

**BEFORE THE CITY OF KIRKLAND  
HEARING EXAMINER**

In the Matter of:

**Prehearing Order**

File No: SHR06-0001 (5201 Lake Washington Boulevard NE)  
Zoning/shoreline permit approval  
SEPA appeal

On July 31, 2006, the Hearing Examiner and the Houghton Community Council will conduct a public hearing on the application for a zoning/shoreline approval (Process IIB). The Hearing Examiner will also hear an appeal of the Director's SEPA determination by the Breakwater Condominium Board of Directors.

The joint public hearing with the Houghton Community Council will be held first, followed by the SEPA appeal hearing. The order of hearing will be generally as follows:

Public Hearing

- Introductory statements by Chair and Hearing Examiner
- Department presentation
- Applicant's presentation
- Public testimony
- Opportunity for questions from Community Council, Examiner or parties. (Questions directed at citizens are generally limited to questions for purposes of clarification.)
- Close of joint public hearing.

SEPA appeal hearing

- Examiner's introductory statement
- Opportunity for opening statements by parties
- Appellant's presentation of evidence
- Department's presentation of evidence
- Applicant's presentation of evidence
- Opportunity for rebuttal
- Closing statements
- Close of appeal hearing

The order of hearing may be modified to ensure fair and clear presentation of the proceedings, and as otherwise permitted by the Examiner.

Entered this 20<sup>th</sup> day of July, 2006.



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Anne Watanabe  
Hearing Examiner Pro Tem



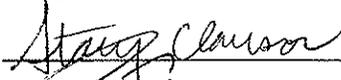


**CITY OF KIRKLAND**

Planning and Community Development Department  
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**ADVISORY REPORT  
FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS**

**To:** Kirkland Hearing Examiner  
Houghton Community Council

**From:**  Stacy Clauson, Project Planner

 Eric R. Shields, AICP, Planning Director

**Date:** July 19, 2006

**File:** SHR06-00001, ZON06-00001, and APL06-00007  
Yarrow Bay Marina

**Hearing Date and Place:** Monday, July 31, 2006 at 7:00 pm  
City Hall Council Chamber  
123 Fifth Avenue, Kirkland

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## I. **INTRODUCTION**

### A. **APPLICATION**

1. Applicant: Phil Goldenman representing Marina Suites LLC
2. Site Location: 5207 Lake Washington Blvd NE (see Attachment 1)
3. Request: Marina Suites LLC is proposing to extend a pier and redevelop the upland portion of the Yarrow Bay marina site located at 5207 Lake Washington Blvd NE (see Attachment 2). The applicant is requesting approval for the following :
  - Demolish the existing marina services building and accessory structures;
  - Relocate the existing underground fuel tanks;
  - Construct a new 53,000 square foot office building. The building would contain three floors of office space and two levels of parking;
  - Construct a new 6,980 square foot marina services building to be used as office space related to marina operations as well as boat repair and service;
  - Site improvements consisting of a new access driveway and parking for 214 vehicles (including enclosed, subterranean and surface parking), a pedestrian walkway system, new utility connections, grading and installation of retaining walls and landscaping;
  - Extend an existing pier by 66 feet to provide for six additional uncovered moorage spaces;
  - Removal of two existing buoys and three existing floats;
  - Install new walkway to covered moorage located south of existing bulkhead; and
  - Offsite work includes frontage improvements along Lake Washington Blvd NE.
4. Review Process: The proposal requires the following review:
  - a. Development of an office development in a PLA 15A zone, requiring a Process IIB review (see Section II.G.4);
  - b. Modification to a general moorage facility in the PLA 15A zone, requiring a Process IIB review (see Section II.G.5);
  - c. Development of an office development and associated improvements within the shoreline jurisdiction, a Substantial Development Permit requiring a Process I review (see Section II.H.3); and
  - d. Modification to a general moorage facility, a Substantial Development Permit requiring a Process I review (see Section II.H.2).

Pursuant to KZC 145.10 and KMC 24.06.040(b)(1), if the use or activity that requires approval through Process I is part of a proposal that requires additional approval through Process IIB, the entire proposal is reviewed using Process IIB.

Process IIB, Hearing Examiner conducts public hearing and makes recommendation; City Council makes final decision. The Houghton Community Council has approval/disapproval jurisdiction over the land use proposal.

- e. SEPA Appeal: Pursuant to Kirkland Municipal Code Section 24.02.105 the SEPA appeal hearing will be conducted by the Hearing Examiner and combined

with the public hearing for the Process IIB Zoning Permit for the project. The Hearing Examiner will make the final decision on the SEPA appeal.

5. Summary of Key Issues:

- a. Zoning and Shoreline Permit: Key issues are compliance with detailed requirements for construction of marinas and office uses as set forth in the Kirkland Zoning Code and Shoreline Master Program. Issues of transportation, trees and landscaping, parking, lighting, public pedestrian access, and the marina dock expansion as impacts to the adjoining condominium development to the south have been identified in the correspondence. These issues have been addressed through project design and recommended conditions of approval.

It should be noted that the applicant would be agreeable to eliminating the pedestrian pathway and providing additional buffering on the south side of the project. The Zoning Code does provide the potential for the access from the right-of-way to be eliminated, because the waterfront on the subject property can be reached from the Carillon Point property to the north. In evaluating this issue, staff has recommended that the public pedestrian access be provided from the right-of-way to the waterfront in order to provide access to the marina, a water dependent use, and to the waterfront use area that the applicant is proposing to develop in association with the request for increased height of the office building, as provided for under the zoning regulations (see Section II.G.4.b(3) and (4) on pages 28-29 for additional information).

It also should be noted that there is a conflict between the driveway buffering regulations and the view corridor regulations. The landscape buffering that could be provided along the south property line would be located within the view corridor, where the Zoning Code presently restricts vegetation height to three feet above finished grade in order to insure the long-term preservation of views across the property (see Section II.G.1.a on pages 18-20 for additional information). Increases in the allowable vegetation height would provide enhanced buffering for the adjoining development and, because of the grade change across the site, could be installed in a way that would not further obscure the view from Lake Washington Boulevard to and beyond Lake Washington. As a result, staff is recommending that additional flexibility for vegetation height for the driveway be granted, with the condition that the applicant submit a site section through the landscape buffer demonstrating that the landscaping (at mature height) would not project into the line of sight from Lake Washington Boulevard to the high water line.

- b. SEPA Appeal: Does the appeal of the issuance of a determination of nonsignificance for this project have merit (see section II.D)? In answering this question, the Hearing Examiner will either: Affirm the decision being appealed; reverse the decision being appealed; or modify the decision being appealed.

## **B. RECOMMENDATIONS**

Based on Statements of Fact and Conclusions (Section II), and Attachments in this report, staff recommends approval of this application subject to the following conditions:

1. This application is subject to the applicable requirements contained in the Kirkland Municipal Code, Zoning Code, and Building and Fire Code. It is the responsibility of the

applicant to ensure compliance with the various provisions contained in these ordinances. Attachment 3, Development Standards, is provided in this report to familiarize the applicant with some of the additional development regulations. This attachment does not include all of the additional regulations. When a condition of approval conflicts with a development regulation in Attachment 3, the condition of approval shall be followed (see Conclusion II.J).

2. Prior to issuance of a grading or building permit, the applicant shall submit:
  - a. Plans consistent with the geotechnical recommendations contained in the reports by Associated Earth Sciences dated January 19, 2006 and June 24, 2002 (see Conclusion II.A.1.b(2)).
  - b. A copy of the approved Tree Plan II (see Conclusion II.A.1.b(3)).
  - c. A report from a certified arborist providing special instructions for work within the limits of disturbance of those trees shown to be retained along the waterfront area (see Conclusion II.A.1.b(4)). The recommendations shall be incorporated into the plan sets.
  - d. Final landscape plans, in compliance with the following requirements:
    - (1) Within the view corridor, except along the buffering for the access driveway, the plans shall either be revised to include only those shrubs that would not exceed 3 feet above finished grade or the applicant shall submit a perpetual maintenance agreement, to be recorded with King County, to maintain the vegetation within the view corridor to a height no greater than three feet above finished grade (see Conclusion II.G.1.a(2)(d)).
    - (2) The plans shall provide the 5-foot wide buffer for the driveway required under KZC 95.40.7.b (see Conclusion II.G.3.b(2)). The applicant shall submit a site section through the landscape strip demonstrating that the landscaping (at mature height) would not project into the line of sight from Lake Washington Boulevard to the high water line (see Conclusion II.G.1.a(2)(e)).
  - e. Final plans for construction of the retaining wall located near the south property line, consistent with the following requirements:
    - (1) Soil disturbance is limited to a cut no closer than five feet (5') north of the property line (see Conclusion II.G.4.a(4)(e)).
    - (2) A solid wall shall be incorporated into the restraint system on the south side of the pedestrian trail. The wall shall be of sufficient height to block the headlights from vehicles exiting the parking garage (see Conclusion II.G.4.a(4)(d)).
    - (3) The south face of the retaining wall shall be treated, either with forms that contain a decorative pattern, or by planting climbing vegetation with some sort of support or trellis system that will allow the vegetation to cover the wall (see Conclusion II.G.4.a(4)(c)).
  - f. Final plans for public pedestrian access and the waterfront use area, consistent with the approved plans (II.G.4.b(4)(d)).

