction is interested in temporarily securing eight off-street parking stalls for staging and mobilization while constructing a project in downtown Kirkland; and

WHEREAS, the City is willing to make eight parking stalls at its Auxiliary Lot at Lakeshore Plaza, Kirkland, Washington (the "Auxiliary Lot") available for such purposes;

NOW THEREFORE, the parties agree as follows:

1. Term.

The term of this Agreement shall commence on November _____, 2009, and shall expire April 30, 2010. Simmons Construction may request that the City extend the term of this Agreement on a month-to-month basis, by giving the City notice of its request at least two weeks prior to the expiration of this Agreement.

2. Rate.

The rate by Simmons Construction shall be $125.00, per space, per month, for a total amount of $1,000.00 per month.

3. Payments.

Simmons Construction agrees to pay City, without invoice, to the attention of: Teresa Levine, Accounting Manager, Finance and Administration, City Hall, 123 Fifth Avenue, Kirkland, Washington 98033, $1000.00 in advance of the commencement of the term of this Agreement, prorated on the basis of the number of days remaining in November, and thereafter, $1000.00 prior to the 25th day of each month, for each month.

4. Leasehold Excise Tax.

The use of the City parking stalls by Simmons Construction is subject to taxation under the laws of the State of Washington (RCW 82.29A.030(1) and RCW 82.29A.030(2)). The leasehold excise tax rate is twelve point eighty-four percent (12.84%), or as may be amended by Washington State legislation. The tax is calculated on the amount to be paid the City month under the terms of this Agreement. Simmons Construction shall pay the leasehold excise tax payment to the City at the same time the monthly payment is due and payable under this Agreement.

5. Hours of Use.

Simmons Construction shall have access and full use of the eight stalls 24 hours a day, seven days a week.

6. Stenciling New Stalls. In order to accommodate Simmons Construction's use of the parking stalls, nine current permit parking users will need to be relocated to the west side of the Auxiliary Lot. Simmons Construction agrees that it will stencil the new stalls, "Permit Only – (M-F) as shown on the attached map.

7. Assignment. It is agreed that this Agreement is personal to Simmons Construction and that Simmons Construction may not assign its rights under this Agreement to any other party without the prior written consent of the City, which consent may be withheld at City's sole discretion.

8. Hold Harmless Agreement.

Simmons Construction shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with this Agreement, except injuries or damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Simmons Construction and the City, its officers, officials, employees, and volunteers, Simmons Construction's liability hereunder shall be only to the extent of Simmons Construction's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes Simmons Construction's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

9. Insurance.

Simmons Construction shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with operations and use of the City parking stalls by Simmons Construction, their agents, representatives, employees or subcontractors.

No Limitation. Simmons Construction's maintenance of insurance as required by this Agreement shall not be construed to limit the liability of Simmons Construction to the coverage provided by such insurance, or otherwise limit the City's recourse to any other remedy available at law or in equity.

A. Minimum Scope of Insurance.

Simmons Construction shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Commercial General Liability insurance shall be written on Insurance Services Office

(ISO) occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability shall be endorsed to provide the Aggregate Per Project Endorsement ISO for CG 25 03 11 85. The City shall be named as an insured under Simmons Construction's Commercial General Liability insurance policy with respect to the this Agreement.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. Minimum Amounts of Insurance

Simmons Construction shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate and a $2,000,000 products-completed operations aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability:

1. Simmons Construction's insurance coverage shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of Simmons Construction's insurance and shall not contribute with it.

2. Simmons Construction's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested has been given to the City.

D. Simmons Construction's Insurance For Other Losses

Simmons Construction shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Simmons Construction's employee owned tools, machinery, equipment, or motor vehicles owned or rented by Simmons Construction, or Simmons Construction's agents, suppliers or contractors as well as to any temporary structures, scaffolding and protective fences.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

F. Verification of Coverage

Simmons Construction shall furnish City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured

endorsement, evidencing the Automobile and Commercial General Liability insurance of Simmons Construction prior to the commencement of activities associated with this Agreement.

10. Notices.

All notices, demands, and requests to be given by either party to the other shall be in writing. All notices, demands and requests to the City shall be sent by United States registered or certified mail, postage prepaid, addressed to John Burkhalter, Senior Development Engineer, 123 Fifth Avenue, Kirkland, Washington 98102. All notices, demands, and requests to Simmons Construction shall be sent by United States registered or certified mail, postage prepaid address to Todd Hartmann, Project Manager, P.O. Box 27089, Seattle, Washington 98165.

11. Interpretation and Venue.

Washington law shall govern the interpretation of this Agreement. King County shall be the venue of any mediation, arbitration, or lawsuit arising out of this Agreement.

12. Severability.

If one or more clauses of this Agreement is found to be unenforceable, illegal, or contrary to public policy, the Agreement will remain in full force and effect except for the clauses that are unenforceable, illegal or contrary to public policy.

13. Entire Agreement.

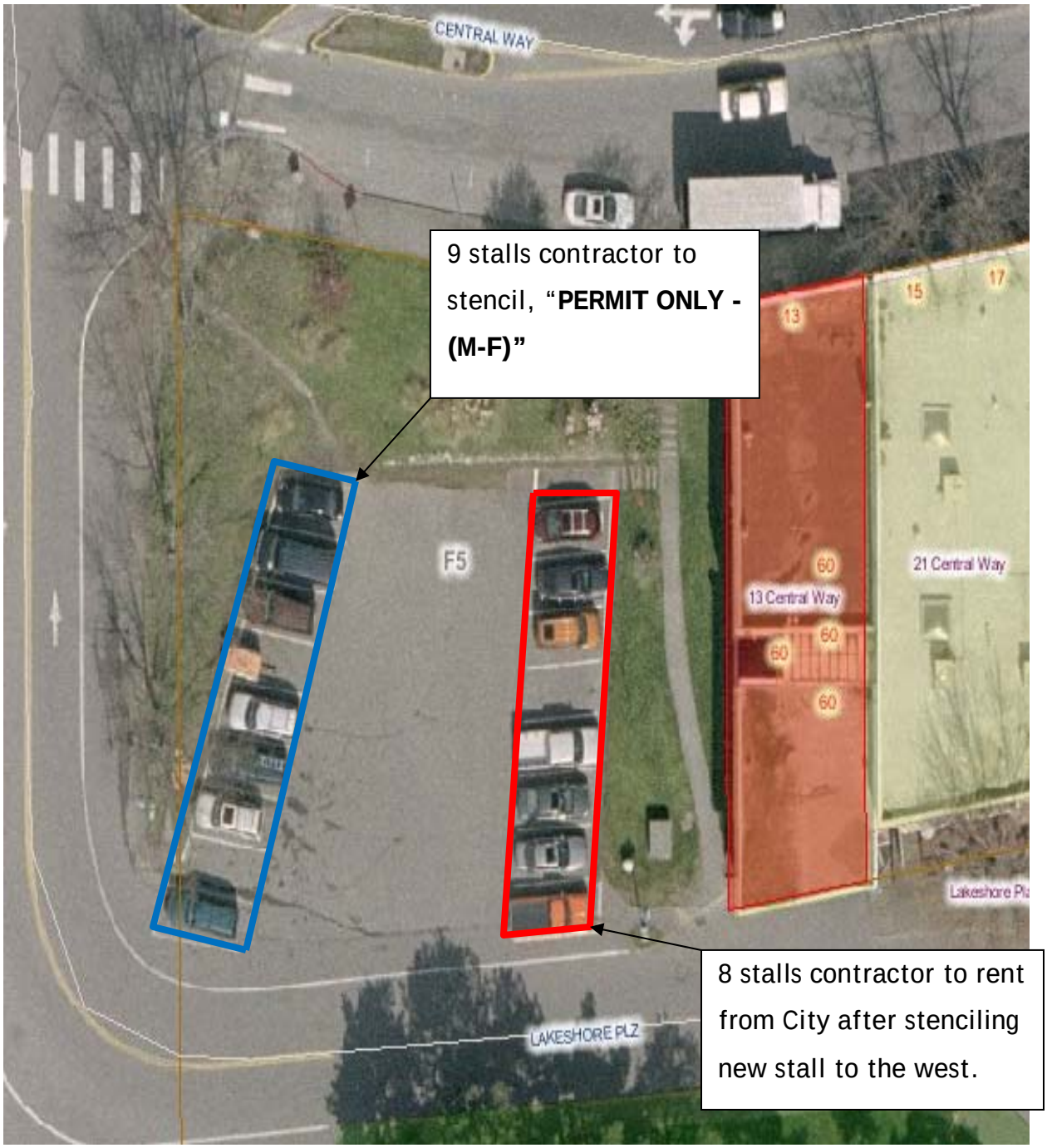
This Agreement constitutes the complete and final agreement of the parties, replaces and supersedes all oral and/or written proposals and agreements heretofore made on the subject matter, and may be modified only by a writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this document as of the day and year first above written.

CITY OF KIRKLAND	JOSEPH S. SIMMONS CONSTRUCTION, INC.
By:_____	By:_____
David Ramsay City Manager	Its:_____

APPROVED AS TO FORM:

_____
Kirkland City Attorney


CENTRAL WAY
9 stalls contractor to stencil, "**PERMIT ONLY - (M-F)**"
F5
13
15
17
60
13 Central Way
21 Central Way
LAKESHORE PLZ
8 stalls contractor to rent from City after stenciling new stall to the west.

Council Meeting: 11/02/2009
Agenda: Other Business
Item #: 8. h. (1).

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

MEMORANDUM

To: Dave Ramsay, City Manager

From: Tracey Dunlap, Director of Finance and Administration

Date: October 9, 2009

Subject: 2010 NORCOM Budget Approval

RECOMMENDATION:
Approve Kirkland's share of the 2010 NORCOM budget.

BACKGROUND DISCUSSION:
On July 1, 2009, the North East King County Regional Public Safety Communications Agency (NORCOM) began dispatch operations. The interlocal agreement forming NORCOM calls for each participating agency to approve their portion of NORCOM's budget before it is adopted on December 20, 2009 (ILA Section 12(c)). Technically, the City of Kirkland approved NORCOM's budget as part of the adoption of the 2009-2010 budget on December 16, 2008, however, the figures included for NORCOM at that time were estimates, as NORCOM had not yet prepared its 2010 budget. Since NORCOM's 2010 budget is lower than that included in the City's adopted budget, staff is recommending that the City Council approve the revised figure, which will be incorporated into the City's mid-biennium budget adjustments. A comparison of the adopted versus the revised figures is provided in the table below.

	Police	Fire	Total	FD 41 Share	Net City Share
2010 in Adopted Budget				25.5%	
Operating (On-going)	1,664,179	400,007	2,064,186	102,002	1,962,184
Technology (One time)	-	-	-	-	-
2010 Revised Budget				25.2%	
Operating (On-going)	1,444,395	370,375	1,814,770	93,335	1,721,436
Technology (One time)	17,645	5,073	22,718	1,278	21,440
Net Reduction	**202,139**	**24,559**	**226,698**	**7,389**	**219,309**

The next savings of $219,309 will be applied toward funding the projected budget shortfall in 2010.

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

MEMORANDUM

To: David Ramsay, City Manager

From: Katy Coleman, Development Engineering Analyst
Daryl Grigsby, Public Works Director

Date: October 21, 2009

Subject: RESOLUTION TO RELINQUISH THE CITY'S INTEREST IN A PORTION OF UNOPENED RIGHT-OF-WAY

RECOMMENDATION:

It is recommended that the City Council adopt the enclosed Resolution relinquishing interest in a portion of unopened alley being identified as the westerly 8 feet of the unopened alley abutting the easterly boundary of the following described property: Lot 19, Block 50, Town of Kirkland, according to the plat thereof recorded in Volume 6 of Plats, page 53, records of King County, Washington.

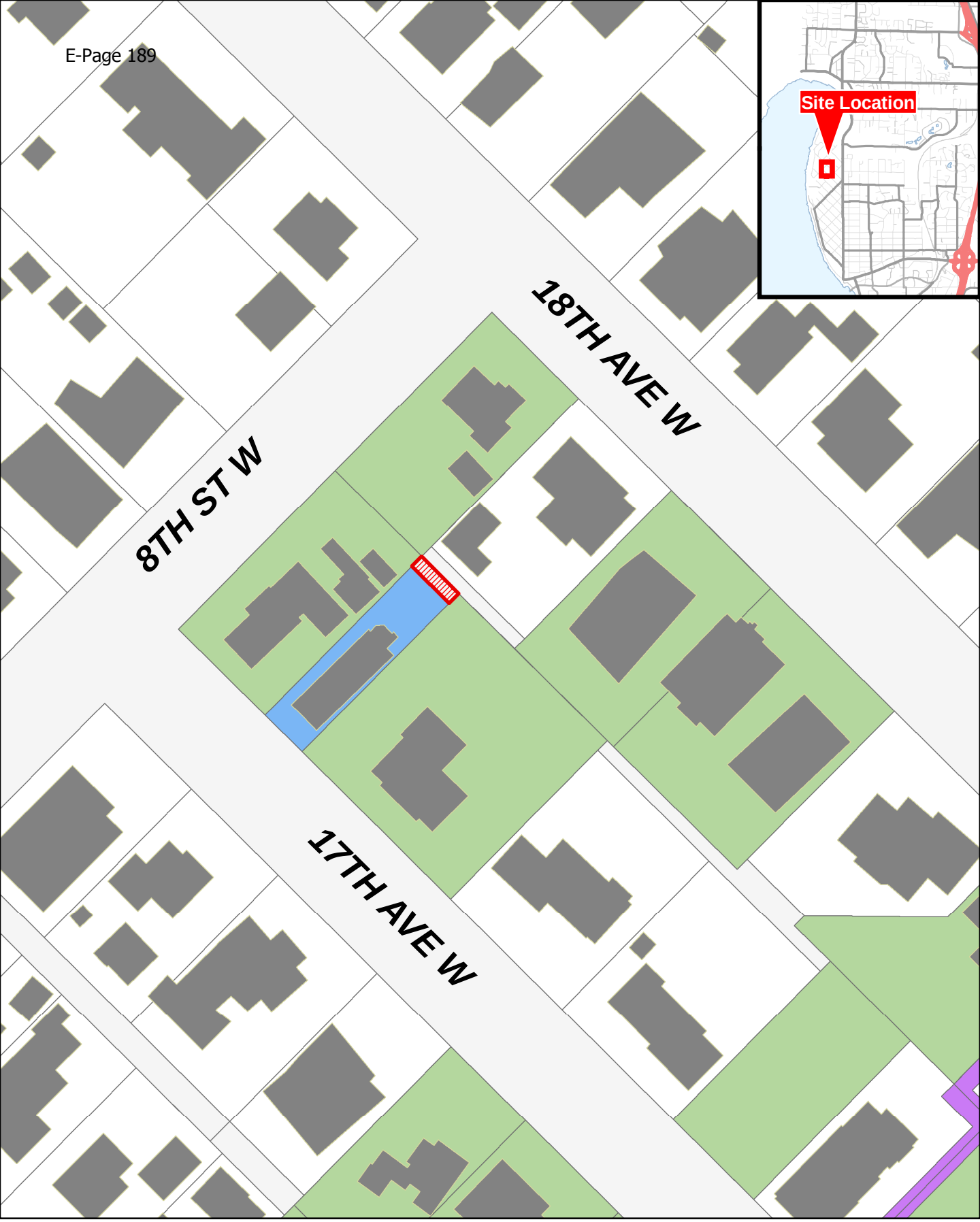
BACKGROUND DISCUSSION:

The unopened portion of the alley abutting the property of 742 17th Ave W was originally platted and dedicated in 1890 as Town of Kirkland. The Five Year Non-User Statute provides that any street or right-of-way platted, dedicated, or deeded prior to March 12, 1904, which was outside City jurisdiction when dedicated and which remains unopened or unimproved for five continuous years is then vacated. The subject right-of-way has not been opened or improved.

Diane Reynolds and Glen Reynolds, the owners of the property abutting this right-of-way, submitted information to the City claiming the right-of-way was subject to the Five Year Non-User Statute (Vacation by Operation of Law), Laws of 1889, Chapter 19, Section 32. After reviewing this information, the City Attorney believes the approval of the enclosed Resolution is permissible.

Attachments: Vicinity Maps
Resolution

Copy: Rob Jammerman, Development Engineering Manager



Reynolds Residence Non-User Vacation
742 17TH AVE W

- Reynolds Residence
- Proposed Vacation
- Building Outline
- Granted Non-User Vacations
- Pedestrian Easement

Produced by the City of Kirkland.

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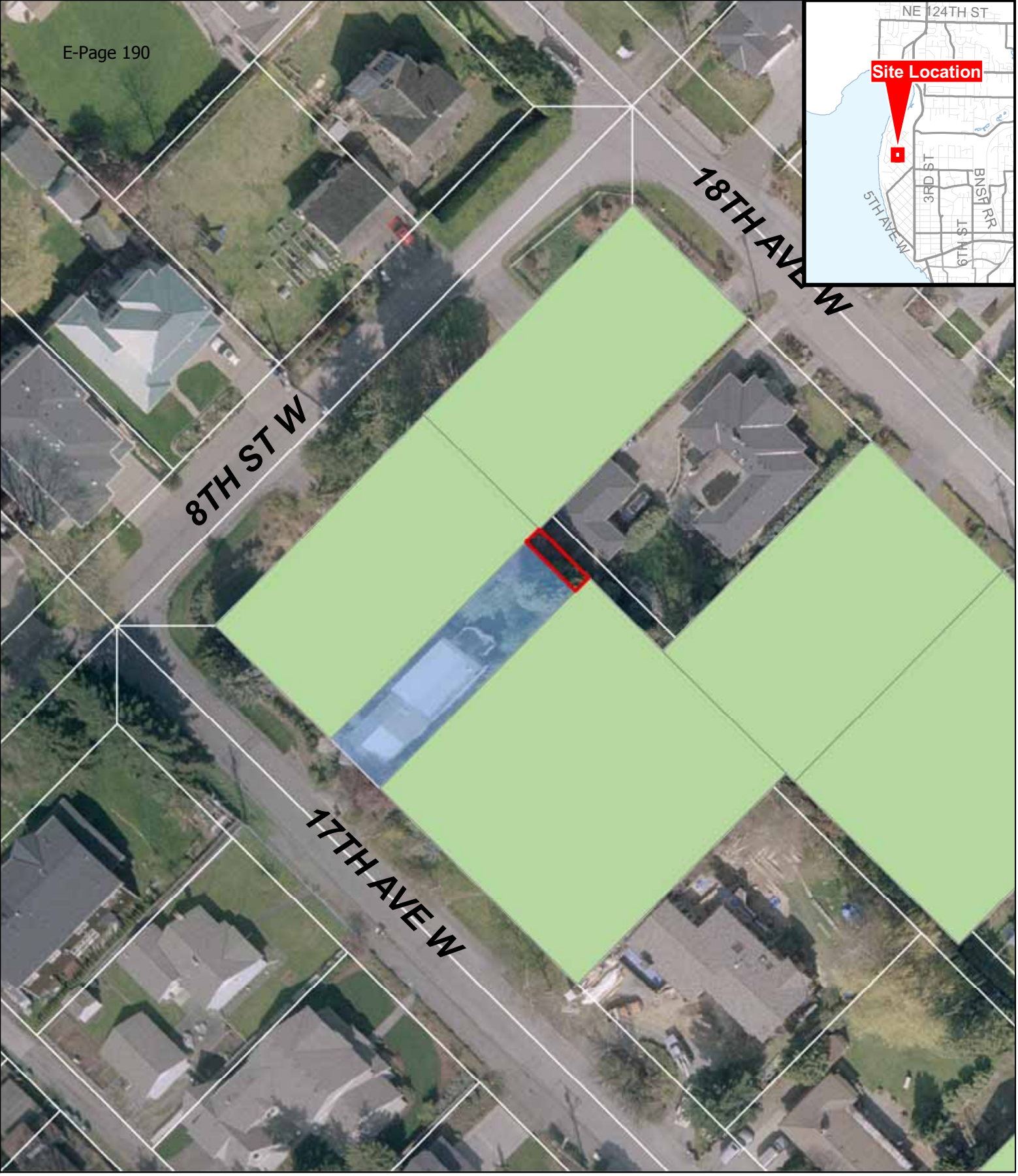
No warranties of any sort, including but not limited to accuracy, fitness or merchantability, accompany this product.

Printed October 19, 2009 - Public Works GIS



Reynolds Residence Non-User Vacation
742 17TH AVE W

Reynolds Residence

Proposed Vacation

Granted Non-User Vacations

Produced by the City of Kirkland.

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No warranties of any sort, including but not limited to accuracy, fitness or merchantability, accompany this product.

Printed October 19, 2009 - Public Works GIS

RESOLUTION R-4781

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND RELINQUISHING ANY INTEREST THE CITY MAY HAVE IN AN UNOPENED RIGHT-OF-WAY AS DESCRIBED HEREIN AND REQUESTED BY PROPERTY OWNERS DIANE F. REYNOLDS AND GLEN C. REYNOLDS

WHEREAS, the City has received a request to recognize that any rights to the land originally dedicated in 1890 as right-of-way abutting a portion of the Town of Kirkland have been vacated by operation of law; and

WHEREAS, the Laws of 1889, Chapter 19, Section 32, provide that any county road which remains unopened for five years after authority is granted for opening the same is vacated by operation of law at that time; and

WHEREAS, the area which is the subject of this request was annexed to the City of Kirkland, with the relevant right-of-way having been unopened; and

WHEREAS, in this context it is in the public interest to resolve this matter by agreement,

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

Section 1. As requested by the property owners Diane F. Reynolds and Glen C. Reynolds, the City Council of the City of Kirkland hereby recognizes that the following described right-of-way has been vacated by operation of law and relinquishes all interest it may have, if any, in the portion of right-of-way described as follows:

A portion of unopened alley being identified as the westerly 8 feet of the unopened alley abutting the easterly boundary of the following described property: Lot 19, Block 50, Town of Kirkland, according to the plat thereof recorded in Volume 6 of Plats, page 53, records of King County, Washington.

Section 2. This resolution does not affect any third party rights in the property, if any.

Passed by majority vote of the Kirkland City Council in open meeting this ____ day of _____, 2009

Signed in authentication thereof this _____ day of _____, 2009.

_____
MAYOR

Attest:

_____
City Clerk

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

MEMORANDUM

To: David Ramsay, City Manager

From: Barry Scott, Purchasing Agent

Date: October 21, 2009

Subject: REPORT ON PROCUREMENT ACTIVITIES FOR COUNCIL MEETING OF NOVEMBER 2, 2009

This report is provided to apprise the Council of recent and upcoming procurement activities where the cost is estimated or known to be in excess of $50,000. The "Process" column on the table indicates the process being used to determine the award of the contract.

The City's major procurement activities initiated since the last report, dated September 24, 2009, are as follows:

	Project	Process	Estimate/Price	Status
1.	120th Ave NE / NE 73rd Street Water Main Replacement	Invitation for Bids	$400,000 - $450,000	Advertised on 10/28. Bids due on 11/12.
2.	IT Service Management Software and Services RFP	Request for Proposals	$137,000 (estimated)	RFP issued and advertised on 9/22. Ten proposals received on 10/16 are being evaluated.
3.	Executive Recruitment Services for City Manager position	Request for Proposals	$30,000 - $50,000	RFP issued and advertised on 10/7. Proposals due to Director of Human Resources on 10/23.

Please contact me if you have any questions regarding this report.

CITY OF KIRKLAND
MEMORANDUM

TO: Kirkland City Council members

FROM: Bob C. Sterbank

DATE: October 27, 2009

RE: Bank of America Design Review Process

I. Introduction

You asked that I review the design review process utilized for the SRM / Bank of America project, and provide any recommendations for adjustments to the process currently called for by the City's code. The goal of this work is to assist City staff, the DRB and Council in avoiding a repeat of the controversy that accompanied the SRM / B of A project.

Before commencing work on the project, I met with Mayor Lauinger, Deputy Mayor McBride, and Council member Hodgson to discuss their views on what the review should encompass. Council member Hodgson provided a list of 5 main issues and questions he believed should be addressed (see copy attached as Exhibit A). Mayor Lauinger and Deputy Mayor McBride indicated their belief that while the review need not address the issues/questions precisely as articulated by Council member Hodgson, the general topics could be incorporated in my review as appropriate. The three council members also indicated that the review should also include interviews of all seven Council members, the four former Design Review Board members who resigned following the Council's decision to reverse the Design Review Board decision on the SRM / B of A project, City Manager David Ramsay, City Attorney Robin Jenkinson, Director of Planning & Community Development Eric Shields, selected planning staff involved with the project, the outside attorney retained by Council member Hodgson during the project, and officers of CiViK.

Most but not all of those interviews have taken place. The outside attorney for Council member Hodgson indicated that given his busy schedule, this review was not something for which he would typically volunteer his time. Two of the four former DRB members did not respond at all to requests for interviews; one indicated he required "more information about what's going on" before he would finalize an appointment. The fourth indicated that she would "have no part" in what she labeled a "witch hunt." In addition, when contacted the attorney for SRM indicated that SRM representatives would respond only to written questions and would not participate in an interview. SRM's attorneys themselves declined to speak on the subject. I was able to speak by telephone with Patrick Schneider, an outside attorney who advised the City Council and Ms. Jenkinson during a portion of the Council's consideration of the appeal of the DRB decision.

Nevertheless, the interviews that have occurred, combined with review of the relevant documents, have provided a fairly complete picture of the events that transpired, as discussed below.

[On October 20, 2009, the City Council voted to disclose most of this memorandum, with the exception of portions discussing the substance of the April 9, 2008 memorandum from the City Attorney to the City Council. This memorandum redacts that discussion, per the Council's direction, but leaves in discussion of the appropriateness of obtaining attorney-client privileged advice during a pending quasi-judicial proceeding.]

II. Chronology

The basic chronology of events is not disputed, and is outlined below:

09/05/2007	Pre-submittal conference application received.
09/18/2007	Pre-submittal conference held.
09/21/2007	Conceptual Design Conference application received.
10/01/2007	Design Review Board ("DRB") Conceptual Design review completed.
10/03/2007	Senior Planner Janice Soloff writes SRM's Andy Loos, stating that the DRB had "concluded that the conceptual plans are on the right track for the Board to support a 5 story project. . .if the discussion comments are incorporated into the next phase of the project."
11/02/2007	Design Review Conference application received.
11/19/2007	DRB holds Design Review meeting.
12/03/2007	DRB holds Design Review meeting.
12/07/2007	Senior Planner Soloff writes SRM's Andy Loos, summarizing outcome of 12/03/07 DRB Design Review meeting. The letter states that "No final decision was reached on the project however the Board reached consensus on portions of the project," including a 5-0 vote to "approve the 5th story portion of the project."
01/07/2008	DRB Design Review meeting; DRB vote to approve SRM / B of A project.
01/17/2008	Notice of DRB decision issued.
01/31/2008	Appeal filed by Citizens for a Vibrant Kirkland ("CiViK").

04/13/2008	City Council holds hearing on CiViK appeal.
05/06/2008	City Council holds hearing and issues oral decision on CiViK appeal.
05/20/2008	City Council conducts additional consideration of appeal.
06/03/2008	City Council conducts additional consideration of appeal.
07/01/2008	City Council conducts additional consideration of appeal.
08/05/2008	City Council adopts Resolution No. R-4707 reversing DRB Decision and denying design review approval for the SRM / B of A project.
08/26/2008	SRM and related entities file land use petition in King County Superior Court, challenging Resolution No. R-4707.
11/18/2008	City Council adopts Resolution No. R-4731 approving Alternate Design for SRM / B of A project.

III. Analysis

A. Introduction

Although the above chronology is not disputed, participants in the project continue to vigorously debate the meaning and/or legitimacy of various statements made during the course of events. For the most part, the debate appears to be driven largely by perceptions of the advocates, illustrating "Miles' Law's" dictate that "how you stand depends on where you sit."[1]

---

[1] According to Rufus E. Miles, he coined the term "Miles' Law" while working at the Bureau of the Budget, or BOB (the predecessor to today's federal Office of Management and Budget) in 1948 or 1949. One of Miles' subordinates was offered a raise if he left BOB to work for the agency he was then supervising, and he sought to use that offer as leverage to stay and obtain a raise at BOB. Miles refused, and the subordinate left for the agency, even though he had been severely critical of that agency while supervising it. After the departure, Miles correctly predicted that his former subordinate would completely change his view:

> A day or two after he departed, I said to one of my associates, "Just watch! Within three or four months he will be as critical of the Bureau of the Budget and as defensive of his agency as he has been the opposite within the Bureau." My associate was astonished at me. "Oh no!" he said, "he is much too objective and fair minded for that kind of turnabout." My rejoinder was, "You should not dispute whether this will happen, but only how long it will take." It took about two months longer than I estimated, as I recall it. When it did happen, I said to my associate, "You see, it depends on where you sit, how you stand."

Miles, RE, Jr. The Origin and Meaning of Miles' Law," *Public Administration Review*, Vol. 38, No. 5 (Sep. - Oct., 1978), pp. 399-403.

Specifically, the individual advocates' perceptions, and reactions thereto, appear more driven by those advocates' respective positions on the issue of growth in downtown Kirkland.

For example, from the perspective of some of the City Council members who voted to deny CiViK's appeal and approve the SRM project as originally proposed, public opposition to the project was solely the result of CiViK members who reside in the Portsmouth condominiums. According to this view, these CiViK members will lose their view of Lake Washington if the SRM project is built, and therefore CiViK's opposition to the project and subsequent appeal to the City Council were driven solely by a desire for view protection. In the view of these Council members, growth in downtown Kirkland is to be encouraged, out of concern that downtown is "starting to die." Council members holding this position also believe that view protection is not a legitimate basis on which to oppose a project, but rather a "fig leaf" held by those who are perceived to oppose development and change. Therefore, this view holds, any stated concerns with a given project's legal compliance, or with the design review process itself, must be rejected out of hand. Likewise, the contrary positions of some of their Council colleagues, who voted to grant the appeal and reverse the DRB, must also be rejected; those Council members had been supported by some CiViK officers or members during previous election campaigns, and therefore any position supporting CiViK was automatically suspect. As one DRB member articulated it, the position taken by some Council members was merely to "appease the misguided, misinformed CiViK."

For Council members holding the contrary view, although growth in downtown Kirkland must be accommodated, it is not the City's job to advocate it. Instead, the City must neutrally call "balls and strikes" on individual development applications. In this view, some applications will succeed, and receive discretionary approvals allowing the maximum possible building height, while others will not. Neither City staff (and City Council) should be in a position of helping development to succeed; proposals must succeed (or fail) on their own. Objections from citizens to date, starting with concerns about a development proposal for the City parking lot at Lake and Central Streets, are not based on concerns for view protection. Rather, the community determined that the design review process is not what is set forth in the City's code, and the community organized and rose up in defense of its own zoning code. Council colleagues in the opposite camp are either in the pocket of the development industry, or in the sway of the City Manager and/or staff who do their bidding.

The strength with of these two primary views, and accompanying suspicion of those holding the contrary view, has shaped the views that individual members of each camp hold concerning the appropriateness of the events that occurred throughout the Bank of America process. To try to escape this paradigm, the analysis below first discusses the contentions and perceptions of various participants and, where possible, makes observations concerning their accuracy based on review of the record, e-mails, and statements made during individual interviews. To the extent that questions have been raised about the appropriateness of particular actions, the analysis first sets forth the relevant legal principle or other applicable standard, and then attempts to determine whether the action was consistent with the applicable principle or standard. Finally, where possible, the analysis also provides options for alternate approaches for future projects, along with a brief pro/con discussion.

B. Design Review Board Process

As per Chapter 142.35 of the Kirkland Zoning Code, the Design Review process provides for three separate steps:

(1) a pre-design review conference with the Planning Official;
(2) a "Conceptual Design Conference" ("CDC") with the Design Review Board; and
(3) a "Design Response Conference" ("DRC") with the Design Review Board.

See Section 142.35(5), (6) and (9). The DRB may continue the Design Response Conference if necessary to obtain additional information for its final decision on the application. Section 142.35(9).

1. Concerns Identified With DRB Process

a. Early Communications Regarding "Approvability" of 5th Story

One of the primary flaws with the Design Review Process alleged by members of CiViK and some Council members was that, the day following the Conceptual Design Conference, a letter was sent to the applicant indicating that the Design Review Board had "concluded that the conceptual plans are on the right track for the Board to support a 5 story project. . .if the discussion comments are incorporated into the next phase of the project." To CiViK, and some Council members, such a comment was premature at best. From their perspective, a decision on the fifth story should not have been made until the close of the Design Response Conference, after receipt of all public comment. In their view, communication by staff in advance of that time was potentially indicative of staff bias in favor of the applicant, if not an outright attempt to "box" the DRB into approving the 5th story.

Review of the audiotape recording of the October 1, 2007 Conceptual Design Conference, however, indicates that the DRB was directly asked to indicate whether a 5th story was approvable for the project, even with a bank as a major tenant. Comments by DRB members in response were generally supportive of a 5th story. The October 3, 2007 staff letter accurately summarized the direction given by the DRB at the conclusion of the CDC.

For example, at the outset of the staff presentation during the CDC, City staff opened its presentation of the staff report by noting that guidance was sought on several issues, including whether "a 5th story is approvable or not. . . ." SRM's Andy Loos gave some introductory comments prior to a detailed presentation by SRM's architect, Chad Lorentz. Mr. Loos indicated that SRM was buying the property from a bank, and the only way the Bank of America would agree to sell the property was if it (Bank of America) came back into the project. Mr. Loos acknowledged that the presence of a bank had been an issue at some retail sites, but because of the Bank of America's insistence, "you'll see a bank. . .[and] that's the only way for it to work here. . . ."

SRM's presentation was then turned over to architect Chad Lorentz, who walked the DRB through the details of the proposed building design. Mr. Lorentz specifically addressed what he indicated he thought were the criteria for superior retail space, noting that he was "not going to convince you [the DRB] here on the 5th story; we just want direction – are we headed in the right direction?"

Subsequently, staff gave an additional follow-up presentation, which outlined the number of stories that could be permitted, along with a brief discussion of the criteria (including superior retail) that the DRB should address in considering the applicant's request for a 5th story. The Board heard public comment from a few individuals, who stated that 5 stories were too high and would "destroy what makes Kirkland great." The commenters requested that building height be limited to 28 feet, similar to the height limits then in place in the CBD 2 zone.