3. Moorage is not permitted on the outside of the floating pier addition (see Conclusion II.G.5.b(10) and II.H.2.d).
4. As part of the application for a Building Permit for the floating pier addition, the applicant shall submit plans consistent with the following standards:
  - a. Moorage structures may not be treated with toxic substances. The marina must provide at least two covered and secured waste receptacles. All utility lines must be under the pier decks. Piers must be adequately lit and the source of the light shall not be visible from off the subject property. The street address must be displayed on the moorage structure, visible from the lake, with letters and numbers at least 4" high. Covered aircraft moorage is not permitted. No additional covered moorage is permitted. The marina services building should contain restrooms that are available to the public. (see Conclusion II.G.5.b(14)).
  - b. The plans shall include the location and design of signage posted to prohibit moorage on the outside of the proposed floating pier addition (see Conclusion II.G.5.b(10) and II.H.2.d).
5. The subject property is subject to the following parking requirements:
  - a. Use of the marina is limited to 110 moorage slips (see Conclusion II.G.2.b).
  - b. The marina services building shall be limited to service of up to four boats at one time, unless additional storage area on the site is provided (see Conclusion II.G.5.b(8)).
  - c. No boat trailer storage in designated parking stalls is permitted (see Conclusion II.G.2.b).
  - d. Parking in front of the service bay doors shall be limited to marina staff (see Conclusion II.G.2.b).
  - e. The parking within the parking garage shall be made available to marina customers during nights and weekends in order to meet the peak parking demand for the marina (see Conclusion II.G.2.b).
  - f. The applicant shall demonstrate that the parallel parking stalls located in the parking garage levels are functional (see Conclusion II.G.2.b).

Failure to meet these requirements shall result in restrictions in the number of moorages or other measures consistent with the Zoning Code and approved by the Planning Official to accommodate the difference in required parking (see Conclusion II.G.2.b).

6. Prior to issuance of a final inspection:
  - a. Submit for recording with King County a signed and notarized public access easement establishing the right of the public to the pedestrian access from the right-of-way to and along the entire waterfront of the subject property, the location to be determined through this review process. Sign(s) shall be installed, obtained from the City, designating the public pedestrian access (see Conclusion II.G.4.b(2)(c) and II.G.5.b(4)).
  - b. The public plaza shall be completed. A public use easement document shall be provided to the City for the public use area. Sign(s) are required to be installed,

- obtained from the City, designating the public access to the plaza area (see Conclusion II.G.4.b(4)(d)).
- c. Submit a reciprocal parking agreement in a form acceptable to the City Attorney, stating that the marina parking and office parking may be used for parking by the other property. The applicant must file this statement with the King County Bureau of Elections and Records to run with the properties (see Conclusion II.G.2.b).
  - d. Submit a completed Transportation Management Program (TMP) approved by the City and METRO for the office building. The applicant must file this statement with the King County Bureau of Elections and Records to run with the properties (see Conclusion II.G.4.b(5)(b) and II.I.2.b).
  - e. Provide an easement to the City for a bus shelter footing (see Conclusion II.G.4.b(5)(b)).
  - f. Install the required improvements as described in Attachment 3. In lieu of completing any required improvements, a security device to cover the cost of installing the improvements may be submitted if the criteria in Zoning Code Section 175.10.2 are met (see Conclusion II.G.6.b(1)).
  - g. Install notice signs at the end of the proposed floating pier noting moorage is not permitted (see Conclusion II.G.5.b(10) and II.H.2.d).
  - h. Install notice signs in the surface parking areas indicating that boat trailer parking is prohibited on designated parking stalls and that parking in front of the service bay doors is limited to marina staff (see Conclusion II.G.2.b).
  - i. Submit a covenant restricting rooftop appurtenances. The applicant must file this statement with the King County Bureau of Elections and Records to run with the properties (see Conclusion II.G.4.b(4)).
7. The applicant is required to submit a lot line adjustment application in order to adjust the property lines as indicated in the proposal drawings (see Conclusion II.A.1.b).

## **II. FINDINGS OF FACT AND CONCLUSIONS**

### **A. SITE DESCRIPTION**

1. Site Development and Zoning:
  - a. Facts:
    - (1) Size: The subject property contains 92,048 square feet of land area, located above the ordinary high water mark. The site consists of two separate parcels and the proposal would include adjustment of the existing lot lines.
    - (2) Land Use: The upland parcel has previously been used for dry dock boat storage and the lower property is associated with the marina activities. The existing marina services include moorage, boat sales, boat rentals, parts, accessories, and marine repair. The site contains:
      - 104 moorage slips,

- A 6,878 square foot building consisting of a marine service shop, retail services, office, storage, and apartment office
  - A fueling facility,
  - A boat haul-out; and
  - A boat rentals dock.
- (3) Zoning: PLA 15A
- (4) Shoreline Designation: Urban Mixed 2
- (5) Terrain The property slopes downhill from Lake Washington Blvd NE to Lake Washington, with an elevation change of approximately 32 feet. An 8-foot high rockery wall is located on the east side of the property, providing grade separation between Lake Washington Blvd NE and the subject property. A series of gravel drive areas cross the site, creating level benches for boat and trailer parking.

The Kirkland Sensitive Area Maps identify a seismic hazard area on the upland portion of the site. A preliminary geotechnical feasibility report has been completed by Associated Earth Sciences, Inc. (see Enclosure 9 of Attachment 5). In this report, Associated Earth Sciences has noted that, from a geological standpoint, the parcel is suitable for the proposed development provided that the recommendations established within the report are properly followed.

- (6) Vegetation:
- (a) Pursuant to requirements of KZC 95.35.2.b)2), the applicant is required to submit a Tree Plan II. To fulfill this requirement, the applicant has submitted a tree plan (see Sheet L-1 of Attachment 2.a) and the results of an arborist report completed by Greenforest, Inc. (see Enclosure 10 of Attachment 5). A tree survey completed as part of this report identified 19 trees on the Marina property or abutting right-of-way. The arborist provided an assessment of the viability and health of these trees, together with 40 trees located on the adjacent properties to the north and south whose canopy overhang onto the site. The arborist also established the location of limits of disturbance around all of the trees.
- (b) Based on this information, the City's urban forester has rated each of the trees located on the subject property under the provisions of KZC 95.35.4.A.1)A) (see Attachment 8). Only one tree, the 36" Big Leaf Maple tree located along the south property line (Tree #152) has been designated as a Type I tree.
- (c) On the tree plan, the applicant has indicated which trees are proposed for retention and removal. Tree #152 has been proposed for removal and work is proposed within the limits of disturbance as established by the arborist, associated with the retaining wall to be installed offset from the south property line to retain the fill needed to raise the elevation of the access roadway.

- (d) The applicant's arborist has evaluated the impacts of this retaining wall on trees along the south property line and has determined that Tree #152 will not survive the proposed construction (see Attachment 9).
- (e) Several other trees, including trees located near the waterfront area, have been proposed for retention, though work associated with completed of the waterfront access trail are shown occurring within the limits of disturbance established by the arborist for these trees.

b. Conclusions:

- (1) A lot line adjustment is required to modify the existing lot lines.
- (2) Land use and shoreline issues are relevant factors to be considered in this application and are further addressed in Sections II.F, II.G and II.H below.
- (3) The recommendations of the report from Associated Earth Sciences should be followed.
- (4) The submitted tree plan is consistent with the requirements of Tree Plan II and should be included in future development permit applications. Given the degree of construction related impacts to Tree 152, which has been characterized as a Type I tree, retention of this tree is not feasible.
- (5) Prior to issuance of a grading or building permit, the applicant should consult with an arborist to provide special instructions for work within the limits of disturbance of those trees shown to be retained along the waterfront area.

2. Neighboring Development and Zoning:

a. Facts: The subject property is surrounded by the following zones and uses:

North: Properties to the north are also located within the PLA 15A zone and UM 2 shoreline environment. The upland portion of the site is bordered by the Carillon Point development, a mixed-used development containing office, retail, hotel and restaurant uses. The waterward portion of the site is bordered by the marina at Carillon Point.

South: Properties to the south are located in the WD III zone and UR 2 shoreline environment. The upland portion of the site is bordered by the Breakwater Condominiums, an 8-unit condominium building. The waterward portion of the site is bordered by the moorage facility for the Breakwater Condominium residents.

East: Property to the east is zoned RS 12.5 and is outside shoreline jurisdiction. The site abuts the Lake Washington Blvd NE right-of-way. Property across the street is developed with residential uses, including the 9-unit Yarrow Hill Villas Condominiums and the Yarrow Hill Development.

West: Lake Washington

- b. Conclusion: The project is located in a transition area along the shoreline, where uses shift from urban mixed uses to high density residential uses. The site has been designed to be sensitive to this transition, with the view corridor located on the south and the buildings located on the north side of the property.

**B. HISTORY**

1. Facts: The marina has been in existence since the 1950s, prior to Houghton consolidation with the City of Kirkland in 1968.