During the last 10 minutes or so of the meeting, the DRB acknowledged that they had been asked at the beginning of the meeting whether 5 stories were approvable, and although individual Board members had commented on a number of proposed design aspects, "what we haven't given is, to what extent is it feasible to get to 5 stories?" DRB members then discussed what constitutes "superior retail space," based on parameters that staff and the DRB had developed during previous projects (the Heathman and the Kirkland Central projects), and the extent to which the SRM conceptual design met or could be made to meet those criteria. The DRB members indicated their belief that most of the criteria had previously been addressed by the architect presentation, or in individual Board member comments. No Board member indicated a belief that 5 stories should not or could not be approved – instead, the general tenor of comments was supportive. As one member put it, "I don't want to be prescriptive – it's the sum of the parts. You've done a good job describing how it [superior retail criteria] applies to the [proposed] space. . . .I'm not saying it can't be done."

In light of the above, the DRB member comments taken together were reasonably summarized by staff as indicating a 5th story could be approvable, subject to the various design modifications requested by individual Board members. As such, the October 2, 2007 staff letter to Andy Loos accurately described the outcome of the DRB's Conceptual Design Conference.

b. Effect of Timing of SRM Purchase of Property

Additional concern was expressed by CiViK concerning the relationship, if any, between the DRB's vote to approve the 5th story at its December 3, 2007 meeting, and what was later reported to be the closing of SRM's purchase of the property from Bank of America on December 10, 2007. As CiViK member Bea Nahon put it:

> It makes sense that the Developer wanted to be sure that they had the ability to construct the 5th floor, prior to closing on the property. We have not seen the PSA itself, but it's certainly a reasonable possibility that there could have been a contingency in place relating to the developer's ability to have the 5th floor. There is nothing wrong with that, per se, that's just good economic practice.

> What would be a problem, though, is if that date added additional pressure, which was conveyed in some subtle (or not so subtle) way to DRB members to approve the 5th floor at that specific meeting. Remember that it was not the project which was approved at the December meeting, but the 5th floor - with a motion that was brought up early in the deliberations and passed with relatively little discussion.

CiViK's concern that DRB members may have been pressured by knowledge of the timing of SRM's purchase are not supported by the record. The audio recording of the October 1, 2007 Conceptual Design Conference, and the transcripts of the November 19 and December 3, 2007 Design Response Conferences, do not indicate that the DRB was informed that the closing of SRM's purchase imminent, or that such a closing should play any role in the DRB's decision. When asked, City staff did not recall having been informed of the timing of SRM's property purchase, only of SRM's request for an early indication as to whether a 5th story was approvable.

In addition, CiViK's characterization of the DRB's December 3, 2007 decision to approve the 5th story as having been accomplished "with a motion that was brought up early in the deliberations and passed with relatively little discussion," does not appear to be accurate. The topic of the 5th story – but not a motion on it -- was brought up relatively early in the discussion, but only because it was suggested by DRB member Phyllis Warman that it made more sense to begin deliberating on the larger issues rather than focusing on design details:

> Phyllis Warman: So we're going to talk about some of the details or are we going to talk about the larger issues? I mean, I just hate to spend two hours going over the details and then we start hitting the larger issues at hand.
>
> Male participant: We can start with the larger issues, then.
>
> Phyllis Warman: Yeah. Does that –
>
> Male participant: That makes sense to me.
>
> Phyllis Warman: I just don't know what the largest one is.
>
> Male participant: It's probably that story on top.
>
> Male participant: That story –
>
> Audience participant: Speak into the microphone please, for the benefit of all of us tonight, it's also recorded for posterity.
>
> Eric Shields: I'll just set the stage here and let you guys go at it, but I think obviously the big issue is the height and mass, and related to that is whether or not for the fifth story, there's sufficient superior retail. So, I mean, I would care – and obviously have a lot of concerns from the audience about that, but, again, the building mass, starting at the two stories along the street lines, stepping back sufficiently or whether or not that fifth story is earned through its superior retail, probably the big issues.

December 3, 2007 DRB meeting transcript at 40.

Thereafter, the Board members deliberated about the fifth story. It was only after each expressed his or her opinion at relative length (the comments occupy nearly ten pages of transcript), that a motion was made, seconded, and passed, to approve the fifth story:

Carter Bagg: Okay. So therefore I'm assuming by the comments that the fifth story is allowable, third, fourth, and fifth story.

Steve Cox: I have maybe a suggestion. There are other design issues with regard to this building that we haven't got to that we owe it, perhaps, the luxury of discussing once we get rid of the 800 pond gorilla in the room or once we sort of settle on a point of view with regard to the fifth story.

* * * *

Male Participant: Are you saying –

Steve Cox: I'm moving.

Male Participant: If they have appropriate, subject to –

Stephen Cox: I'm moving that we accept it.

Phyllis Warman: I'll second.

Stephen Cox: Does that come across?

Male Participant: Yeah, but you're still talking.

Stephen Cox: I did, too, then I got a question that derailed me. That we accept it as satisfying that criteria and that if – then we can discuss the rest of the building, or if we need to bring it back for a subsequent review, that that be a limited scope; discuss details and finer bits of articulation, color materials and those types of things, and that we deal with this fifth floor thing. That's my motion.

Male Participant: Throw me a question again. Are you saying the upper floor setbacks?

Stephen Cox: I move that we accept the building's fifth floor.

Male Participant: Fifth floor.

Stephen Cox: As acceptable, having satisfied the criteria for superior retail and street level design, period.

Male Participant: I second.

Phyllis Warman: I second it.

* * * *

Stephen Cox: Maybe I'm being confusing. I was just trying to get this issue out of the way.

Male Participant: Right.

Stephen Cox: I wasn't trying to get the meeting over, I wasn't trying to end this applicant's time, I wasn't trying to do any of that. I was just trying to get this issue out of –

Male Participant: Right.

Stephen Cox: I was trying to move that we could decide whether or not that aspect of the building was either acceptable or not.

Male Participant: Okay.

Stephen Cox: And then we can go on to discuss, in time we may be allowed, other aspects of their design.

Carter Bagg: Okay. So you made a motion, there was a second. All those in favor.

Male Participant: Aye.

Male Participant: Aye.

Phyllis Warman: Aye.

Carter Bagg: Opposed? All right.

December 3, 2007 DRB meeting transcript at 50-53. The minutes of the meeting reflect that DRB member Cox's motion passed 5-0.

In light of the foregoing, the record does not support the contention that the motion to approve the fifth story was introduced early in the deliberations, or that it was approved "with relatively little discussion." Rather, it was the topic of the 5th story that was brought up early, but that topic was discussed relatively extensively. This appears to have been driven by the

recognition that the 5th story was one of the largest issues facing the board, both from the perspective of the applicant and comments by the public, and that the DRB should address this issue before turning to finer design, color and materials issues. Only after it became apparent from DRB members' detailed comments that the 5th story was "approvable" was a motion made, and then passed.

The one area in which information relating to the timing of SRM's decision to close on its purchase of the property may have had an effect was whether the DRB should, as part of its final decision on the project application, reconsider the preliminary direction given at its December 3 meeting. This issue is illustrated in part by two e-mails from Planning Director Eric Shields to DRB members.

On Wednesday, December 12, Director Shields wrote DRB members indicating he'd heard complaints from members of the public who were concerned that DRB members had not read written comments prior to voting to give SRM direction on the 5th floor. Director Shield indicated that it would be a good idea for DRB members to look over the written comments prior to the then-upcoming January 7, 2008 meeting, acknowledge them to the audience at that meeting, and then have a brief discussion about whether the comments changed the DRB's conclusions from its December 3 meting.

Two days later, Director Shields e-mailed DRB members again, to "revise" his December 12 message. He wrote:

> I still think you should acknowledge the letters and make it clear that you have considered them in your decision. However, I did not mean to suggest that you should reconsider the direction you gave to the applicant at the last meeting. The applicant should be able to rely on that direction to move his project forward. Therefore, I recommend that you start your review on the basis of your previous decisions. Of course, any one of you may ask that those decisions be reconsidered, but the starting point for discussion should be where you left off at the last meeting.

December 14, 2007 e-mail from Eric Shields to DRB members (emphasis added). This e-mail may indicate that, in between the December 12 and 14 e-mails, Mr. Shields had been informed that SRM had "moved the project forward" following the December 3 DRB meeting by closing its purchase of the property. Given that, Mr. Shields may not have wanted to appear to be directing the DRB to reconsider its prior decision. It is difficult to read the December 14 e-mail revision any other way: because the DRB's December 3 decision was not a final decision on which the applicant was entitled to rely, there should have been no reason to believe – in the absence of specific information about a recent closing -- that the applicant might try to "move his project forward" based on it.

Even so interpreted, however, Mr. Shield's December 14 e-mail did not inform the DRB of the December 10 closing. And, Mr. Shield's e-mail did acknowledge that "any one of you [DRB members] may ask that those decisions be reconsidered. . . ." Therefore, absent information indicating off-the-record conversations among DRB members and Mr. Shields – and

I have not been provided any such information -- I cannot conclude that information concerning the timing of SRM's purchase of the property affected the substance of the DRB's decision.

c. The Role of City Staff

The topics discussed above reflect an overarching concern by CiViK and others that staff were biased in favor of the applicant, and/or that staff inappropriately advocated for development approval. Evidence of bias is claimed by virtue of staff recommendations for DRB approval, by staff and Planning Director answers or interjections during DRB deliberations. Evidence of bias is also claimed by virtue of the fact that, at the start of the November 19, 2007 DRB meeting, a copy of the October 3 letter to Andy Loos had been placed at each DRB member's seat at the dais.

(i) Regulatory context

Before any judgment may be made about City staff's actions, it is important to first consider the context prescribed by the City Council, through adopted codes, design guidelines, and plans. For example, in 2001 the City Council adopted the Downtown Strategic Plan, which states that it is the "community's plan to transform our central city area into a high-quality pedestrian village." The Downtown Strategic Plan summarizes the key recommendations of the Downtown Action Team, a group appointed in 1999 that included (among others) Mayor Lauinger, Council member Sternoff, City Manager David Ramsay, and Planning Director Eric Shields. The Strategic Plan identifies several specific strategies for enhancing the Downtown Core Area, including the direction to "Facilitate redevelopment at key opportunity sites, including. . .Bank of America site on Kirkland Avenue. . . ." Downtown Strategic Plan at 9 (emphasis added).

Through the City Code, the City Council has also given direction concerning the roles to be played by staff. For example, Kirkland Municipal Code Section 3.30.010 provides that "the director of planning and community development shall sit on the design review board ("DRB") as a nonvoting member for purposes of advising the board on regulatory and urban design issues." (Emphasis added).[2]

The Kirkland Zoning Code also contains several provisions addressing the role of the Planning Director with respect to applications for Design Review Board approval. For example, Section 142.35(5) provides that the Planning Director should meet with an applicant, explain how City regulations apply to an application, and assist the applicant in preparing for the conceptual design conference before the DRB:

> Before applying for D.B.R. [Design Board Review] approval, the applicant shall attend a pre-design conference with the Planning Official. The conference will be scheduled by the Planning Official upon written request by the applicant. The purpose of this conference is for the Planning Official to discuss how the design

[2] KMC Section 3.30.050 does provides that a member of the DRB who is an applicant or a paid or unpaid advocate, agent, or representative for an applicant may not participate in a decision on a design review application, but does not address actions by city staff.

> regulations, design guidelines, and other applicable provisions of this code and the Comprehensive Plan relate to the proposed development and to assist the applicant in preparing for the conceptual design conference.

(Emphasis added).

Section 142.35(9) discussed the Planning Director's role when the DRB considers an application. This section states:

> The design response stage allows the Design Review Board to review the design plans and provide direction to the applicant on issues to be resolved for final approval. The applicant shall present a summary of the project to the Design Review Board. The Planning Official shall present a review of the project for consistency with the requirements specified in subsection (3) of this section. Public comment relevant to the application may be taken.

(Emphasis added).

The substantive basis for the Planning Director's advice at the various points identified above is informed by KMC 20.04.120, which sets forth the general criteria by which land use applications are to be judged. It states:

> The foundation for project review shall be the city's comprehensive plan and development regulations. The city's review of a project permit application will include determination as to whether the proposed project is consistent with applicable regulations or comprehensive plan. The determination of consistency shall be based on review of the applicable development regulations, or in the absence of a relevant development regulation, upon the comprehensive plan. The city's review will emphasize existing requirements and adopted standards, with the use of supplemental authority as specified by Chapter 43.21C RCW to the extent that existing requirements do not adequately address a project's specific probable adverse environmental impacts.

(ii) Staff actions

The actions taken by staff fit generally into the procedural steps outlined above.

Pre-submittal conference

On September 5, 2007, the SRM representative Andy Loos submitted an application for a pre-submittal conference (copy attached). In the space provided for the applicant's "questions/concerns for staff," Mr. Loos included "drive thru lane," "upper floor setbacks," and "superior retail." Mr. Loos included a proposed agenda for the pre-submittal conference, which included discussion of ground floor and upper floor setbacks, and building height calculation. Pre-prepared materials provided by Planner Janice Soloff to the applicant at the pre-submittal conference (copy attached) indicate that, per the Zoning Code's direction that the Planning

Official discuss "how the design regulations, design guidelines, and other applicable provisions of this code and the Comprehensive Plan relate to the proposed development," planning staff informed Mr. Loos that "building height above 2 stories is discretionary with the Design Review Board," that the applicant "will need to show superior retail and superior architectural design in building bulk and mass above 2 stories." With respect to superior retail, the applicant was directed to "Describe how project meets superior retail principles along Kirkland Avenue and Lake Street. . .(see handout on what is superior retail)." The applicant was provided a copy of the superior retail component checklist that the Planning Director and staff had developed during previous mixed use projects (the Heathman and Kirkland Central).[3] With respect to building height, Mr. Loos was informed that:

"under the direction provided in the Downtown Plan of the Comprehensive Plan, the 5th story may be considered by the Design Review Board for projects where:

- At least 3 of the upper stories are residential; and
- The total height is not more than one foot taller than the height that would result from an office project with three stories of office over ground floor retail (or 55 feet total); and
- Stories above the second story are set back significantly from the street; and the building form is stepped back at the third, fourth, and fifth stories to mitigate the additional building mass; and
- The project provides superior retail space at the street level; and
- Rooftop appurtenances and related screening should not exceed the total allowed height, and should be incorporated into the height and design of any peaked roofs or parapets.

In addition to the foregoing, Ms. Soloff's handwritten notes on the pre-submittal conference materials indicate that planning staff reviewed conceptual plans and provided suggestions (e.g., extending windows around building corners) to help address superior retail, and that the applicant would need to discuss a number of other components with the DRB.

Staff actions with respect to the pre-submittal conference were consistent with the directions provided by the Code. Staff met with the applicant, discussed the application of various regulations, and assisted the applicant in preparing for the conceptual design conference by suggesting modifications the applicant could make to the plans to better address required design elements.

One area of concern to CiViK and some Council members is the overall issue of whether "superior retail" should include some consideration of the proposed retail <u>use</u>, as compared to a more limited meaning of the term, referring only to the physical space. The pre-submittal materials indicate that, while planning staff construed "superior retail" with the more limited meaning, they did so with reference to guidelines that the Planning Director had developed along with the Design Review Board on previous projects. The record does not support a conclusion

[3] The DRB also discussed these standards at its January 2007 retreat, as evidenced by written materials presented to the Board at that time by staff. These materials contain the same description of the standards for identifying "superior retail" as those later provided by staff to the DRB concerning the SRM / B of A project.

that planning staff initially selected the more limited definition of "superior retail" in order to permit the SRM to proceed with a bank as the primary ground floor tenant.

Staff Communications

Another subject of criticism has been staff communications with the applicant. On the whole, staff communications were appropriate when viewed in the context of the directions provided by the Downtown Strategic Plan and Zoning Code, as summarized below.

For example, following the Conceptual Design Conference on October 1, 2007, Senior Planner Janice Soloff wrote to Andy Loos to discuss the outcome of the conference. Ms. Soloff's October 3, 2007 letter, discussed above, has been one target of criticism. As noted, however, this letter fairly describes the outcome of the October 1, 2007 Conceptual Design Conference. According to an e-mail from Ms. Soloff to this author, the staff's "procedures state that we do a follow up letter summarizing each Design Review Board meeting to the applicant and we copy the Board members." Even if the procedures did not so state, because staff is tasked by the Zoning Code with "assisting" the applicant in preparing for the Conceptual Design Conference, sending a follow-up letter summarizing the results of that conference, and identifying issues that the applicant must address at the Design Response Conference, is not inappropriate. It is also not unreasonable for an applicant to request and receive feedback on a major building component (e.g., a proposed 5th Floor) at the Conceptual Design Conference, given that additional resources are spent during successive stages of the design review process.

Other communications occurred via e-mail. As part of preparation of this memorandum, all e-mails among City staff and Mr. Loos during the design review process (October – December, 2007) were reviewed. These e-mails (copies attached) do not indicate inappropriate bias or favoritism on the part of staff.

For example, one of the elements noted during the pre-submittal conference was that the "Site is targeted for public parking. Explore options with City Manager, City Council and Parking Advisory Committee." In an e-mail dated October 3, 2007 at 4:27 p.m., Ms. Soloff informed Mr. Loos that "staff met with the City Manager to discuss the issue of partnering with your project to provide public parking. Once again we've come to the conclusion that the City does not have the revenue source to pursue this further." There was no further discussion of this issue by City staff via e-mail with SRM during the design review process.

In late October, 2007, Ms. Soloff inquired whether SRM could confirm certain project details (number of units and gross floor area), and provide an electronic version of the most recent site plan for staff's use in issuing public notice for the upcoming Design Response Conference. Mr. Loos responded with this information. Mr. Loos also e-mailed again on November 1, 2007, asking about use of Lake Street vs. Kirkland Avenue as the basis for height measurements. No e-mail responding to this inquiry was provided.

On November 14, 2007, Ms. Soloff forwarded Mr. Loos a copy of a petition that had been circulated calling for Council to impose a moratorium upon development projects in the downtown core. Ms. Soloff's e-mail notes that "there is some anxiety brewing about several of

the projects in review downtown and traffic [sic]." Because the petition might have sought to affect the SRM project, forwarding Mr. Loos a copy was not inappropriate. Mr. Loos responded with several comments about the petition; Ms. Soloff forwarded Mr. Loos' response without comment to Planning Director Eric Shield and Planning Supervisor Jeremy McMahan.

The following day, November 15, 2007, Mr. Loos e-mailed Ms. Soloff inquiring about the timing of environmental review and potential appeal processes, in the event the DRB decision were to be appealed. Ms. Soloff responded with basic factual information answering Mr. Loos' questions; again, her response was appropriate.

The Design Response Conference was held on November 19, 2007. The next morning, on November 20 at 10:09 a.m., Mr. Loos e-mailed Ms. Soloff, forwarding her his notes from the DRB meeting, and asking for an opinion from the City to "determine what the code really says regarding the discretionary approvals over two stories [in height]," which Mr. Loos characterized as "nebulous." Mr. Loos then asked for stated his belief that "some clear direction is needed from the City to the Design Review Board in terms of what their discretion entails:"

> I always thought it was the fifth floor but with last night's meeting I'm not sure and if I'm not sure then I don't feel comfortable moving forward and buying the property or spending more money on planning.
>
> * * *
>
> It appears that we'll be able to work our way through this but I'm responsible to my company and the Bank of America to advise them on whether to proceed and at this point I don't have the feeling of comfort that we will attain the height I've anticipated.
>
> <u>When I report this to Merrill, SRM and the Bank it may be that we scrap this and go elsewhere</u>.
>
> <u>I do think there is a good chance of appeal on this one because of the Portsmith views being blocked. I'd like to meet with you, Eric, Jeremy and whoever else you think may want to weight-in [sic] to discuss the project and the best way to move forward</u>.

(Emphasis added).

By noon that day, planning staff had arranged an internal meeting for November 21. Ms. Soloff e-mailed her staff colleagues "a summary of staff's interpretation of the maximum height in CBD 1" in preparation for the upcoming internal meeting. The attachment Ms. Soloff forwarded indicates the staff interpretation in italics, as follows:

> CBD 1 height:

> *Staff's interpretation is that the Downtown Plan provides specific criteria for developers to follow in order to propose the maximum allowed height. The DRB should evaluate the proposal against these specific criteria to determine the allowed height.*
>
> *Staff discussion point – are there properties where the maximum height could not be attained?*
>
> 2 stories along Lake Street:
>
> *Staff interprets this to mean <u>provide a 2 story street wall façade</u> (for human scale and pedestrian orientation and since taller heights are allowed through discretionary approval by the DRB.*

Attachment to Soloff 11/20/2007 12:11 p.m. e-mail (italics and underscore in original).

Later that same day (November 20), Ms. Soloff responded to Mr. Loos' 10:09 a.m. e-mail, stating:

> I understand your concerns. I will be debriefing on the meeting with Eric and Jeremy tomorrow.
>
> I guess my attempt to break down and simplify the building height criteria was still not clear for the Board so at the next DRB meeting staff's goal will be to provide a clearer interpretation of the height regulations, policies and discretion of the Board.

E-mail dated November 20, 2007 3:29 p.m. from J. Soloff to A. Loos. It does not appear that Ms. Soloff shared her draft "staff interpretation" with Mr. Loos.

Mr. Loos, for his part, responded with a 4:08 p.m. e-mail acknowledging internal contradictions within the Downtown Plan, but concluding that "even though I'm biased it seems clear that area 1B anticipates flour floors (upper three levels of residential) with the discretionary fifth floor."

One week later, on November 27, Ms. Soloff e-mailed Planning Director Shields and Planning Supervisor Jeremy McMahan, attaching applicable Downtown Plan policies. Ms. Soloff's e-mail indicates that the policies appear "exactly as stated in the Plan but reformatted," and indicated that she would be attaching them to her staff report to the DRB for the upcoming December 3 meeting. Mr. McMahan responded with "a couple of tweaks" to the summary's format.

Thereafter, the Design Review Board met on December 3, and voted 5-0 to preliminarily approve the project's use of a fifth story. On December 7, following that meeting, Mr. Loos e-mails Ms. Soloff, City Manager David Ramsay, and Ellen Miller-Wolfe, the City's Economic

Development Manager. Mr. Loos explained his thinking about the level of public complaint directed at his project, and wondering whether it would make sense for the City Council to establish a flat height limit for a particular zone. According to Mr. Loos, "the current process encourages conflict due to its uncertainty for all concerned," because "tying the additional height to the Design Review Board gives the public the impression that they have authority on height when in fact they do not if the developer conforms to their design suggestions."

Mr. Loos' e-mail also expounded on his view of the future of development in downtown Kirkland, based on his conversation with Ms. Miller-Wolfe. According to Mr. Loos, "density if the only way to get additional development downtown. Period. We cannot build two or even three stories and make the economics work." December 7, 2007 e-mail at 12:35 p.m. from A. Loos to J. Soloff, D. Ramsay, E. Miller-Wolfe, with cc's to J. McMahan and E. Shields.

Planning Director Shields responded succinctly, apparently to the first portion of Mr. Loos' e-mail:

> Andy – You are right-on.
>
> The problem we have is political. <u>The code was written the way it is as a kind of compromise between those who argued to reduce the permitted height to 2 stories and those who understood the economics and the need to allow 4 or 5 stories to make development feasible</u>. The louder people complain about buildings that are too high, the harder it is for the Council to agree to the kind of change you propose. I have been concerned that if we even open up the code for a revision just to make the code clearer and offer more certainty, there will be a push to revise it to reduce the permitted height overall.

December 7, 2007 e-mail at 2:43 p.m. from Planning Director Shields to A. Loos (emphasis added). Mr. Loos responded with a longer e-mail reiterating his view of the meaning of the Downtown Plan and Zoning Code, and his view of the public's expectations of the DRB, but also agreeing with what he characterized as Mr. Shield's "hesitance to make a sweeping change" as Mr. Loos had indicated in his first e-mail.

On the whole, there is nothing inappropriate about these e-mail exchanges. Mr. Loos, the project applicant, e-mailed expressing concern about the apparent change in direction of the DRB's outlook, following a DRB meeting at which significant public opposition to the project was expressed. Mr. Loos suggested that the project was not financially viable unless it could obtain approval for five stories, and that SRM and Bank of America might withdraw the application when informed of the potential change in direction. Mr. Loos also e-mailed at length about his overall view of public opposition to his project, and his view of what was necessary for redevelopment to occur in downtown Kirkland. Such e-mails from project proponents are not unusual, and Mr. Loos' e-mails were mild in tone compared to similar e-mails I have seen sent by other developers in other jurisdictions.

For the most part, staff e-mail responses were limited to answering specific questions; staff generally did not engage in substantive responses to Mr. Loos' complaints. (The lone

exception to this was Mr. Shield's December 7 e-mail, which explained the history behind the apparent vagueness in the relevant sections of the Downtown Plan regarding height and "superior retail.") Planning staff did meet to discuss the concerns raised by Mr. Loos about code interpretation, and to prepare materials to provide the DRB on this topic, but the materials prepared essentially simply re-stated the relevant Plan provisions. And, even after these meetings, planning staff's position simply reflected the same interpretation and positions staff had taken from the outset at the pre-submittal conference. This position appears to have reflected planning staff's professional interpretation of the meaning of the term "superior retail" and building heights allowable under the Zoning Code. This interpretation was developed during previous projects, and the consistency of staff's expression of it throughout the Bank of America project would seem to disprove allegations of bias or favoritism resulting from a particular applicant's (SRM) persistent e-mails.

Even if some readers do detect hints of bias in some of the staff e-mails, it is worth recalling that the Downtown Strategic Plan calls for the City to "facilitate" redevelopment of key sites, including – expressly – the Bank of America site. Given this larger policy direction, it is difficult to conclude that the e-mails were inappropriate.

Comments During DRB Meetings

Staff, particularly Planning Director Shields, have also been singled out for their comments during DRB meetings. According to some, the Planning Director engaged in DRB deliberations too frequently, and appeared to redirect their conversations toward approval of the fifth story. In this author's view, the transcripts and audiotapes of the DRB meetings do not bear this out. And, KMC 3.03.010 calls for the Planning Director to sit on the DRB and provide advice on regulatory and urban design issues. The Planning Director's comments to the DRB indicated that the DRB should consistently apply the Downtown Plan, Zoning Code and other criteria generally. This was consistent with the direction in KMC 20.04.120. More specifically, the Planning Director's comments indicated that the DRB should employ the same criteria for judging "superior retail" that it had utilized for previous projects, even though those criteria were admittedly not "adopted" as part of the code. This was not inappropriate, again, given the Director's role called for by KMC 3.03.010 and the substantive direction in KMC 20.04.120.

That is not to say that there were no other, possible interpretations that could have been given to the meaning of "superior retail," especially given the known presence of a bank that would occupy a large percentage of the ground floor of this particular project. It is also not to say that there were no other procedural avenues (e.g., a formal code interpretation) that could have been utilized to address the issue. It is simply to say that the fact the Planning Director regularly advised the DRB during its deliberations, and the content of the advice he gave, were within the range of professional discretion open to him, given the role assigned him by the City code.

d. DRB Members' Awareness of Authority to Deny Approval

An additional critique of the DRB process by CiViK is that DRB members were not aware that they possessed the legal authority to deny approval. The transcripts and audio

recordings of the DRB meetings do not indicate confusion on the part of DRB members concerning the extent of their authority to approve or deny. DRB members actively discussed the criteria for approval of the fifth story, and whether or not the project met those criteria. At least one member, Brian Berg, argued at length that the project did not meet those criteria. The criteria had been developed by staff, and presented to and applied by the DRB on a number of previous projects. Mr. Berg was not present at the December 3, 2007 meeting, but was present at the January 7, 2008 meeting. He asked that the Board re-examine its tentative conclusion at the December, 2007 meeting to approve the fifth story, and the Board did so, member by member. January 7, 2008 DRB meeting transcript at 58-62. Although Mr. Berg indicated his belief that the project did not meet the "superior retail" criteria, after hearing the views of his 6 DRB colleagues, he too, voted to approve the project – including the fifth story. *Id.* at 65; Minutes of January 7, 2008 DRB meeting at 3.

The one area in which the record reflects that DRB members may have been unclear about the extent of their authority to interpret the provisions of the Downtown Plan, as to whether the phrase "superior retail space" refers exclusively to the physical characteristics of proposed retail space, or whether it means space for "superior retail *uses*." CiViK's critique may have actually been referring to this issue, given CiViK's contention that, in reversing the DRB, the City Council properly interpreted the Downtown Plan as not allowing a bank to qualify as "superior retail." CiViK may be contending that DRB members had similar authority to interpret the Downtown Plan, but were not aware of it.

To some extent, the record bears this out. At one point during the January 7, 2008 DRB meeting, DRB member Cox followed up on Board member Berg's question as to whether a bank is considered an office or a retail use. DRB member Cox inquired whether the DRB had any authority to impose a covenant or other restriction that would limit use of particular spaces. January 7, 2008 DRB meeting transcript at 35. City Attorney Robin Jenkinson[4] stated that she had looked at the code, and did not identify any authority for the DRB to limit uses. Because the DRB's code-granted authority focused on design, she indicated that "it makes sense that if the intent was for you to have that authority it would have been provided you." *Id.* This answer, however, addressed the specific question as to whether the DRB possessed authority to impose a condition on use. It did not address whether the DRB could interpret the meaning of "superior retail."

That question, however, lurked within some DRB members' discomfort with the question of whether the presence of the bank affected the determination as to whether the project provided "superior retail" so as to justify the requested 5th story. For example, DRB member Bates indicated that he was "troubled by the fact that, you know, it is a bank," and that he "would like not to be in the position of being here again where we're talking about, gosh, is the bank viable retail?" *Id.* at 61. DRB member Bates indicated that although he understood the Board "can't really talk about the tenants," "I do think that we are giving people the benefit of having an additional story, but I think we need to tighten up superior retail in terms of what kind of retail. . . ." DRB member Cox noted his desire to:

[4] The transcript prepared by CiViK and subsequently submitted as part of the record before the City Council identifies this speaker as Senior Planner Janice Soloff. Review of the audio recording, however, reveals that the speaker was actually the City Attorney.

> echo Jeff [Bates'] sentiments, though, about revisiting banking as retail as pertains to, you know, a candidate for this kind of activity because it's we shouldn't have to make this kind of a judgment again when we know a use, and we know the use as a user, doesn't really give much back.

Id. at 62-63.

The question was never squarely answered, although during this discussion, Planning Director Eric Shields did acknowledge that:

> In fairness, <u>there aren't adopted criteria</u>, and one of the letter writers correctly pointed that out. <u>Those are criteria which staff developed and which we've discussed with you before, but there aren't really – that's a term that has not been defined as well as it should be in the code</u>, so I'll just leave it at that. You just need to discuss probably whether or not you think it's – in the past you've – <u>I will say in the past you discussed the fact that really the things that were being done in terms of the additional;, both the building treatment and then in the sidewalk environment and the setting back of the building creating bigger open spaces and things like that, were providing the elements to meet the superior retail</u>, I think that's what the group as a whole was saying last time.

January 7, 2008 DRB meeting transcript at 59 (emphasis added). Nevertheless, while acknowledging that there were no adopted criteria, this comment did not directly address whether the DRB had the authority to interpret the meaning of "superior retail" differently than the criteria that staff had developed and discussed with the DRB previously. This apparent circumspection may have been due to the belief that candidly telling the DRB (in front of SRM representatives) that the DRB could interpret "superior retail" differently with respect to the planned presence of the Bank of America in the SRM project than the DRB had applied "superior retail" in the past might result in some legal risk to the City. Regardless of the reason, however, the issue of the extent of the DRB's authority to interpret the meaning of an ambiguous criteria being applied to the SRM proposal was not squarely addressed.

Whether this made an appreciable difference in the outcome, however, is impossible to discern. Three DRB members (Berg, Bates and Cox) expressed concern about whether the bank qualified as "superior retail." However, the four DRB members who resigned following City Council reversal of design approval (Kilburn, Cox, Warman and Bates) either did not respond to requests for interviews, or declined those requests, so it is unknown whether they might have decided differently had they been informed they were entitled to interpret "superior retail" as precluding a bank use. And, other members' comments appear to indicate a belief that, even <u>with</u> the bank, the project provided sufficient superior retail space:

> Phyllis Warman: You know, the bank owns the building, and I think it's – you know, <u>it's a bank, but it qualifies as retail and it qualifies as superior in my opinion, still; did last time and still does</u>.

January 7, 2008 DRB meeting transcript at 60-61 (emphasis added). DRB member Bagg also indicated his belief that even though SRM's proposed retail space only provided two units of 2,300 square feet in addition to the bank, it nevertheless constituted "superior retail," because the other amenities (particularly the building's face materials) provided "some of the best streetscape we've seen so far." *Id.* at 62.

2. Options

There are several options that may be considered to address the concerns discussed above:

a. Amend Kirkland Zoning Code to More Specifically Address Heights and the Uses Allowed Those Heights.

The Council has already taken action in this regard, to amend the Zoning Code to more specifically address what is required for superior retail, and what height (defined in feet, rather than stories) is allowed in which zones. These code amendments should provide more of the certainty that Mr. Loos advocated in his December 7, 2007 e-mails, and for which other members of the public also eventually advocated.

b. Amend the Zoning Code to Clearly Provide a Process by Which the DRB May Obtain an Interpretation of Comprehensive Plan and Design Guideline provisions.

The Council could also amend the zoning code to provide a process by which the Design Review Board may obtain an interpretation of the Comprehensive Plan, Zoning Code and Design Guideline provisions. This would provide an appropriate process within a particular development project review to resolve concerns about ambiguity or conflicting interpretations, rather than after–the-fact as occurred with the Bank of America project.

There are several options for this to occur. The Council could authorize the DRB itself to interpret those documents, or provide that the DRB may request a formal interpretation from Planning Director utilizing existing KZC code interpretation provisions. See, e.g., KZC 170.60. The latter has the advantage of a built-in appeal process, given that KZC 170.65(3) provides that formal code interpretations issued by the Director may be appealed to the Hearing Examiner using the provisions of Process I.

c. Amend the Zoning Code to Clearly Identify the Point At Which the Design Review Board's Decision is Final.

Another option the Council may wish to consider is to amend the Design Review provisions of the Zoning Code to clearly identify the point at which the Design Review Board's decision becomes final. Such an amendment could also clarify that any preliminary oral votes or guidance are merely preliminary, and are non-binding and subject to change until incorporated into a final, written design response decision adopted by the DRB. (This would parallel the current state of the common law governing the effect of oral decisions issued by Washington's

superior court trial judges). This might help to eliminate potential concern over whether an applicant might be tempted to rely on preliminary guidance from the DRB and "move a project forward."

d. Amend the City Code to Clarify Staff Roles

Given concerns expressed about staff roles, another option the Council may wish to consider would be amending the City code to clarify the role for staff in design review projects. This could include: (1) providing for a completely neutral staff role by eliminating staff's responsibility to advise the Design Review Board, assist the applicant or make a recommendation to the DRB concerning a proposed project; (2) preserving the Planning Director's role as advisor to the DRB but eliminating references to "assistance" to applicants; or (3) keeping current roles intact but clarifying what is included within the scope of "advising" and "assisting." Such an amendment could be undertaken along with the potential amendment concerning authority to interpret Comprehensive Plan and Design Guideline provisions described in Section 1(A)(2)(b) above.

B. Appeal to City Council

Interviewees raised two key issues pertaining to events that occurred during the City Council's consideration of advice from legal counsel (including the City Attorney and outside counsel) and Council consideration of an *ex parte*, anonymous memorandum. These are addressed below.

1. Input from Legal Counsel

CiViK filed its appeal of the DRB decision on January 31, 2008. The appeal hearing before the City Council was delayed until mid-April, however, in part due to disputes among the parties concerning the appropriate timing of the SEPA environmental review process.

During this time, several Council members indicated that they were receiving e-mails or comments from members of the public concerning the appeal. According to Mayor Lauinger, because some of the number, intensity and tone of the public comments, he requested that the City Attorney provide written legal advice to the City Council on the parameters governing Council's consideration of the upcoming appeal. According to the Mayor, he asked for a "think piece," as a "whack on the side of the head." The Mayor believed that the City Manager had already asked for such an analysis, because Ms. Jenkinson indicated to the Mayor that she was already working on it. (The City Manager indicated that he had, in fact, requested that Ms. Jenkinson prepare the memorandum, to advise the Council on the factors the Council should consider in making its decision on the appeal.) The Deputy Mayor recalled that the Mayor had made his request during an agenda setting meeting.[5] Both the Mayor and City Manager indicated that, in requesting legal advice, they were mindful of a previous project (the Watermark Condominiums) over which the City had been sued and had paid a substantial amount in damages. The Mayor believed that other Council members did not know that the legal advice was forthcoming. Some Council members indicated that they were aware the Mayor had

[5] Agenda setting meetings are typically attended by the Mayor, Deputy Mayor, the City Manager, and City Clerk.

made the request, and that the City Manager had indicated the City Attorney was working on it; others indicated their perception that the request for a memorandum was "under the radar." Some Council members, however, indicate they were unaware any legal advice had been requested – and therefore were quite surprised when it surfaced.

On April 9, 2008, the City Attorney provided a memorandum to the City Council.

[Redacted]

The memorandum was not uniformly received by Council. Reactions were generally divided along the same line that divided the Council's decision on the appeal. In the words of one Council member who supported the DRB decision, the memorandum was "totally appropriate." In the words of a Council member who voted against the appeal, the memorandum was "inappropriate"; in the words of others, it "overachieved" [Redacted] . . . .

(i) Regulatory context

Like the discussion above concerning staff e-mails, the City Attorney's legal advice should be viewed in the appropriate context. The Rules of Professional Conduct (RPC) are the ethical rules governing attorneys in Washington State. RPC 1.2(d) provides that "a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law." RPC 1.13(b) goes further. It states:

> If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action . . . that is . . a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(Emphasis added). This provision requires a lawyer who believes that his or her client organization is engaged in action that is a violation of law that reasonably might be imputed ot the organization to advise a higher authority within client, unless the lawyer reasonably believes that doing so is not necessary.

After giving advice, however, an attorney is required to abide by a client's decision as to the objectives of the representation. RPC 1.2(a).

(ii) Substance of City Attorney Advice

[Redacted]

Given her ethical obligations, the April 9, 2008 memorandum from the City Attorney was entirely appropriate.

[Redacted]

Such advice from City Attorneys is not uncommon in the land use arena in Washington, given the existence of a statutory cause of action for developers (RCW 64.40), and given reported appellate decisions in which significant liability was established by developers in actions against local governments and individual city council members.[6]

This is not to say that there were not other possible ways of framing the legal advice, or that this was the only advice that could have been given under the facts of the SRM / Bank of America case.[7]

[Redacted]

That other options existed, however, does not make the advice given by the City Attorney inappropriate; her advice was well within the range of appropriate advice given her knowledge of the law and facts of the case before her, and her ethical obligations to advise the Council as she believed appropriate if concerned that a violation of law would result. And, the fact that a majority of the Council determined to reverse the DRB's decision, notwithstanding the April 9, 2008 memorandum, would appear to indicate that the Council majority did not find the memorandum so conclusive as to prohibit the exercise of their discretion. Moreover, despite the general division of the Council's view of memo, not every Council member viewed the memo as taking a hard and fast position. One Council member labeled the memorandum "wishy washy," while another interpreted it as merely outlining legal risks but not barring an approach that might be "closer to the edge." All of this supports the conclusion that the City Attorney appropriately

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[6] *See, e.g., Mission Springs v. City of Spokane*, 134 Wash.2d 947, 954 P.2d 25 (1998)(summary judgment in favor of city reversed, and lawsuit against City and individual Council members reinstated for wrongful denial of grading permit, where Council members rejected advice on the record of City Attorney, and stated "We have the opportunity to put a stop to this and let's just see what happens. Let's see how confident they are. If they bring suit, we can always turn around and issue the permit. . ."); *Westmark v. City of Burien*, 140 Wash.App. 540, 166 P.3d 813 (Div. I 2007) (upholding jury verdict against City for $10,710,000 for tortious interference when City delayed processing environmental review for project proposed in state legislator's neighborhood); *Norquest / RCA – W Bitter Lake Partnership v. City of Seattle*, 72 Wash.App. 467, 865 P.2d 18 (Div. I 1994)(affirming award of damages and $100,000 in attorneys' fees against Seattle for arbitrary and capricious denial of a building permit for hospital's proposed adolescent drug treatment center, after city had previously issued conditional use permit for the same project).

[7] Mr. Loos, for example, indicated that in his view the Downtown Plan provisions concerning the extent of the DRB's discretionary authority over the number of stories above the second story did "appear nebulous," so much so that he requested an opinion from the City regarding that issue. "I always thought it [DRB discretionary authority] was the fifth floor but with last night's meeting I'm not sure. . . ." November 20, 2007 e-mail at 10:09 a.m. from A. Loos to J. Soloff.

advised the Council consistent with her ethical obligations, and without inappropriately interfering with their discretion.

iii. Use of Attorney-Client Privilege

Questions were also raised by CiViK and others as to whether the City Attorney's memorandum should have been provided as attorney-client privileged advice, or whether the parties were entitled to see and respond to the memorandum prior to the City Council making a decision on the appeal. Ironically, after the Council had made its decision and SRM filed its lawsuit, it was SRM who suggested (in its land use petition and otherwise) that it would seek to utilize discovery to obtain a copy of the memorandum, which it believed would help its case. SRM's position illustrates precisely why use of the attorney-client privilege was appropriate: it allowed the City Attorney to give the Council candid advice, while preventing other parties from later attempting to use that advice against the City in subsequent litigation.

Aside from the practical benefit of application of the privilege, applicable Washington appellate decisions establish that the City Council was entitled to receive privileged advice during a quasi-judicial proceeding. *Amoss v. University of Washington*, 40 Wn.App. 666, 687 (Div. I 1985). In *Amoss*, the University's attorney prepared two attorney-client privileged memoranda to the University President who, along with the Board of Regents, was responsible for hearing and determining an appeal by a faculty member denied tenure. One of the memoranda digested the extensive evidence from the hearing and outlined options for the President. In subsequent litigation, the faculty member moved for production of the two memoranda, but the trial court refused. In upholding this decision, the Court of Appeals noted that "Courts have refused to invalidate agency decisions because of help by review attorneys who prepared digests of the record, memoranda, or proposed findings and decisions. . . .Disclosure of such internal memoranda is generally not compelled." Because the memoranda reflected confidential legal advice and discussed no facts other than those from the record which were available to the appellant, the Court of Appeals upheld the attorney-client privilege. *Id.* at 688. *Amoss* is dispositive here. Like the Wilson memoranda in *Amoss*, Mr. Jenkinson's memoranda contained confidential legal advice, and contained no facts not otherwise available to the parties from the record before the Council. In light of the holding in *Amoss*, provision of legal advice subject to the attorney-client privilege was appropriate notwithstanding the quasi-judicial nature of the proceeding.

More recently, an unreported decision from Division I of the Court of Appeals supports this result. In *Citizens for Natural Habitat v. Lynwood*, 107 Wash.App. 1054, 2001 WL 950827 (Div. I 2001), an environmental group challenged the Lynwood City Council's decision to approve a preliminary plat. Among issues raised by the group was the claim that the Mayor had improperly cast the deciding, tie-breaking vote, because the Mayor had received ex parte briefings by the same staff who had recommended plat approval, and was therefore alleged to be biased. The Court rejected this argument, noting that although the Mayor had had communications with her staff, there was no allegation that the Mayor had a financial interest in ruling in favor of the applicant, or that the parties did not otherwise receive a fair hearing. Although unpublished, and therefore not available for citation during actual litigation, *Citizens for Natural Habitat* nevertheless supports the conclusion that it is not inappropriate for a Council

to receive off-the-record advice from staff, whether that staff be its attorney or other city staff, even if those same staff have recommended project approval.

Finally, it is also worth noting that RCW 42.30.140(2) provides an exemption from open meeting requirements for "That portion of a meeting of a quasi-judicial body which relates to a quasi-judicial matter between named parties as distinguished from a matter having general effect on the public or on a class or group." This provision allows the City Council to, among other things, meet with its attorney to discuss the legal positions asserted before the Council in a quasi-judicial matter. The attorney-client privilege permits the Council to receive written legal advice from its attorney on a quasi-judicial matter, in the same way that it could receive oral legal advice pursuant to RCW 42.30.140(2). As noted in the *Amoss* decision, this occurs in much the same manner that a judge or court receives a privileged "bench" legal memo summarizing positions in a case, or potential avenues for decision-making, without the parties being informed of the contents of the bench memo.

2. May 21, 2008 Anonymous Memorandum

a. Facts

Following the Council's oral decision at its May 6, 2008 meeting to grant CiViK's appeal and reverse the DRB, the City Attorney received an anonymous memorandum, delivered to City Hall on May 21, 2008 in an envelope addressed "City Attorney." The memorandum made various accusations – a number of which were reportedly false -- concerning the role previously played by some individuals, alleged to be currently associated with CiViK, in past election campaigns for Mayor Lauinger and Council members Greenway and Hodgson. The memorandum asserted that those three Council members should have been disqualified from hearing the appeal.

The anonymous memo's provenance is unknown. Most Council members indicated they could only speculate as to the memo's author; one Council member indicated having seen a draft of it "floating around" at coffee shops during the preceding weeks, but denied knowledge of its author or who had submitted it to the City Attorney. City staff state they were unaware of the memorandum's source. In mid-July, 2008, SRM acknowledged having received a copy of the memo on May 22, a day after it was delivered to the City, but SRM did not disclose the memo's source. SRM representatives and its attorneys declined to be interviewed as part of the preparation of this memorandum.

After receiving the anonymous memorandum, the City Attorney consulted with outside counsel, Pat Schneider of the Foster Pepper firm, with whom she was in the process of consulting concerning preparation of written findings and conclusions implementing the Council's May 6 oral decision. Ms. Jenkinson shared with the City Council Mr. Schneider's recommendation that the anonymous memorandum be provided to the City Council, that the Council discuss in executive session the memo and its implications for potential appearance of fairness challenges that might be asserted in future litigation. After the memorandum and Mr. Schneider's recommendation was provided to Council members, at least one Council member e-mailed Ms. Jenkinson requesting a legal opinion on the matter.

The Council discussed the anonymous memorandum in an executive session prior to its June 3, 2008 regular meeting. The executive session was reported by virtually all in attendance as contentious. Some Council members perceived the memorandum as an attempt to intimidate them into withdrawing so that the outcome of the May 6, 2008 4-3 vote to reverse the DRB would be altered. Some of those same Council members believed the City had a policy of destroying anonymous correspondence, and that retention of this particular memorandum and the calling of an executive session to discuss it was evidence of foul play.

Following the executive session, some Council members disclosed the substance of the memorandum during the open meeting. Although the parties (CiViK and SRM) were not specifically offered a chance to rebut the memorandum or Council members comments concerning them, neither of them requested to do so. Subsequently, SRM attempted to include the memorandum as part of its July 25 submittal to the City Council, but after CiViK's objection the memorandum was not publicly released as part of the packet.

b. Appropriateness of City Response to Anonymous Memorandum

One comment voiced about the City's response to the May 21 memorandum concerns the general treatment of anonymous correspondence. According to this view, the City had previously received an anonymous letter making various off-color allegations about a City official's Council member's private life. The memorandum was shown to police and person involved, but taken no further. In the view of some, this established a policy for addressing anonymous correspondence, which raised questions as to why that policy was not followed with respect to the May 21, 2008 anonymous memorandum.

The view held by Council members who were not named in the anonymous memorandum was that not only was disclosure of the memorandum received on May 21 to the Council appropriate, those Council members named in it should have recused themselves from further involvement in the SRM / B of A matter. These contentions are addressed in turn below.

The difference between the prior situation and the May 21 memorandum was that the latter may have potentially implicated the City's defense of what was at that time the Council's oral decision to reverse the DRB decision and deny approval of the Bank of America project. On advice of outside counsel, the City Attorney and City Manager determined that it was appropriate to disclose the existence of the memorandum to the Council as a whole, and to discuss whether Council members named in it should make any on-record disclosures, to help insulate the City against future appearance of fairness challenges. Given that the law holds that a party must raise an appearance of fairness challenge at the first opportunity, the Council members' disclosure had the effect of forcing SRM and CiViK to determine then whether to challenge any Council member's participation based on the facts disclosed, or else the appearance of fairness challenge was waived. Strategically, there was merit in this approach.

Following the executive session, at least one Council member did make additional disclosures, although none recused themselves. This was also not inappropriate. The appearance of fairness allegations in the anonymous memorandum have little if any merit. The

memorandum alleges that certain Council members were biased in favor of CiViK, because members of CiViK had served on various positions during the Council members campaigns. RCW 42.36.050 provides that it is not a violation of the appearance of fairness doctrine to accept campaign contributions. "Contributions" are defined in RCW 42.17.020(15)(a)(i) to include "personal and professional services for less than full consideration," except for volunteer campaign worker services of less than fifty dollars in value, and "Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. . . . RCW 42.17.020(15)(c). To the extent that the individuals named in the anonymous memorandum provided campaign services of greater than $50 in value, such services were likely "campaign contributions" which did not create an appearance of fairness doctrine violation by virtue of those individuals alleged subsequent association with CiViK.[8]

Even if past campaign service did not constitute a "campaign contribution" entitled to automatic insulation from a appearance of fairness challenge under RCW 42.36.050, the alleged campaign services nevertheless do not rise to the level of an appearance of fairness violation nor actual bias. To establish an appearance of fairness doctrine violation, a complainant must prove the existence of ex parte communications made during a pending quasi-judicial matter, and concerning that same matter. *See, e.g., OPAL v. Adams County*, 128 Wn.2d 869, 886-87 (1996)(63 phone calls from Waste Management official to County Commissioner did not demonstrate appearance of fairness doctrine violation, where no proof that substance of calls pertained to Waste Management's then-pending permit application); *Raynes v. Leavenworth*, 118 Wn.2d 237, 239-40, 250 n. 4 (1994)(no conflict of interest for real estate broker council member who voted in favor of rezone ordinance allowing mobile home park in tourist commercial zone even though council member's real estate firm held listing on properties subject to rezone). There is simply no proof that CiViK members who may have previously served on Council members' campaigns had ex parte communications with Council members concerning the Bank of America project while the appeal before Council was pending, or that Council members were actually biased due to fact that some members of CiViK supported Council members' campaigns. Finally, it is notable that, despite the Council members' disclosures, SRM never objected or sought recusal of those Council members. SRM's failure to do so waived any potential challenges. For these reasons, it was not inappropriate for those Council members accused by the anonymous memorandum to decline to recuse themselves.

c. Options

Although the methods followed were appropriate, there are other options the Council may wish to consider in the event that anonymous correspondence is received in the future with respect to any then-pending quasi-judicial matter. Because evidence may be submitted into the record of such a proceeding only by a party of record, the Council may instruct staff that communications from individuals other than parties of record should not be provided to the

[8] CiViK members and some Council members named in the anonymous memorandum assert that the anonymous memo falsely identifies certain members of the public as having been associated with CiViK. This memorandum does not attempt to verify the truth or falsity of the anonymous memorandum, because even if its contents are assumed to be true, they do not raise a credible appearance of fairness doctrine violation in the view of this author.

Council. Because an anonymous letter could not be identified as communication from a party of record, it would not be provided to Council. Such a policy would have the advantage of protecting the Council from engaging in ex parte communications, and then needing to make additional disclosures, every time an unsigned letter arrived in a City mail box.[9] The disadvantage would be to deprive the Council of communications from the public, and potential misimpression that the Council was engaged in a less-than-open process.

If future anonymous correspondence also alleges bias or appearance of fairness violations on the part of some individual Council members, the Council could agree on a policy whereby the City Attorney would consult individually with any Council member named in any correspondence, and discuss any facts concerning alleged bias (rather than the correspondence itself). This would still permit a Council member about whom potential disqualification information is alleged to make any on-record disclosures sufficient to trigger a party's duty to object or waive any challenge, while avoiding creation of an "ex parte communication" by forwarding extra-record communications to the entire Council.

According to the City Manager, though, his working policy requires that information given to one Council member must be given to all. Especially given the polarized atmosphere present following the City Attorney's April 9 memorandum, and the Council's May 6 oral decision, both the City Attorney and City Manager were reluctant to discuss potential liability issues with only a minority of Council members. Given this, it was not inappropriate to bring the memorandum to the attention of the entire Council, and then let individual Council members determine what if any disclosures to make. Council may wish to decide whether it affirmatively should direct the City Manager and/or City Attorney to handle any future anonymous communication differently, and to <u>not</u> disclose anonymous correspondence to the entire Council.

c. Appropriateness of Retention of Outside Counsel

Another question raised concerns the use of outside counsel to advise the City Council concerning the anonymous memorandum. Pat Schneider, the attorney retained, is a member of Foster Pepper, which also reportedly represented Touchstone KPP Development LLC, the developer of Park Place. Some have questioned whether retention of outside counsel was appropriate. Further, some have pointed out that because the parties to the Touchstone matter could reasonably be expected to cite to the outcome of the Bank of America project, Foster Pepper had an "issue" conflict of interest which should have been disclosed to the City Council prior to Mr. Schneider's advice to the Council concerning the anonymous memorandum.

KMC 3.16.040 provides that the City Manager "shall be empowered to make provision for the obtaining of legal counsel," including "by any reasonable contractual arrangement for such professional services." The City Manager is not required to obtain Council approval or concurrence, although the City Manager "may seek such recommendation of the council as he

[9] (This would avoid the situation that occurred here, where disclosure of the anonymous memorandum to the entire Council at least potentially converted the memorandum into an "ex parte communication" to the Council, requiring disclosure of its substance on the record so as to prevent it from being considered a violation of the appearance of fairness doctrine. By so doing, however, the memorandum made its way into the record, to be cited by SRM in its eventual LUPA petition, and giving rise to SRM's claim to be entitled to discovery in the process.)

deems appropriate and necessary." In addition, KMC 3.16.065(b) authorizes a department director to "enter into a professional services agreement so long as such agreement does not impose a financial obligation on the city in excess of the amount set forth in Section 3.85.080 of this code," which is $50,000. Under these sections, the City Attorney and/or City Manager were authorized to retain outside legal counsel to advise the City Attorney during the course of CiViK's appeal of the DRB decision to the City Council.

In this matter specifically, the City Manager and City Attorney did not need to separately exercise their authority, because they had already previously entered into a professional services agreement for outside legal advice. In April, 2007, before SRM had even applied for Design Review Approval, the City had entered into a professional services agreement with the Foster Pepper law firm to provide advice concerning the formation of the Northeast King County Regional Public Safety Communications Agency (NORCOM), "and such other intergovernmental, public or private development, and land use matters as may be requested from time to time." Foster Pepper is a large firm by Seattle standards, and has separate municipal government and public finance practice groups. In late December, 2007 and January, 2008, Ms. Jenkinson sought advice from Richard Settle at Foster Pepper, concerning contentions by CiViK's attorney, Richard Aramburu, on the required timing of SEPA environmental review. Mr. Settle is a law professor at Seattle University and author of several published treatises concerning the State Environmental Policy Act. Review of invoices show that Ms. Jenkinson consulted with Mr. Settle as well as other attorneys at the Foster Pepper firm, on a limited, ad hoc basis, as the need arose, during the first half of 2008. This included Patrick Schneider, a former Assistant City Attorney with the City of Seattle who focuses his practice on municipal land use. While at a previous firm, Mr. Schneider had represented the City during the Watermark Condominium litigation in 1997, and so the City Manager and other staff were familiar with his representation.[10] Given the foregoing, was nothing inappropriate or unusual in the City's selection of Foster Pepper or Mr. Schneider, nor with its arrangement permitting consultation on various intergovernmental, development and land use matters from time to time.

Less clear is how potential conflict of interests were to be addressed during the course of "rolling" legal advice spanning multiple matters over the course of the professional services agreement's term. The April, 2007 Professional Services Agreement stated that although Foster Pepper agreed not to perform professional services for other clients where a conflict of interest or ethical violation as defined in the Rules of Professional Conduct for attorneys may exist, lawyers in the firm would "be able to continue to work on entirely unrelated matters that may be adverse to the City," including unrelated land use matters where Foster Pepper lawyers represented property developers." The Rules of Professional Conduct, specifically RPC 1.7, prohibit a lawyer from representing a client if the representation will involve a "concurrent conflict of interest," which exists where (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client. . . ."[11] The Rules of

[10] The Watermark Condominiums litigation occurred prior to the start of Ms. Jenkinson's appointment as City Attorney.

[11] According to Comment 6 to RPC 1.7, "directly adverse" means that "a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated," because "[t]he client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting

Professional Conduct do permit representation of multiple clients, even where a concurrent conflict may exist, if the lawyer reasonably believes competent representation can be provided to both clients, and each affected client gives informed consent.

Given the requirements of the RPC, the statements in Section VIII of the Professional Services Agreement appear to be contradictory. The first sentence states that the firm will not represent other clients where a conflict of interest may exist (which includes "directly adverse" representation; the second and third sentences state that firm lawyers may represent other clients on matters "that may be adverse to the City" – a result that would be prohibited by the RPC absent informed written consent by the City and other clients.

When asked, Mr. Schneider was also uncertain as to the meaning of Section VIII. He indicated that Hugh Spitzer, the head of Foster Pepper's Municipal Government practice group, prefers to negotiate "blanket waivers" of future conflict[12], by which a city client is asked to waive conflicts in advance, by expressly consenting to Foster Pepper's representation of developers on projects in that city, even though the developer's position may be adverse to the city, *e.g.*, because the developer decides to litigate against the city over a permit decision. Indeed, in 2004 and 2005, Mr. Spitzer requested and the City signed two letters waiving potential future conflicts of interest that might result when other Foster Pepper lawyers represented developer clients with interests adverse to the City. It is not clear whether the second and third sentences of the 2007 Professional Services Agreement were intended to function as a blanket waiver of future concurrent conflicts of interest, or whether it simply meant that the firm would represent other clients on matters that may be adverse to Kirkland only on a case-by-case basis, following disclosure and the City's grant of written consent under the ethical rule.

Foster Pepper's actual practice during the course of its representation of Kirkland may suggest that the latter meaning was intended. In April, 2007, contemporaneous with execution of the Professional Services Agreement that later governed Mr. Schneider's work for the City, Mr. Spitzer disclosed the firm's work on behalf of a number of real estate and land use clients, and asked that the City waive potential conflicts. The City did so. And, in May, 2008, Foster Pepper also requested that the City waive any potential conflict with respect to the firm's representation of the owners of the Totem Lake Mall to represent them as condominium counsel with respect to improvements at the Mall. Because Foster Pepper also represented the City as special counsel with respect to the Totem Lake Mall redevelopment, the firm requested that the City waive an potential conflict concerning its dual representation of the Totem Lake Mall owners. The City again agreed. Foster Pepper did not appear to disclose or seek a waiver

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damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. . . ." Comment 24 indicates that the second clause of the rule, prohibiting representation of a client where that representation would be materially limited by the lawyer's responsibilities to another client," includes a situation in which "a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer."

[12] Mr. Schneider's description of his firm's approach to potential future conflicts is consistent with this author's experience as an in-house City Attorney in retaining the Foster Pepper firm.

concerning its representation of Touchstone, the owners of the Park Place property.[13] Mr. Schneider indicated that he did not know why the firm did not seek a conflict waiver from the City when it commenced its work on Touchstone. Mr. Spitzer indicated that the firm's work for Touchstone was limited to transactional work, and that therefore no disclosure or conflict waiver was necessary. Foster Pepper's TJ Parkes firm did, however, write a letter to a lawyer for a citizens' group opposing the Park Place development. The letter (which was copied to Mayor Lauinger and Planning Director Shields, and a copy of which is attached) addressed various aspects of the project's land use application, contended that the citizens group's advertisement in the Kirkland Courier was misleading, and requested that the group "correct" what Mr. Parkes contended was "inaccurate" information. This letter appears to indicate that Foster Pepper's work for Touchstone was not limited to providing "transactional" advice.

Detailed comparison of the Touchstone design review application and the Bank of America application,[14] to determine whether Foster Pepper's representation of Touchstone in that matter was directly adverse to the City, or whether its work for Touchstone may have materially limited its representation of the City, is beyond the scope of this memorandum. Mr. Schneider did indicate that, at the time he was consulted by Ms. Jenkinson, he was unaware of his firm's representation of Touchstone, and that learned about it only later, after he had completed his work for the City. This would appear to indicate that his work for the City was not materially limited by his firm's work for Touchstone. And, if both the City and Foster Pepper intended Section VIII of the 2007 Professional Services Agreement to constitute a blanket future conflicts waiver, nondisclosure of Touchstone would not have violated the RPCs or the Professional Services Agreement. Nevertheless, a disclosure of the firm's simultaneous representation of Touchstone and subsequent review and determination as to any conflict waiver would have either subsequently enhanced the confidence of some members of the City Council in the resulting advice, or provided an opportunity to seek advice from a different attorney not connected to Touchstone.

In light of the above, City Manager and City Attorney may wish to consider whether more specific language should be included in legal professional services agreements to address potential concurrent conflicts of interest. Several options are available: (1) use only the first sentence of Section VIII, which would prohibit a firm representing the City from representing another client where such representation may be adverse to the City; (2) same as No. 1 but allow such representation only after disclosure and informed consent as provided by the RPC; and (3) define "concurrent conflict of interest" even more specifically, to expressly address the types of "issue" conflicts addressed in Comment 24 to RPC 1.2. The advantages to such clarification would be to enhance confidence in outside legal advice received; a potential disadvantage may be a reduction in the number of firms or attorneys willing to contract with the City.

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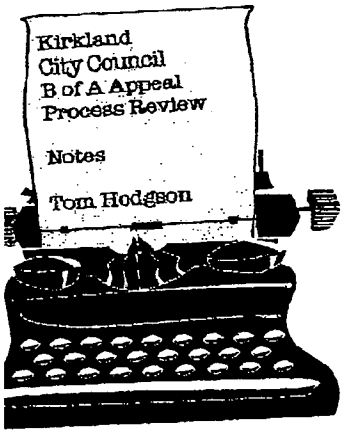
[13] (The 2007 conflict waiver identified an individual and a corporation who were participating in partnerships engaged in certain unnamed permit applications within the City. It may be possible that one of those "partnerships" included Touchstone, although Touchstone is a limited liability company ("LLC")).

[14] While Touchstone was seeking (and was ultimately granted) a private amendment to the Kirkland Zoning map and code, Touchstone nevertheless will require Design Review Board approval of its proposed development.

IV. Conclusion

Based on the foregoing analysis, I conclude that the actions taken by staff and the City Council during the SRM / B of A project were appropriate, in light of the various legal, planning, and ethical standards applicable to those actions. While there is room for reasonable disagreement about some of those actions, and a range of different options for future projects is available, none of the actions taken in this matter were outside the range of appropriate action based on the information available to me, and given the applicable standards and the information available to staff and Council members at the time.



March 3, 2009

Issues for review

1. Role of Design Review Board
   - Did the DRB feel empowered to fully consider the 5th floor?
   - How did staff support deliberations of DRB?
2. Preparation of background materials for a quasi-judicial process
   - Was background material balanced and unbiased?
   - Was the confidentiality privilege used appropriately?
3. Management of correspondence
   - What is the policy regarding unsigned correspondence?
   - Was advisory legal counsel retained properly?
4. City support of applicant and appellant
   - Did staff support both applicant and appellant equally and fairly?
   - Was Council influenced by campaign contributions?
5. Relationship of staff, applicant and appellant
   - Did staff act as an advocate for either interest?
   - Was there an understanding of outcome prior to the DRB process?

tel: 206-375-3693

e: thodgson@ci.kirkland.wa.us

From: "Andy Loos" <andy@srmdevelopment.com>
To: "Janice Soloff" <JSoloff@ci.kirkland.wa.us>
CC: <jcole@kirklandparkplace.net>, <joe.d.castleberry@hotmail.com>
Date: 10/4/2007 9:37 AM
Subject: RE: Bank of America Site and Public Parking Opportunity

Janice: Thanks for looking into this. We had our Downtown Property Owners meeting yesterday and parking is the major concern for downtown property owners. As I look at the downtown a couple of things appear to be in conflict.

1. New projects are required to supply sufficient parking for their uses so theoretically new developments do not exacerbate the parking problems. In our case we're actually doing more than our share.
2. If we look at the existing restaurants and retailers in the downtown core it appears to me that these older properties which have no parking for their uses are really the problem. For example, the restaurants on Park Avenue (like Jalisco) have no parking. I'd estimate that code would require 30 stalls for each of these restaurants and probably 8-10 for each retail store. If one were to add up all of the parking these existing businesses need it would be staggering. The answer is to redevelop these properties so they can supply their own parking rather than looking to the City or other businesses to supply parking for their benefit.
3. In order for these businesses to redevelop they need to have incentive to do so. I think the City should provide incentives to redevelop these properties so that the downtown properties will cease to be a burden on the City and will instead provide parking, housing and sales taxes to the City. These incentives may be in the form of a two year suspension of impact fees (we wouldn't need the big traffic impact fees if the City didn't have to supply parking for private businesses) or adding floors in the case of the waterfront properties. I don't know of all of the incentives that could be offered.
4. Many downtown owners would like to redevelop (and build their own parking) but the two story zoning along the waterfront is an impediment to redevelopment. I think the 1A designation would be acceptable for development. I don't know why no one is redeveloping any of those properties. The two story along the water is tough because the yield is so low that the owners would not get as much for waterfront property as we paid for non-waterfront up Kirkland Avenue. That value is strictly a function of the buildable square footage and income of the property.

My fear is that since the City does not have the funds to create enough parking for the downtown and the community looks at the parking problem and figures it is due to recent development. New development is not the reason. I think the reason is existing businesses that are attracting more and more cars and all of those businesses are competing for public parking spaces. We see the same situation on Old Main in Bellevue which is why retailers at Bellevue Square get far more business (and pay double the rental rates) than those at Old Main. Kirkland retailers would do much better and the City would attract better retailers if patrons have a place to park. But that burden should fall squarely on the property owners who own those properties and in order for those owners to redevelop we need to give them a reason to do so.

Thanks.

Andy

From: Janice Soloff [mailto:JSoloff@ci.kirkland.wa.us]
Sent: Wednesday, October 03, 2007 4:27 PM

To: Andy Loos; Chad Lorentz
Subject: Bank of America Site and Public Parking Opportunity

I wanted you let you both know that staff met with the City Manager to discuss the issue of partnering with your project to provide public parking. Once again we've come to the conclusion that the City does not have the revenue source to pursue this further.

Staff and the Parking Advisory Board will be raising the revenue issue and missed public parking opportunities with the City Council in the next few months. What comes into play as I understand it is whether or not to increase areas of the downtown for paid public parking and other parking management/revenue generating ideas.

Janice Soloff

Senior Planner

City of Kirkland

Planning and Community Development

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From: "Andy Loos" <andy@srmdevelopment.com>
To: "Janice Soloff" <JSoloff@ci.kirkland.wa.us>
Date: 10/31/2007 2:17 PM
Subject: RE: Bank of America Site Plan
Attachments: Site plan.pdf

Yes. Here it is. Yes, 72 units and 108,390 of gross floor area. I'm assuming this includes the garage.

Andy

From: Janice Soloff [mailto:JSoloff@ci.kirkland.wa.us]
Sent: Wednesday, October 31, 2007 12:40 PM
To: Chad Lorentz
Cc: Hoa Pham; Andy Loos
Subject: Bank of America Site Plan

Do you at least have an electronic version of the latest site plan you can send me today so we can produce the public meeting notice?

Are you still planning on 72 units? What is the amount of non-residential gross floor area?