As part of the 2001 Comprehensive Plan Amendment process and related Comprehensive Plan and Zoning Map changes, the zoning for the property was amended to permit office on the existing marina site as a separate use from the Carillon Point Master Plan site. The applicant requested the amendment in order to retain the marina and construct an office building on the vacant portion of the site. At the time, the city regulations were not written to allow an office use outside of an approved master plan without a five acre minimum lot size. Since the marina site was not part of the Carillon Point master plan and did not contain five acres, the property could not be developed for office uses. In evaluating the proposed amendment, the owner hired a consulting architect that designed a potential site plan to illustrate the concepts being reviewed, such as view corridors, lot coverage and height (see Attachment 15). These drawings depict a new office building on the north side of the site, with access along the south, both for pedestrians and vehicles, as well as retention of the existing marina services building. Both the Planning Commission and Houghton Community Council recommended amending the Comprehensive Plan and Zoning Code to allow office uses on the site with the following provisions:

- a. Maximum building height of 40 feet, but no rooftop appurtenances allowed if built to this height
- b. The view corridor would increase in width if built to the higher height limit
- c. A maximum 50 percent building footprint
- d. Public use area required at the shoreline
- e. Vehicular and pedestrian circulation plan to provide safe access to and from the Boulevard

The amendment was noticed to the public, with notices posted on City notice boards installed at the site. Residents from the condominiums east of the site participated in the process and provided written and oral comments. Their concerns were view blockage from their units and additional traffic. No additional neighboring residents participated in the Comprehensive Plan amendment process. The City Council approved the amendment, including a requirement for a Transportation Demand Management Plan. Retention of the marina was expressed as a policy goal for the site.

2. Conclusion: The current proposal is substantially consistent with the concept drawings evaluated as part of the 2001 Comprehensive Plan amendment process. The one new aspect, relocation of the marina services building to the north portion of the site, will open up the view corridor as part of the redevelopment process. The proposed development includes retention of the existing marina, with redevelopment of the upland piece occurring in a way that is integrated and planned around the marina use. The proposal opens up a view corridor and provides pedestrian access to a waterfront recreational use, both features that currently do not exist at the site. Compliance with

the zoning code provisions established as part of the 2001 amendment process are further detailed in Section II.G and II.H below.

### C. PUBLIC COMMENT

1. Facts: The City has received 5 comment letters and e-mails from residents of the Breakwater Condominiums to the south regarding the proposal to date. An additional letter has been received from legal counsel representing the condominium association to the south. Correspondence is included as Attachments 4.a-f. Comments are summarized as follows, with a brief staff analysis where appropriate in italics.

Helen Rogers (see Attachment 4.a) – expressed concern about the proposed expansion of the marina docking facilities and recommends that with the redevelopment the entry to the fueling area be relocated to the north side of the property to minimize further intrusion on the Breakwater condominium property. If the entry is not relocated, recommends that the marina configure and identify a route into their facility which will make it clear that the Breakwater dock should not be used; also requested penalties to be put in place.

*Staff is not aware of any restrictions on use of public waters that would preclude access across the waters in front of the Breakwater Condominiums. The applicant has submitted a plan that shows the existing and anticipated boat access to the fueling facility (see Attachment 10). Access across the public waters in front of the Breakwater site to reach the marina facilities, including the fueling facilities, would continue, but the separation between the proposed float pier addition and the Breakwater Condominium dock is sufficient to insure that boats can maneuver around the edge of the moorage facility without further impact to the use and enjoyment of the Breakwater Condominium dock. The applicant has also submitted a proposal (see Attachment 11) to include wayfinding and warning signage for customers advising them not to tie up to the private pier of the Breakwater Condominiums. The applicant would need to obtain permission from the residents of the Breakwater Condominiums before placing any signage on their property.*

Joan Schmidt (see Attachment 4.b) – expressed concerns about the project on the following issues:

- Recommends relocating driveway further to the north and installation of a traffic signal, based on following concerns:
  - Relocation of driveway closer to the Breakwater Condominium site with resulting noise and glare impacts from headlights.

*To address the concerns about vehicle lights, staff has recommended that the open guardrail located along the pedestrian pathway to be replaced with a solid railing, which would act to deflect vehicle lights.*
  - Traffic impacts and increase in number of cars on Lake Washington Blvd NE making it more difficult for residents of the Breakwater Condominiums to enter or leave the property.

*The City's Traffic Engineer has addressed this concern in Enclosure 7 of Attachment 5 and Attachment 13.*

- Recommends project to be reduced in size so that the project complies with parking standards.

*Parking is addressed in Section II.G.2 below.*

- Requested a 6-foot high solid fence to protect the residents of the Breakwater Condominiums from noise pollution and headlights.

*The proposal does not currently include a fence. As designed, a fence installed at the property line would be at a lower elevation than the driveway and would not function to minimize noise or glare from headlights. See section above concerning staff recommendation for a solid restraint system along the south side of the public walkway to address these concerns.*

- Requested that both street and water entrances to the marina be relocated to the far north of the marina where they would not disrupt adjoining residential building.

*The City's Traffic Engineer has addressed the recommended location for the vehicular access in Enclosure 7 of Attachment 5. Access to the marina from the water is existing and it not proposed to be relocated.*

- Opposed to dock expansion unless it is moved northward. Concerned about view obstruction and increased potential for trespass associated with proposed dock expansion.

*The Breakwater Condominiums are located on the waterfront and currently enjoy expansive views of Lake Washington. The units currently view the Breakwater dock, which is located on the Breakwater property. The extension would be located 20 feet north of the Breakwater north property line and would comply with established setback yards. The pier extension is proposed to serve small boats. See comments above concerning increased potential for trespass.*

- Opposed to installation of public walkway along the south side of the subject property connecting Lake Washington Blvd. NE to the waterfront.

*The public pathway is a desired public amenity at this location. It will provide enhanced access to the marina, which is a water dependent recreational use, and will also connect to a waterfront use area proposed as part of the development. The Breakwater Condominium property would be adequately buffered from the walkway by an existing vegetation buffer along the north portion of the Breakwater Condominium site.*

John Burnett (see Attachment 4.c) – expressed similar concerns as Joan Schmidt

Fred and LouAnn Freeburg (see Attachment 4.d) - expressed similar concerns as Joan Schmidt and John Burnett, together with the following (see Attachment 4.e):

- Concerned about additional ground and surface water coming onto Breakwater property as a result of the proposed development.

*All site drainage (roof, parking, and footings) will be collected and conveyed to the lake. No drainage will be routed toward the Breakwater Condominiums.*

- Concerned about additional pressure applied to Breakwater bulkhead from fill on marina property.

*There is no fill proposed in the area located along the shoreline near the Breakwater bulkhead. As part of the construction of the proposed retaining wall system designed to retain the fill associated with the driveway, the applicant will need to submit structural drawings and will need to comply with recommendations established through the geotechnical review of the proposal.*

J. Richard Aramburu (see Attachment 4.f) – indicated that there were defects in the notice and project description and requested that the public comment period for the proposal be reopened and that no public hearings be held until after a new comment period has expired.

*Notice of application and the summary notice mailed to the property owners within 300 feet of the proposal site are included as Attachment 30.*

2. Conclusions: The concerns expressed prior to issuance of this staff advisory report are from residents adjoining to the property to the south. The proposal does represent the introduction of a new use on the site (office use) and a slight increase in the number of boats to be moored (104 existing and 110 proposed), with associated impacts including an increase in traffic. However, as addressed in this report and with the recommended conditions of approval, the project complies with applicable City regulations and has been appropriately evaluated and mitigated for any potential significant adverse environmental impacts.

Staff believes that appropriate notice of the application has been given.

#### **D. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

1. SEPA Threshold Determination
  - a. Facts:
    - (1) A Mitigated Determination of Nonsignificance (DNS) was issued on May 9, 2006. The Environmental Checklist, Determination, and additional environmental information are included as Attachment 5.
    - (2) A timely appeal of the SEPA Determination was filed on May 23, 2006 by the Board of Directors for the Breakwater Condominium, which is located next to the project at 4823 Lake Washington Blvd NE (see Attachment 6).
    - (3) In addition to the written appeal, two written comments of the SEPA Determination were submitted to the Planning Department (see Attachment 7.a and b).
    - (4) The Hearing Examiner will conduct a public hearing on the SEPA appeal concurrently with the public hearing for this permit application on July 31, 2006. A separate decision on the SEPA appeal hearing will be issued within two weeks of the close of the office public record hearing.

- b. Conclusion: Once the Hearing Examiner issues a decision of the appeal of SEPA determination of Non-Significance, the City and the applicant will have satisfied the requirements of SEPA.

## 2. SEPA Appeal

- a. Summary of Specific Issues Raised in the Appeal: The appeal included the issues listed below. Staff's analysis of the specific factual findings and conclusions disputed in the letter of appeal is also included.