Janice Soloff

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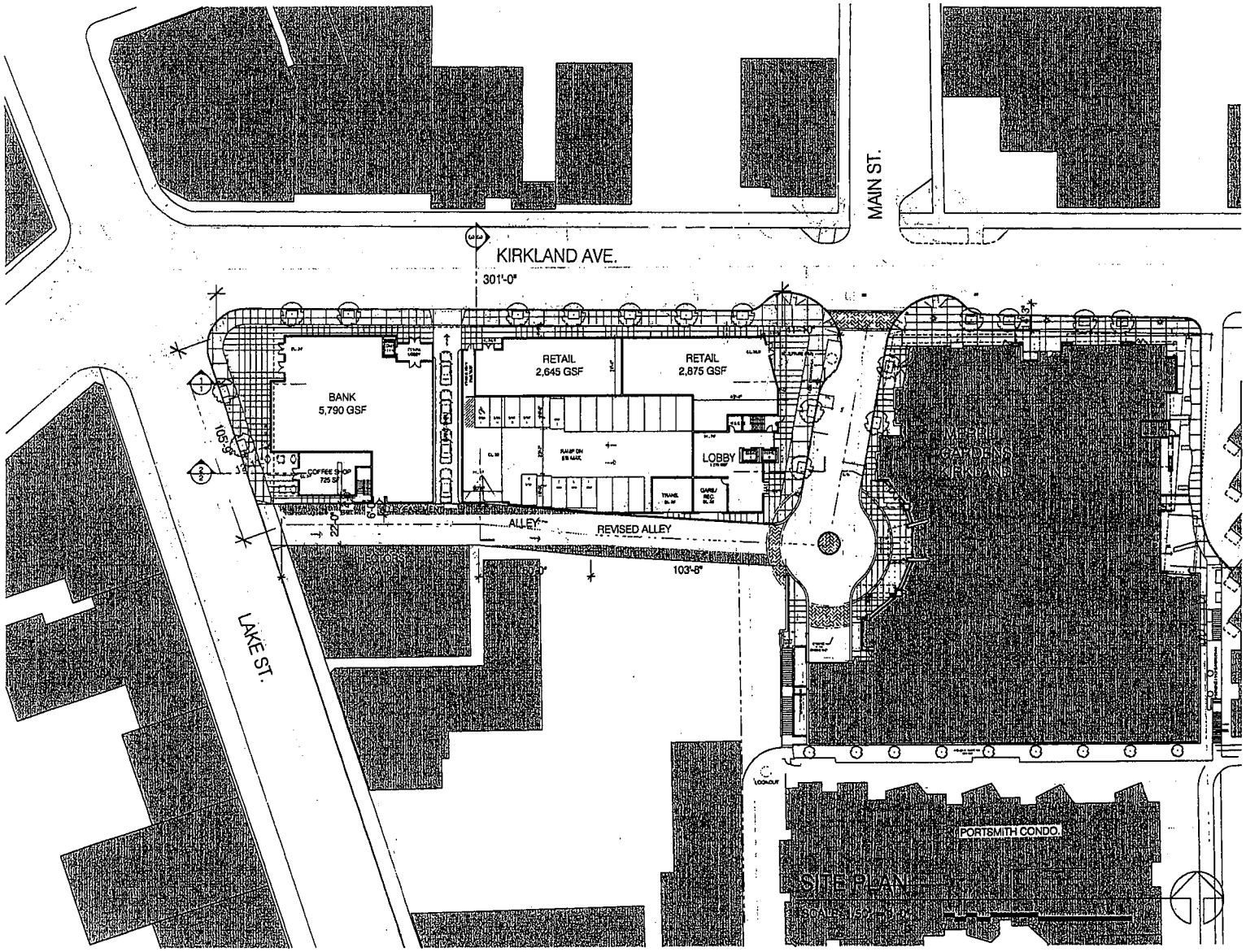

RUNBERG ARCHITECTURE group PLLC

One Yesler Way
Suite 200
Seattle, WA 98104
p 206-956-1970
f 206-956-1971

SITE PLAN

101 Kirkland Avenue

10/15/07

From: "Andy Loos" <andy@srmdevelopment.com>
To: "Janice Soloff" <JSoloff@ci.kirkland.wa.us>
CC: "Chad Lorentz" <chadl@runberg.com>
Date: 11/1/2007 4:27 PM
Subject: Height calculation for 101 Kirkland

Hi Janice: Chad and I were reviewing the package we'll be submitting (by the way I think you are going to love the elevations) and I asked him about the retail heights. He said that you had indicated that we should use Lake Street as the basis for our height calculation. He said that Lake Street is the lowest elevation on the site. I'm wondering how you came to the conclusion to use Lake Street. If Lake Street were the highest elevation would we use it? I'm thinking since Kirkland Avenue is more representative of the grade of the site it would be the one to use. Also, the frontage on Kirkland Avenue is 300' while the frontage on Lake Street is only 100'.

By using Lake Street we'll need to lower the retail space by about 1'. I still think we have plenty of height in the retail spaces and that the spaces are clearly "superior" but then again I'm a bit biased. But if we could increase the height by 1' by using Kirkland Avenue (as we did on the previous project) the Board may look at it more favorably.

Let me know.

Thanks.

Andy

Andy Loos

Development Manager

SRM Development, LLC

808 5th Avenue North

Seattle, WA 98109

(P) 206-352-7873

(F) 206-352-7132

(C) 206-200-0675

From: "Andy Loos" <andy@srmdevelopment.com>
To: "Janice Soloff" <JSoloff@ci.kirkland.wa.us>
CC: "Jim Rivard" <jim@srmdevelopment.com>, "Rich Reel" <RichR@Merrillgardens...
Date: 11/14/2007 10:32 AM
Subject: RE: Kirkland - Stop High-Rise Buildings Petition 11-07 - c (2).doc

Janice: Thanks for sending. There isn't much we can do except conform to the zoning laws that are in place for us. I think it would send a very strong message to any future development in Kirkland if the Council were to adopt something like this on the "spur of the moment". This is a currently zoned property and we are complying with all applicable codes, procedures and regulations.

The letter continues to label five story as "high-rise". Interesting that this is coming from the residents of a building that is seven stories above Lake Street...

We'll simply continue to do what we have always done which is to develop the highest quality projects according to the current laws, codes and regulations and within the rights afforded to us as owners of real property in the State of Washington.

I know this is a hot topic and everyone has a different concept of what is appropriate. Fortunately, we have laws in place which define this for all of us and there are avenues in which to change these laws if people so chose. The current zoning should not be a surprise to anyone in downtown Kirkland particularly the residents of the Portsmith- with whom I've met numerous times to discuss our projects and the zoning in the downtown area. If they had wanted to make these zoning changes then there has been ample opportunity for them to start a movement.

I don't think this warrants much more discussion because I'd be shocked if the City Council took any sort of emergency action like a moratorium in response to this letter from the Portsmith.

Thanks again.

Andy

From: Janice Soloff [mailto:JSoloff@ci.kirkland.wa.us]
Sent: Wednesday, November 14, 2007 8:51 AM
To: Andy Loos
Subject: Kirkland - Stop High-Rise Buildings Petition 11-07 - c (2).doc

Andy, just wanted to let you know this petition is being circulated around town. There is some anxiety brewing about several of the projects in review downtown and traffic.

From: "Janice Soloff" <JSoloff@ci.kirkland.wa.us>
To: "Jeremy McMahan" <JMcMahan@ci.kirkland.wa.us>, "Eric Shields" <EShields@...
Date: 11/14/2007 11:31 AM
Subject: FW: Kirkland - Stop High-Rise Buildings Petition 11-07 - c (2).doc

FYI, see response from Andy Loos regarding the recent petition floating around.

Janice Soloff

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From: Andy Loos [mailto:andy@srmdevelopment.com]
Sent: Wednesday, November 14, 2007 10:33 AM
To: Janice Soloff
Cc: Jim Rivard; Rich Reel; Bill Pettit
Subject: RE: Kirkland - Stop High-Rise Buildings Petition 11-07 - c (2).doc

Janice: Thanks for sending. There isn't much we can do except conform to the zoning laws that are in place for us. I think it would send a very strong message to any future development in Kirkland if the Council were to adopt something like this on the "spur of the moment". This is a currently zoned property and we are complying with all applicable codes, procedures and regulations.

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I know this is a hot topic and everyone has a different concept of what is appropriate. Fortunately, we have laws in place which define this for all of us and there are avenues in which to change these laws if people so chose. The current zoning should not be a surprise to anyone in downtown Kirkland particularly the residents of the Portsmith- with whom I've met numerous times to discuss our projects and the zoning in the downtown area. If they had wanted to make these zoning changes then

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Thanks again.

Andy

From: Janice Soloff [mailto:JSoloff@ci.kirkland.wa.us]
Sent: Wednesday, November 14, 2007 8:51 AM
To: Andy Loos
Subject: Kirkland - Stop High-Rise Buildings Petition 11-07 - c (2).doc

Andy, just wanted to let you know this petition is being circulated around town. There is some anxiety brewing about several of the projects in review downtown and traffic.

From: "Andy Loos" <andy@srmdevelopment.com>
To: "Janice Soloff" <JSoloff@ci.kirkland.wa.us>
Date: 11/15/2007 3:00 PM
Subject: RE: Kirkland - Stop High-Rise Buildings Petition 11-07 - c (2).doc

Thanks Janice. This helps me plan. Can I submit for SEPA in early December and still apply for my building permit in late January?

Andy

From: Janice Soloff [mailto:JSoloff@ci.kirkland.wa.us]
Sent: Thursday, November 15, 2007 2:55 PM
To: Andy Loos
Cc: Jim Rivard; Chad Lorentz
Subject: RE: Kirkland - Stop High-Rise Buildings Petition 11-07 - c (2).doc

Here are answers to your questions:

1. First of all you may submit for SEPA review at anytime.
2. yes, you can still submit a building permit if the project receives a SEPA/concurrency appeal however, the City will not issue the building permit until the SEPA appeal is decided upon.
3. An appeal of SEPA goes to the Hearing Examiner (see KMC Title 24- Environmental Procedures)
4. An appeal of the Design Review decision goes to City Council (see KZC Chapter 142)

(now whether or not these two could be combined into one hearing is something I'm looking into)

5. SEPA review usually takes 1-2 months (mainly to conduct the traffic impact analysis); if traffic impact analysis is complete the administrative tasks take only a couple of weeks.
6. Timing on both a DRB or SEPA appeal could take anywhere from 1-3 months.

Janice Soloff

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From: Andy Loos [mailto:andy@srmdevelopment.com]

Sent: Wednesday, November 14, 2007 12:01 PM
To: Janice Soloff
Cc: Jim Rivard; Chad Lorentz
Subject: RE: Kirkland - Stop High-Rise Buildings Petition 11-07 - c (2).doc

Janice: A couple of questions.

1. If the SEPA decision were to be appealed can we still submit a building permit application?
2. An appeal goes to City Council right?
3. What would you envision as the timing for SEPA decision, appeal and Council hearing?

I'm just trying to think ahead on the Bank of America site.

Thanks.

Andy

From: Janice Soloff [mailto:JSoloff@ci.kirkland.wa.us]
Sent: Wednesday, November 14, 2007 8:51 AM
To: Andy Loos
Subject: Kirkland - Stop High-Rise Buildings Petition 11-07 - c (2).doc

Andy, just wanted to let you know this petition is being circulated around town. There is some anxiety brewing about several of the projects in review downtown and traffic.

From: "Andy Loos" <andy@srmdevelopment.com>
To: "Janice Soloff" <JSoloff@ci.kirkland.wa.us>
CC: "Chad Lorentz" <chadl@runberg.com>, "Margarett Harrison" <margarettH@cas...
Date: 11/20/2007 10:09 AM
Subject: 101 Kirkland Design Review Meeting Notes
Attachments: Summary of Design Review Meeting for 101 Kirkland Avenue.doc

Janice: Here are my notes from the meeting. I know they are not "official" but may be of use to you.

I need to talk to Rob Jammerman about the alley issue. We've been given direction from public works on the alley width, sidewalk, one-way versus two-way but I'll ask him again and then have a response to give to the Board.

I'd like to determine what the code really says regarding the discretionary approvals over two stories. I've read it and it is does appear nebulous.

I'd like an opinion from the City regarding this issue because if the project is appealed we need to know that we have solid grounds for defense of the code.

Having so much discretion for a Design Review Board is disconcerting. They can in effect alter zoning in one evening. I don't think the City's intent was to give that kind of power to a design review board. As one who is trying to plan projects, arrange for purchases, do budgets, proformas and develop property it makes it very difficult to predict what a small group of people will do. As a property owner, this has significant impacts to property values. I'm not sure the Board realizes that if they have discretion over three levels of height with one vote among five people they can reduce a person's property value dramatically.

We paid $10,000,000 for the 201 Kirkland property. We got five floors or $2M per floor. If we would have gotten only two floors we could only pay $4M for the property so you can see that in this case the property owner would have lost $6M in value. We actually couldn't even pay that much because it would not make economic sense to go underground with the parking for such a small building so in effect the yield would be one floor of parking and one floor of heated space. So the value would be more in the $2.5 to $3M range. So a loss of probably $7.5M in property value for this owner. Play this same scenario for the rest of the downtown core and you will see a significant reduction in property values. In reality, the properties are not worth redeveloping to add one floor to existing one-story buildings because the owners must meet new parking codes so really they end up with the same space but have to pay for a new building and parking- a lot of cost for the same salable space. If I'm an owner of a property downtown I see a significant risk to my property values if this kind of discretionary approval is part of the Kirkland process.

If the City wants two-stories then it should be mandated. No discretionary approvals. If they want four, five, ten, whatever, then we know and can plan accordingly.

I think some clear direction is needed from the City to the Design Review Board in terms of what their discretion entails. I always thought it was the fifth floor but with last night's meeting I'm not sure and if I'm not sure then I don't feel comfortable moving forward and buying the property or spending more money on planning.

By the way, you did your usual great job of explaining the project and the issues. The fact that the Board got sidetracked was not foreseeable.

It appears that we'll be able to work our way through this but I'm responsible to my company and the Bank of America to advise them on whether to proceed and at this point I don't have the feeling of comfort that we will attain the height that I've anticipated.

When I report this to Merrill, SRM and the Bank it may be that we scrap this and go elsewhere.

I do think there is a good chance of appeal on this one because of the Portsmith views being blocked. I'd like to meet with you, Eric, Jeremy and whoever else you think may want to weight-in to discuss the project and the best way to move forward.

Thank you very much for your efforts.

Andy

Andy Loos

Development Manager

SRM Development, LLC

808 5th Avenue North

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Summary of Design Review Meeting for 101 Kirkland Avenue
November 19, 2007

I. Planner Janice Soloff introduced the project, zoning and issues from the last meeting.

II. Architect Chad Lorenz and Landscape Architect Margarett Harrison presented the project in response to comments received in the last meeting.

III. Public comments centered around the desire to reduce height in the downtown core.

A. One Portsmith neighbor indicated that the code is nebulous on whether the fifth floor is discretionary or that every floor above the 2nd floor is discretionary.
B. One neighbor liked the building, good modulation.
C. Wanted better retailer at corner.
D. Alley too narrow for two-way traffic, make one-way
E. Does Bank constitute superior retail? Won't need banks in the future.
F. More affordability for downtown, where will firemen and policemen live if we have all seniors downtown.
G. Wants more office in core area
H. Traffic is a concern
I. Increase setbacks
J. Two stories wanted by residents

IV. Board Questions and Comments

A. Brian
1. Considers Lake Street to be a two-story height street, why go over two stories?
2. Eric Shields, Planning Director response: We've applied this criteria in the zone on all previous properties so how do we suddenly change this?
3. Jeremy McMahon, City Staff response: Five stories has been approved and accepted in the city core.

B. Other Board Comments
1. Much discussion on enlivening the street even though the bank use is not negotiable.
   a. Try to make the coffee shop more prominent along Lake Street.
   b. Soften the hard corner between the coffee shop and the bank.
2. East Façade

a. Building is fine, landscaping is fine.

3. North Façade
   a. Add some landscaping at the NE corner
   b. Bring the secondary entrance out toward the street or provide weather protection for the entrance
   c. Change tree species along Kirkland Avenue- remove liquid amber in favor of catsurus.
   d. Provide pathways through the landscaping for people who park on the street.
   e. Look at site triangles at the drive-thru exit- maybe put plantings against the building to push the pedestrian away from the building giving more safety for the pedestrian from exiting vehicles.
   f. Use mesh to "open" wall within drive-thru space so there isn't a big blank wall in the drive-thru.

4. Corner of Lake and Kirkland Avenue
   a. Too barren at corner, needs some more landscaping, maybe at the curb to separate the node from the traffic lane.
   b. Pull hard corner between coffee shop and bank back to make sidewalk more seamless.
   c. Shift coffee shop for more Lake Street frontage.
   d. Landscape containers at corner.
   e. Reduce upper level corner architectural bay to make it less dramatic. The prominent upper level draws attention to the height.
   f. Greater setback at upper levels.

5. General Comments
   a. Show signage
   b. Show streetlights
   c. Show under-plantings at tree grates
   d. Show water feature details

6. Discussion
   a. The Board discussed the schedule to review the project at its next available meeting.
   b. The Developer, Andy Loos, made comments to the Board:

1. The Development team had been given direction at the first meeting and has responded to that direction but now it

appears that the Board is considering whether to allow a building over two stories in height on Lake Street. He asked that the Board determine whether that is appropriate because if not then there is no need for further meetings.

2. The Board asked if the Developer wanted confirmation on four stories or five stories. The Developer indicated that the team has spent a good deal of time and money and that if there is no possibility of attaining the fifth floor then the Board should say so.
3. The Board voted and four members indicated that the fifth floor is achievable. One member indicated he would not vote for a fifth floor under any circumstances.
4. The next meeting was scheduled for Dec. 3rd.
5. The Meeting was adjourned.

From: "Jeremy McMahan" <JMcMahan@ci.kirkland.wa.us>
To: "Janice Soloff" <JSoloff@ci.kirkland.wa.us>, "Eric Shields" <EShields@ci...
Date: 11/20/2007 3:11 PM
Subject: RE: CBD 1 Height Interpretation
Attachments: Heightsummary(JM).doc

Thanks Janice! I have been reading through the Plan today too and would like to incorporate the attached changes to your draft.

Jeremy McMahan

Planning Supervisor

City of Kirkland

jmcmahan@ci.kirkland.wa.us

425.587.3229

From: Janice Soloff
Sent: Tuesday, November 20, 2007 12:11 PM
To: Eric Shields; Jon Regala; Jeremy McMahan
Subject: CBD 1 Height Interpretation

See attached summary of staff's interpretation of the maximum height in CBD 1 for our internal meeting tomorrow.

Janice Soloff

Planning and Community Development

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Building Height in CBD 1

1. **CBD 1 ZONING**

Allows a range of building height 2-4 stories (2-5 stories for hotels, attached or stacked dwelling units, and assisted living)- Buildings exceeding 2 stories must demonstrate compliance with design regulations in KZC chapter 92 and all provisions of the Downtown Plan.

Staff's interpretation is that the Downtown Plan provides specific criteria for developers to follow in order to propose the maximum allowed height. The DRB should evaluate the proposal against these specific criteria to determine the allowed height.

Staff discussion point – are there properties where the maximum height could not be attained?

2. **DOWNTOWN PLAN HEIGHT AND DESIGN POLICIES** PAGE XV.D-10

A. **Figure C-5 Chart** (see text)

Design District 1 allows a range of 2-5 stories with discretionary approval for over 2 stories.

1A (yellow) 2-3 stories with 1 extra story if residential and design criteria above the 2nd floor are met (4 stories) *(therefore presumes taller than 2 stories is permitted).*

1B (orange) 2-4 stories with 1 extra story if residential and design criteria above the 2nd floor are met. (5 stories) *(therefore presumes taller than 2 stories is permitted).*

B. **Design District 1 General Text**

- Maximum building height in the core area should be 2-5 stories with 0' setbacks.
- To preserve the existing human scale in Design District 1, stories above the 2nd floor should be setback from the street and require review and approval by the Design Review Board based on priorities set forth in this plan.
- Along all of Lake Street South buildings should be limited to 2 stories to reflect the scale of development in district 2 (west side of Lake Street So.).
- Along Park Lane (west of Main Street), Third Street, Kirkland Avenue, a maximum of 2 stories *along street frontages* will protect the existing human scale and pedestrian orientation.
- Pedestrian scale and orientation design considerations in the Core Area (also in Design Guidelines):
  - Street wall (façade) should contribute to lively, attractive, and safe pedestrian streetscape
  - Judicious placement of windows
  - Multiple entrances
  - Awnings and canopies
  - Courtyards, arcades
  - Other pedestrian amenities
  - Service area, parking, blank facades are located away from street frontage

Staff interprets this to mean provide a 2 story street wall façade (for human scale and pedestrian orientation and since taller heights are allowed through discretionary approval by the DRB).

1A Design District

Portions of 1A should be a maximum height of 3 stories.

As an incentive to encourage residential use and to strengthen the retail fabric, 4 stories may be allowed by the DRB if:

- At least 2 floors are residential
- Total height is not more than 4' taller than would result from an office project with 2 stories of office over retail
- Above the 2nd story, upper stories set back significantly from the street, and building form is stepped back at the third and fourth stories to mitigate the additional building mass
- Project provides superior retail at street level
- Height of rooftop appurtenances and related screening does not exceed the total allowed height and and integrated into the height and design of peaked or parapet roofs.

1B Design District

General:

- These sites provide the best opportunities for new development that could contribute to the pedestrian fabric of downtown
- Much of existing development is older auto-oriented defined by parking lots and poor pedestrian orientation
- To provide incentive for redevelopment and because "these larger sites have more flexibility to accommodate additional height, a mix of 2-4 stories is appropriate":
- East of Main Street development should combine modulations in building heights with modulations of façade widths to break up large buildings.
- South of Kirkland Avenue (Merrill Gardens, Bank of America, Mcleod) building forms should step up from the north and west with tallest portions at the base of the hillside to help moderate the mass of large buildings on top of the bluff (Portsmith).
- Buildings over two stories should generally reduce the building mass above the second story.

As in 1A, one additional story (5th story) may be appropriate to encourage residential on upper floors and strengthen retail if:

- At least 3 of the upper stories are residential; and
- Total height is not more than one foot taller than the height that would result from an office project with three stories of office over ground floor retail (or 55 feet total); and
- Stories above the second story are setback significantly from the street; and
- The building form is stepped back at the third, fourth, and fifth stories to mitigate additional building mass; and
- Superior retail space is provided at street level; and
- Height of rooftop appurtenances and related screening does not exceed the total allowed height and and integrated into the height and design of peaked or parapet roofs.

From: "Andy Loos" <andy@srmdevelopment.com>
To: "Janice Soloff" <JSoloff@ci.kirkland.wa.us>, "Rob Jammerman" <RJammerman...
CC: "Chad Lorentz" <chadl@runberg.com>
Date: 11/20/2007 3:39 PM
Subject: RE: 101 kirkland

Janice: Thanks for adding these to the notes. It brings up a point I want to discuss and I think staff needs to consider. What are the limits of the Design Review Board's responsibility and authority? The one-way alley, turning movements, view triangles etc would seem to be something that Public Works, Traffic and Planning Staff would consider. We get bogged down when the Design Review Board starts designing streets, alleys, turning radius, etc. I think they should make comments that staff can consider but it seems that they are expanding architectural design into zoning, land use, traffic, public works, art council, etc.

Somewhere we need to specify what they are reviewing and what is not their responsibility. We encountered this on the last project where we were encouraged to use stamped concrete and a fountain and public works could not approve it. I think the Design Review Board needs to assume that Public Works and Planning will handle safety movements for vehicles and pedestrians and if they want to make some suggestions for staff then fine, but I'm getting the impression that the DRB is reaching into areas that City Staff will be assessing.

Andy

From: Janice Soloff [mailto:JSoloff@ci.kirkland.wa.us]
Sent: Tuesday, November 20, 2007 3:13 PM
To: Rob Jammerman; Margarett Harrison
Cc: Andy Loos; Chad Lorentz
Subject: RE: 101 kirkland

Also discussed at the meeting was:

* What design techniques could be used at the vehicle entrances and exits to minimize conflicts between vehicles and pedestrians (i.e. at Lake Street alley and drive through exit on Kirkland Avenue)?
* Is the entrance to the drive through along the alley wide enough for cars to turn into and be able to see cars in que?
* Should a drive through even be permitted given the emphasis of pedestrian orientation of the core area (not sure how strong the Board is about this at this point)

Janice Soloff

Planning and Community Development

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From: Rob Jammerman
Sent: Tuesday, November 20, 2007 11:53 AM
To: 'Margarett Harrison'; Janice Soloff
Cc: Andy Loos; Chad Lorentz
Subject: RE: 101 kirkland

Our Traffic Engineers have said we can not make the street narrower. If anything, any extra width, if we have any, would be/could be used for striped bike lanes. As we discussed, you can look at the bump-out at the intersection on the Kirkland Ave. side but the max bump-out width needs to be 6 ft (that matches our narrowest parking lane width) and the curb radius from Lake to Kirkland Ave needs to be 35 ft. Also, your proposed bump out it too long; it should start to return to the curb alignment at the point of tangency. Please revise your sketch and I'll run it by our Traffic Engineers

Rob Jammerman

From: Margarett Harrison [mailto:margarettH@cascadedesigncollab.com]
Sent: Tuesday, November 20, 2007 10:09 AM
To: Rob Jammerman; Janice Soloff
Cc: Andy Loos; Chad Lorentz
Subject: 101 kirkland

<<kirkland.pdf>>
There was quite an emphasis on pedestrian environment and street scape last night at the DRB meeting so I want to make sure that we have explored all options.

Per the survey information - both Lake and Kirkland are 60' right of way. Currently there is 22.5' from centerline to existing curb on both streets. 11' travel lane + 11.5' parking??????? + 7.5' of sidewalk within the right of way.

A couple of questions
1. Why is the parking so wide?- could we give some back ot the pedestrain realm?

2. The corner of Kirkland and Lake is clearly the focal point and very important to the downtown core. Could we propose a bulb out to the north for added public space? See attached sketch

3. What is the required distance from the right turn manuever to the location of the first parallel parking space on Kirkland?

See attached sketch

4. What are the site requirements for the bank drive through at kirkland ave? See attached sketch.

5. Could you send me information on the street lights and decorative hanging baskets that was discussed last night.

I am sure there is more but if I could get started with answers to these it would be most helpful.

margarett harrison

senior associate

cascade design collaborative * 911 western ave, suite 210 seattle, wa 98104 * P 206.628.9133 * F 206.292.8824 * cascadedesigncollab.com

From: "Andy Loos" <andy@srmdevelopment.com>
To: "Janice Soloff" <JSoloff@ci.kirkland.wa.us>
Date: 11/20/2007 4:08 PM
Subject: RE: 101 Kirkland Design Review Meeting Notes

Janice: I've re-read it for myself again today and even though I'm biased it seems clear that area 1B anticipates four floors (upper three levels of residential) with the discretionary fifth floor.

The reference that Dean (from Portsmith) and Brian (DRB member) were making were referring to Design District 2 where it says "two stories along street frontages west of Main Street". I could see where this is a little confusing. Also, Figure C-5 shos the 1B classification shows "discretionary approval for heights over 2 Stories". This would seem to contradict the narrative section for 1B in the Downtown Plan.

I probably need some clarification on this myself.

Thanks.

Andy

From: Janice Soloff [mailto:JSoloff@ci.kirkland.wa.us]
Sent: Tuesday, November 20, 2007 3:29 PM
To: Andy Loos
Cc: Chad Lorentz; Margarett Harrison; Ellen Miller-Wolfe; Jim Rivard
Subject: RE: 101 Kirkland Design Review Meeting Notes

I understand your concerns. I will be debriefing on the meeting with Eric and Jeremy tomorrow.

I guess my attempt to break down and simplify the building height criteria was still not clear for the Board so at the next DRB meeting staff's goal will be to provide a clearer interpretation of the height regulations, policies and discretion of the Board.

Janice Soloff

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From: Andy Loos [mailto:andy@srmdevelopment.com]
Sent: Tuesday, November 20, 2007 10:09 AM
To: Janice Soloff
Cc: Chad Lorentz; Margarett Harrison; Ellen Miller-Wolfe; Jim Rivard
Subject: 101 Kirkland Design Review Meeting Notes

Janice: Here are my notes from the meeting. I know they are not "official" but may be of use to you.

I need to talk to Rob Jammerman about the alley issue. We've been given direction from public works on the alley width, sidewalk, one-way versus two-way but I'll ask him again and then have a response to give to the Board.

I'd like to determine what the code really says regarding the discretionary approvals over two stories. I've read it and it is does appear nebulous.

I'd like an opinion from the City regarding this issue because if the project is appealed we need to know that we have solid grounds for defense of the code.

Having so much discretion for a Design Review Board is disconcerting. They can in effect alter zoning in one evening. I don't think the City's intent was to give that kind of power to a design review board. As one who is trying to plan projects, arrange for purchases, do budgets, proformas and develop property it makes it very difficult to predict what a small group of people will do. As a property owner, this has significant impacts to property values. I'm not sure the Board realizes that if they have discretion over three levels of height with one vote among five people they can reduce a person's property value dramatically.

We paid $10,000,000 for the 201 Kirkland property. We got five floors or $2M per floor. If we would have gotten only two floors we could only pay $4M for the property so you can see that in this case the property owner would have lost $6M in value. We actually couldn't even pay that much because it would not make economic sense to go underground with the parking for such a small building so in effect the yield would be one floor of parking and one floor of heated space. So the value would be more in the $2.5 to $3M range. So a loss of probably $7.5M in property value for this owner. Play this same scenario for the rest of the downtown core and you will see a significant reduction in property values. In reality, the properties are not worth redeveloping to add one floor to existing one-story buildings because the owners must meet new parking codes so really they end up with the same space but have to pay for a new building and parking- a lot of cost for the same salable space. If I'm an owner of a property downtown I see a significant risk to my property values if this kind of discretionary approval is part of the Kirkland process.

If the City wants two-stories then it should be mandated. No discretionary approvals. If they want four, five, ten, whatever, then we know and can plan accordingly.

I think some clear direction is needed from the City to the Design Review Board in terms of what their discretion entails. I always thought it was the fifth floor but with last night's meeting I'm not sure and if I'm not sure then I don't feel comfortable moving forward and buying the property or spending more money on planning.

By the way, you did your usual great job of explaining the project and the issues. The fact that the Board got sidetracked was not foreseeable.

It appears that we'll be able to work our way through this but I'm responsible to my company and the Bank of America to advise them on whether to proceed and at this point I don't have the feeling of comfort that we will attain the height that I've anticipated.

When I report this to Merrill, SRM and the Bank it may be that we scrap this and go elsewhere.

I do think there is a good chance of appeal on this one because of the Portsmith views being blocked. I'd like to meet with you, Eric, Jeremy and whoever else you think may want to weight-in to discuss the project and the best way to move forward.

Thank you very much for your efforts.

Andy

Andy Loos

Development Manager

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(C) 206-200-0675

From: "Jeremy McMahan" <JMcMahan@ci.kirkland.wa.us>
To: "Janice Soloff" <JSoloff@ci.kirkland.wa.us>, "Eric Shields" <EShields@ci...
Date: 11/27/2007 1:23 PM
Subject: RE: Building Height in CBD 1B.doc
Attachments: Building Height in CBD 1Bjm.doc

Looks good - I suggest a couple tweaks. Thanks!

Jeremy McMahan

Planning Supervisor

City of Kirkland

jmcmahan@ci.kirkland.wa.us

425.587.3229

From: Janice Soloff
Sent: Tuesday, November 27, 2007 12:12 PM
To: Eric Shields; Jeremy McMahan
Subject: Building Height in CBD 1B.doc

See attached Downtown Plan policies exactly as stated in the Plan but reformated. This will be an attachment to the DRB report. Let me know if you suggest editing or reformatting changes.

Maximum Building Height in CBD 1B

1. ZONING REGULATIONS

CBD 1 Zoning Regulations allows a range of building height (section 50.12):

- 2-4 stories for mixed use retail and office
- 2-5 stories for mixed use retail, hotels, attached or stacked dwelling units, and assisted living.
- Buildings exceeding 2 stories must demonstrate compliance with design regulations in KZC chapter 92 and all provisions of the Downtown Plan.

The Downtown Plan provides specific criteria for developers to follow in order to propose the maximum allowed height. The DRB should evaluate the proposal against these specific criteria below to determine the allowed height.

2. DOWNTOWN PLAN HEIGHT AND DESIGN POLICIES

A. Figure C-5 Downtown Height and Design Districts

Design District 1 allows a range of 2-5 stories with discretionary approval for over 2 stories: (see text for specific allowances)

1B (orange) allows 2-4 stories with 1 additional story (5 stories) for upper story residential and if design criteria above the 2nd floor are met *(see criteria below):*

B. Design District 1B Text-General:

Maximum building height in the core area should be 2-5 stories with 0' setbacks:

- ✓ Stories above the 2nd floor should be setback from the street. To preserve the existing human scale of this area development over two stories require review and approval the Design Review Board based on priorities set forth in this plan (see below criteria).
- ✓ Buildings should be limited to 2 stories along all of Lake Street South to reflect the scale of development in District 2 (west side of Lake Street So.).
- ✓ Along Kirkland Avenue a maximum of 2 stories along street frontages will protect the existing human scale and pedestrian orientation.
- ✓ These sites provide the best opportunities for new development that could contribute to the pedestrian fabric of Downtown. The existing development is older, auto-oriented, defined by parking lots and poor pedestrian orientation.

C. To provide incentive for redevelopment and because these larger sites have more flexibility to accommodate additional height, a mix of 2-4 stories is appropriate.

Design Considerations for 2-4 stories:

- ✓ South of Kirkland Avenue, building forms should step up from the north and west with tallest portions at the base of the hillside to help moderate the mass of large buildings on top of the bluff (Portsmith).
- ✓ Buildings over two stories should generally reduce the building mass above the second story.

D. One additional story (5 stories) may be appropriate to encourage residential on upper floors and strengthen retail in the core area. This additional story (5th floor) may be considered by the DRB if:

~~**Design Considerations for 5 stories:**~~

- ✓ At least 3 of the upper stories are residential,
- ✓ Total height is not more than one foot taller than the height that would result from an office project with three stories of office over ground floor retail (55 feet),
- ✓ Stories above the second story are setback significantly from the street,
- ✓ The building form is stepped back at the third, fourth, and fifth stories to mitigate additional building mass,
- ✓ Superior retail space is provided at street level,
- ✓ Rooftop appurtenances and related screening does not exceed the total allowed height is integrated into the height and design of peaked or parapet roofs.

E. General design considerations related to pedestrian scale and orientation are of particular importance in this area:

- ✓ Street wall (façade) should contribute to lively, attractive, and safe pedestrian streetscape
- ✓ Judicious placement of windows
- ✓ Multiple entrances
- ✓ Awnings and canopies
- ✓ Courtyards, arcades
- ✓ Other pedestrian amenities
- ✓ Service area, parking, blank facades are located away from street frontage

From: "Jeremy McMahan" <JMcMahan@ci.kirkland.wa.us>
To: "Janice Soloff" <JSoloff@ci.kirkland.wa.us>, "Eric Shields" <EShields@ci...
Date: 12/6/2007 1:32 PM
Subject: RE: Bank of America/Merrill Gardens DRB Staff Notes

A couple suggestions below. Thanks!

Jeremy McMahan

Planning Supervisor

City of Kirkland

jmcmahan@ci.kirkland.wa.us

425.587.3229

From: Janice Soloff
Sent: Wednesday, December 05, 2007 11:19 AM
To: Eric Shields; Jeremy McMahan
Subject: Bank of America/Merrill Gardens DRB Staff Notes

Here are staff notes from the meeting about what the Board decided and the direction given for January 7th. Have I missed anything?

DRB Action:

No final decision was reached on the project however the Board reached concensus on portions of the project:

1. Approved the 5th Story portion of project- Cox moved that the Board accept the 5th floor because the building satisfies the superior retail design criteria. Warman seconded it and all 5 members present voted in favor.

2. Approved the amount of upper story setbacks- The amount of setback at upper stories (from 2nd floor) is adequate to allow levels 3-5.

3. The Board will continue discussion of the project details until January 7th with an early start time of 6:00 p.m.:

Additional information requested for January 7th meeting:

o The Board would like the project to appear different from the other Merrill Gardens project under construction. Architect should walk through the building materials for each façade including: siding, cornices, windows, and colors with the goal of fine tuning the details.

o Explore design options that would add interest to the east elevation.

o Explore modulations in parapet heights to enhance the treatment of building mass as 3 building segments and avoid long horizontal lines. Explore options to strengthen variety of colors and materials between the 3 building segments

o Landscaping Provide greater street tree choices (deciduous; richness in color) (variety will also help break up facades); Provide upper story planters and detailing for upper story terraces and containers

o Provide more detail regarding art sculptures.

o Seat walls could be less structural

o Have Cultural Council review open space plaza and water feature, public spaces, artwork. Staff is working on arranging for the applicant to attend the Cultural Council on December 19th.

Janice Soloff

Planning and Community Development

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From: "Eric Shields" <EShields@ci.kirkland.wa.us>
To: "Andy Loos" <andy@srmdevelopment.com>, "Janice Soloff" <JSoloff@ci.kirkl...
CC: "Jeremy McMahan" <JMcMahan@ci.kirkland.wa.us>
Date: 12/7/2007 2:42 PM
Subject: RE: Bank of America Design Review Board

Andy - You are right-on.

The problem we have is political. The code was written the way it is as a kind of compromise between those who argued to reduce the permitted height to 2 stories and those who understood the economics and the need to allow 4 or 5 stories to make development feasible. The louder people complain about buildings that are too high, the harder it is for the Council to agree to the kind of change you propose. I have been concerned that if we even open up the code for a revision just to make the code clearer and offer more certainty, there will be a push to revise it to reduce the permitted height overall.

Ellen; Do you think there would be any value in sharing Andy's comments with the Economic Development Committee?

Eric Shields

Director

Kirkland Dept. of Planning & Community Development

From: Andy Loos [mailto:andy@srmdevelopment.com]
Sent: Friday, December 07, 2007 12:35 PM
To: Janice Soloff; David Ramsay; Ellen Miller-Wolfe
Cc: Jeremy McMahan; Eric Shields
Subject: Bank of America Design Review Board

Janice, Dave and Ellen: After speaking with both Janice and Ellen today I started thinking about the neighbors in downtown Kirkland and what their expectations are of the development process. It seems to me that they are unaware of how land use laws are established and how they can be changed. There seems to be a perception in the public that if they voice their disapproval with a law at a public meeting that it can just be changed. It seems that the neighbors who are against height in downtown Kirkland expect the Design Review Board to ignore the Comprehensive Plan and Zoning Code and to simply rule on something (height) that is specifically allowed by code under certain conditions (superior retail, modulation, setbacks, etc).

I understand their confusion. I think it would be less controversial to simply establish a height limit for a zone based upon the Comprehensive Plan. Then give the Design Review Board the discretion (which they already have) to demand modulation, setbacks and superior retail or any other aspect they feel appropriate. But tying the additional height to the Design Review Board gives the public the impression that they have authority on height when in fact they do not if the developer conforms to their design suggestions. The DRB really has the power to disapprove a project whether it is one level or five. And it seems to me we want superior retail for a one level building just as much as we would a five level building. Let's have superior retail on all buildings and simply establish the height limits per zone.

Maybe I'm missing something fundamental that would prevent this but having been through the process and listening to the neighbors it appears to me that the current process encourages conflict due to its uncertainty for all concerned. I think Kirkland would be well served to have an established height and then simply discuss good design in our meetings.

I also spoke to Ellen about development and what I see are some fundamentals that will affect Kirkland's future:

1. Development is driven by economics. To say it briefly, without density in the downtown there will be no development. The two-story zoning along Lake will not work economically unless someone wants to build very large and expensive condos (but even then it would be tough to compete with locations to the South which were built when costs were far less). When we add the cost of parking (to meet current code), new construction (up 60% in three years), impact fees (I know Kirkland was behind but it is still a cost), land value (which is less than the non-waterfront property across the street) it makes no sense to build. Those properties will remain as they are unless something dramatic changes. I'm sure that is fine with a lot of people. It is simply a matter of fact as I see it.
2. The reason developers are going to downtown and not Totem Lake (except for medical uses) is due to higher rents. Whereas office rents downtown might be $30/sf today rents in Parmac or Totem Lake will be $20/sf. The building will cost the same to build and the difference in land value will not account for the huge difference in rents so developers have to go to the higher rent location unless some other factor can be added like a subsidy of some kind.
3. I think if some form of Park Place happens and if redevelopment in the downtown core is stifled it could be a disaster for downtown retail. Park Place will attract the best retailers because it will have the things top notch retailers want: access, signage, parking. It will attract the best retailers and will become the main retail attraction

for downtown. I think downtown will get the retailers who can't afford to be at Park Place which is the second tier retailers. Customers at Park Place will be reluctant to walk to downtown unless there is a destination retailer or group of retailers to draw them and make it worth the walk. And they'll be reluctant to get in their car and drive from Park Place and try to find another place to park downtown. If there is dynamic retail downtown I think there is a better chance of making a connection like a University Village atmosphere.

4. Density is the only way to get additional development downtown. Period. We cannot build two or even three stories and make the economics work. I think office and residential are needed to support a vibrant downtown. I think buildings higher than six stories would be out of scale in such a small downtown core. I think the Portsmith is a decent building. The problem with it is it is so prominent because there is nothing in front of it to reduce the scale.

5. With restricted development and density the costs are simply higher and therefore affordability goes down.

I'll stop. Just had these thoughts that I wanted to share.

Thanks to all of you for your efforts and unbiased work in Kirkland.

Andy

Andy Loos

Development Manager

SRM Development, LLC

808 5th Avenue North

Seattle, WA 98109

(P) 206-352-7873

(F) 206-352-7132

(C) 206-200-0675

From: "Andy Loos" <andy@srmdevelopment.com>
To: "Eric Shields" <EShields@ci.kirkland.wa.us>, "Janice Soloff" <JSoloff@ci...
CC: "Jeremy McMahan" <JMcMahan@ci.kirkland.wa.us>
Date: 12/7/2007 3:35 PM
Subject: RE: Bank of America Design Review Board

Eric: Very good points and I did not know how the code was formed. That makes sense. And I agree that if the door is opened for reform there is no guarantee that the solution isn't worse than the problem...I'd hate to open the "can of worms" although that may be happening in the next few years anyway. Although I'd hope that with well designed buildings the sentiment for lower heights will wane.

I still think the public expects the design review board to be able to limit height at its sole discretion and that is not how I read the Guidelines. I read it that the Board is to make specific comments to the applicant and "give options" to the applicant if they cannot approve the design. The language leads me to interpret this as saying that if the developer does what the Board requests in terms of the elements of design then the project gets approved. By the way, I think there may be a Board member that believes they have that authority. I'd be interested to hear your thoughts on that. Maybe a legal interpretation would help all of us, and the public, to see where we stand.

I have noticed that the planner typically summarizes the zoning for a project at the DRB meeting. Maybe we take the opportunity at the meeting to show graphically what the zoning allows and what the DRB's role is as far as conditions of approval.

In the case of a downtown property like 101 Kirkland, I'm thinking that the planner might show a graphic of a two story building with no setbacks or modulation -which is basically permitted. Then show a diagram of a four story building that has been modulated with upper level setbacks to conform to the design guidelines for a four-story building. Then show a five story building, with all of the setbacks of the four story building, and with all of the superior retail aspects outlined in the design guidelines. The planner would address the audience and DRB with this explanation of the comprehensive plan and design review guidelines and indicate that this is the ordinance under which we are all bound. That developments of certain heights must conform to the conditions outlined in the design guidelines. Developers and owners can either conform to the guidelines or not. If they only want a two story building then they won't need to adhere to the guidelines as strictly as a four or five story would but that if they adhere to the guidelines then the stories are permitted. Period. The goal is to encourage development and good design, not to vote on whether the height is appropriate- that has already been established by the ordinance. Now, if people have ideas on how to make the design better through constructive input then we'd like to hear their ideas.

I agree with your hesitance to make a sweeping change as I'd indicated in my first e-mail.

Thanks for your comments.

Andy

From: Eric Shields [mailto:EShields@ci.kirkland.wa.us]
Sent: Friday, December 07, 2007 2:43 PM
To: Andy Loos; Janice Soloff; David Ramsay; Ellen Miller-Wolfe
Cc: Jeremy McMahan
Subject: RE: Bank of America Design Review Board

Andy - You are right-on.

The problem we have is political. The code was written the way it is as a kind of compromise between those who argued to reduce the permitted height to 2 stories and those who understood the economics and the need to allow 4 or 5 stories to make development feasible. The louder people complain about buildings that are too high, the harder it is for the Council to agree to the kind of change you propose. I have been concerned that if we even open up the code for a revision just to make the code clearer and offer more certainty, there will be a push to revise it to reduce the permitted height overall.

Ellen; Do you think there would be any value in sharing Andy's comments with the Economic Development Committee?

Eric Shields

Director

Kirkland Dept. of Planning & Community Development

From: Andy Loos [mailto:andy@srmdevelopment.com]
Sent: Friday, December 07, 2007 12:35 PM
To: Janice Soloff; David Ramsay; Ellen Miller-Wolfe
Cc: Jeremy McMahan; Eric Shields
Subject: Bank of America Design Review Board

Janice, Dave and Ellen: After speaking with both Janice and Ellen today I started thinking about the neighbors in downtown Kirkland and what their expectations are of the development process. It seems to me that they are unaware of how land use laws are established and how they can be changed. There seems to be a perception in the public that if they voice their disapproval with a law at a public meeting

that it can just be changed. It seems that the neighbors who are against height in downtown Kirkland expect the Design Review Board to ignore the Comprehensive Plan and Zoning Code and to simply rule on something (height) that is specifically allowed by code under certain conditions (superior retail, modulation, setbacks, etc).

I understand their confusion. I think it would be less controversial to simply establish a height limit for a zone based upon the Comprehensive Plan. Then give the Design Review Board the discretion (which they already have) to demand modulation, setbacks and superior retail or any other aspect they feel appropriate. But tying the additional height to the Design Review Board gives the public the impression that they have authority on height when in fact they do not if the developer conforms to their design suggestions. The DRB really has the power to disapprove a project whether it is one level or five. And it seems to me we want superior retail for a one level building just as much as we would a five level building. Let's have superior retail on all buildings and simply establish the height limits per zone.

Maybe I'm missing something fundamental that would prevent this but having been through the process and listening to the neighbors it appears to me that the current process encourages conflict due to its uncertainty for all concerned. I think Kirkland would be well served to have an established height and then simply discuss good design in our meetings.

I also spoke to Ellen about development and what I see are some fundamentals that will affect Kirkland's future:

1. Development is driven by economics. To say it briefly, without density in the downtown there will be no development. The two-story zoning along Lake will not work economically unless someone wants to build very large and expensive condos (but even then it would be tough to compete with locations to the South which were built when costs were far less). When we add the cost of parking (to meet current code), new construction (up 60% in three years), impact fees (I know Kirkland was behind but it is still a cost), land value (which is less than the non-waterfront property across the street) it makes no sense to build. Those properties will remain as they are unless something dramatic changes. I'm sure that is fine with a lot of people. It is simply a matter of fact as I see it.
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Andy

Andy Loos

Development Manager

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(C) 206-200-0675

From: "Eric Shields" <EShields@ci.kirkland.wa.us>
To: "Janice Soloff" <JSoloff@ci.kirkland.wa.us>
Date: 12/13/2007 1:26 PM
Subject: FW: Project/Parking questions

Let's discuss how this pertains to Bank of America.

Eric Shields

Director

Kirkland Dept. of Planning & Community Development

From: Jon Regala
Sent: Thursday, December 13, 2007 9:22 AM
To: 'Bea L. Nahon CPA'; Eric Shields
Subject: RE: Project/Parking questions

Hi Bea,

Below is the Zoning Code section regarding parking modifications. It looks like a parking modification will be reviewed under whichever process it is going through. -Jon

105.103 Modifications

1. General - The provisions of this section establish under what circumstances the requirements of this chapter may be modified.

2. Authority To Grant and Duration

a. If the proposed development of the subject property requires approval through Design Review, Process I, IIA, IIB, or III, described in Chapters 142 <http://kirklandcode.ecitygov.net/KirklandZC_html/kzc142.html#142> , 145, 150, 152 and 155 KZC, respectively, a request for a modification will be considered as part of that process under the provisions of this section. The City must find that the applicant meets the criteria listed below in subsection (3) of this section. If granted under Design Review, Process I, IIA, IIB or III, the modification is binding on the City for all development permits issued for that development under the Building Code within five years of the granting of the modification.

b. If subsection (2)(a) of this section does not apply, the Planning

Official may grant a modification in writing under the provisions of this section.

From: Bea L. Nahon CPA [mailto:Bea.Nahon@nahoncpa.com]
Sent: Thursday, December 13, 2007 7:41 AM
To: Eric Shields; Jon Regala
Subject: Project/Parking questions

Eric and John,

Quick (I hope) questions about parking in the application and approval process.

The first question relates to the McLeod proposal - I could not find the parking calculations in the updated proposal that is on the DRB website - can you let me know where that would be found, or if it's not there, what is being proposed (and hopefully compared to the required number of spaces)

The other questions relate to variances in parking

- if an applicant is seeking a variance from the code, what body is it that makes that determination?

- Does the same body determine any contribution to the in-lieu fund?

- When "one per bedroom" is requested for a proposal where 1.7 per unit is specified by the code, does that go thru the same process for obtaining a variance, or would that be automatic or expedited in any way?

The only question that has some sense of urgency is the 1st question about the number of spaces at the McLeod proposal, as it would be helpful to know that by Monday. As for the others - and even for this one - I know you are swamped, so if there's not time to respond right away, I completely understand.

Thank you!

Bea

Office contact (425) 828-4747

(425) 696-4109 (office fax)

(425) 696-0032 (direct fax)

From: "Eric Shields" <EShields@ci.kirkland.wa.us>
To: "Brian Berg" <bberg@collinswoerman.com>, "Carter Bagg" <baggfamily@earth...
CC: "Janice Soloff" <JSoloff@ci.kirkland.wa.us>, "Jeremy McMahan" <JMcMahan@...
Date: 12/14/2007 4:53 PM
Subject: RE: Bank of America project

I'd like to revise the message I sent you earlier this week about responding to the comment letters on the Bank of America project.

I still think you should acknowledge the letters and make it clear that you have considered them in your decision. However, I did not mean to suggest that you should reconsider the direction you gave to the applicant at the last meeting. The applicant should be able to rely on that direction to move his project forward. Therefore, I recommend that you start your review on the basis of your previous decisions. Of course, any one of you may ask that those decisions be reconsidered, but the starting point for discussion should be where you left off at the last meeting.

Eric Shields

Director

Kirkland Dept. of Planning & Community Development

From: Eric Shields
Sent: Wednesday, December 12, 2007 10:33 AM
To: Brian Berg; Carter Bagg; Eric Shields; H. Todd Kilburn; Jeff Bates; Jeremy McMahan; Kevin Oremus; Phyllis Warman; Stephen W. Cox
Cc: Janice Soloff; Jeremy McMahan
Subject: Bank of America project

I've heard a number of complaints from people who are concerned that you didn't read the letters submitted at the last meeting before providing guidance to the developer on which aspects were OK and which need revisions. I think it would be a good idea for you to look over the letters prior to the January 7 meeting, acknowledge them to the audience and have a brief discussion about whether the comments in the letters change your conclusions from last time. Thanks.

Eric Shields

Director

Kirkland Dept. of Planning & Community Development

From: "Andy Loos" <andy@srmdevelopment.com>
To: "Rob Jammerman" <RJammerman@ci.kirkland.wa.us>
CC: "Janice Soloff" <JSoloff@ci.kirkland.wa.us>
Date: 12/18/2007 10:56 AM
Subject: FW: 101 Kirkland Avenue
Attachments: DSC_0021.JPG; location of signal control.pdf

Hello Rob: Has the City done anything with these signal boxes in the past? I'm trying to see if there is something that can be done with this one at the corner of Lake Street and Kirkland Avenue. It is a shame to have a nice corner plaza with this big metal box in front of it...

On the other hand I'm in no hurry to pay to relocate it as I've heard the $100,000 figure before. Too bad these can't be dropped in a vault. Have you had any experience with them?

Thanks.

Andy

From: Chad Lorentz [mailto:chadl@runberg.com]
Sent: Tuesday, December 18, 2007 10:41 AM
To: Andy Loos
Cc: Margarett Harrison; maher.joudi@drstrong.com
Subject: RE: 101 Kirkland Avenue

Andy--

I just re-looked at this thinking the location was on the survey, but the power J-box does not seem to be the same as the signal box. Therefore the location worse than I thought, see attached picture and exhibit. I am not sure there is any good way of integrating it either.

Chad Lorentz | Associate

RUNBERG ARCHITECTURE group PLLC
One Yesler Way | Suite 200 | Seattle, WA 98104
206.956.1970 main
206.518.5024 direct
206.956.1971 fax
www.runberg.com <http://www.runberg.com/>

From: Andy Loos [mailto:andy@srmdevelopment.com]
Sent: Tuesday, December 18, 2007 9:11 AM
To: Chad Lorentz; Margarett Harrison; maher.joudi@drstrong.com
Subject: RE: 101 Kirkland Avenue

Agree, just wondering if we should plant around it, incorporate it into the plaza, etc. I'm not sure of the location in reference to our landscaping but I think we should look at it so we at least can say we didn't forget about it.

Andy

From: Chad Lorentz [mailto:chadl@runberg.com]
Sent: Tuesday, December 18, 2007 8:29 AM
To: Andy Loos; Margarett Harrison; maher.joudi@drstrong.com
Subject: RE: 101 Kirkland Avenue

I didn't anticipate moving it. It isn't pretty but I don't think it is in our way.

Chad Lorentz | Associate

RUNBERG ARCHITECTURE group PLLC
One Yesler Way | Suite 200 | Seattle, WA 98104
206.956.1970 main
206.518.5024 direct
206.956.1971 fax
www.runberg.com <http://www.runberg.com/>

From: Andy Loos [mailto:andy@srmdevelopment.com]
Sent: Tuesday, December 18, 2007 8:18 AM
To: Chad Lorentz; Margarett Harrison; maher.joudi@drstrong.com
Subject: 101 Kirkland Avenue

We have a signal box located at the corner of Kirkland Ave and Lake Street. Those are about $100,000 to move so I'm not inclined to move it. Let's look at designing around it if possible or implementing it into the design.

I'm open to suggestions.

Andy

Andy Loos

Development Manager

SRM Development, LLC

808 5th Avenue North

Seattle, WA 98109

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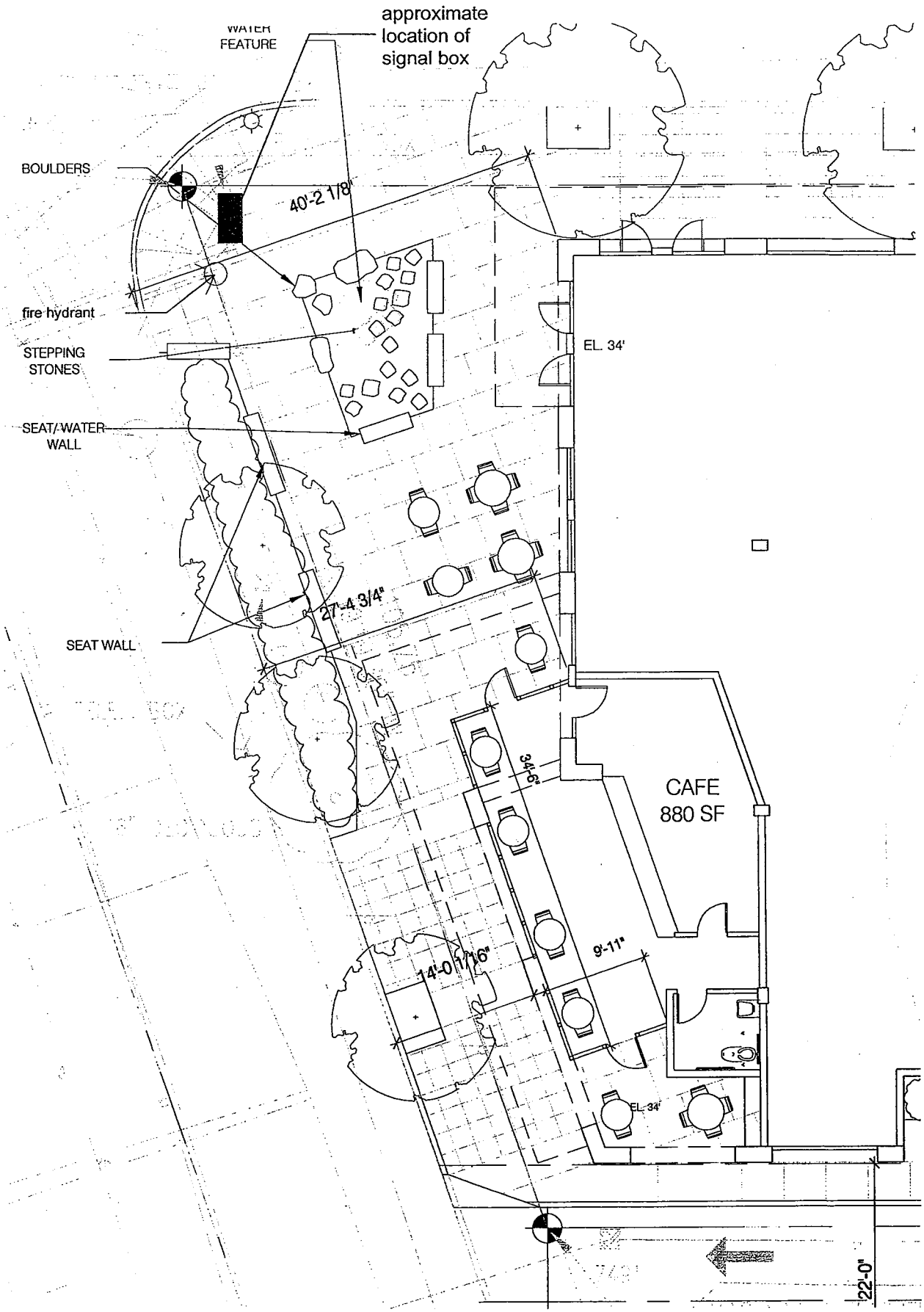
(C) 206-200-0675


WATER FEATURE
approximate location of signal box
BOULDERS
40'-2 1/8"
fire hydrant
STEPPING STONES
SEAT/WATER WALL
EL. 34'
27'-4 3/4"
SEAT WALL
34'-6"
CAFE
880 SF
9'-11"
14'-0 1/16"
EL. 34'
22'-0"

JS

CITY OF KIRKLAND
PRE-SUBMITTAL CONFERENCE APPLICATION

PRE 07-00086

RECEIVED
SEP 05 2007
AM PM
PLANNING DEPARTMENT
BY

Check one: ☐ Land Use Permit ☐ Building Permit

Project Name: 101 KIRKLAND AVENUE

Project Address: 101 KIRKLAND AVENUE

Parcel Number(s): 0825059011

Property Owner's Name: BANK OF AMERICA

Address: 101 KIRKLAND AVE City: KIRKLAND

Phone: Zip: 98033

Contact Person (for this conference): Andy Loos

Address: 808 5th AVE City: SEATTLE

Phone: 206-352-7873 Zip: 98109

206-200-0675

Check the departments you would like to attend:
- ☑ Building
- ☑ Fire
- ☑ Planning
- ☑ Public Works

Describe the proposed project: Construct mixed-use project with ground floor retail with residential units above.

List questions/concerns for staff. If you need more space, please attach a separate page.
- Parking requirements
- Drive thru lane
- Upper floor setbacks
- Superior retail
- Access points

Owner/Agent: Andy Loos (Signature) Date: 9/5/07

STAFF USE ONLY BELOW THIS LINE

Drawings included:

- ☐ Land Use Permit – Vicinity Plan; conceptual drawings of proposed project (surveyors or engineers drawings not required).
- ☐ Building Permit – Vicinity Plan; site plan with existing and proposed contour lines – include parking lot, circulation system, significant trees (at least 6" diameter) and any natural features; elevations of all four (4) sides of any proposed structures; floor plans.
- ☐ $350 Fee made payable to the City of Kirkland.

Date scheduled: 09/18/07 Time 11:00 AM Room: Moss Bay Room

NOTE: Permit Applic[illegible] requiring plan review are accepted: Monday-Tuesday-Thursday-Friday 8:00-4:00

Wednesday 10:30-4:00

101 Kirkland Avenue Agenda
September 18, 2007

Planning:

1. Confirm zoning
   a. Setbacks at ground level from Lake Street
   b. Setbacks at ground level from Kirkland Ave
   c. Upper level setbacks
   d. Height Calculation Confirmation
2. Parking Requirements per use:
   a. Senior Housing
   b. Bank
   c. Retail
3. Site access
   a. Drive-Thru configuration
   b. Alley width
   c. One Way or Two-Way Alley
   d. Can the Alley jog if additional width needed. Hectors cannot move.
   e. Bank queing

will have a surplus
Alley dedication
(9'6") 24' wide road
(include 5' sidewalk)
Right in only alley.
Consider one way
Alley
[Bill Pope will look at
options

Complete westside
of radius of turnaround

4. Streets
   a. Utilities in alley?
   b. Ability to close alley during construction?
   c. Tiebacks under street and/or alley?
   d. Repaving of alley in ashphalt?
5. Fees have been addressed in e-mails Rob J.
   a. Can we move the bank to the temporary location without paying the traffic impact fee on the 201 Kirkland Ave. Property?
   b. Credit of bank fee will go to offset other mitigation fees including Park Fee?

ZONING WORKSHEET
PRE07-00086
SRM Development
Bank of America Site at 101 Kirkland Avenue

Date: September 18, 2007

Planner: Janice Soloff, Senior Planner, 425-587-3257, jsoloff@ci.kirkland.wa.us
Property Address: 101 Kirkland Avenue
Persons requesting meeting: Andy Loos with SRM Development, 206-352-7873
Neighborhood: Moss Bay Neighborhood.
Proposal: Demolish existing structure and construct 5 story mixed use retail and residential project.
Tax Assessor's Parcel Number: 082505-9011
Lot Size: 28,329 SF
Zone: CBD 1, See KZC Section 50.10 Use Zone Chart; General Regulation refers to the Downtown Plan for discretionary building height above 2 stories. See Section 50.62 and Downtown Plan for CBD 1 and Design District 1B for height and urban design policies. See Section 50.60 regarding parking requirements and potential LID 119 parking credit in CBD 1.
Sensitive Area Maps: N/A
Zoning Permit Processes: 1) Conceptual Design Conference before Design Review Board 2) Design Response Conference
State Environmental Policies Act (SEPA) review. Submit environmental checklist plus traffic impact analysis will be processed with Design Response Conference process. (See handout).
Concurrency Review Required: See application form in Public Works Dept. – submit at time of DRC
Permit Fees:

Issues/ Code Requirements:

1. **Number of required parking stalls-** Show compliance with code requirements KZC Section 50.60 for number of parking stalls (credit may be available for existing gross floor area and contribution of site into the LID 119 fund). May request a parking modification to reduce number of parking stalls per KZC Section 105.103 if criteria are met and substantiated by a parking study. Modifications have been approved for 1 parking stall per bedroom and shared commercial/retain uses. Restrictive covenants may be needed to manage stalls. Limit on 50% of compact vs standard stalls. Property paid $15,077.53 in LID 119 (a credit of 2.51 stalls may be applied to required number of parking stalls). Site is targeted for public parking. Explore options with City manager, City Council and Parking Advisory Committee.
2. **Vehicle access to site-** See Section 50.12.025 regarding drive through facilities permitted if existed prior to 1/1/2004 and design criteria. DRB will assess vehicular and pedestrian access to site.
3. **Building height-** above 2 stories is discretionary by Design Review Board; will need to show superior retail and superior architectural design in building bulk and mass above the 2 stories. We will need to clarify where point of measurement for building height will be located.
4. **Superior retail-** Describe how project meets superior retail principles along Kirkland Avenue and Lake Street. (Offices or parking garages are not allowed on the ground level) (see handout on what is superior retail).
5. **Street Trees-** Submit an arborist report evaluating the health of the existing trees along Kirkland Avenue and how the trees could be retained with redevelopment of the site such as using larger tree wells or other innovative sidewalk materials.
6. **Compliance with Design Guidelines-** See Design Guideline Checklist and Design Guidelines for Pedestrian Oriented Districts document for design guidelines related to the site. Kirkland Avenue and Lake Street are both pedestrian oriented streets. Emphasis will be on pedestrian relationship to

NOTE: *The information related by the City staff is a preliminary, qualified assessment which is based on the information provided by the applicant/contact person. More detailed technical review of a specific development permit application may disclose additional substantive or procedural requirements. Furthermore, in the case of a discretionary development permit, the role and authority of the City staff is advisory only. Final recommendation and decision on such permits can only be made, after public comment and/or public hearing, by the Planning Director (as to Short Plats and Zoning Code Process I Permits), the Hearing Examiner, or the Planning Commission and City Council, depending upon the type of permit.*

architectural design at the street level on both streets, corner building treatments and carrying the windows around the corner at Northwest, Southwest and Northeast corners of the buildings, building modulation and reducing bulk on upper stories, treatment of parking garage at street level. Staff recommends at the NW corner of building increasing the sidewalk area to create a pedestrian open space.

7. **Encourage building to be constructed per LEED green standards** per grant opportunities through King County.
8. **Comprehensive Plan Downtown Plan Policies** for building height, reducing building bulk and mass comments, emphasis on pedestrian connections:

Building Height. The subject property is in the core area in Design District #1. The following information describes some of the key concepts for this design district (see p. XV.D-9XV.D-11).
The maximum building height in Design District 1 is between two and five stories. The project is located in sub district 1B where a mix of two to four stories in height is appropriate.

Buildings are limited to two stories in height along Kirkland Avenue and Lake Street to maintain the human scale and pedestrian orientation of the area. The Design Review Board has discretionary authority to determine the appropriate height above the second story (between 3 and 5 stories). Under the direction provided in the Downtown Plan of the Comprehensive Plan, the 5th story may be considered by the Design Review Board for projects where:

- At least three of the upper stories are residential; and
- The total height is not more than one foot taller than the height that would result from an office project with three stories of office over ground floor retail (or 55 feet total); and
- Stories above the second story are setback significantly from the street; and the building form is stepped back at the third, fourth, and fifth stories to mitigate the additional building mass; and
- The project provides superior retail space at the street level; and
- Rooftop appurtenances and related screening should not exceed the total allowed height, and should be integrated into the height and design of any peaked roofs or parapets.

Kirkland Avenue and Lake Street are identified as pedestrian oriented streets and therefore, will need to design project to meet the pedestrian oriented guidelines. Building design at the street wall should contribute to a lively, attractive and safe pedestrian streetscape.

Planner provided copies of the following information:

- ☒ GIS map
- ☒ Zoning Code Section(s) 50.10, CBD 1; Parking Section 50.60; Building Height Section 50.62
- ☒ Ordinance 3996
- ☒ Zoning Permit Application Packets: Design Review Application
- ☒ Traffic Impact Analysis Guidelines, Concurrency Test Process and Road Impact fee schedule (see increase in fees as of February 2008)
- ☒ Comprehensive Plan Downtown Plan excerpts
- ☒ Handout on "*What Defines Superior Retail Space?*"

The Kirkland Zoning Code, Comprehensive Plan and Pedestrian Oriented Design Guidelines (on Planning Dept. page), and forms are now available on the internet. A link to these sites can be found at www.kirklandpermits.net under the go to section on the left hand side of the home page.

NOTE: Following is a copy of typical conditions that may be imposed on your application. Items may have been included that don't pertain or have been omitted from the list that will apply to the project. Only a complete and through review can determine exactly what conditions apply to a particular case.

PLANNING DEPARTMENT DEVELOPMENT STANDARDS LIST-*2007*

ZONING CODE STANDARDS

92.35 Prohibited Materials In Design Districts. If in a design district the following building materials are prohibited or limited in use: mirrored glass or reflective materials, corrugated fiberglass, chain link fencing, metal siding, concrete block, backlit awnings. Water spigots are required along building facades along sidewalks for cleaning and plant watering. Commercial buildings with more than one tenant shall install a cornerstone or plaque.

95.50.2. A Required Landscaping. All required landscaping shall be maintained throughout the life of the development. The applicant shall submit an agreement to the city to be recorded with King County which will perpetually maintain required landscaping. Prior to issuance of a certificate of occupancy, the proponent shall provide a final as-built landscape plan and an agreement to maintain and replace all landscaping that is required by the City.

95.45 Tree Installation Standards. All supplemental trees to be planted shall conform to the Kirkland Plant List. All installation standards shall conform to Kirkland Zoning Code Section 95.45.

100.25 Sign Permits. Separate sign permit(s) are required. In JBD and CBD cabinet signs are prohibited.

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, pedestrian connections to adjacent properties, between primary entrances of all uses on the subject property, through parking lots and parking garages to building entrances. In design districts through block pathways or other pedestrian improvements may be required. See also Plates 34 in Chapter 180.

105.32 Bicycle Parking. All uses, except single family dwelling units and duplex structures with 6 or more vehicle parking spaces must provide covered bicycle parking within 50 feet of an entrance to the building at a ratio of one bicycle space for each twelve motor vehicle parking spaces. Check with Planner to determine the number of bike racks required and location.

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 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 Overhead Weather Protection Standards. Overhead weather protection must be provided along any portion of the building adjacent to a pedestrian walkway or sidewalk; over the primary exterior entrance to all buildings. May be composed of awnings, marquees, canopies or building overhangs; must cover at least 5' of the width of the adjacent walkway; and must be at least 8 feet above the ground immediately below it. In design districts, translucent awnings may not be backlit; see section for the percent of property frontage or building facade.

105.19 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. If in a design district, see section and Plate 34 for through block pathways standards.

105.20 Required Parking. Parking spaces are required for this use.

105.58 Parking Lot Locations in Design Districts. See section for standards unique to each district.

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 Wheel stops. Parking areas must be constructed so that car wheels are kept at least 2' from pedestrian and landscape areas.

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.

105.96 Drive Through Facilities. See section for design criteria for approving drive through facilities.

110.52 Sidewalks and Public Improvements in Design Districts. See Plate 34 and public works approved plans

manual for sidewalk standards and decorative lighting design applicable to design districts.