- (1) Transportation: The applicant's response is in Attachment 12. The City's response is included in Attachment 13, prepared by Thang Nguyen, Transportation Engineer for the City of Kirkland.
- (2) Trees: The applicant has revised the plans to provide a 6-foot wide separation between the retaining wall to be installed at the edge of the pedestrian walkway and the common property line with the Breakwater Condominiums (see Sheet A4.5 of Attachment 2.a). The applicant has also provided the results of an arborist report (see Enclosure 10 of Attachment 5 and Attachment 9). The arborist has evaluated the trees on the adjoining Breakwater Condominium project in relationship to the proposed retaining wall and has determined that the roots for these trees are at a distance where they will not be affected by the proposed trail construction (see Attachment 9).
- (3) Parking: See Section II.G.2 of this staff report.
- (4) Lighting. The SEPA determination contained mitigation measures addressing potential lighting impacts, including glare, light trespass, and sky glow. The mitigation measures required use of full-cutoff light fixtures in order to conceal the light bulb from adjoining residential properties and limit glare. This standard will ensure that the lights do not allow any light dispersion or direct glare to shine above a 90 degree, horizontal plane from the base of the fixture. The mitigation measures also required that the lights be turned off after 10 pm in order to discourage excessive lighting at nighttime and limit any light trespass onto neighboring properties. After the hours of 10 pm, lighting is restricted to security lighting that would be lower in profile and have a uniform luminance across the site in order to discourage use of excessively bright or high wattage bulbs. In addition to these requirements, the applicant is required to meet the Kirkland Zoning Code requirements in KZC Section 115.85 relating to light and glare, which states that the applicant shall select, place and direct light sources so that the glare produced by any light source, to the maximum extent possible, does not extend to adjacent properties or to the right-of-way.

The applicant has also submitted the results of a preliminary lighting plan (see Attachment 14) which includes a photometric site plan showing the locations of light fixtures and fixture type and luminance levels of the lighting in footcandle measurements. The preliminary plan shows that the lighting has been designed so that it does not extend to adjacent properties.

- (5) Walkway. Because the Kirkland Zoning Code and Shoreline Master Program contain specific requirements for public access, the effects of the walkway are more appropriately addressed and evaluated through the zoning and shoreline permit process. See Section II.G.4.b(1) and (2), II.G.5.b(3) and (4), and II.H.4 of this report.
- (6) Vegetation Border and View Corridors. Because the Kirkland Zoning Code and Shoreline Master Program contain specific requirements for landscaping and view corridors, these requirements are more appropriately addressed and evaluated through the zoning and shoreline permit process. See Section II.G.1.a, II.G.3, and II.H.3 of this report.
- (7) Marina Dock Expansion. In considering the impacts of the proposed marina expansion, the City's authority is limited to considering those environmental impacts caused by a proposal. The covered moorage structures and fueling facility are currently existing and, as a result, it is not appropriate for the City to consider environmental impacts from the existing facility.

The Zoning Code establishes a 10 foot minimum setback from the south property line with which the proposed pier extension would comply. In addition, the applicant has submitted a plan that shows the existing and anticipated boat access to the fueling facility (see Attachment 10). Access across the public waters in front of the Breakwater site to reach the marina facilities, including the fueling facilities, would continue, but the separation between the proposed float pier addition and the Breakwater Condominium dock is sufficient to insure that boats can maneuver around the edge of the moorage facility without further impact to the use and enjoyment of the Breakwater Condominium dock. The applicant has also submitted a proposal (see Attachment 11) to include wayfinding and warning signage for customers advising them not to tie up to the private pier of the Breakwater Condominiums.

The applicant has submitted the results of a qualified professional assessment of probable environmental impacts to water quality and habitat associated with the proposed expansion (see Enclosure 8 of Attachment 5). The report identifies potential direct and indirect effects on species of concern, including salmonids and Bald Eagles and establishes mitigations for these potential impacts, including:

- Removal of existing floats that are located over nearshore habitat.
- Minimization of pier width to 5 feet.
- Use of full deck grating and narrow width (22 inches) for nearshore walkway.
- Use of durable and non-toxic materials.
- Construction of project within established work windows for Lake Washington.
- Hand removal of any non-native vegetation that colonizes the nearshore area between a depth of 0 and 2 feet.
- Installation of native plantings along the shoreline edge in the southwest corner of project, together with a monitoring and maintenance plan for these activities.

The Planning Department has reviewed this information and determined that the applicant has satisfactorily addressed impacts to water quality and habitat.

b. Standards of Review:

- (1) KMC Section 24.02.105.b establishes the following parties as able to appeal the SEPA determination: The applicant or proponent; any agency with jurisdiction, any individual or other entity who is specifically and directly affected by the proposed action.
  - (2) KMC Section 24.02.105.g.2 states that only those persons entitled to appeal the threshold determination may participate in the appeal.
  - (3) KMC Section 24.02.105.i of the Kirkland Municipal Code relating to SEPA states that:
    - (a) The matters to be considered and decided upon in the appeal are limited to the matters raised in the notice of appeal.
    - (b) The decision of the responsible official shall be accorded substantial weight.
    - (c) All testimony will be taken under oath.
    - (d) The decision of the hearing body hearing the appeal shall be the final decision on any appeal of a threshold determination including a mitigated determination of nonsignificance (see Attachment 26).
3. Conclusions: Although the appeal includes a number of concerns, none of them represent significant environmental impacts. Therefore, the decision by the responsible official to issue a DNS was appropriate. The Hearing Examiner will consider these issues and the testimony received during the public hearing in making her decision to either: affirm the decision being appealed; reverse the decision being appealed; or modify the decision being appealed.

**E. CONCURRENCY**

1. Facts: The Public Works Department has reviewed the application for concurrency. A concurrency test was passed for traffic on August 2, 2005 (see Enclosure 4 of Attachment 5) and for water and sewer on March 10, 2006 (see Attachment 3).
2. Conclusion: The proposal meets the City's concurrency requirements.

**F. APPROVAL CRITERIA**

1. GENERAL ZONING CODE CRITERIA
  - a. Fact: Zoning Code section 152.70.3 states that a Process IIB application may be approved if:
    - (1) It is consistent with all applicable development regulations and, to the extent there is no applicable development regulation, the Comprehensive Plan; and
    - (2) It is consistent with the public health, safety, and welfare.

The applicant has addressed compliance with this approval criteria in Attachment 17.

- b. Conclusion: The proposal complies with the criteria in section 152.70.3. It is consistent with all applicable development regulations (see Sections II.G) and the Comprehensive Plan (see Section II.I). The expansion of the marina is consistent with the public health, safety, and welfare because it promotes public access to the shoreline and recreational activities for Kirkland residents while complying with applicable City regulations. The office development is consistent with the public health, safety, and welfare because it will provide benefits to the public of shoreline access and a waterfront use area, visual access to the Lake through the property, and redevelopment of the upland piece of the property that might otherwise not occur and in a way that is integrated with the marina use, while complying with applicable City regulations. The development of the waterfront access trail also completes a key link, connecting the waterfront trail that extends to the south with the trail system at Carillon Point.

## 2. SHORELINE SUBSTANTIAL DEVELOPMENT

### a. Facts:

- (1) WAC 173-27-140 establishes that no permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.
- (2) The applicant is proposing to construct an office building that would be more than thirty-five feet above average grade level.
- (3) The proposal includes establishment of a view corridor across the south portion of the site.
- (4) Properties to the north and south have frontage on Lake Washington and their view of the water will not be impacted by the proposed construction. Properties to the east, across Lake Washington Blvd. NE, are developed with residential uses, including the 9-unit Yarrow Hill Villas Condominiums, the 8-unit Freshwinds Apartments, and the Yarrow Hill Development.
- (5) The office building is proposed to extend approximately 17 feet above the elevation of the sidewalk along Lake Washington Blvd. NE, with a rooftop elevation of approximately 83 feet. On the east side of Lake Washington Blvd. the topography rises steeply uphill. The applicant has submitted results of survey information from adjoining development to the east, which shows that the 1st floor decks of the most westerly units of the residential building at 5210 Lake Washington Blvd. NE (Freshwinds Apartment complex) are at an elevation of 88.49, the first floor deck at the most westerly units at Yarrow Villas is at an elevation of 92.25, and the first floor deck of the most westerly units at the Yarrow Hill Villas buildings directly across the street is at an elevation of 110.15 (see Attachment 16).

(6) The applicant has prepared a view analysis of the proposed development (see Enclosure 11 of Attachment 5). The view analysis was prepared by taking photographs of the site as viewed from four different reference points depicted in the view study. Survey information (e.g. elevation) at each of the reference points is also taken to help ensure accurate depiction. A model of the building is then superimposed into the photograph to depict the project's impact on neighboring properties' views.

b. Conclusions:

- (1) More than 25 residences adjoin the property directly to the east.
- (2) The proposed redevelopment will create a view corridor across the property which does not currently exist, opening up views to the lake from the east. The creation of a new view corridor will open views to the lake and beyond to both adjoining private properties and to the general public. This, in addition to the creation of public access and a public waterfront use area, are in the public interest and override any view impacts to the public.
- (3) The first floor deck elevations of the adjoining developments to the west are all at a higher elevation than the top of the proposed building.
- (4) The view analysis prepared by the applicant demonstrates that the proposal will not obstruct views from existing development lying east of Lake Washington Boulevard. Presently, several large Willow trees partially obstruct views of the residents at Yarrow Villas and Freshwinds Apartments. These trees are not proposed to be retained in the development, opening up larger portions of the Lake to be viewed from the adjoining properties. The depictions of the proposed development further show that the lake continues to be clearly visible beyond and to either side of the office building. The view of the most westerly units in the Yarrow Hill development, whose views are potentially most impacted by the proposed development, are currently obstructed by trees on the Yarrow Hill property.

c. Fact: WAC 173-27-150 establishes that a Substantial Development Permit may only be granted when the proposed development is consistent with all of the following:

- (1) The policies and procedures of the Shoreline Management Act.
- (2) The provisions of WAC Chapter 173-27.
- (3) Chapter 24.05 of the Kirkland Municipal Code.