110.60.5 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 Garbage and Recycling Placement and Screening. For uses other than detached dwelling units, duplexes, moorage facilities, parks, and construction sites, all garbage receptacles and dumpsters must be setback from property lines, located outside landscape buffers, and screened from view from the street, adjacent properties and pedestrian walkways or parks by a solid sight-obscuring enclosure.

115.47 Service Bay Locations. All uses, except single family dwellings and multifamily structures, must locate service bays away from pedestrian areas. If not feasible must screen from view.

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 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.

115.120 Rooftop Appurtenance Screening. New appurtenances on existing buildings shall be surrounded by a solid screening enclosure equal in height to the appurtenance. New construction shall screen rooftop appurtenances by incorporating them in to the roof form.

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.

95.35.2.b.(3)(b)i Tree Protection Techniques. A description and location of tree protection measures during construction for trees to be retained must be shown on demolition and grading plans.

95.35.6 Tree Protection. Prior to development activity or initiating tree removal on the site, vegetated areas and individual trees to be preserved shall be protected from potentially damaging activities. Protection measures for trees to be retained shall include (1) placing no construction material or equipment within the protected area of any tree to be retained; (2) providing a visible temporary protective chain link fence at least 4 feet in height around the protected area of retained trees or groups of trees until the Planning Official authorizes their removal; (3) installing visible signs spaced no further apart than 15 feet along the protective fence stating "Tree Protection Area, Entrance Prohibited" with the City code enforcement phone number; (4) prohibiting excavation or compaction of earth or other damaging activities within the barriers unless approved by the Planning Official and supervised by a qualified professional; and (5) ensuring that approved landscaping in a protected zone shall be done with light machinery or by hand.

27.06.030 Park Impact Fees. New residential units are required to pay park impact fees prior to issuance of a building permit. Please see KMC 27.06 for the current rate. Exemptions and/or credits may apply pursuant to KMC 27.06.050 and KMC 27.06.060. If a property contains an existing unit to be removed, a "credit" for that unit shall apply to the first building permit of the subdivision.

Estimated Permit Processing Fees:

Conceptual Design Conference $1,280.00 (minus $350.00 pre-submittal refund within 6 mos) =$930
Design Response Conference $14,346.86
Base Fee: $3,920.00
$180.00 per unit (66)=11,880/2= $5,940.00
Gross Floor Area (24,927) x .18=$4,486.86

SEPA $3,897.08
Base Fee: $260.00
$40.00 x 66= $2,640.00
24,927 gfa x .04=$997.08

Concurrency $210.00

TOTAL $19,383.94

Impact Fees after February 1, 2008 (vested with building permit):
Multi Family Park Impact Fees per unit: $2,368
Transportation Impact Fees: See rate chart depending on use.

CHAPTER 50 - CENTRAL BUSINESS DISTRICT (CBD) ZONES

50.05 User Guide. The charts in KZC 50.12 contain the basic zoning regulations that apply in the CBD 1 zones of the City. Use these charts by reading down the left hand column entitled Use. Once you locate the use in which you are interested, read across to find the regulations that apply to that use.

Section 50.10

Zone CBD-1

Section 50.10 – GENERAL REGULATIONS

The following regulations apply to all uses in this zone unless otherwise noted:

1. Refer to Chapter 1 KZC to determine what other provisions of this code may apply to the subject property.
2. Height measured at the midpoint of the frontage of the subject property on the abutting right-of-way, excluding First Avenue South. Buildings exceeding two stories must demonstrate compliance with the design regulations of Chapter 92 KZC and all provisions contained in the Downtown Plan. The City will determine compliance with these requirements through Design Review (D.R.).

Zone CBD-1

USE ZONE CHART

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS

Section 50.12	USE ⇩ / REGULATIONS ⇨	Required Review Process	MINIMUMS: Lot Size	MINIMUMS: REQUIRED YARDS (See Ch. 115) Front	Side	Rear	MAXIMUMS: Lot Coverage	Height of Structure	Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)
.010	Restaurant or Tavern	D.R., Chapter 142 KZC	None	0′	0′	0′	100%	2 to 4 stories above each abutting right-of-way.	D	E	One per each 125 sq. ft. of gross floor area. See KZC 50.60.	
.020	Any Retail Establishment, other than those specifically listed, limited or prohibited in this Zone, selling goods or providing services, excluding banking and related financial services										One per each 350 sq. ft. of gross floor area. See KZC 50.60.	1. The following uses are not permitted in this zone: a. Vehicle service stations. b. The sale, service and/or rental of motor vehicles, sailboats, motor boats, and recreational trailers; provided, that motorcycle sales, service, or rental is permitted if conducted indoors. c. Drive-in facilities and drive-through facilities. 2. Ancillary assembly and manufacture of goods on the premises of this use are permitted only if: a. The assembled manufactured goods are directly related to and dependent upon this use, and are available for purchase and removal from the premises. b. The outward appearance and impacts of this use with ancillary assembly or manufacturing activities must be no different from other retail uses.

(Revised 4/07)

Section 50.12 Zone CBD-1 USE ZONE CHART

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS

Section 50.12	USE ⇩ / REGULATIONS ⇨	Required Review Process	MINIMUMS: Lot Size	MINIMUMS: REQUIRED YARDS (See Ch. 115): Front	Side	Rear	MAXIMUMS: Lot Coverage	Height of Structure	Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)
.025	Banking and Related Financial Services	D.R., Chapter 142 KZC	None	0′	0′	0′	100%	2 to 4 stories above each abutting right-of-way.	D	E	One per each 350 sq. ft. of gross floor area. See KZC 50.60.	1. Drive-through facilities are permitted as an accessory use if: a. The drive-through facility existed prior to January 1, 2004, OR the drive-through facility will replace a drive-through facility which existed on January 1, 2004, and which drive-through facility: 1) Was demolished to allow redevelopment of the site on which the primary use was located; and 2) Will serve the same business served by the replaced facility, even if that business moves to a new location; and 3) Does not result in a net increase in the number of drive-through lanes serving the primary use; and b. The Public Works Department determines that vehicle stacking will not impede pedestrian or vehicular movement within the right-of-way, and that the facility will not impede vehicle or pedestrian visibility as vehicles enter the sidewalk zone; and c. The vehicular access lanes will not be located between the street and the buildings and the configuration of the facility and lanes is generally perpendicular to the street; and d. Any replacement drive-through facility is reviewed and approved pursuant to Chapter 142 KZC for compliance with the following criteria: 1) The design of the vehicular access for any new drive-through facility is compatible with pedestrian walkways and parking access. 2) Disruption of pedestrian travel and continuity of pedestrian-oriented retail is limited by minimizing the width of the facility and associated curb-cuts.

(Revised 12/04)

Section 50.12 Zone CBD-1 USE ZONE CHART

DIRECTIONS: FIRST, read down to find use...THEN, across for REGULATIONS

Section 50.12	USE ⇩ / REGULATIONS ⇨	Required Review Process	MINIMUMS: Lot Size	MINIMUMS: REQUIRED YARDS (See Ch. 115) Front	Side	Rear	MAXIMUMS: Lot Coverage	Height of Structure	Landscape Category (See Ch. 95)	Sign Category (See Ch. 100)	Required Parking Spaces (See Ch. 105)	Special Regulations (See also General Regulations)
.060	Private Club or Lodge	D.R., Chapter 142 KZC.	None	0′	0′	0′	100%	2 to 4 stories above each abutting right-of-way.	D	B	See KZC 50.60 and 105.25.	1. This use may be located on the street level floor of a building only if there is a retail space extending a minimum of 30 feet of the building depth between this use and the abutting right-of-way. The Planning Director may approve a reduction to the depth requirement for the retail space if the applicant demonstrates that the proposed configuration of the retail use provides an adequate dimension for a viable retail tenant and provides equivalent or superior visual interest and potential foot traffic as would compliance with the required dimension. 2. Ancillary assembly and manufacture of goods on premises may be permitted as part of an office use if: a. The ancillary assembled or manufactured goods are subordinate to and dependent on this office use; and b. The outward appearance and impacts of this office use with ancillary assembly and manufacturing activities must be no different from other office uses. 3. The following regulations apply to veterinary offices only: a. May only treat small animals on the subject property. b. Outside runs and other outside facilities for the animals are not permitted. c. Site must be designed so that noise from this use will not be audible off the subject property. A certification to this effect signed by an Acoustical Engineer, must be submitted with the D.R. and building permit applications. d. A veterinary office is not permitted if the subject property contains dwelling units.
.070	Office Use									D	One per each 350 sq. ft. of gross floor area. See KZC 50.60.	
.080	Stacked or Attached Dwelling Units							2 to 5 stories above each abutting right-of-way.		A	1.7 per unit. See KZC 50.60.	
.090	School, Day-Care Center or Mini School or Day-Care Center							2 to 4 stories above each abutting right-of-way.		B	See KZC 50.60 and 105.25.	1. A six-foot-high fence is required along all property lines adjacent to outside play areas. 2. Structured play areas must be setback from all property lines by at least five feet. 3. Hours of operation may be limited by the City to reduce impacts on nearby residential uses. 4. An on-site passenger loading area may be required depending on the number of attendees and the extent of the abutting right-of-way improvements. 5. These uses are subject to the requirements established by the Department of Social and Health Services (WAC Title 388).

(Revised 4/07)

50.60 Special Parking Provisions in the CBD 1, 2, and 8 Zones

1. General

The provisions of this section govern parking for uses in the CBD 1, 2, and 8 Zones. To the extent that these provisions conflict with the provisions of Chapter 105 KZC, the provisions of this section prevail. Where no conflict exists, the provisions of Chapter 105 KZC apply to parking for uses in the CBD 1, 2, and 8 Zones.

X 2. Number of Spaces

To the extent that subsections (3) and (4) of this section require that uses in the CBD 1, 2, and 8 Zones provide parking, the following establishes the number of spaces required:

a. Residential uses must provide 1.7 parking spaces for each dwelling unit and one parking space for each assisted living unit.

b. Restaurants and taverns must provide one parking space for each 125 square feet of gross floor area, except as provided in subsection (3)(a) of this section.

c. All other uses must provide one parking space for each 350 square feet of gross floor area.

3. Certain Floor Area Exempt from Parking Requirements

The following paragraphs establish several situations under which properties within the CBD 1, 2, and 8 Zones are exempt in whole or in part from providing parking spaces:

a. Regardless of use, the owner need not increase the number of parking spaces for any floor area that existed prior to May 12, 2002; provided, that the owner may not decrease the number of parking stalls on the subject property below the number of stalls that was required by any previous development permit, unless the owner complies with the provisions of subsection (4) of this section.

b. The parking obligation of the subject property is reduced as follows:

paid $15,077.53 to LID 119 ÷ $6,000 = X 2.00 stalls (51)

1) If new floor area was created or existing floor area converted to a more parking intensive use between September 20, 1976, and October 4, 1982, the number of stalls required for the subject property is reduced by the amount of the subject property's assessment under LID #119 divided by $2,300.

2) If new floor area is created or existing floor area is converted to a more parking intensive use after October 4, 1982, the number of stalls required for the subject property is reduced by the amount of the subject property's assessment under LID #119 divided by $6,000.

3) If the subject property was vacant as of September 18, 1978, the number of parking stalls required for the subject property is reduced by one for each 350 square feet of gross floor area created on the ground floor of the subject property.

c. Any property that paid into the special parking fund specified in subsection (4)(b) of this section shall be credited toward any parking obligations incurred in the future in the amount of one stall for each stall originally paid into the fund.

4. Options for Meeting Parking Obligations

The applicant may meet his/her parking obligation, computed using subsection (2) of this section, by providing the required number of parking stalls in the building or on the building site containing the primary use conducted on the subject property. The applicant may propose to meet all or a portion of the parking obligation by paying a fee-in-lieu of parking for each required parking stall or fraction of a stall into a special fund that will be used to provide and upgrade municipal off-street parking within the CBD, Planned Areas 6 or 7 Zones, or park/public use zones located adjacent to the CBD. The per-stall fee shall be $20,000 in 2006 dollars and shall be adjusted annually in November of each subsequent year based on the "Engineering News Record" Construction Cost Index 20-City average (ENR CCI) for November. The actual fee-in-lieu amount shall be established at the time of payment.

The City may consider the applicant's proposal and shall base its decision whether to grant approval on whether the City has current plans or programs in place to provide or upgrade municipal off-street parking within the CBD, Planned Area 6 or 7 Zones, or park-public use zones located adjacent to the CBD. Plans and programs shall include capital improvement program projects for future off-street parking. The City's decision will be made by the Planning Director as part of the permit process for the applicant's project. The Director may approve the request, reject the request, or approve a lesser number of in-lieu parking stalls than requested.

50.62 Building Height Provisions in the CBD

1. In cases where the height of structures is specified in number of stories, the following heights per story are allowed:

   a. Ground floor retail; ground floor restaurant and tavern; ground floor entertainment/cultural and/or recreational facility shall be a minimum of 13 feet in height and a maximum of 15 feet in height.

   b. Office; private club or lodge; church; school, day-care center; public utility, government facility, or community facility; public park; ground floor of hotel or motel; retail above the ground floor shall be a maximum of 13 feet.

   c. Residential; hotel or motel above the ground floor shall be a maximum of 10 feet.

2. To determine the allowed height of structure, determine the number of stories allowed in the use zone charts and apply the allowed height per story specified in subsection (1) of this section. For example, if three stories are allowed and the proposed use is ground floor retail with two stories of residential above, the allowed height would be 35 feet.

   Buildings which are not constructed with the maximum allowable number of stories may increase the height of the stories actually constructed by an amount that does not result in a height greater than that which would have resulted from a building constructed with the maximum allowable number of stories. For the purpose of this height calculation, it shall be assumed that each unconstructed story would have been used for residential purposes if constructed, and therefore allows an additional 10 feet of height that can be added to the building.

For example, if three stories are allowed, but only two stories are constructed, an additional 10 feet may be added to the building height.

3. Height shall be measured above the point of measurement (e.g, above average building elevation, or above right-of-way) as specified in the particular use zone charts. For purposes of measuring building height above the abutting right(s)-of-way, alleys shall be excluded.

4. In addition to the height exceptions established by KZC 115.60, the following exceptions to height regulations in CBD zones are established:

   a. Decorative parapets may exceed the height limit by a maximum of four feet; provided, that the average height of the parapet around the perimeter of the structure shall not exceed two feet.

   b. For structures with a peaked roof, the peak may extend eight feet above the height limit if the slope of the roof is equal or greater than four feet vertical to 12 feet horizontal.

improvements, such as physical barriers to restrict traffic flow in these areas, may be considered. The architectural massing of projects in this area should be modulated both horizontally and vertically to reduce their visual bulk and to reflect the topography which presently exists.

C. URBAN DESIGN

The urban design of Downtown Kirkland consists of many disparate elements which, together, define its identity and "sense of place." This document provides policy guidelines for the design of private development and a master plan for the development of the public framework of streets, pedestrian pathways, public facilities, parks, public buildings, and other public improvements (see Figure C-4).

The following discussion is organized into three sections:

A. Downtown Design Guidelines and Design Review;

B. Building Height and Design Districts; and

C. The Image of the City: Urban Design Assets.

DOWNTOWN DESIGN GUIDELINES AND DESIGN REVIEW

Mechanics of Design Review are described.

The booklet entitled "Design Guidelines," which is adopted in Chapter 3.30 of the Kirkland Municipal Code, contains policy guidelines and concepts for private development in Downtown Kirkland. The booklet includes an explanation of the mechanics of the Design Review process to be used for all new development and major renovations in the Downtown area. Discretion to deny or condition a design proposal is based on specific Design Guidelines adopted by the City Council and administered by the Design Review Board and Planning Department. Design Review enables the City to apply the Guidelines in a consistent, predictable, and effective manner.

The Guidelines are intended to balance the desired diversity of project architecture with the equally desired overall coherence of the Downtown's visual and historic character. This is to be achieved by injecting into each project's creative design process a recognition and respect of design principles and methods which incorporate new development into Downtown's overall pattern. The Guidelines would be applied to any specific site in conjunction with the policy guidance provided by the Downtown Master Plan and the following text regarding Design Districts.

The Design Review Process enables the City to require new development to implement the policy guidance contained in the Guidelines, the Master Plan for Downtown, and to protect and enhance the area's urban design assets. A more complete description of how Design Review should operate is found in the Zoning Code.

BUILDING HEIGHT AND DESIGN DISTRICTS

Figure C-5 identifies eight height and design districts within Downtown Kirkland. The boundaries of these districts are determined primarily by the topographical characteristics of the land and the area's proximity to other noncommercial uses.

Design District 1

Maximum building height in Design District 1 is between two and five stories, depending on location and use.

This district is bordered by Lake Street, Central Way, 3rd Street, and generally 1st Avenue South. When combined with District 2, this area corresponds to the core area as shown in Figure C-3.

The maximum building height in this area should be between two and five stories with no minimum setback from property lines. Stories above the second story should be set back from the street. To preserve the existing human scale of this area, development over two stories requires review and approval by the Design Review Board based on the priorities set forth in this plan.

Buildings should be limited to two stories along all of Lake Street South to reflect the scale of development in Design District 2. Along Park Lane west of Main Street, Third Street, and along Kirkland Avenue, a maximum height of two stories along street frontages will protect the existing human scale and pedestrian orientation. Buildings up to three stories in height may be appropriate along Central Way to reflect the scale of development in Design District 8 and as an intermediate height where adequately set back from the street. A continuous three-story street wall should be avoided by incorporating vertical and horizontal modulations into the design of buildings.

The portions of Design District 1 designated as 1A in Figure C-5 should be limited to a maximum height of three stories. As an incentive to encourage residential use of upper floors and to strengthen the retail fabric of the Core Area, a fourth story of height may be allowed. This additional story may be considered by the Design Review Board for projects where at least two of the upper stories are residential, the total height is not more than four feet taller than the height that would result from an office project with two stories of office over ground floor retail, stories above the second story are set back significantly from the street and the building form is stepped back at the third and fourth stories to mitigate the additional building mass, and the project provides superior retail space at the street level. Rooftop appurtenances and related screening should not exceed the total allowed height, and should be integrated into the height and design of any peaked roofs or parapets.

The portions of Design District 1 designated as 1B in Figure C-5 provide the best opportunities for new development that could contribute to the pedestrian fabric of the Downtown. Much of the existing development in these areas consists of older auto-oriented uses defined by surface parking lots and poor pedestrian orientation. To provide incentive for redevelopment and because these larger sites have more flexibility to accommodate additional height, a mix of two to four stories in height is appropriate. East of Main Street, development should combine modulations in building heights with modulations of facade widths to break large buildings into the appearance of multiple smaller buildings. South of Kirkland Avenue, building forms should step up from the north and west with the tallest portions at the base of the hillside to help moderate the mass of large buildings on top of the bluff. Buildings over two stories in height should generally reduce the building mass above the second story.

As with Design District 1A, an additional story of height may be appropriate in 1B to encourage residential use of the upper floors and to strengthen the retail fabric in the Core Area. This additional story may be considered by the Design Review Board for projects where at least three of the upper stories are residential, the total height is not more than one foot taller than the height that would result from an office project with three stories of office over ground floor retail, stories above the second story are set back significantly from the street and the building form is stepped back at the at the third, fourth, and fifth stories to mitigate the additional building mass, and the project provides superior retail space at the street level. Rooftop appurtenances and related screening should not exceed the total allowed height, and should be integrated into the height and design of any peaked roofs or parapets.

Design considerations of particular importance in this area are those related to pedestrian scale and orientation. Building design at the street wall should contribute to a lively, attractive, and safe pedestrian streetscape. This should be achieved by the judicious placement of windows, multiple entrances, canopies, awnings, courtyards, arcades, and other pedestrian amenities. Service areas, surface parking, and blank facades should be located away from the street frontage.

abuts Peter Kirk Park is a good model for visual markers along the east-west pedestrian spine.

VEHICULAR

Automobiles and public transit are the modes of transportation which move people in and out of the Downtown, and often between the core area and the frame. Within the Downtown, pedestrian circulation should be given equal priority with vehicular circulation. A primary circulation goal should be to emphasize pedestrian circulation within the Downtown, while facilitating vehicle access into and out of the Downtown.

Alternate traffic routes should be considered.

Lake Street should be designated to function as a major pedestrian pathway. The objectives for land use and pedestrian circulation should be seriously considered during any plans for traffic and roadway improvements on Lake Washington Boulevard. The goal to discourage commuter traffic on the boulevard should not be viewed independently from the need to retain vehicle access for tourists, shoppers, and employees to the Downtown.

State Street should continue to serve as a major vehicular route, bringing shoppers and workers into the Downtown area. Sixth Street should be developed to accommodate additional vehicles. Future plans for Lake Street and Lake Washington Boulevard may include the diversion of cars from the Downtown area, and 6th Street would provide the most appropriate north/south alternative route. The existence of commercial development on this street renders it more appropriate than State Street to handle substantial commuter traffic.

The use of public transportation to the Downtown should be encouraged.

Third Street has been designed for the pedestrian and public transit user, with the METRO transit center located on this street. The use of public transportation as an alternative for people who work or shop in the Downtown should be encouraged. Increased use of this mode of transportation would help to reduce traffic congestion and parking problems in the core area.

The number of vehicular curb cuts in the Downtown area should be limited. Both traffic flow in the streets and pedestrian flow on the sidewalks are disrupted where driveways occur. In the core frame in particular, the placement of driveways should not encourage vehicles moving to and from commercial areas to travel through residential districts.

PARKING

The core area is a pedestrian-oriented district, and the maintenance and enhancement of this quality should be a high priority. Nevertheless, it should be recognized that pedestrians most often arrive in the core via an automobile which must be parked within easy walking distance of shops and services. To this end, as discussed elsewhere in this chapter, private projects which include a substantial amount of surplus parking stalls in their projects should be encouraged to locate these parking stalls in the core frame.

The Downtown area contains a variety of parking opportunities. Four public parking lots exist in the Downtown area: at the west side of Peter Kirk Park, the street-end of Market Street at Marina Park, in Lakeshore Plaza, and at the intersection of Central Way and Lake Street. These lots are shown on the Downtown Master Plan (Figure C-4).

Public parking to be a permitted use on private properties north and south of the core area.

Other sites that would be appropriate for public parking include the north and south slope of the Downtown as shown in Figure C-4. Public parking in these areas would help to serve core-area businesses, while not detracting from the dense pattern of development critical to the pedestrian environment there.

More intensive development of existing parking areas should be considered as a way to provide more close-in public parking. Certain sites, such as the Market Street-End lot and the Peter Kirk lot would adapt well to structured parking due to the topography in the immediate vicinity of these lots. Structuring parking below Lakeshore Plaza could make more efficient use of the available space and result in a dramatic increase in the number of stalls available.

The fee-in-lieu of parking alternative allows developers in the core area to contribute to a fund instead of providing required parking on site. The City's authority to spend the monies in this fund should be expanded to include the use of the funds on private property in conjunction with parking facilities being provided by private developers.

Another option for off-site parking should be considered which would allow developers to provide the parking required for their projects elsewhere in the core area or core frame. This alternative should include the construction of parking stalls in conjunction with another developer, if it can be shown that the alternative parking location will be clearly available to the public and is easily accessible to the core area.

The City's parking management and enforcement program should be maintained. The program should be evaluated periodically to assess its effectiveness, with revisions made when necessary.

A. LIVING ENVIRONMENT

The Central Neighborhood contains a wide variety of housing types, including many single-family residences and multifamily units. It is the intent of the Comprehensive Plan to provide a range of housing opportunities, and a continued broad range is planned for the Central Neighborhood (Figure C-1).

Considerations for low-density residential development are discussed.

The various residential densities designated for land in the Central Neighborhood, and particularly for the areas lying south of Kirkland Avenue, will be compatible if certain concerns are addressed. For example, a low-density designation is appropriate in any area developed predominantly in single-family homes, if the likelihood exists that these structures will be maintained for the lifetime of this Plan. Similarly, an area should remain committed to low-density uses if a higher-density development in the area could not be adequately buffered from single-family houses.

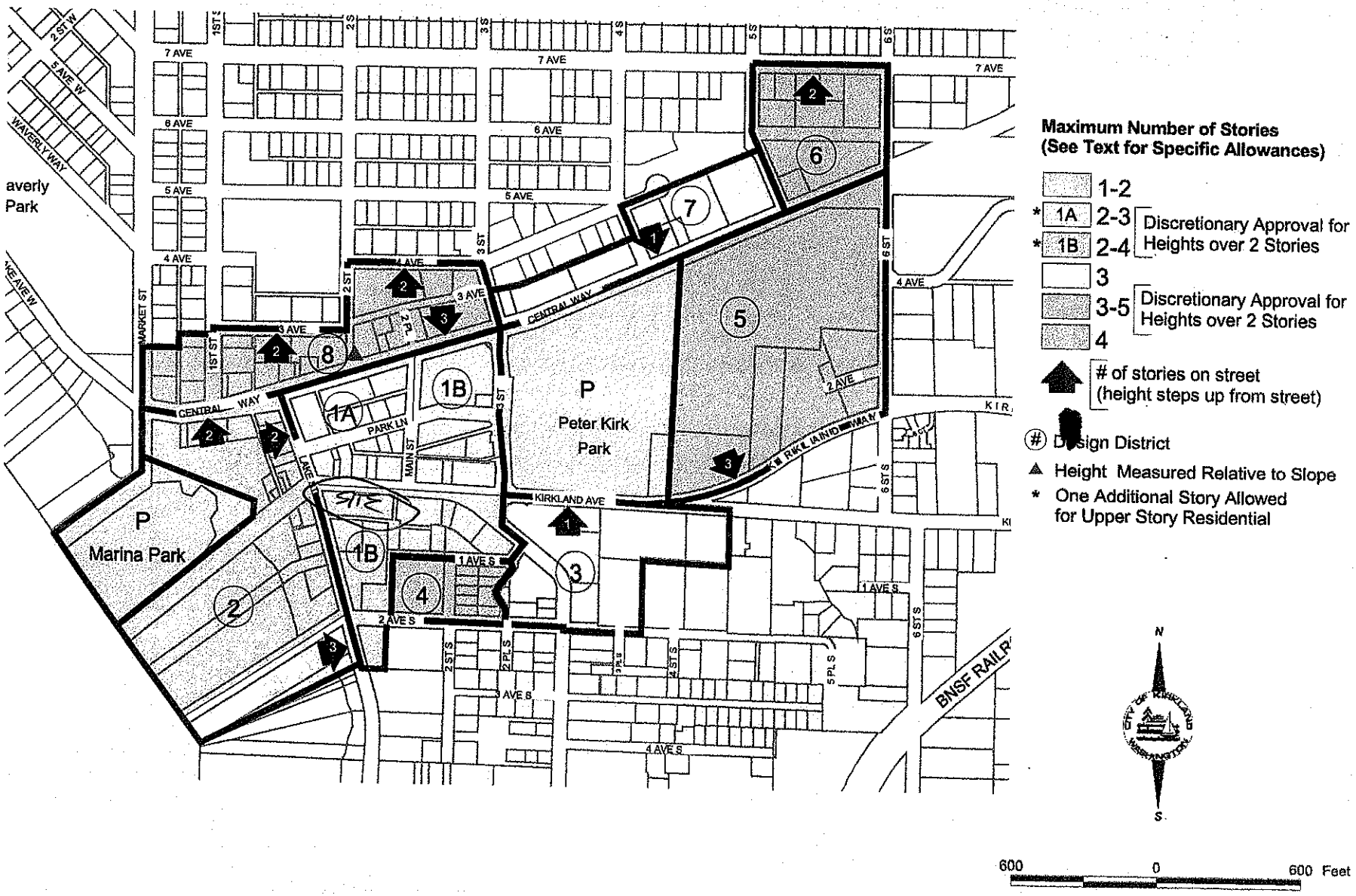
Considerations for medium- and high-density residential development are discussed.

A medium-density designation is appropriate for areas where sufficient land area is available to separate such development from adjacent single-family uses. In addition, medium-density residential development should not be allowed where it would significantly increase traffic volumes on streets where single-family housing is the predominant land use. Other considerations include the overall compatibility of medium-density development with adjacent single-family uses, with respect to height, setbacks, landscaping, and parking areas. If special precautions are taken to reduce adverse impacts on existing single-family homes, higher densities may be allowed. Within the Central Neighborhood, land surrounding the Downtown is generally most appropriate for these higher-density developments.

Medium-density residential development permitted in block between Kirkland Avenue and Kirkland Way, along 6th Street South, as well as south and west of Planned Area 6.

The block of land lying east of 6th Street, between Kirkland Way and Kirkland Avenue, is largely developed in a mix of single-family and multifamily uses. Medium-density residential development at a

Figure C-5: Downtown Height and Design Districts



What Defines Superior Retail Space?

Issue: Within Design Districts 1A and 1B, the Downtown Plan provides that "as an incentive to encourage residential use of upper floors and to strengthen the retail fabric of the Core Area", an additional story of height may be allowed. Among the criteria for the DRB to consider is that the project provides "superior retail space at the street level".

A. What is the basic retail expectation (without height bonus):

What is the "basic" zoning expectation for retail:

- Code Standards:
  - Minimum 30' depth required if intervening between street and office or housing use (Use Zone Charts)
  - Minimum 13' height (Building Height Provisions)
- Pedestrian Orientation (Design Regulations):
  - Minimum 10' sidewalk width
  - Minimum 75% glazing required between 2' and 7' height (or artwork or landscape treatments).
  - Minimum 80% pedestrian weather protection of property frontage
    - Minimum 5' width
    - Should compliment architecture of building
    - Steel, glass, fabric and other materials of a more permanent nature are encouraged

Applicable Comprehensive Plan design considerations:

- Building design at the street wall should contribute to a lively, attractive, and safe pedestrian experience
  - Judicious placement of windows, multiple entrances, canopies, awnings, courtyards, arcades, and other pedestrian amenities.
  - Service areas, surface parking, blank facades located away from street frontage

B. What is the expectation for "superior" retail space:

- Physical features:
  - Size – Is it larger/deeper/higher than the norm?
  - Quality – Are the materials and details superior to the norm?
  - Streetscape – Are the public improvements superior to the norm (sidewalks, street trees, street furniture, public art, etc.)
- How does the retail fit into/contributes to downtown?
  - Does it support other retail by virtue of its tenants, pedestrian connections/linkages,, etc.
  - Is it space that attracts desired tenant types (local serving retail, anchor tenant space, etc.)

DESIGN GUIDELINE CHECKLIST

9/18/07
JS, PCD

The role of the DRB at the Conceptual Design Conference is to help determine how policies, design regulations, and design guidelines found in the Comprehensive Plan, Pedestrian-Oriented Design Guidelines, and Zoning Code apply to the proposed development. The following checklist is a scaled down version of the Pedestrian-Oriented Design Guidelines. This checklist is to be used as a tool to help identify how design guidelines would apply to the proposed project. The design regulations found in the Zoning Code goes into greater depth regarding the guidelines below and may be used as a reference.

DESIGN GUIDELINE CHECKLIST

The City of Kirkland Design Guidelines for Pedestrian-Oriented Business Districts are summarized below. *See adopted Design Guidelines for Pedestrian-Oriented Business Districts for complete text and explanations and the Design Regulations of the Kirkland Zoning Code for further detail.*

Pedestrian-Oriented Elements ALL APPLY KIRKLAND AVE & LAKE STREET ARE "PEDESTRIAN ORIENTED STREETS"

- ☐ Sidewalk Width - Movement Zone. Sidewalk width supports variety and concentration of activity yet avoids overcrowding and congestion. • Min 10' wide sidewalks on both streets • Explore use of unique or innovative sidewalk materials especially near existing trees.
- ☐ Sidewalk Width – Curb Zone. New buildings set back to allow enough room for pedestrian movement. Wider setbacks to accommodate other sidewalk uses. Lighting and special paving of the storefront activity zone.
- ☐ Pedestrian Coverings. Awnings/canopies on facades facing pedestrian-oriented sidewalks.
- ☐ "Pedestrian-Friendly" Building Fronts. All building fronts should have pedestrian-friendly features (e.g. – display windows, seating, public entries...). • Intervening business along parking garage on Kirk Ave • Continue windows around SW, NW, NE corners • Superior architectural elements
- ☐ Upper-Story Activities Overlooking the Street. Buildings on pedestrian-oriented streets have upper-story activities overlooking street, as well as balconies and roof decks. Upper-story commercial activities encouraged.
- ☐ Lighting from Buildings. Building entries well lit. Building facades provide lighting to walkways. Light fixture variety from one building facade to the next.
- ☐ Pedestrian-Oriented Plazas. Pedestrian-oriented plazas located in sunny areas along well-traveled pedestrian route. Plazas provide plenty of sitting areas and amenities Enlarge open space at NW corner because of major intersection
- ☐ Pedestrian Connections. Commercial developments have well defined, safe pedestrian walkways. • Add entrance at SW corner of building?
- ☐ Blank Walls. Blank walls avoided. Where unavoidable, blank walls treated with landscaping, art, or other architectural treatments. • Clarify what is planned at east end along garage level on Kirkland Ave.
- ☐ Public Improvements and Site Features
- ☐ Pathway Width. Major pedestrian pathways at least 8' wide. Other pathways with less activity can be 6' wide.
- ☐ Street Trees. Submit an Arborist Report evaluating the health of the existing trees along Kirkland Avenue and how trees can be retained with redevelopment such as use of permeable sidewalks, larger tree wells.

NOTES:

E-Page 29

Public Improvements and Site Features.

N/A ☐ Entry Gateway Features. Locations noted in Comprehensive Plan, emphasis on framing view into district.

☐ Public Art. opportunity at NW corner? Fountain or bench?

NOTES:

Parking Lot Location and Design

N/A ☐ Parking Locations and Entrances. Minimize number of driveways, combine parking lot entrances and coordinate parking areas. Restrict parking in front yards - extensive screening where there is front yard parking.

N/A ☐ Circulation Within Parking Lots. Parking lot design be clear and well organized with space for pedestrians to walk safely.

N/A ☐ Parking Lot Landscaping. Landscaping to reduce visual impact of parking.

☐ Parking Garages. In pedestrian areas, ground-level retail uses or appropriate pedestrian spaces. Extensive landscaping near residential areas and high visibility locations. On hillsides and near residential areas, step backs or terracing to reduce scale.