The applicant has addressed compliance with these approval criteria in Attachment 17.

d. Conclusion: The proposal complies with WAC 173-27-150. The expansion of the marina is consistent with the policies and procedures of the Shoreline Management Act because it represents a water dependent use of the shoreline that encourages public and recreation use of the waterfront. The modifications requested also result in additional protection for the resources and ecology of the shoreline, with the removal of overwater structures and improvements to the nearshore habitat. The office development is consistent with the policies and

procedures of the Shoreline Management Act because it supports and is integrated to the marina use, allowing retention of this water dependent use. Further, the office development increases public access and recreational opportunities for the public in the shoreline, with the creation of pedestrian access walkways through the site and a waterfront use area. The development also would results in the creation of a view corridor across a significant portion of the property, opening up public views to the lake. The development of the waterfront access trail also completes a key link, connecting the waterfront trail that extends to the south with the trail system at Carillon Point. The expansion of the marina and office are consistent with the provisions of WAC 173-27 because a complete application for a Substantial Development Permit has been submitted by the proponent and appropriate notice of the application has been given. As discussed in sections II.H, it is consistent with Chapter 24.05 of the Kirkland Municipal Code.

## **G. ZONING CODE REGULATIONS**

### **1. Applicable General Regulations**

#### **a. View Corridor**

##### **(1) Facts:**

- (a) General Regulation #2 of Section 60.170 establishes the requirement for a view corridor along Lake Washington Blvd NE of 30 percent of the average parcel width, which is required to be increased 2.5 feet for each foot, or portion thereof, that any building exceeds 30 feet above average building elevation. The regulation also establishes a view corridor of seventy percent of the high water line if the height of any building is greater than 35 feet above average building elevation. The following standards apply to the view corridor:
- Structures, parking areas and landscaping will be allowed, provided that they do not obscure the view from Lake Washington Boulevard to and beyond Lake Washington.
  - Trees or shrubs that mature to a height of greater than three feet above average grade may not be placed in the required view corridor.
  - Parking stalls or loading areas are not permitted in the required view corridor that would result in vehicles obscuring the line of sight from Lake Washington Boulevard to the high water line
  - The view corridor must be adjacent to either the north or south property line, whichever will result in the widest view corridor given development on adjacent properties.
- (b) The applicant is proposing to construct a building that would be 40 feet above average building elevation.
- (c) The proposal includes a view corridor across the south portion of the property that would connect the following points:

104'7 $\frac{3}{4}$ " north of the south property line along Lake Washington Blvd. NE (30% of 265.49 (average parcel width) + (2.5 x 10) = 104'7 $\frac{3}{4}$ "') with 194'3" north of the south property line along the high water line (40% of 277'0 5/8")

- (d) The view corridor is proposed to be located adjacent to the south property line. This would align with the view corridor established as part of the permitting for the Breakwater Condominium property to the south, which was approved adjacent to the north property line and encompasses 30 percent of the average parcel width of the Breakwater site, or approximately 45 feet. The view corridor established as part of the permitting for the Carillon Point development is located adjacent to the north property line of the Carillon Point development.
- (e) The site contains covered moorage along the north portion of the site, with a smaller covered slip located south of the fueling dock.
- (f) Within the view corridor, the applicant has proposed to locate retaining walls, parking and landscaping and to remove existing structures located near the waterfront. The applicant has submitted a section drawing of the site (see Sheet A1.1 of Attachment 2.a) that represents the view of a pedestrian along Lake Washington Blvd NE to the shoreline within the view corridor, showing the relative heights of the proposed vehicles and retaining wall heights.
- (g) The applicant has submitted a landscape plan (see Sheets L-2 and L-3 of Attachment 2.a) that provides information on the proposed landscaping, including proposed placement and species of plant materials, as well as the mature height of proposed species. Within the view corridor, the applicant has proposed to install a variety of shrub species and has indicated that the shrubs to be installed would have a maximum mature height of 36 inches. According to the information in *Sunset Western Garden Book*, some of the species (e.g. *Berberis thunbergii* 'gentry', *Otto Luyken Laurel*, etc.) would require sheering or pruning to maintain the mature height of 36 inches.
- (h) The residents of the Breakwater Condominiums adjoining the south property line have requested that the vegetation buffer between the properties be allowed to increase in height (greater than 3 feet above finished grade) in order to provide a taller screen for the proposed development. The applicant has expressed their willingness to install taller vegetation in this area.
- (i) The property slopes downhill significantly from the sidewalk elevation along Lake Washington Blvd NE (from an elevation of 66 to 28 feet) as represented on the section drawing of the site (see Sheet A1.1 of Attachment 2.a). A large elm tree is also located at the southeast corner to the site, an existing intrusion into the view corridor along the south property line. In addition,

several trees are located near the shoreline edge along the south portion of the site, further intrusions into the view corridor along the south property line.

(2) Conclusions:

- (a) The proposal is consistent with the dimensional requirements for the view corridor.
- (b) Given the placement of existing covered moorage on the site and the location of the view corridors on the Breakwater Condominium and Carillon Point sites, the placement of the view corridor adjacent to the south property line would provide the widest view corridor.
- (c) The removal of the existing structures located near the waterfront area will open up views of the lake from Lake Washington Blvd NE. The section drawing provided by the applicant satisfactorily demonstrates that the vehicles and parking areas within the view corridor have been designed so that they will not impede views to the lake.
- (d) Some of the proposed shrubs would exceed the maximum allowed mature height of three feet above average grade. As a result, the planting plan should either be revised to include only those shrubs that would not exceed 3 feet above finished grade or the applicant should submit a perpetual maintenance agreement, to be recorded with King County, to maintain the vegetation within the view corridor to a height no greater than three feet above finished grade.
- (e) The vegetation along the south property line is located within the view corridor and therefore is subject to the height limit of three feet above average grade. However, due to the grade change across the property and the existing intrusions into the view corridor by the several trees, there are opportunities to permit vegetation that would be taller than 3 feet above finished grade and still not further obscure the view from Lake Washington Boulevard to and beyond Lake Washington. As a result, staff recommends that the vegetation along the south property line buffering the driveway be permitted to exceed three feet above finished grade. To insure that the views are not further impacted, staff recommends that the applicant submit a site section through the landscape buffer demonstrating that the landscaping (at mature height) would not project into the line of sight from Lake Washington Boulevard to the high water line.

b. Vegetation Height

(1) Facts

- (a) General Regulation #5 of KZC 60.170 states that trees or shrubs that mature to a height that would exceed the height of the primary structure are not permitted to be placed on the subject property.

- (b) The structure would exceed the height of the Lake Washington Blvd. NE by approximately 17 feet.
- (c) The vegetation to be planted in the area located between the building and the street, which is the highest finished grade on the site, would be planted at a lower elevation than the street, varying between approximately 8 to 23 feet below the elevation of the sidewalk.
- (d) The applicant has submitted a landscape plan (see Sheets L-2 and L-3 of Attachment 2.a) that provides information on the proposed landscaping, including proposed placement and species of plant materials, as well as the mature height of proposed species.

(2) Conclusions:

- (a) Given the grade of the sidewalk and grade in front of the building, the trees planted in this area should not exceed 25 to 40 feet in height to ensure that they do not exceed the height of the building. The selected trees comply with this requirement.

2. Parking Requirements

a. Facts:

- (1) The PLA 15A zone establishes the following parking requirements for the uses on the subject property:
  - (a) Office = 1 stall per 300 square feet for general office
  - (b) General Moorage Facility = 1 stall per every two slips
- (2) Based on the proposed office square footage and number of slips, the project would need to provide 232 parking stalls, 177 stalls required for the office use and 55 stalls required for the marina use.
- (3) KZC 105.45 establishes that two or more uses may share a parking area if the number of parking spaces provided is equal to the greatest number of required spaces for uses operating at the same time.
- (4) The applicant has submitted a parking study (see Enclosure 5 of Attachment 5) which included a parking count of the existing marina operations.

This study also analyzed the shared parking use characteristics of the existing and proposed uses. The study notes that the marina use and the office use have different peak parking characteristics. For example, the peak parking demand for the marina during the weekday occurs at the 6 PM hour, which on average was determined to be 24 vehicles. The parking associated with the office use will largely vacate the site by the 6 PM hour. Given the characteristics of the uses, the peak parking

demand occurs at 11:00 AM when the parking associated with the office is at maximum capacity (based upon the distribution of parking demand for office uses by hour of weekday as established by the Urban Land Institute publication Shared Parking) and some marina patrons are at the site (based upon the distribution of parking demand as evaluated in the parking count completed at the existing marina). The peak parking analysis, based on the code requirements for the existing and proposed uses, can be summarized as follows:

Use	Size	Code rate	Requirement	Percent demand at 11:00 am	# stalls at 11:00 am
Office	53,000 s.f.	1/300 s.f.	176.67 stalls	100%	176.67 stalls
Marina	110 slips	1 stall/2 slips	55 stalls	63%	34.65 stalls
			<b>Total = 232 stalls</b>		<b>Total = 212 stalls</b>

- (5) The proposal includes parking for 214 vehicles (81 stalls on Parking Level 2, 88 stalls on Parking Level 1, and 43 surface stalls, as well as two additional loading stalls).
  - (a) Two of the spaces within the garage parking levels are parallel spaces.
  - (b) Four of the surface stalls are proposed to be placed in front of the marina service building service bay doors. The applicant has proposed that these spaces be dedicated to Yarrow Bay Marina staff parking only.
- (6) The design of the proposed floating pier presents to possibility that boats could moor to the outside of the pier, thereby increasing the number of boats beyond that specified in the application.
- (7) The applicant is also required to complete a Transportation Management Program (see Section II.G.4.b(5)).

b. Conclusions:

- (1) With adherence to the following conditions of approval, the applicant has demonstrated that the site contains sufficient parking to meet the greatest number of required spaces for the office and marina use operating at the same time, consistent with the provisions addressed in KZC 105.45:
  - (a) Use of the marina should be limited to the 110 moorage slips requested.
  - (b) No boat trailer storage on designated parking stalls should occur.