NOTES: - Drive through location & circulation will be discusse with Public Works Dept and the Design Review Board
- Consider pedestrian pathways from entrances, sidewalk to parking garage entrance
- will discuss area with Police Dept for nighttime sec

All **Scale**

☐ Fenestration Patterns. Varied window treatments. Ground floor uses have large windows that showcase storefront displays. Architectural detailing emphasized. Add in NW, SW, NE corners

☐ Architectural Elements - Decks, Bay Windows, Arcades, Porches. Elements such as arcades, balconies, bay windows, roof decks, trellises, landscaping, awnings, cornices, friezes, art concepts, and courtyards encouraged. Discuss w/ DRB

☐ Building Modulation - Vertical. Vertical building modulation to make large buildings appear to be an aggregation of smaller buildings. Discuss w/ DRB

☐ Building Modulation - Horizontal. Horizontal building modulation to reduce the perceived mass and provide continuity at ground level of large building complexes. Discuss w/ DRB

NOTES:

- Provide photographs of elevations of existing buildings along Lake Street to show how building will fit into context of other structures as far as roofline, scale, building materials.

- Superior Retail

Building Material, Color, and Detail ALL

- ☐ Ornament and Applied Art. Ornament and applied art integrated and not haphazardly applied. Highlight building features such as doors, windows, eaves, and building materials.
- ☐ Color. Color schemes should adhere to the guidelines.
- ☐ Street Corners. Architecturally enhance building corners.
- ☐ Signs. Neon signs, sculptural signs, signs incorporating artwork, blade signs, traditional signs and signs integrated with building's architecture.

NOTES:

Natural Features

N/A

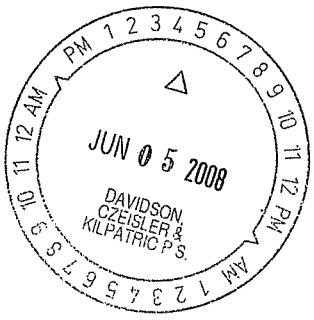
- ☐ Visual Quality of Landscapes. Special consideration of purpose and context of proposed landscaping. The pedestrian/auto landscape requires strong plantings of a structural nature to act as buffers or screens.
- ☐ Pedestrian landscape emphasizes subtle characteristics of the plant materials. Building landscape complements building's favorable qualities and screens its faults.
- ☐ Protection and Enhancement of Wooded Slopes. Vegetation on slopes preserved and maintained. Developments on slopes retains about 30 percent of the site in wooded open space and significant trees. Sensitive to upland uses and enhance hillsides to maintain existing views - deciduous trees restricted to small varieties; evergreens thinned or limbed-up to allow for views. Back sides of commercial lots at the base of hillsides planted to screen upland properties from unsightly views of rooftops.
- ☐ Height Measurement on Hillsides. Top of building roughly follows slope of existing terrain.
- ☐ Views of Water. Existing views should be maintained by widening setbacks as development approaches water, and stepping down hillsides. Buildings and rooftop appurtenances placed perpendicular to the water.

NOTES:

In addition to determining which regulations and policies apply to the proposed development, the DRB may request for additional application materials at the Conceptual Design Conference. If you have any questions or requests for additional information, please email me at jsoloff@ci.kirkland.wa.us or call me at 425-587-3257.

Janice Soloff, AICP
Senior Planner
City of Kirkland
Department of Planning and Community Development

FOSTER PEPPER PLLC



Direct Phone
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(206) 749-2043

E-Mail
parkt@foster.com

June 5, 2008

Mr. Ken Davidson
Davidson, Czeisler & Kilpatric, P.S.
520 Kirkland Way, Suite 400
Kirkland, WA 98083-0817

Re: Parkplace Project located in Kirkland, Washington

Dear Mr. Davidson:

We represent Touchstone KPP Development LLC ("Touchstone"), the owner of the Parkplace project located in Kirkland, Washington. We understand that you [either on your own behalf or in connection with the organization Citizens for Responsible Development ("CRD")] have taken out certain paid advertisements in the *Kirkland Courier Reporter* in opposition to the Parkplace rezone application. In addition, we have reviewed the information about the Parkplace project that has been posted on the CRD website. In response to the information that you and CRD have promulgated about the Parkplace project, Touchstone has asked us to contact you to correct certain factual inaccuracies set forth in those advertisements and on the Citizens for Responsible Development website.

With respect to the advertisements that have been published in the *Kirkland Courier Reporter*, the statements concerning (i) the elimination of setbacks, (ii) the amount of parking required for the Parkplace project, and (iii) the costs of traffic improvements resulting from the proposed Parkplace project are considered by Touchstone to be the most inaccurate. Further, the "CAD rendering of the proposed Parkplace [project] as seen from Peter Kirk Park" and "as seen from the downtown library parking area" that are shown in the advertisements are grossly misleading. In order to facilitate getting out to you, CRD, and the public an accurate depiction of the project, we are providing you with a color copy of an overhead view of the currently proposed Parkplace project from above the area of Peter Kirk Park. We request that you remove the inaccurate CAD renderings from the CRD website and from any future information produced by you or CRD.

The current Parkplace application only proposes to eliminate setbacks along a portion of Central Way. Touchstone is not proposing to eliminate setbacks along Sixth Street and Peter Kirk Park. In fact, the current proposal for Parkplace includes a road along the boundary of Peter Kirk Park and a substantial setback of the buildings on that side of the property.

With respect to the amount of parking proposed for the Parkplace project, it is true that the application includes a request to modify the minimum parking requirements pursuant to Kirkland Zoning Code Section 105.103.3.c. However, the provisions of that section of the Kirkland Zoning Code permit such a reduction to the minimum parking requirements "if the number of spaces proposed is documented by an adequate and thorough parking demand and utilization study to be sufficient to fully serve the use." Here, the Parking Demand and Supply Technical Memorandum dated February 11, 2008 prepared by Heffron Transportation, Inc. shows that the peak daily parking demand for the redeveloped Parkplace project will be 3,500, and the current Parkplace proposal includes 3,500 parking spaces to support such demand.

With respect to the costs for traffic improvements, the traffic studies do not show that the Parkplace project will cause a need for $13,000,000 in traffic improvements. At most, the traffic studies show that there will be $6,294,400 of traffic improvements needed as a result of the Parkplace proposal. All other traffic improvement costs that are shown in the Draft Environmental Impact Statement are needed even if there were no proposed action on the Parkplace project.

For purposes of concision, we are limiting our comments in this letter to what Touchstone believes to be the most misleading aspects of the advertisements that have been published in the *Kirkland Courier Reporter*. The fact that other statements contained in the advertisements or on the CRD website are not discussed in this letter should not be construed by you to be a concession that such other information is accurate. Rather, we request that you carefully vet the other information promulgated by you or CRD to ensure its accuracy.

Touchstone hopes that the redevelopment of Parkplace will ultimately be a great success for not only itself, but also for the City of Kirkland and its citizens. In that regard, Touchstone supports the involvement of the public, including yourself and CRD, in the Parkplace rezone application and related land use entitlement processes. It is important that each perspective is given due consideration, and, as I expect you are aware from your law practice and past experiences, projects evolve throughout such processes as a result of the various input that is given. However, for such processes to function properly, it is critically important that the officials and citizens in Kirkland are provided with accurate information.

Accordingly, we respectfully request that you correct the inaccurate information that has been promulgated by you and CRD. We sincerely hope that it will not be necessary for the parties involved in this matter to invest time and resources in disputes over false and misleading information.

Sincerely,

Thomas J. Parkes

Enclosure

Cc: Jim O'Hanlon, Touchstone Corp. (w/ encl.)
A-P Hurd, Touchstone Corp. (w/ encl.)
James Lauinger, Kirkland City Council (w/ encl.)
Byron Katsuyama, Kirkland Planning Commission (w/ encl.)
Angela Ruggeri, Kirkland Planning and Community Development (w/ encl.)
Eric Shields, Kirkland Planning and Community Development (w/ encl.)
Jordan Lindstrom, *Kirkland Courier Reporter* (w/ encl.)

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

MEMORANDUM

To: David Ramsay, City Manager

From: Tracey Dunlap, Director of Finance and Administration
Robin Jenkinson, City Attorney

Date: October 16, 2009

Subject: Property Tax Levy Finding of Substantial Need

RECOMMENDATION:
Council adopt the attached resolution establishing a finding of substantial need to allow the property tax levy to increase 1% consistent with the adopted 2010 budget.

BACKGROUND DISCUSSION:
On September 22, 2009 the Department of Revenue released the rate of inflation for property taxes due in 2010 (Attachment 1). The implicit price deflator used to determine the property tax limit factor is negative 0.848 percent (-0.848%).

Anticipating a negative IPD, the Department of Revenue released a special notice in April of this year answering questions about the impact of deflation (or negative "inflation") on local property taxes (Attachment 2). For taxing districts with a population of 10,000 or more the limit factor is the lesser of 101% or 100% plus inflation. However, with a finding of substantial need and supermajority council approval, larger taxing districts can adopt a limit factor up to a maximum of 101%. In order to increase the limit factor to 101%, a resolution or ordinance must be adopted by the district's governing body. Because the City Council is a legislative authority comprised of more than 4 members, the ordinance or resolution must be approved by a majority plus one. The limit factor authorized by the ordinance or resolution is for one year only.

The adopted 2010 budget assumed that the City would implement the optional levy increase of 1%. To carry out this increase, the City Council will need to adopt the resolution establishing a finding of substantial need. If no finding of substantial need is adopted, the property tax revenues for 2010 would be reduced by $275,415 (the 1% increased assumed of $149,034 plus the IPD decrease of -0.848% or $126,381), increasing the projected deficiency in 2010.

STATE OF WASHINGTON
DEPARTMENT OF REVENUE

September 22, 2009

Dear County Assessors:

What is the rate of inflation (IPD rate) for 2010?
The rate of inflation (IPD rate) for property taxes due in 2010 is **a *negative* 0.848 percent** (–0.848%).

What is the limit factor for 2010?
The limit factor for property taxes due in 2010 is ***negative* 0.848 percent** (–0.848%) for the state and taxing districts with populations over 10,000. The limit factor for these districts is defined as the smaller of the rate of inflation or 1 percent.

For taxing districts with populations under 10,000, the limit factor for property taxes due in 2010 is **1 percent**.

How is the rate of inflation (IPD rate) calculated?
The rate of inflation is the percent change in the implicit price deflator for personal consumption as published in the Bureau of Economic Analysis' September *Survey of Current Business*.

However, this year the September *Survey of Current Business* did not include the implicit price deflator for personal consumption due to space constraints from the publication of the 2009 Comprehensive Revision statistics. Therefore, the Department of Revenue contacted the Bureau of Economic Analysis and received the implicit price deflator for personal consumption from the 2009 Comprehensive Revision statistics. The Bureau of Economic Analysis indicated the implicit price deflator will be published in the October *Survey of Current Business*.

The percent change is calculated by dividing the July 2009 number by the July 2008 number, subtracting one, and then multiplying by 100. These numbers were updated as part of the Bureau of Economic Analysis' 2009 Comprehensive Revision to a base year of 2005. The values used in the calculation this year were as follows:

July 2008	110.205
July 2009	109.270

If you have any questions, please contact me.

Sincerely,

Valerie L. Torres
Tax Policy Specialist

Research Division
P O Box 47459 ♦ Olympia, Washington 98504-7459 ♦ (360) 570-6084 ♦ Fax (360) 664-0972
E-mail Address: ValerieT@dor.wa.gov

Property Tax Special Notice

Department of Revenue Washington State

April 22, 2009

Determining the Limit Factor for Increases in Property Tax Levies

Question: What is the limit factor for local taxing districts' levy increases if deflation (negative "inflation") occurs?

Answer: The limit factor for some local taxing districts may be less than 100%.

Discussion: Under ch. 84.55 RCW, the growth of regular property tax levies is limited. For taxing districts with a population of less than 10,000, the limit factor is 101%. The limit factor for local taxing districts with a population of 10,000 or more is the lesser of 101% or 100% plus inflation. With a finding of substantial need, these larger taxing districts can adopt a limit factor that exceeds 100% plus the rate of inflation up to a maximum of 101%. RCW 84.55.005 defines "inflation" as the percentage change in the implicit price deflator (IPD) for personal consumption. The statute requires the use of data published in September of the year before the tax will be due in determining inflation.

Because the limit factor for local taxing districts with a population of 10,000 or more is the lesser of 101% and 100% plus inflation, and inflation is defined as the percentage change in the IPD, a negative change in the IPD would result in a limit factor of less than 100%. For example, if the percentage change in the IPD were, say, -1.0%, the limit factor would be 100% - 1.0%, or 99%.

What does this mean for local taxing districts?
For taxing districts with a population of ***less than 10,000***, the limit factor is 101%, regardless of inflation or deflation. These smaller districts may continue to increase their regular property tax levies by 1% annually.

For local taxing districts with a population of ***10,000 or more***, the limit factor would dip below 100% and property tax levies would not grow[1]. These larger districts could increase the limit factor to a maximum of 101% with a finding of substantial need. In order to increase the limit factor to 101%, a resolution or ordinance must be adopted by the district's governing body. In districts with legislative authorities comprised of 4 or less members, two-thirds of the members must approve the ordinance or resolution. In districts with legislative authorities comprised of more than 4 members, the ordinance or resolution must be approved by a majority plus one. The limit factor authorized by the ordinance or resolution is for one year only.

Taxing districts of ***any size*** may also exceed the limit factor with the approval of a majority of the voters residing in the district. RCW 84.55.050 authorizes taxing districts to "lift the lid" and increase regular property tax levies by more than would be otherwise allowed. A lid lift allows a taxing district to exceed the limit factor for up to six consecutive years. The ballot measure must include the levy rate to be imposed in the first year following approval of the lid lift. If the lid lift allows the district to exceed the limit factor for more than one year, the ballot measure must also include the limit factor or a specified index to be used in determining the limit factor for each succeeding year.

Questions: If you have questions or need additional information, please contact Diann Locke at (360) 570-5885 or DiannL@dor.wa.gov.

[1] Taxing districts would still be entitled to levy additional amounts based on new construction, improvements to property, increases in state-assessed property, and the value of wind turbines as authorized in RCW 84.55.010.

RESOLUTION R-4782

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND MAKING A DECLARATION OF SUBSTANTIAL NEED FOR PURPOSES OF SETTING THE LIMIT FACTOR FOR THE PROPERTY TAX LEVY FOR 2010 .

WHEREAS, RCW 84.55.010 provides that a taxing jurisdiction may levy taxes in an amount no more than the limit factor multiplied by the highest levy of the most recent three years plus additional amounts resulting from new construction and improvements to property; and

WHEREAS, under RCW 84.55.005(2)(c), the limit factor for a taxing jurisdiction with a population of 10,000 or over is the lesser of 101 percent or 100 percent plus inflation; and

WHEREAS, RCW 84.55.005(1) defines "inflation" as the percentage of change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent 12-month period by the Bureau of Economic Analysis of the federal Department of Commerce in September of the year before the taxes are payable; and

WHEREAS, "inflation" for July 2009 is -0.848 percent and the limit factor is 99.152 percent, meaning the taxes levied in the City of Kirkland in 2009 for collection in 2010 will decrease except for the amounts resulting from new construction and improvements to property; and

WHEREAS, RCW 84.55.0101 provides for use of a limit factor of up to 101 percent with a finding of substantial need by a majority of the Council Members plus one; and

WHEREAS, the adopted 2010 budget assumed that the City would implement the optional levy increase of one percent; and

WHEREAS, if no finding of substantial need is adopted, the property tax revenues for 2010 would be reduced by $275,415, increasing the projected deficiency in 2010; and

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

Section 1. A finding is made of substantial need under RCW 84.55.0101, which authorizes a limit factor of 101 percent for the property tax levy for 2010, due to the need to maintain public safety services and City streets.

Passed by majority vote of the Kirkland City Council plus one in open meeting this _____ day of _____, 2009.

Signed in authentication thereof this ____ day of _____, 2009.

_____
MAYOR

Attest:

_____
City Clerk

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

MEMORANDUM

To: David Ramsay, City Manager

From: Tracey Dunlap, Director of Finance and Administration
Daryl Grigsby, Director of Public Works
Robin Jenkinson, City Attorney

Date: October 16, 2009

Subject: Fire Hydrant Issue

RECOMMENDATION

Approve resolution authorizing use of the Contingency Reserve Fund ($188,262) to pay fire hydrant costs in 2009-2010 (Kirkland water utility cost of $185,493 and Bellevue 2010 billing of $2,769). Also included in the resolution is a housekeeping authorization formalizing use of the reserve for services related to the proposed cable franchise transfer by Verizon ($54,750 approved at the September 1 City Council meeting).

BACKGROUND DISCUSSION

In October 2008, the Washington State Supreme Court ruled that fire hydrant costs are a general government function and should be paid out of general tax revenues (Lane v. City of Seattle – Attachment 1). The City of Seattle began to pay Seattle Public Utilities for fire hydrants from their general fund and raised utility taxes on SPU to cover for the general funds expended for the hydrants. This ruling has far-reaching consequences for all water providers throughout Washington in that water rate-making standards (as defined in the American Water Works Association M1 Manual) specifically include fire protection costs as part of water rates. Currently, the only direction that exists on how this ruling should be implemented is found in court documents related to Lane v. City of Seattle. Water utilities across Washington are grappling with how to comply with this ruling, especially given the limitations on general fund resources due to economic conditions and the absence of clear guidance on the specifics of how to apply the ruling to a wide variety of rate-setting approaches.

As part of the City of Kirkland's 2008 audit completed in June 2009 by the State Auditor's Office (SAO), the following exit item was highlighted for follow-up by the City:

> ***Fire Hydrant Costs***
>
> *Through 2008, the City of Kirkland included the cost of maintaining and operating fire hydrants in its charges to water utility customers. The costs were reported in City's Water Fund. A similar practice by another city was the subject of litigation over the past several years. During that time the City of Kirkland continued to pay fire hydrant costs in its Water Fund.*

In October 2008, the Washington State Supreme Court ruled that fire hydrant costs are a general government function and should be paid out of general tax revenues. Therefore, the City does not have specific authority to fund these costs directly out of fees to water customers.

The City indicates it spent approximately $67,375 maintaining fire hydrants in 2008. This amount does not include depreciation on the larger mains required to support the fire hydrants. The City estimates total costs, including depreciation would be one and a half percent of a water system's costs.

The City indicates they continue to pay for the maintenance and replacement of fire hydrants in the Water Fund. However, the City expects to address the issue as part of the mid-biennial budget process in fall 2009. In addition, the City anticipates charges to the general fund related to fire hydrants to be imposed effective January 2010.

We recommend the City ensure that fire hydrant costs are funded with general tax revenues. We further recommend the City review rate studies performed by cities or perform its own rate study to determine the total costs of maintaining and operating fire hydrants.

Recommended Action for 2009-2010

The City of Kirkland has already adopted its water rates for 2009 and 2010. Given the SAO guidance above, the staff recommendation is to transfer the costs of fire hydrant maintenance and related costs from the Contingency Reserve Fund, which is available "to meet any municipal expense, the necessity or extent of which could not have been reasonable foreseen at the time of adopting the biennial budget". Attachment 2 identifies the costs of hydrant maintenance and replacement for 2009 and 2010. The current Contingency Reserve Fund balance is $2.325 million and the hydrant cost for 2009-2010 totals $185,493. These funds would be transferred to the water utility, increasing the operating fund balance, which would be taken into consideration when the water rates are updated for 2011-2012.

Recommended Action for 2011-2012

There has been much discussion surrounding whether the term "fire hydrants" was intended to mean the total cost of "fire protection", which can include a portion of the storage and transmission/distribution facilities of the water utility. To date, very few jurisdictions have implemented this change beyond the City of Seattle. The City of Bellevue took the approach that the full "fire protection" element of their rates should be charged as a general government expense and, in addition to charging its general fund, has billed surrounding cities for the share of fire protection serving outside Bellevue's city limits. As a result, Bellevue has billed Kirkland for the 8 Bellevue hydrants and related infrastructure serving within the Kirkland city limits ($2,769 in 2010). Staff recommends adding this amount to the use of the Contingency Reserve Fund for 2010.

Kirkland has been approached by Northshore Utility District (NUD) to discuss approaches to addressing the fire protection services they provide in the Kirkland city limits. This issue becomes even more significant if annexation occurs. In preliminary discussions, NUD has suggested that we could modify the franchise agreement to increase the franchise fee paid by the District to offset the amount of the fire protection costs paid by Kirkland for consideration of

the following changes: (1) extended notice of future service area takeover (increasing the non-assumption timeframe) and (2) protection of citizens from possible double taxation in the future (in the event that the City has the capability in the future to impose a utility tax on the District, that the tax would replace the current franchise fee). The District would then reduce the water rate to customers within the City by our fire protection payments and pass on the franchise fee increase, resulting in no new net cost to the ratepayers and minimizing the overall impact on both parties.

To further pursue this approach, Kirkland would need to update its rate study to refine what portion of the rates is related to fire hydrants and then determine whether to implement the change in a manner similar to that pursued by Seattle – reducing rates by the amount of the general fund payment for fire hydrants and raising the utility tax rate on the water utility to generate sufficient revenues to make the general fund payment. Once Kirkland determined its approach to implementing the change, NUD would implement a revised franchise fee and reduce rates accordingly. NUD has also suggested that the District and City pursue jointly filing for declaratory judgment by the Court confirming the acceptability of the final method selected.

Consistent with the SAO recommendation, staff recommends that the planned water utility rate update in 2010 (for 2011-2012) address the broader question of fire hydrant costs and strategies for implementation. As in prior years, the City plans to engage a consultant for this rate update and, by mid-2010, there may be more definitive guidance on implementing the court ruling, including more clarity on the definition of fire hydrant costs.

Conclusion

In summary, staff is recommending two strategies to address this court ruling:

- A near-term strategy of funding the fire hydrant costs in 2009-2010 (including the Bellevue billing) using the Contingency Reserve Fund ($188,262), recognizing that the City has already adopted its 2010 rates and the funds will be restricted to use in the Water utility.
- A longer-term strategy of updating the water rate analysis in 2010 (for the 2011-2012 rates) and determining an approach for funding the new general fund cost for fire hydrants. In addition, negotiate a revised franchise fee agreement with NUD to address fire protection services provided by the District.

Finally, staff has approached the Association of Washington Cities about pursuing a legislative clarification to address this issue which will negatively impact cities across the state, recognizing that Washington would become the only state we are aware of where such restrictions are in place. We are also recommending addition of a potential legislative fix to the City's legislative agenda.

[Note: The resolution also contains a housekeeping authorization formalizing use of the reserve for legal counsel and consulting assistance related to the proposed transfer by Verizon of its cable franchise agreement with the City ($54,750 approved at the September 1 City Council meeting).]

H

Supreme Court of Washington,
En Banc.
Arthur T. LANE, Kenneth Gorohoff and Walter L. Williams, individually and on behalf of the class of all persons similarly situated, Respondents/Cross-Appellants,
v.
The CITY OF SEATTLE, Respondent/Cross-Respondent,
King County Fire District No. 2; King County Fire District No. 4 (a.k.a. Shoreline Fire Department); North Highline Fire District No. 11; King County Fire District No. 16 (a.k.a. Northshore Fire Department); King County Fire District No. 20; The City of Shoreline, a Washington municipal corporation; and King County, a Washington municipal corporation, Respondents,
The City of Burien, a Washington municipal corporation; The City of Lake Forest Park, a Washington municipal corporation, Appellants.
No. 80204-1.

Argued Feb. 28, 2008.
Decided Oct. 16, 2008.

Background: Municipal water utility sued other municipalities and fire districts for payment for hydrants. Ratepayers brought class action and sued the utility for hydrant payments made by ratepayers for three-year period and sued municipality for raising taxes on water utility to cover cost of hydrant payments. Each party moved for summary judgment. The Superior Court, King County, Michael S. Spearman, J., ruled that utility could not charge ratepayers for hydrants, municipal tax on utility was valid, utility had to repay ratepayers, other municipalities had to pay for their share of hydrant costs, and fire districts had no obligation to pay. Ratepayers, municipality, and other municipalities appealed.

Holdings: The Supreme Court, en banc, J.M. Johnson, J., held that:
(1) charge imposed by utility on ratepayers to pay for hydrants was an illegal tax;
(2) ratepayer had standing to challenge municipality's increased tax on water utility;
(3) municipality's tax on public water utility to pay for fire hydrants was constitutional;
(4) ratepayer was entitled to statutory interest on repayment of illegal hydrant charge; and
(5) charge imposed on surrounding municipalities was valid fee.

Affirmed in part and reversed in part.

West Headnotes

[1] Municipal Corporations 268 57

268 Municipal Corporations
268II Governmental Powers and Functions in General
268k57 k. Powers and Functions of Local Government in General. Most Cited Cases
Governments are treated differently by the courts depending on if they are acting as governments or as businesses.

[2] Municipal Corporations 268 63.1

268 Municipal Corporations
268II Governmental Powers and Functions in General
268k63 Judicial Supervision
268k63.1 k. In General. Most Cited Cases
Supreme Court reviews most government decisions to determine whether they had a rational basis and occasionally use this standard to strike down a government decision.

[3] Municipal Corporations 268 63.5

268 Municipal Corporations
268II Governmental Powers and Functions in General
268k63 Judicial Supervision
268k63.5 k. Discretion. Most Cited Cases
Supreme Court reviews business decisions made by a governmental unit under the business judgment rule and infrequently reverse a business decision.

[4] Taxation 371 2002

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371 Taxation
371I In General
371k2002 k. Distinguishing "Tax" and "License" or "Fee". Most Cited Cases
There is a three-factor test to decide whether a governmental charge is a tax or a fee, and no single factor determines the matter: (1) the purpose of the charge, (2) where the money raised is spent, and (4) whether people pay the cost because they use the service.

[5] Waters and Water Courses 405 ⚷203(9)

405 Waters and Water Courses
405IX Public Water Supply
405IX(A) Domestic and Municipal Purposes
405k203 Water Rents and Other Charges
405k203(9) k. Hydrant Rentals. Most Cited Cases
Charge imposed by municipal water utility on taxpayers to pay for the cost of fire hydrants was an invalid tax; purpose of the charge was to increase revenue, the money went to a hydrant fund, but ratepayers paid the same fixed amount whether they used the hydrants or not. West's RCWA Const. Art. 7, § 5.

[6] Action 13 ⚷13

13 Action
13I Grounds and Conditions Precedent
13k13 k. Persons Entitled to Sue. Most Cited Cases

Courts 106 ⚷39

106 Courts
106I Nature, Extent, and Exercise of Jurisdiction in General
106k39 k. Determination of Questions of Jurisdiction in General. Most Cited Cases
Without jurisdiction, a court cannot hear a case, even if every party concedes standing.

[7] Waters and Water Courses 405 ⚷203(12)

405 Waters and Water Courses
405IX Public Water Supply
405IX(A) Domestic and Municipal Purposes
405k203 Water Rents and Other Charges
405k203(12) k. Review by Courts and Injunction Against Enforcement. Most Cited Cases
Ratepayer had standing to challenge municipality's increased tax on water utility, even though ratepayer did not pay the tax directly; water utility increased its rates to pay for the tax charge by municipality, and ratepayer had to pay the higher rates in order for utility to pay the higher taxes.

[8] Action 13 ⚷13

13 Action
13I Grounds and Conditions Precedent
13k13 k. Persons Entitled to Sue. Most Cited Cases
To have standing, a party must be in a law's zone of interest and must suffer some harm.

[9] Municipal Corporations 268 ⚷957(4)

268 Municipal Corporations
268XIII Fiscal Matters
268XIII(D) Taxes and Other Revenue, and Application Thereof
268k957 Constitutional Requirements and Restrictions
268k957(4) k. Submission to Voters, and Levy, Assessment, and Collection. Most Cited Cases

Taxation 371 ⚷2100

371 Taxation
371III Property Taxes
371III(B) Laws and Regulation
371III(B)3 Constitutional Requirements and Restrictions
371k2100 k. In General. Most Cited Cases
Municipality's tax on public water utility to pay for fire hydrants was constitutional; municipality explicitly said it was taxing utility, the tax was properly adopted, and tax expressly stated it was subject to referendum. West's RCWA Const. Art. 7, § 5; West's RCWA 35.21.710, 82.16.010(4).

[10] Municipal Corporations 268 ⚷1002

268 Municipal Corporations
268XV Claims Against Corporation
268k1002 k. Interest. Most Cited Cases

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Municipal Corporations 268 ⚷1016

268 Municipal Corporations
268XVI Actions
268k1016 k. Capacity to Sue or Be Sued in General. Most Cited Cases
Governments cannot be sued for money without their consent, and local governments cannot be sued for interest without the state's consent.

[11] Waters and Water Courses 405 ⚷184.1

405 Waters and Water Courses
405IX Public Water Supply
405IX(A) Domestic and Municipal Purposes
405k184 Water or Waterworks Companies
405k184.1 k. In General. Most Cited Cases
Ratepayer who paid improper charge for city hydrants was entitled to interest on the amount paid at the statutory rate, where governing statute waived immunity and permitted suit against water companies for "all" loss damage, or injury, which included interest on the amount of the award. West's RCWA 80.04.440.

[12] Waters and Water Courses 405 ⚷203(9)

405 Waters and Water Courses
405IX Public Water Supply
405IX(A) Domestic and Municipal Purposes
405k203 Water Rents and Other Charges
405k203(9) k. Hydrant Rentals. Most Cited Cases
Charge imposed by municipality on surrounding municipalities that required municipal water utility to provide hydrants to them was a valid fee to cover their fair share of the costs of the hydrants; there was a direct relationship between the costs charged and the service provided. West's RCWA 43.09.210.
****978** Michael Paul Ruark, Attorney at Law, Bellevue, WA, Brian Richard Paige, Itron Inc., Liberty Lake, WA, for Appellants.

Gregory Colin Narver, Suzanne Lieberman Smith, Seattle City Attorneys Office, William Howard Patton, Foster Pepper PLLC, King County Prosecutor's Office, Margaret A. Pahl, Howard Phillip Schneiderman, William E. Blakney, King County Administrative Building, Seattle, WA, Ian Richard Sievers, City of Shoreline Attorney, Shoreline, WA, Kinnon William Williams, Joseph Halder Marshall, Williams & Williams, PSC, Bothell, WA, for Respondents.

David Florian Jurca, Jennifer Suzanne Divine, Connie K. Haslam, Helsell Fetterman LLP, Seattle, WA, for Respondents/Cross-Appellants.

Brian K. Snure, Snure Law Office PSC, Des Moines, WA, for Amicus Curiae on behalf of Washington Fire Commissioner's Association.

J.M. JOHNSON, J.

***879** ¶ 1 In this case we must decide who will pay for fire hydrants in the city of Seattle and its suburbs. Seattle Public Utility (SPU) used to pay for them, ***880** passing the cost along to its ratepayers. The ratepayers object and want Seattle to foot the bill. If Seattle has to pay for its hydrants, it wants Lake Forest Park to pay for the hydrants in Lake Forest Park. Lake Forest Park, in turn, wants fire districts in Lake Forest Park to pay. The fire districts want someone, anyone, else to pay. On top of all that, the ratepayers want interest on improper past hydrant payments they recover and want Seattle's new tax on SPU declared illegal. Finally, the fire districts claim they are no longer even parties to the litigation.

¶ 2 We affirm the trial court on most issues. The court correctly held that providing fire hydrants is a government responsibility****979** for which a government must pay, that Seattle's new tax on SPU is constitutional, and that municipality Lake Forest Park must pay for hydrants within its boundary. The trial court erred only when it failed to give the claiming ratepayers the statutory interest rate on the invalid hydrant fees.

I

¶ 3 For years, SPU paid for hydrants by charging its water ratepayers a flat hydrant fee added to their water charges. In 2003, this court held that Seattle City Light could not charge its ratepayers for streetlights. Providing streetlights is a government function, and the court held that a municipal government must pay out of the city's general fund. *Okeson v. City of Seattle*, 150 Wash.2d 540, 78 P.3d 1279 (2003). Recognizing the legal equivalence between hydrants and street-

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lights expressed in that decision (and argued by the city), Seattle had SPU stop charging ratepayers for hydrants. Instead, Seattle began to pay for the hydrants out of its general fund. To make up the cost, Seattle raised taxes on SPU, which led SPU to raise rates on water ratepayers to make up the difference.

¶ 4 SPU also provides local hydrants to areas outside the city of Seattle and concluded that those municipal governments should pay their share. SPU sent a bill for hydrants ***881** to Lake Forest Park, Burien, and to local fire districts, all of which refused to pay. SPU then sued Lake Forest Park and Burien for payment and later joined the fire districts.

¶ 5 Meanwhile, a class made up of ratepayers (" **Lane** et al.," as representatives, hereinafter " **Lane**") sued SPU for **hydrant** payments made by ratepayers for the preceding three years. The statute of limitations limits that claim to three years. RCW 4.16.080(6). Lane also sued Seattle to enjoin the newly raised city taxes on SPU, which had resulted in SPU's raising its rates on ratepayers.

¶ 6 After a lengthy pretrial process, each party moved for summary judgment. The trial judge held (1) SPU could not charge ratepayers to pay for **hydrants**; (2) Seattle's tax on SPU was valid; (3) SPU had to pay back the **Lane** ratepayers, but only at one percent interest; (4) Lake Forest Park and Burien had to pay Seattle for their share of the hydrant costs; and (5) the fire districts had no obligation to pay. Each of these rulings has been challenged. We granted direct review.

¶ 7 After review, but before oral argument, Burien decided it had spent too much money litigating and withdrew. Thus, Burien was the only party originally stating a claim against the fire districts. Without an opposing party appealing their judgment, the fire districts are no longer parties, and we do not reach the issue between Burien and the fire districts. The remaining issues are resolved below.

II

A. *SPU Cannot Charge Ratepayers for Hydrants, which Are a General Government Responsibility*

¶ 8 "No tax shall be levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same to which only it shall be applied," WASH. CONST. art. VII, § 5. If providing hydrants is a government function, and if charging ratepayers for those hydrants is a tax, not a fee, the charge violates this part of the constitution.***882** Seattle imposed a "charge" rather than a tax, which it was not authorized by law to impose.

[1][2][3] ¶ 9 We treat governments differently if they are acting as governments or as businesses. *Okeson*, 150 Wash.2d at 549, 78 P.3d 1279. We review most government decisions to determine whether they had a rational basis and occasionally use this standard to strike down a government decision. *E.g.*, *Associated Grocers, Inc. v. State*, 114 Wash.2d 182, 187-88, 787 P.2d 22 (1990); *O'Meara v. Wash. State Bd. Against Discrimination*, 58 Wash.2d 793, 799, 365 P.2d 1 (1961); *In re Hendrickson*, 12 Wash.2d 600, 612, 123 P.2d 322 (1942). In contrast, we review business decisions under the business judgment rule and infrequently reverse a business decision. *See Scott v. Trans-System, Inc.*, 148 Wash.2d 701, 709, 64 P.3d 1 (2003). We must first decide if providing ****980** hydrants is a government responsibility or a proprietary responsibility.

¶ 10 It is conceded that *Okeson* decides that question. We held that streetlights are a government function and strongly suggested that providing hydrants is the same. We confirm that holding today.

[4] ¶ 11 The next step is deciding whether charging ratepayers to pay for hydrants was a tax or a fee, since a city must be authorized by statute to impose a tax but has broader power to impose a fee. *Okeson*, 150 Wash.2d at 550, 78 P.3d 1279. We have created a three-factor test to decide whether a charge is a tax or a fee; no single factor determines the matter. *Covell v. City of Seattle*, 127 Wash.2d 874, 879, 905 P.2d 324 (1995). The three factors are the purpose of the cost, where the money raised is spent, and whether people pay the cost because they use the service. *Id.*

¶ 12 Our decision here directly follows our decision in *Okeson.* There, the purpose of the cost was to increase revenue for the city and not to regulate the installed streetlights, indicating a tax. *Okeson*, 150 Wash.2d at 553, 78 P.3d 1279. The money did go into a streetlight fund, which made it more like a fee. *Id.* But ratepayers bore the same streetlight cost no matter

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how much electricity they used, leaning ***883** toward tax. *Id.* at 554, 78 P.3d 1279. Since all citizens may use and benefit from lighted areas, we held the charge to be an invalid tax. *Id.*

[5] ¶ 13 Here, the purpose of charging ratepayers a hydrant charge is also to increase revenue for the city and not to regulate hydrants or water usage, indicating a tax. The money goes to a hydrant fund, making it more like a fee. But, ratepayers pay the same fixed hydrant cost whether they use hydrants or not, indicating a tax. All benefit by having water available to put out fires. Moreover, we had expressly discussed fire hydrants as an example of government services in *Okeson.* Seattle had argued that the *Okeson* streetlights were just like hydrants, and SPU had always charged ratepayers for hydrants. The hydrant issue was not before us, but the argument of Seattle and implication of our decision were clear: for purposes of deciding a tax or fee, hydrants are very much like streetlights. *Id.* at 552, 78 P.3d 1279. As in *Okeson,* the charge here is a tax.

¶ 14 Lake Forest Park tries to distinguish *Okeson.* It points out that water companies within cities must, by statute, provide hydrants (RCW 80.28.010), but no similar law requires electric companies to provide streetlights. This is not determinative. After all, state law requires police to report accidents (RCW 46.52.070) and school districts to educate special education children (RCW 28A.155.040), but these laws do not justify taxing such transactions.

¶ 15 Lake Forest Park also claims a relationship between hydrant charges and user benefit by pointing out that houses near hydrants may have lower insurance rates. This might be more persuasive if SPU charged a different cost based on proximity to hydrants. The direct benefit of a hydrant system is enhanced fire suppression, which is a shared benefit, and the record shows no differential.

¶ 16 Amici also point to three cases where Washington courts upheld charges on customers when first connecting to waterworks. *Landmark Dev., Inc. v. City of Roy,* 138 Wash.2d 561, 980 P.2d 1234 (1999); ***884***Hillis Homes, Inc. v. Pub. Util. Dist. No. 1,* 105 Wash.2d 288, 714 P.2d 1163 (1986); *Irvin Water Dist. No. 6 v. Jackson P'ship,* 109 Wash.App. 113, 34 P.3d 840 (2001). These cases are inapposite. One-time connection fees are different from monthly hydrant charges. Connection fees capture start-up costs for new customers, which are costs of the waterlines for water service. Hydrant fees capture the costs of hydrants, which are government costs.

¶ 17 Finally, Lake Forest Park says, "the heights of irony will be scaled if SPU can purchase art for its facilities and recover the cost in rates ... but cannot recover the cost of complying with lawful regulations." Br. of Appellant Lake Forest Park at 9-10. This makes a mountain out of an irony molehill. The question is not whether there will be art and hydrants, but who must pay for them. Art for public facilities is a business expense (sometimes imposed by statute or ordinance). ****981** Hydrants, like streetlights, are a government expense for which a government must pay.

¶ 18 Thus, charges for hydrants are taxes, not fees. Since "[n]o tax shall be levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same to which only it shall be applied." WASH. CONST. art. VII, § 5. Since Seattle did not declare the charge to be a tax until 2005 or state a lawful object of a tax or statutory authority, the imposition was unconstitutional. *See Okeson,* 150 Wash.2d at 556, 78 P.3d 1279.

B. *Lane Has Standing To Challenge Seattle's Tax and SPU's Rate Increases, but Those Increases Are Not Invalid*

¶ 19 Seattle recognized the legal similarity between streetlights and hydrants, and so, in 2003, began paying for hydrants out of the general fund. To pay, Seattle either had to raise tax revenue or take funds from other services. The city council decided to raise revenue. It did so by raising the tax rate on SPU from 10 to 14 percent. Since it wholly controls SPU, it had SPU make up the difference by raising rates on customers. This situation has a similar result for nearly every party involved as if SPU just charged ***885** ratepayers for hydrants, with two exceptions: for residents of other areas, their local government will repay the charges; for Seattle ratepayers, the tax charge is now subject to referendum or political efforts to change, including election of council members opposing the tax. Lane still objects. This issue raises two subissues: whether Lane has standing and whether the tax is legal.

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1. *Lane Has Standing To Challenge Seattle's Tax on SPU*

[6] ¶ 20 Seattle challenged Lane's standing to challenge the tax at trial but has dropped the argument here. However, standing is a matter of our jurisdiction. Without jurisdiction, we cannot hear a case, even if every party concedes standing. *High Tide Seafoods v. State*, 106 Wash.2d 695, 702, 725 P.2d 411 (1986).[FN1]

FN1. This rule is in flux. *Compare Branson v. Port of Seattle*, 152 Wash.2d 862, 879-80 & n. 10, 101 P.3d 67 (2004) (Chambers, J., concurring) (a case may be heard even if a party lacks standing, as long as the issue is one of great public interest and well briefed), *with High Tide*, 106 Wash.2d at 702, 725 P.2d 411 (unanimously holding, "[i]f a plaintiff lacks standing to bring a suit, courts lack jurisdiction to consider it."). This case does not lend itself to deciding whether standing is jurisdictional in Washington, since neither party briefed the matter. And in any event, even if we are not required to raise the issue, we certainly have the discretion to. *In re Recall of West*, 156 Wash.2d 244, 248, 126 P.3d 798 (2006).

[7][8] ¶ 21 To have standing, a party must be in a law's zone of interest and must suffer some harm. *Nelson v. Appleway Chevrolet, Inc.*, 160 Wash.2d 173, 186, 157 P.3d 847 (2007). Lane obviously has suffered harm; if his argument is right, he must pay more in taxes than is legally allowed. His zone of interest argument, though, is on shakier ground because he does not directly pay the tax. After all, he is complaining about Seattle's tax on the water utility SPU. If Lane has standing at all, it is only as a taxpayer interested in making his government follow the law.

¶ 22 Lane points us to RCW 80.04.440, which allows any person harmed by a public utility's unlawful acts to bring suit. Even though Lane's challenge is to Seattle's tax on SPU and not to SPU's illegal acts, he rests on ***886**RCW 7.24.020, allowing for declaratory judgments of laws directly affecting a party.

¶ 23 The standing issue here was analyzed in our decision in *Nelson.* There, we held that a car buyer has standing to challenge a tax applied directly to his dealer and seller because the buyer ultimately paid the tax. *Nelson*, 160 Wash.2d at 186, 157 P.3d 847. In the same way, the tax on SPU is passed on to Lane directly, and so he is within the interest zone of RCW 80.04.440. He has standing to challenge the tax and rate increase.

2. *Seattle's Tax and SPU's Rate Increases Are Constitutional*

¶ 24 Lane complains that Seattle is frustrating the holding in *Okeson.* He argues that raising taxes on SPU and passing the increases along to ratepayers is just the same as SPU charging ratepayers for **hydrants**.****982** The problem with the argument is that *Okeson* did not go so far as **Lane** would take it.

[9] ¶ 25 We voided the charge in *Okeson* because Seattle did not adopt the charge as a lawfully authorized tax, violating article VII, section 5 of the state constitution, and because a tax would have exceeded the six percent statutory limit. Either reason was sufficient to support our holding in its entirety. *Okeson*, 150 Wash.2d at 556-57, 78 P.3d 1279. We simply held that if Seattle wanted to charge Seattle City Light ratepayers for streetlights, it would have to comply with statutes in enacting the tax (with the attendant possibility of a referendum, WASH. CONST. art. II, § 1(b)). Such tax, if adopted, would be subject to the applicable statutes and a six percent total cap.

¶ 26 Seattle has complied here. It explicitly said it was taxing SPU, the tax was properly adopted, and the tax expressly stated it was subject to referendum. Also, the six percent limit referenced in *Okeson* does not apply to taxes on businesses providing water. RCW 35.21.710; RCW 82.16.010(4). Seattle has statutory authority to impose this tax on SPU (RCW 35.22.280(32)).

***887** ¶ 27 Lane's whole argument rests on our constitution's requirement that "[n]o tax shall be levied except in pursuance of law;...." WASH. CONST. art. VII, § 5. He argues that imposing a tax with the same effect as SPU's charging ratepayers for hydrants is contrary to the law announced in *Okeson.*

¶ 28 This argument fails for the same reason as above. The law is not that Seattle must charge for hydrants to a broad range of taxpayers. Instead, it is simply that cities must have statutory authority to impose taxes and must enact them properly as "taxes." This tax

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meets both requirements. The tax and the resulting rate raise are lawful.

C. *SPU Must Pay the Statutory Interest Rate on Back Payments*

¶ 29 SPU illegally charged ratepayers for hydrant costs before 2005, so it had to refund the charges for three years as allowed by the applicable statute of limitations. Lane wants his payments to be with interest; Seattle opposes. The trial court gave Lane interest at one percent. Lane appealed, saying he is entitled to more. Seattle says he is entitled to none (or, at most, one percent).

[10] ¶ 30 Governments cannot be sued for money without their consent. *Architectural Woods, Inc. v. State*, 92 Wash.2d 521, 526, 598 P.2d 1372 (1979). More to the point, local governments cannot be sued for interest without the State's consent. *Our Lady of Lourdes Hosp. v. Franklin County*, 120 Wash.2d 439, 455-56, 842 P.2d 956 (1993). But absent sovereign immunity, parties must pay 12 percent interest on judicial awards from the time of judgment to the time of payment. RCW 4.56.110(4); RCW 19.52.020. They must also pay 12 percent on the time from the injury to the judgment if the damages are liquidated, that is, if it is "possible to compute the amount with exactness, without reliance on opinion or discretion." *Prier v. Refrigeration Eng'g Co.*, 74 Wash.2d 25, 32, 442 P.2d 621 (1968); RCW 19.52.020. The damages here are clearly liquidated because they are based only on the amounts customers wrongly ***888** paid. So if SPU is not immune from judgment, it must pay 12 percent interest on both the pre- and postjudgment award.

[11] ¶ 31 Lane offers three reasons why he should be awarded statutory interest on his refund payments from SPU, and if he is correct on any of them, he receives interest at the judgment rate. His best argument is that a statute waives immunity for claims against government-run utilities, allowing interest on part of those claims.

¶ 32 RCW 80.04.440 allows people to sue water companies for "all loss, damage or injury" resulting from an illegal act. On its face, "all loss" includes interest. Depriving a party of money for a time deprives him of its productive use during that time. "Justice delayed is justice denied" is literally true for money. If a losing party has wrongfully kept another's money at 12 percent interest for six years before giving it back, it is the same as taking the lost value. "All loss, damage or injury" includes interest on money improperly taken or withheld.

****983** ¶ 33 Seattle argues that the statute does not include the word "interest." Neither does it expressly include "medical bills" or "lost work time" or "profits," but the phrase "all loss, damage or injury" has been held to include those. *See, e.g.*, *Nat'l Union Ins. Co. of Pittsburgh, Pa. v. Puget Sound Power & Light*, 94 Wash.App. 163, 168, 175, 972 P.2d 481 (1999). Seattle says we would have to infer state consent to interest payments from the statute. However, "all loss, damage or injury" is clear, broad, and inclusive. We have no authority to judicially amend the broad statute to read "all loss (except interest)."

¶ 34 The trial court seems to have split the difference and held the statute waived immunity for interest, but not for interest at the judgment rate. Instead, the trial court gave one percent interest because the monthly amounts were so small that a reasonable investor could have placed the money only in a low interest account. We reject this approach for two reasons.

***889** ¶ 35 First, RCW 80.04.440 says nothing about a reasonably prudent investor. It consents to suit for all "loss, damage or injury" and does not exempt from those losses the usual judgment interest. Second, any reasonably prudent investor test invites complex factual questions about investment returns. The legislature has decided the number by setting the statutory rate of 12 percent, RCW 4.56.110(4); RCW 19.52.020 (set for all judgments), and we have no reason to deviate from it. "All loss" includes interest at the judgment rate. SPU must pay back the payments at the statutory rate.

D. *Lake Forest Park Is Liable for Hydrant Payments*

¶ 36 If Seattle must pay for hydrants located in Seattle, it asks Lake Forest Park to pay for those hydrants located in Lake Forest Park. Seattle argues, and the trial court held, that RCW 43.09.210 makes the cities liable. The statute reads: "All service rendered by ... one department ... to another, shall be paid for at its true and full value by the department ... receiving the same,...." RCW 43.09.210. This law applies to services that one government body provides for another, including when one city provides another city with

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services.[FN2] *Cf. State v. Grays Harbor County,* 98 Wash.2d 606, 608, 656 P.2d 1084 (1983) ("The word 'department' plainly refers to an administrative division or branch of government,...."). Since SPU provided a service to Lake Forest Park, Lake Forest Park is liable for SPU's cost.

FN2. Otherwise, resident taxpayers of the providing city would be paying for services to others.

[12] ¶ 37 Moreover, SPU provided the hydrants because Lake Forest Park required it to do so by ordinance. LAKE FOREST PARK MUN.CODE 15.04.015(A)(3). Since providing hydrants is governmental, *see above,* Lake Forest Park also consented to pay for the hydrants when it passed this requirement. True, Lake Forest Park passed the ordinance before *Okeson,* but this does not avoid its liability.

***890** ¶ 38 Lake Forest Park would apply the three-part test from *Covell* to argue that Seattle would be imposing a tax on another city, which it cannot do. The *Covell* factors are the purpose of the cost: where the money raised is allocated and whether the cities pay the cost because they use the service. 127 Wash.2d at 879, 905 P.2d 324.

¶ 39 The purpose of charging Lake Forest Park for hydrants is clearly to raise money, indicating a tax. There is no evidence that the funds are segregated, also leaning toward a tax. But, most importantly, here there is a direct relationship between the costs charged and the service provided. Lake Forest Park requires SPU to provide hydrants, and SPU is charging just for the costs of the hydrants required by Lake Forest Park. We hold that the hydrant charge to Lake Forest Park is not a tax, but rather a cost of providing a government service, which Lake Forest Park must pay.

¶ 40 Lake Forest Park argues that if we require it to pay for hydrants, cities may extend their utility services to other jurisdictions without consent and then charge the cost. This possibility is speculative (and improbable). SPU will not likely install fire hydrants where uninvited. Right-of-way problems alone would block this eventuality. SPU operates in Lake Forest Park only with that city's permission, and it is providing a service only Lake Forest Park required.

****984** ¶ 41 Lake Forest Park also argues that even if it has to pay for hydrants, it should have to pay only for costs before January 1, 2005. On that day, Seattle's tax on SPU started. Under Lake Forest Park's theory, since Seattle already recovered the costs of hydrants starting in 2005, it would get a windfall if Lake Forest Park also had to pay. We reject this argument. RCW 43.09.210 draws no distinction that would exempt pre-2005 charges.

¶ 42 RCW 43.09.210 requires Lake Forest Park to pay for the hydrants within its boundary.

***891** III

¶ 43 In summary, we hold that (1) providing hydrants is a government responsibility for which the general government of the area must pay; (2) charging every SPU ratepayer a flat hydrant fee amounted to an improper tax; (3) the ratepayers may recover past improper hydrant fees, together with interest at the judgment rate; (4) Seattle's new tax on SPU is legal; and (5) Lake Forest Park must pay for the hydrants within its boundary.

WE CONCUR: ALEXANDER, C.J., C. JOHNSON, MADSEN, SANDERS, CHAMBERS, OWENS, FAIRHURST and STEPHENS, JJ.
Wash.,2008.
Lane v. City of Seattle
164 Wash.2d 875, 194 P.3d 977

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2009 YE Est Water Operating Expense

				Total Maintenance & Operational Costs	**Fire Hydrant Maintenance & Operational Costs**
Water Expense		Cascade Water Alliance -- water	3,615,694		
		Cascade Water Alliance -- RCFCs from above	263,873		
		Water Depreciation	995,206		
		Water contrib to GIS	50,000		
		Maint of Facilities	36,336	5.0%	
		Maint of Wa Main	208,069	28.7%	
		Maint of Services	146,468	20.2%	
IFAS Org Key		Maint of Meters	63,960	8.8%	
	411-251-3456*	Maint of Hydrants	102,325	14.1%	102,325
		Water Patching	33,929	4.7%	
		Jt Facilities	112,830	15.6%	
		Const Wa Main	9,349	1.3%	
IFAS Org Key		Const Wa Svsc	3,087	0.4%	
	411-254-3493*	Const Wa Hydrants	8,755	1.2%	8,755
		Cascade Water Alliance -- RCFCs from above	263,873		
		Water Depreciation	995,206		
		Water contrib to GIS	50,000		
		Alloc of Supervision	589,292		
		Alloc of Debt Service	706,989		
		Alloc of Admin. Costs	1,425,004		
		Alloc of Customer Billing	261,243		
		Alloc of Reimburseable Work	0		
Total Water Expense			**9,941,488**		**111,080**
Less :	**Fire Hydrant Rental received from Fire Department**				(4,000)
Total net cost of fire hydrant maintenance and operations included in water rate calculation					**107,080**

2010 Water Operating Expense Budget

				Total Maintenance & Operational Costs	**Fire Hydrant Maintenance & Operational Costs**
Water Expense					
		Cascade Water Alliance -- water	3,885,209		
		Cascade Water Alliance -- RCFCs from above	850,000		
		Water Depreciation	1,138,728		
		Water contrib to GIS	50,000		
		Maint of Facilities	32,056	3.2%	
		Maint of Wa Main	308,524	30.7%	
		Maint of Services	212,186	21.1%	
IFAS Org Key		Maint of Meters	66,204	6.6%	
	411-251-3456*	Maint of Hydrants	67,043	6.7%	67,043
		Water Patching	86,998	8.7%	
		Jt Facilities	164,313	16.4%	
		Const Wa Main	43,841	4.4%	
IFAS Org Key		Const Wa Svsc	7,284	0.7%	
	411-254-3493*	Const Wa Hydrants	15,370	1.5%	15,370
		Alloc of Supervision	654,285		
		Alloc of Debt Service	475,134		
		Alloc of Admin. Costs	1,622,297		
		Alloc of Customer Billing	266,361		
		Alloc of Reimburseable Work	0		
Total Water Expense			**9,945,832**		**82,413**
Less :	**Fire Hydrant Rental received from Fire Department**				(4,000)
Total net cost of fire hydrant maintenance and operations included in water rate calculation					**78,413**

FISCAL NOTE

CITY OF KIRKLAND

Source of Request

Tracey Dunlap, Director of Finance and Administation

Description of Request

Request funding of $188,262 from the Contingency Reserve Fund to pay for fire hydrant costs in 2009-2010. The total includes: Kirkland water utility cost of $185,493 ($107,080 in 2009 and $78,413 in 2010) and Bellevue's 2010 billing of $2,769.

Legality/City Policy Basis

In October 2008, the Washington State Supreme Court ruled that fire hydrant costs are a general government function and should be paid out of general tax revenues. As part of the 2008 Audit, the State Auditors Office recommended that fire hydrant costs be funded with general tax revenues not the water utility. Staff recommends the use of the Contingency Reserve Fund, which is available to meet any municipal expense, the necessity or extent of which could not have been reasonably foreseen at the time of adopting the biennial budget.

Fiscal Impact

One-time use of $188,262 of the Contingency Reserve Fund. The reserve is able to fully fund this request.

Recommended Funding Source(s)

	Description	2010 Est End Balance	Prior Auth. 2009-10 Uses	Prior Auth. 2009-10 Additions	Amount This Request	Revised 2010 End Balance	2010 Target
Reserve	Contingency Reserve	2,324,515	54,750	0	188,262	2,081,503	4,915,571
	Prior 2009 Authorized Uses of $54,750 for funding legal cousel and financial consultant assistance related to the proposed transfer by Verizon of its cable franchise agreement with the City to Frontier Communications.						
Revenue/Exp Savings							
Other Source							

Other Information

Prepared By	Sri Krishnan, Acting Financial Planning Manager	Date	October 20, 2009

RESOLUTION R-4783

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND AUTHORIZING THE TRANSFER OF FUNDS FROM THE CONTINGENCY RESERVE FUND TO THE GENERAL FUND TO PAY FIRE HYDRANT COSTS IN 2009-2010 AND FOR PROFESSIONAL SERVICES RELATED TO THE PROPOSED TRANSFER BY VERIZON.

WHEREAS, the City has unforeseen general fund expenses for the costs of hydrant maintenance and replacement for 2009 and 2010; and

WHEREAS, the City also has unforeseen general fund expenses for the cost of legal and financial consultant assistance needed related to the proposed transfer by Verizon of its cable franchise agreement with the City to Frontier Communications; and

WHEREAS, under RCW 35A.146, the City may, by resolution or ordinance adopted by a vote of the majority of the entire City Council, authorize the transfer of funds from the contingency fund to the appropriate operating fund;

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

Section 1. Funds in the amount of $188,262 shall be transferred from the Contingency Reserve Fund to the general fund for the purpose of paying fire hydrant costs in 2009-2010.

Section 2. Funds in the amount of $54,750 shall be transferred from the Contingency Reserve Fund to the general fund for the purpose of paying for legal counsel and financial consultant assistance needed related to the proposed transfer by Verizon of its cable franchise agreement with the City to Frontier Communications.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2009.

Signed in authentication thereof this ____ day of _____, 20.

_____
MAYOR

Attest:

_____
City Clerk

CITY OF KIRKLAND
City Attorney's Office
123 Fifth Avenue, Kirkland, WA 98033 425.587.3030
www.ci.kirkland.wa.us

MEMORANDUM

To: David Ramsay, City Manager

From: Robin S. Jenkinson, City Attorney

Date: October 26, 2009

Subject: Council Rules of Procedure

RECOMMENTATION:
Council consider the attached resolution amending the Rules of Procedure for the Conduct of Kirkland City Council meetings to move Communications, including Items from the Audience, immediately after the Roll Call and to move Reports, including Council Reports and City Manager Reports, to the end of the order of business.

BACKGROUND DISCUSSION:
At the October 20, 2009, meeting Council Members again discussed moving the Items from the Audience to immediately after the Roll Call or to a time certain on the Council Agenda. Moving Council Reports to the end of the Agenda was also mentioned. The attached Resolution to amend the Rules of Procedure for the Conduct of Kirkland City Council Meetings (see summary of changes below) is submitted to respond to the discussion.

Summary of Changes

Section 4. The order of business shall be as follows:

1. Call to order
2. Roll Call
3. Communications
   a. Items from the audience (3 minute limitation. See Section 5)
   b. Petitions
4. Special presentations
~~4. Reports~~
   ~~a. Council Reports~~
   ~~b. City Manager reports~~
~~5. Communications~~
   ~~a. Items from the audience (3 minute limitation. See Section 5)~~
   ~~b. Petitions~~
~~6~~5. Consent calendar
   a. Approval of minutes
   b. Audit of accounts and payment of bills and payroll
   c. Written Correspondence
      i. Routine

ii. Written correspondence relating to quasi-judicial, including land use public hearing matters and placed in the appropriate hearing file.

d. Award of bids

e. Acceptance of public improvements and establishing lien periods

f. Approval of agreements

g. Resolutions and Ordinances

h. Other routine items of business

Any matter, which because of its routine nature, would qualify for placement on the Consent calendar pursuant to this section, may be included on the Consent Calendar, notwithstanding action on the matter may, by law or otherwise, require adoption of a Resolution or Ordinance.

Any item may be removed from the consent calendar upon the request of any Councilmember. All items remaining on the consent calendar shall be approved by a single motion. Whenever an Ordinance is included on the Consent Calendar, approval of the calendar shall be by roll call vote.

~~7~~6. Public hearings

~~8~~7. Unfinished business

~~9~~8. New business

9. Reports

a. Council Reports

b. City Manager reports

10. Announcements

11. Adjournment

RESOLUTION R-4784

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND SETTING FORTH THE CURRENT RULES OF PROCEDURE FOR THE CONDUCT OF KIRKLAND CITY COUNCIL MEETINGS.

Whereas, a predetermined order of business and the adoption of rules of procedure for City Council meetings will be the most expedient means of conducting Council Meetings; and

Whereas, such order of business and rules of procedure will avoid confusion and aid in the expeditious handling of business; now, therefore,

Be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The order of procedure herein contained shall govern deliberations and meetings of the Council of the City of Kirkland, Washington.

Section 2. Regular meetings of the Council shall be held as provided for by ordinance.

Section 3. At all meetings of the Council, a majority of the Councilmembers shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time to secure the attendance of absent members.

Section 4. The order of business shall be as follows:

1. Call to order
2. Roll Call
3. Communications
    a. Items from the audience (3 minute limitation. See Section 5)
    b. Petitions
4. Special Presentations
5. Consent calendar
    a. Approval of minutes
    b. Audit of accounts and payment of bills and payroll
    c. Written Correspondence
        i. Routine

ii. Written correspondence relating to quasi-judicial, including land use public hearing matters and placed in the appropriate hearing file.

d. Award of bids

e. Acceptance of public improvements and establishing lien periods

f. Approval of agreements

g. Resolutions and Ordinances

h. Other routine items of business

Any matter, which because of its routine nature, would qualify for placement on the Consent calendar pursuant to this section, may be included on the Consent Calendar, notwithstanding action on the matter may, by law or otherwise, require adoption of a Resolution or Ordinance.

Any item may be removed from the consent calendar upon the request of any Councilmember. All items remaining on the consent calendar shall be approved by a single motion. Whenever an Ordinance is included on the Consent Calendar, approval of the calendar shall be by roll call vote.

6. Public hearings
7. Unfinished business
8. New business
9. Reports
   a. Council Reports
   b. City Manager reports
10. Announcements
11. Adjournment

Section 5. The Council believes that the following procedure for public comment during regular City Council meetings will best accommodate the desires and concerns of the Council:

1. During the time for "Items from the audience", speakers may not comment on matters which are scheduled for a public hearing, or quasi-judicial matters. The Council will receive comments on other issues, whether the matter is otherwise on the agenda for the same meeting or not. When possible, items on the agenda will be marked with an asterisk when the Council cannot receive comments on such matters during the time for "Items from the audience".

2. During the time for "Items from the audience", speakers will be limited to 3 minutes apiece. No more than 3 speakers may address the Council on any one subject. However, if both proponents and opponents wish to speak, then up to 3 proponents and up to 3 opponents of the matter may address the Council.

Section 6. Items of business to be considered at any Council meeting shall be submitted to the City Manager no later than the Wednesday morning prior to a scheduled Council meeting. A written agenda and informational material is to be prepared and sent the Friday preceding each meeting to each Councilmember. Emergency items arising after the regular agenda has been prepared shall be referred to the City Manager for inclusion, as an Addendum to the agenda.

Section 7. Written Correspondence: Access to the City Council by written correspondence is a significant right of all members of the general public, including in particular, citizens of the City. The City Council desires to encourage the exercise of this access right by the general public to bring to the attention of the Council, matters of concern to Kirkland residents. In order to do this most effectively, some orderly procedure for the handling of written correspondence is essential. One concern of the City Council is application of the appearance of fairness doctrine to correspondence addressed to the Council, concerning matters which will be coming before the City Council in a quasi-judicial or land use hearing context. Special care in the way the content of those letters is brought to the attention of the individual members of the Council is essential in order that an unintended violation of the appearance of fairness doctrine does not result.

The Council believes that the following procedure for handling of written correspondence addressed to the Council will best accommodate the desires and concerns of the Council as set forth in this section:

1. Correspondence of an Information Only Nature - Correspondence which is purely of an informational nature and which does not require a response or action should not be placed on the Council Meeting Agenda by the City Clerk, but rather transmitted to the Councilmembers in their weekly informational packet.

2. Routine Requests - Items of a routine nature (minor complaints, routine requests, referrals, etc.) shall be placed by the Clerk on the agenda under the Written Correspondence - Routine Section of the consent calendar. A brief staff memorandum should accompany each letter explaining the request and recommending a course of action.

3. Significant Correspondence - Written correspondence which obviously requires some Council discussion, is of a policy nature or for which a non-routine official action or response is required, shall be placed by the Clerk on the regular Council agenda, either under New Business or if appropriate, under Unfinished Business, and shall be accompanied by staff report as are all other agenda items.

4. Correspondence Directly Relating to Quasi-Judicial Hearing Matters - All such correspondence when so identified by the City Clerk shall be listed by name and reference to hearing matter on the consent agenda under the item Written Correspondence Relating to Quasi-Judicial Matters. Copies of such correspondence shall not then be included within the agenda materials, but shall be placed in a City Council communication holding file, or directly into the appropriate hearing file, so that they will be circulated to City Councilmembers at the time that the matter comes before the City Council for its quasi-judicial consideration, and as a part of the hearing record for that matter. The City Clerk shall also advise the sender of each such letter, that the letter will be coming to the attention of the City Council at the time that the subject matter of the letter comes before the Council in ordinary hearing course.

Section 8. ROBERTS RULES OF ORDER, REVISED, shall govern the deliberations of the Council except when in conflict with any of the rules set forth in this resolution.

Section 9. It shall be the duty of the presiding officer of the Council to:

1. Call the meeting to order.
2. Keep the meeting to its order of business.
3. State each motion and to require a second to that motion before permitting discussion.
4. Handle discussion in an orderly way:
   a. Give every Councilmember who wishes an opportunity to speak.
   b. Permit audience participation at appropriate time.
   c. Keep all speakers to the rules and to the question.
   d. Give pro and con speakers equal opportunity to speak.
5. Put motions to a vote and announce the outcome.
6. Suggest but not make motions for adjournment.

7. Appoint committees when authorized to do so.

Section 10. No member shall speak more than twice on the same subject without permission of the presiding officer.

Section 11. No person, not a member of the Council, shall be allowed to address the Council while it is in session without the permission of the presiding officer.

Section 12. All questions on order shall be decided by the presiding officer of the Council with the right of appeal to the Council of any member.

Section 13. Motions shall be reduced to writing when required by the presiding officer of the Council or any member of the Council. All resolutions and ordinances shall be in writing.

Section 14. Each member present shall vote on all questions put to the Council. The duty to vote shall be excused when a council member has a financial interest in the question or, in quasi-judicial matters, where a council member has an appearance of fairness problem. When voting on any matter before the Council, a majority of the entire membership of the Council is required for passage of any ordinance, resolution or motion, provided that a simple majority of the members present shall be sufficient with respect to the following motions:

To adjourn, to table or continue a matter,

To go into or out of executive session,

To schedule a special meeting of the City Council,

To add or remove items on a Council meeting agenda,

To approve or authorize the sending of a letter or other communication so long as the letter or communication sets forth a policy or position previously agreed to by a majority of the entire Council membership,

To establish the date for a public hearing, unless such hearing is required to be set by Ordinance or Resolution,

To authorize call for bids or requests for proposals, and

To approve a consent calendar, provided that any ordinance, any grant or revocation of franchise or license, or any resolution for payment of money included on said consent calendar, has first been removed therefrom.

Section 15. A tie vote, on a matter requiring four affirmative votes for passage, shall not be dispositive of the matter voted upon, but shall be deemed to have tabled the matter until the next succeeding regular meeting at which all seven Councilmembers are present. At that meeting, any member may move to take the matter off the table.

Section 16. A non-tie vote which fails for a lack of four affirmative votes, as to a matter which requires four affirmative votes for passage, shall be deemed to defeat the matter voted upon. Any Councilmember may move to reconsider the matter at the next succeeding regular meeting at which all seven Council-members are present.

Section 17. Except as provided in Sections 14 and 15, motions to reconsider must be made by a member who votes with the majority, and at the same or next succeeding meeting of the Council.

Section 18. Motions to lay any matter on the table shall be first in order; and on all questions, the last amendment, the most distant day, and the largest sum shall be put first.

Section 19. A motion for adjournment shall always be in order.

Section 20. The presiding officer of the Council may, at his discretion, call any member to take the Chair, to allow the presiding officer to address the Council, make a motion, or discuss any other matter at issue.

Section 21. The rules of the Council may be altered, amended or temporarily suspended by a vote of two-thirds of the members present; PROVIDED that at least four (4) affirmative votes be cast.

Section 22. The chairman of each respective committee, or the Councilmember acting for him/her in his/her place, shall submit or make all reports to the Council when so requested by the presiding officer or any member of the Council.

Section 23. The City Manager, Attorney, City Clerk, and such other officers and/or employees of the city of Kirkland shall, when requested, attend all meetings of the Council and shall remain in the Council chamber for such length of time as the Council may direct.

Section 24. The City Clerk shall keep correct minutes of all proceedings. The votes of each Councilmember on any ordinance shall be recorded in the minutes. At the request of any member, the ayes and nays shall be taken on any other question and entered in the minutes. Copies of the minutes shall be sent to the members of the Council prior to their next regular meeting.

Section 25. The City Council shall consider a Process IIA appeal under KZC Chapter 150 at one meeting, and shall vote on the appeal at the next or a subsequent meeting, in order for the Council to gather more information from the record and consider the appeal; provided, that the Council, by a vote of at least five members, may suspend this rule and consider and vote on the appeal at the first meeting. The Council's vote (to affirm, modify or reverse the decision of the Hearing Examiner, or direct the Hearing Examiner to hold a rehearing) shall occur within 60 calendar days of the date on which the letter of appeal was filed, pursuant to KZC150.125.

Section 26. The City Council shall consider a Process IIB application under KZC Chapter 152 at one meeting, and shall vote on the application at the next or a subsequent meeting; provided, that the Council, by a vote of at least five members, may suspend this rule and consider and vote on the application at the first meeting. The Council shall first consider the application at a meeting held within 45 calendar days of the date of issuance of the Hearing Examiner's recommendations, pursuant to KZC 152.90.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2009.

Signed in authentication thereof this _____ day of _____, 2009.

_____
MAYOR

Attest:

_____
City Clerk