- (c) The applicant should install appropriate signage identifying the staff parking stalls in front of the service bay doors.
- (d) The parking within the parking garage should be made available to marina customers during nights and weekends in order to meet the peak parking demand for the marina.
- (e) The applicant should demonstrate that the parallel parking is maneuverable so that these stalls are functional.
- (f) The applicant should prohibit moorage on the outside of the proposed floating pier, or insure that there is sufficient parking to meet this additional moorage.

Failure to meet these requirements should result in restrictions in the number of moorages to accommodate the difference in required parking or other measures consistent with the Zoning Code and approved by the Planning Official.

- (2) To insure that a parking area is shared, the applicant should submit a reciprocal parking agreement in a form acceptable to the City Attorney, stating that the marina parking and office parking may be used for parking by the other property.

### 3. Landscaping Requirements

#### a. Facts:

- (1) Zoning Code section 60.172.025 requires office uses in a PLA 15A zone to comply with Landscape Category D. Section 95.40 lists the applicable regulations for Landscape Category D. Given the adjoining uses, the office use is not required to provide a landscape buffer under the provisions of KZC 90.40.
- (2) Zoning Code section 60.172.050 requires general moorage facilities in a PLA 15A zone to comply with Landscape Category B. Section 95.40 lists the applicable regulations for Landscape Category B. Because the marina property is adjacent to medium and high density uses to the south, Section 95.40 (6)(a) (Buffering Standard 1) applies. Buffering Standard 1 requires that the applicant provide a 15-foot-wide landscaped strip with a six-foot-high solid screening fence or wall along the south property line. The land use buffer must be planted with trees planted at the rate of one tree per 20 linear feet of land use buffer, and large shrubs or a mix of shrubs planted to attain coverage of at least 60 percent of the land use buffer area within two years.
- (3) The south 15 feet of the marina property is currently covered with gravel and grass and contains three mature trees (see Attachment 16). The area has been used for storage, including dry dock boat storage. An overhead power line runs through this area. There is currently no continuous wall or fence along the south property line.

- (4) KZC 95.40.8 establishes that land use buffers must only be brought into conformance with the requirements of KZC 95.40.6 in either of the following situations:
  - (a) An increase in gross floor area of any structure (the requirement to provide conforming buffers applies only where new gross floor area impacts adjoining property); or
  - (b) A change in use on the subject property and the new use requires larger buffers than the former use.
- (5) KZC 95.40.7.b requires the applicant to buffer all parking areas and driveways from the right-of-way and from adjacent property with a five-foot-wide strip along the perimeter of the parking areas and driveways planted with one row of trees planted 30 feet on center along the entire length of the strip and living groundcover planted to attain coverage of at least 60 percent of the strip area within two years.

b. Conclusions:

- (1) The nonconforming land use buffer for the general moorage facility on the south side of the site is not required to be brought into compliance under the provisions of KZC 95.40.8, based on the following:
  - (a) The existing conditions along the south property line for the general moorage facility do not comply with the requirements for buffering standard 1 established in KZC 95.40.6.
  - (b) The new use on the property, the office use, does not require a land use buffer.
  - (c) There is no increase in gross floor area for the marina that impacts the adjoining property.
- (2) The applicant should provide the 5-foot wide buffer for the driveway required under KZC 95.40.7.b. Since this buffer would be located within the required view corridor, it is subject to the vegetation height restrictions discussed under Section II.G.1.a.

4. Office Use Regulations

a. Use Zone Chart

(1) Facts.

- (a) The subject property is located in the PLA 15A zone. The PLA 15A zone allows for an office use if reviewed through Process IIB and subject to the regulations of Section 60.172.025 (see Attachment 19).
- (b) A summary of the regulations contained in KZC 60.172.025 and the relationship of the proposal to them is contained in Attachment 19.

(2) Conclusions. The proposal complies with the development regulations contained in Attachment 18, with recommended modifications addressed below.

(3) Facts:

(a) The south property line has a required yard of 10 feet. Section 115.115.3.g allows rockeries and retaining walls to be a maximum of four feet high in a required yard. The combined height of fences and retaining walls within five feet of each other in a required yard may be a maximum of six feet.

(b) The proposal includes a retaining wall to be installed offset from the south property line by approximately 6 feet in order to retain the fill needed to raise the elevation of the access roadway. The retaining wall would vary in height from approximately 4 to 9 feet above the grade at the south property line. An open guardrail is proposed to be located on top of the retaining wall.

(c) KZC 115.115..3.g establishes that the Planning Official may approve a modification to the retaining wall height limit if it is necessary because of the size, configuration, topography or location of the subject property, and either:

- The design of the rockery or retaining wall includes terraces deep enough to incorporate vegetation, or other techniques that reduce the visual mass of the wall; or
- The modification will not have any substantial detrimental effect on abutting properties or the City as a whole.

It also permits the Planning Official authority to approve a modification to the combined height limit for fences and retaining walls if:

- An open guard railing is required by the Building Code and the height of the guard railing does not exceed the minimum required; or
- The modification is necessary because of the size, configuration, topography or location of the subject property, and either:
  - The design of the rockery or retaining wall includes terraces deep enough to incorporate vegetation or other techniques that reduce the visual mass of the wall, and the fence is designed to be no more than 50 percent solid; or
  - The modification will not have any substantial detrimental effect on abutting properties or the City as a whole.

(d) KZC Section 105.12 establishes that the slope of entrance and exit driveways shall not exceed 15 percent. A majority of the site access has been designed with a slope of 14 percent.

(e) The property slopes downhill significantly from the sidewalk elevation along Lake Washington Blvd NE (from an elevation of

66 to 28 feet) as represented on the section drawing of the site (see Sheet A1.1 of Attachment 2.a).

- (f) A restraint system is needed at the top of the retaining wall for pedestrian safety.
- (g) The Breakwater Condominium building is built 45 feet offset from the north property line. Within this existing yard, the site contains a series of retaining walls that retain the finished grade at the property line.
- (h) The neighboring property to the south has been developed with a densely planted landscape buffer that is between 10 and 15+ feet in width and planted with Leyland Cypress, Pine, Douglas Fir and Western Red Cedar trees, together with screening shrubs, such as Photinia. The height of the trees within this buffer is equal to the height of the upper story of the Breakwater Condominium building. The buffer is generally continuous across the property line, with some gaps where trees taper near the top or where branches do not overlap.
- (i) The applicant has submitted a section drawing (see sheet A4.5 of Attachment 2.a) that depicts the height of the retaining wall relative to existing grade and the Breakwater Condominiums.
- (j) The area between the pathway and the property line is required to be planted with a minimum 5 foot wide landscape buffer to fulfill the requirements for buffering access driveways under KZC 95.40.7.b. The applicant has proposed to meet this requirement by placing a 6-foot wide landscape strip along the south property line, between the Breakwater Condominium site and the retaining wall system.
- (k) The neighboring residents to the south have raised an issue about the potential for glare from headlights of vehicles as they exit the parking garage. The parking layout is designed so that vehicles exiting the garage would face the Breakwater building. The drive aisles are sloped downhill to the north, so that vehicles will be driving slightly uphill to exit the garage.

(4) Conclusions:

- (a) The topography along the driveway has been raised in order to meet the requirements of KZC 105.12, necessitating the retaining wall height within the south required yard.
- (b) Given where the retaining wall is located in relative height to the floors of the Breakwater Condominiums and the height of the treed buffer at the Breakwater Condominiums, the trees would extend higher than the retaining wall to form a visual screen. This existing screen, together with proposed landscaping at the base of the wall, and the distance between the wall and adjoining development, effectively minimize impacts associated with the retaining wall height on the property to the south.

- (c) To minimize the appearance of a blank wall for those portions of the wall that will be visible to the residents of the Breakwater Condominiums, the south face of the retaining wall should be treated, either with forms that contain a decorative pattern, or by planting climbing vegetation with some sort of support or trellis system that will allow the vegetation to cover the wall.
- (d) The applicant has proposed an open rail guardrail to meet the requirements for a restraint system along the edge of the pedestrian walkway, consistent with the modification criteria. However, use of a solid wall in place of an open guardrail should be provided in order to provide additional protection to neighboring residents to the south from any potential glare coming from vehicle lights exiting the parking garage, provided that the wall surface is appropriately treated. The wall should be of sufficient height to deflect headlights.
- (e) To ensure that the existing landscaping is not damaged during construction activities, the applicant should comply with the tree protection standards established by the arborist.

b. Applicable Special Regulations

(1) Facts:

- (a) Special Regulation #2 of Section 60.172.025 states that the applicant must provide public pedestrian access from the right-of-way to and along the entire waterfront of the subject property within the high waterline yard. Access to the waterfront may be waived by the City if public access along the waterfront of the subject property can be reached from adjoining property. The City shall require signs designating the public pedestrian access and public use areas.
- (b) The project includes a 6-foot wide sidewalk extending from Lake Washington Blvd NE near the south property to the waterfront area and extending across the western portion of the subject property to connect to an existing pedestrian walkway located on the Carillon Point property to the north. The walkway also is shown connecting to the waterfront access trail located on the Breakwater Condominium project to the south.
- (c) A portion of the trail is proposed to extend between the marina service and office building and therefore would not be located within the high waterline yard. The applicant has requested this location in order to minimize conflicts between pedestrian traffic and the marina service operations, which would include boat fueling and haul-out facilities.
- (d) The area adjoining the waterfront in front of the proposed service building contains covered moorage, limiting visual access to the lake.
- (e) Access from the right-of-way to the waterfront area can currently be reached from the south portion of the Carillon development

site and from the north portion of the Yarrow Cove Condominiums, located two properties to the south of the subject property. There is currently over 420 feet separating these access points to the waterfront from Lake Washington Blvd. NE.

- (f) Waterfront access is also addressed in Special Regulation #5 (see below). As discussed in the following section, the applicant is required to develop a waterfront area open for public use.
- (g) The residents of the Breakwater Condominiums adjoining the south property line have requested that the pedestrian access connecting the right-of-way to the waterfront area be eliminated, given the proximity of nearby walkways and impact to their property. The applicant has indicated their willingness to remove this pedestrian connection from the proposal.

(2) Conclusions:

- (a) The proposal should include public pedestrian access from the right-of-way to and along the entire waterfront. Access from the street to the lake should be provided at this site in order to maximize access to the public waterfront use area proposed to be developed as well as to the marina, a water dependent use which provides recreational opportunities.
- (b) The proposed location of the waterfront trail between the marina services and office buildings should be evaluated to determine if the trail location is situated appropriately to maximum public access to and use of the waterfront, while minimizing potential conflicts with the existing marina operations.
- (c) Prior to issuance of a final inspection, the applicant should submit for recording with King County a signed and notarized public access easement establishing the right of the public to the pedestrian access from the right-of-way to and along the entire waterfront of the subject property, the location to be determined through this review process. Sign(s) should be installed, obtained from the City, designating the public pedestrian access.

(3) Facts:

- (a) Special Regulation #5 of Section 60.172.025 states that structure height may be increased to 40 feet above average building elevation if:
  - Obstruction of views from existing development lying east of Lake Washington Boulevard is minimized; and
  - Maximum lot coverage is 80 percent, but shall not include any structure allowed within the required front yard under the General Regulations in KZC 60.170; and
  - Maximum building coverage is 50 percent, but shall not include any structure allowed within the required front yard

under the General Regulations in KZC 60.170 or any structure below finished grade; and

- A waterfront area developed and open for public use shall be provided with the location and design specifically approved by the City. Public amenities shall be provided, such as non-motorized watercraft access or a public pier. A public use easement document shall be provided to the City for the public use area, in a form acceptable to the City. The City shall require signs designating the public use area; and
  - The required public pedestrian access trail from Lake Washington Boulevard to the shoreline shall have a trail width of at least six feet and shall have a grade separation from the access driveway; and
  - No roof top appurtenances, including elevator shafts, roof decks or plantings, with the exception of ground cover material on the roof not to exceed four inches in height, shall be on the roof of the building or within the required view corridors.
- (b) The applicant is proposing to build to a maximum 40 feet above average building elevation.
- (c) The applicant has submitted a view analysis (see Section II.F.2.a).
- (d) The overall lot coverage proposed is 79.33 percent of the subject property (see Sheet A1.11 of Attachment 2.a). The lot coverage on the office property alone would be approximately 76 percent.
- (e) The total building footprint is 24,170 square feet, not including the parking garage levels, except where those project above finished grade. This equals approximately 26.3 percent of the total lot size. The building footprint for the office building is 20,535 square feet, or approximately 38 percent the size of the lot on which the office building would be located.
- (f) The applicant has proposed to develop a public plaza adjacent to the natural shoreline area that would contain decorative paving, seating areas (benches and stone slabs), stone outcroppings, native plantings, and an interpretative display (see L sheets of Attachment 2.a). The plaza is located at the connection of the two major pedestrian corridors through the site, between the waterfront access trail and the trail connecting to Lake Washington Blvd. NE. The plaza has been oriented to take advantage of the open water views of Lake Washington from this corner of the site.
- (g) The public pedestrian trail has been designed to be a minimum of 6 feet in width and is separated from the driveway by a vertical curb.

- (h) No rooftop units are proposed. The Parking Level 2 Floor Plan contains space for the mechanical equipment (see Attachment 2.a).
- (4) Conclusions: The proposal is consistent with the standards established for the structure height to be increased to 40 feet above average building elevation as follows:
- (a) The view analysis prepared by the applicant demonstrates that obstruction of views from existing development lying east of Lake Washington Boulevard has been minimized. Presently, several large Willow trees partially obstruct views of properties lying east of Lake Washington Blvd. These trees are not proposed to be retained in the development, opening up larger portions of the Lake to be viewed from the adjoining properties. The depictions of the proposed development further show that the lake continues to be clearly visible beyond and to either side of the office building.
  - (b) The building footprint and lot coverage are consistent with the maximum 50 percent and 80 percent.
  - (c) The public plaza has been designed to provide public use and enjoyment of the waterfront.
  - (d) The public plaza should be installed as part of the office building development and completed prior to final inspection. A public use easement document should be provided to the City for the public use area. Sign(s) should be installed, obtained from the City, designating the public access to the plaza area.
  - (e) The waterfront access trail has been designed consistent with requirements for width and separation from the access drive.
  - (f) The building has been designed with space for mechanical equipment to be housed in the garage levels. No rooftop units are proposed or approved and a covenant should be recorded with King County noticing future owners of this restriction.
- (5) Facts:
- (a) Special Regulation #6 of KZC 60.172.025 states that a transportation demand management plan shall be provided and implemented for the subject property, including provisions for safe pedestrian crossing and vehicle turning movements to and from the subject property to Lake Washington Boulevard, and bus stop improvements if determined to be needed by METRO. The City shall review and approve the plan.
  - (b) A transportation demand management plan has been prepared by METRO and reviewed by the City for the property (see Attachment 20). The program includes such elements as: designation of a Building Transportation Coordinator, annual information distribution and promotional events, free one-zone peak transit passes, preferential parking stalls for

carpool/vanpools, an easement for a bus shelter, and biennial employee surveys.

- (6) Conclusions: Prior to issuance of Certificate of Occupancy, the applicant should execute the Transportation Management Program (TMP) approved by the City and METRO and submit the completed document for recording with King County. Prior to issuance of a building permit for the office, the owner should provide an easement to the City for a bus shelter footing. Issues of pedestrian crossings and vehicular turn movements have been addressed through the SEPA review.
- (7) Facts:
  - (a) Special Regulation #7 of KZC 60.172.025 states that the design of the site must be compatible with the scenic nature of the waterfront.
  - (b) The site has been designed to contain a wide view corridor on the south portion of the site and includes landscaping, both within the parking lot, near the building, and at the shoreline, with a public plaza area proposed at the waterfront near the southwest corner. Pedestrian walkway systems are proposed, connecting Lake Washington Blvd. NE to the waterfront and across the site.
  - (c) The building is proposed to be constructed of both brick and glass, with large glass bays and decks along the south façade. All sides of the building contain windows and additional decks are proposed along the west and north facades.
- (8) Conclusions: The site is proposed to be enhanced with a number of features, including pedestrian access, landscaping, and creation of a public plaza that will be compatible with the scenic nature of the shoreline and encourage public use and enjoyment of the shoreline area. The building has been designed with elements, including balconies and glass bays, which orient and allow visual access to the water. These features also introduce human scale elements and break down the scale of the building, which allow the building design to be compatible with the scenic nature of the shoreline.

## 5. General Moorage Facility Regulations

### a. Use Zone Chart

- (1) Facts:
  - (a) The subject property is located in the PLA 15A zone. The PLA 15A zone allows for a General Moorage Facility if reviewed through Process IIB and subject to the regulations of Section 60.172.050 (see Attachment 21).
  - (b) A summary of the regulations contained in KZC 60.172.050 and the relationship of the proposal to them is contained in Attachment 22.

- (2) Conclusions: The proposal complies with the regulations of the PLA 15A use zone chart, except for the nonconforming landscaping addressed in Section II.G.3 above and nonconforming covered moorage (see Section II.G.5.b(16)) and overwater repair, (see Section II.G.5.b(21)), both existing nonconforming uses at the site.

b. Applicable Special Regulations:

- (1) Fact: Special Regulation #1 of Section 60.172.050 states that except as permitted by Special Regulation 17, no structures, other than moorage structures or public access piers, may be waterward of the high waterline.

- (2) Conclusion: No structures, other than moorage structures, are proposed to be located waterward of the high waterline.

(3) Facts:

- (a) Special Regulation #2 of Section 60.172.050 outlines requirements for provide public pedestrian access.

- (b) Access to and along the waterfront is addressed in Section II.G.4.b(1) above.

- (4) Conclusions: The conclusions presented in Section II.G.4.b(2) are applicable in response to this special regulation.

(5) Facts:

- (a) Special Regulation #5 of Section 60.172.050 states that the design of the site must be compatible with the scenic nature of the waterfront. If the development will result in the isolation of a detached dwelling unit, site design, building design and landscaping must mitigate the impacts of that isolation.

- (b) The site is not located near an existing detached dwelling unit.

- (c) As part of the proposed redevelopment, the dry dock boat yard storage on the site will be removed. The existing access, which is narrow and very steep, will be widened and the slope will be lessened. The parking facilities will be reconstructed to include internal landscaping. Pedestrian walkway systems are proposed, connecting Lake Washington Blvd. NE to the waterfront and across the site. A view corridor will encompass a large section along the southern edge of the site and the marina services building will be relocated out of this view corridor. The existing aging marina services building will be replaced with a new building that would match the design and materials proposed as part of the office development.

- (6) Conclusions: The site is proposed to be enhanced with a number of features, including improved vehicular access, pedestrian access, a view corridor, and landscaping that will be compatible with the scenic nature of the shoreline and encourage public use and enjoyment of the shoreline area. The redevelopment of the upland piece will eliminate

the storage activities which have previously cluttered the site. The marina services building will be integrated with the office development.

- (7) Facts: Special Regulation #6 of Section 60.172.050 states that the City will determine the maximum allowable number of moorages based on the following factors:
- The ability of the land landward of the high waterline to accommodate the necessary support facilities;
  - The potential for traffic congestion; and
  - The effect on existing habitat.
- (a) The application requests 6 additional moorage slips. The existing marina contains 104 slips.
- (b) The proposal complies with the parking requirements as set forth in Section II.G.2 above. The applicant has submitted turning radius studies that show that the driveway configuration will adequately serve vehicle and boat trailer traffic. The site includes a new marina services building which will continue to provide support services, including boat service and repair, as well as hazardous material storage.
- (c) The marina services building has been designed to accommodate up to four boats at one time for service or repair.
- (d) Traffic impacts were evaluated through the SEPA review of the project. The proposal includes the addition of only six new moorage slips which will add a limited number of new daily trips, with only two trips projected to occur within the critical PM peak period.
- (e) The effect on existing habitat was also reviewed through SEPA and mitigating measures were identified to ensure that the proposal does not have significant adverse impacts on existing habitat.
- (8) Conclusions: The proposed 6 additional moorage slips are appropriate given the criteria outlined in Special Regulation #1. To insure that required parking for the office and marina users is not occupied by boats or trailers awaiting repair or service, the marina services building shall be limited to service of up to four boats at one time, unless additional storage area on the site is provided. With this condition of approval, the ability of land landward of the high waterline, traffic congestion, and habitat would not be constraining factors.
- (9) Facts:
- (a) Special Regulation #7 states that moorage structures may not be larger than reasonably necessary to provide safe and reasonable moorage for the boats to be moored. The City will specifically review the size and configuration of moorage structures to insure that:

- The moorage structures do not extend waterward of the point necessary to provide reasonable draft for the boats to be moored, but not beyond the outer harbor line; and
  - The moorage structures are not larger than is necessary to moor the specified number of boats; and
  - The moorage structures will not interfere with the public use and enjoyment of the water or create a hazard to navigation; and
  - The moorage structures will not adversely affect nearby uses; and
  - The moorage structures will not have a significant long-term adverse effect on aquatic habitats.
- (b) The marina, with the proposed addition of 6 slips, would contain 110 slips. Other marinas in the nearby vicinity include the neighboring Carillon Point marina, which contains 200 slips, and the Kirkland Yacht Club Marina in the downtown, which contains approximately 120 slips.
- (c) The moorage slips are being proposed to accommodate additional demand for moorage serving small boats. The slips would be 26 feet in length and approximately 13 to 15 feet in width. The design of the proposed floating pier presents to possibility that boats could moor to the outside of the pier, thereby increasing the number of boats beyond that specified in the application.
- (d) Draft for the boats is not a factor in the lateral extension of the proposal and the proposed floating pier addition does not go beyond the outer harbor line.
- (e) The proposed structures are five-foot wide piers for the main access piers, three-foot five-inch wide ramp, and one-foot ten-inch wide walkway.
- (f) The residents of the Breakwater Condominiums have expressed concern about the pier extension and the potential for further intrusion of marina customers onto their property. The proposed floating pier will be setback approximately 20' from the south property line. The floating pier addition is also located over 150 feet further waterward than the Breakwater pier. The applicant has submitted a plan that shows the existing and anticipated boat access to the fueling facility with the proposed pier extension (see Attachment 10). The plan shows that boats accessing the fuel facility have adequate space to maneuver around the edge of the proposed float extension and that access to the Breakwater dock to the south will not be impaired. Boats have not been shown to moor on the outside of the floating pier extension.

- (10) Conclusions: The proposed facility is not larger than reasonably necessary and complies with Special Regulation #2. The facility is smaller in size than neighboring facilities in the City of Kirkland. The proposed structures meet industry standards and are reasonably sized for the proposed facility and for use by small boats. Compliance with requirements for lighting will ensure that the facility does not create any hazards to navigation. The proposed floating pier addition exceeds minimum setback standards. Access across the public waters in front of the Breakwater site to reach the marina facilities, including the fueling facilities, would continue, but the separation between the proposed float pier addition and the Breakwater Condominium dock is sufficient to insure that boats can maneuver around the edge of the moorage facility without further impact to the use and enjoyment of the Breakwater Condominium dock. Moorage on the outside of the pier should not be permitted, consistent with the exhibits provided. The effect on existing habitat was reviewed through SEPA and mitigating measures were identified to ensure that the proposal does not have significant adverse impacts on existing habitat.
- (11) Fact: Special Regulation #8 states that if the moorage structure will extend waterward of the Inner Harbor Line, the applicant must obtain a lease from the Washington State Department of Natural Resources prior to submittal of a Building Permit for this use.
- (12) Conclusions: The proposed pier float would not extend beyond the inner harbor line.
- (13) Facts: Special regulations #9-14 specify standards for construction of the marina.
- (14) Conclusions: Moorage structures may not be treated with toxic substances. The marina must provide at covered and secured waste receptacles on all piers. All utility lines must be under the pier decks. Piers must be adequately lit and the source of the light shall not be visible from off the subject property. The street address must be displayed on the moorage structure, visible from the lake, with letters and numbers at least 4" high. The marina services building should contain restrooms that are available to the public.
- (15) Facts:
- (a) Special Regulation #14 prohibits covered moorage.
  - (b) The existing marina contains covered moorage on Piers A, B, C, and G2. The proposed pier addition would not be covered.
  - (c) KZC 162.35.9 states that any nonconformance must be brought into conformance if the applicant is making any alteration or change or doing any other work in a consecutive 12 month period to an improvement that is nonconforming or houses, supports or is supported by the nonconformance, and the cost of the alteration, change or other work exceeds 50% of the replacement cost of the improvement.

- (16) Conclusions: The existing marina does contain covered moorage, which is prohibited. Since the cost of the extension would not exceed 50% of the replacement cost of the existing marina, the covered moorage would not be required to be brought into conformance with the provisions of KZC 60.172.050, Special Regulation 14 at this time.
- (17) Fact: Special Regulation #15 prohibits aircraft moorage.
- (18) Conclusion: Aircraft moorage is not permittec.
- (19) Fact: Special Regulation #17 establishes accessory components allowed if approved through Process IIB, Chapter 152 KZC:
  - (a) The site presently contains boat rentals off of Pier H, which are proposed to continue at the site.
  - (b) Boat repair and service is currently occurring over the water for large boats on Pier G2, though it is not proposed to be expanded under the proposal.
  - (c) Small boat repair and service is proposed to occur within the new marina services building. Dry land motor testing is proposed to occur inside the new marina service building.
  - (d) The existing dry land storage activities would be eliminated with the construction of the proposed office building.
  - (e) The site presently contains facilities for gas and oil sales. The proposal includes installation of new underground fuel tanks within the landscape island located near the marina services building.
  - (f) The marina services building would contain facilities to clean-up and contain gas and oil spills.
- (20) Conclusions:
  - (a) The proposed new fuel tanks are consistent with the standards contained in Special Regulation #17. The remainder of the existing facilities would not be impacted by the proposed development.

6. Bonds and Securities

a. Facts:

- (1) Zoning Code section 175.10.2 establishes the circumstances under which the City may consider the use of a performance security in lieu of completion of certain site work prior to occupancy.

b. Conclusions:

- (1) In order to ensure timely completion of all required site and right-of-way improvements, such improvements should be completed prior to

occupancy, unless the applicant can demonstrate compliance with the criteria in Zoning Code section 175.10.2.

## H. SHORELINE MASTER PROGRAM (SMP)

### 1. General

- a. Fact: The subject property is located within the jurisdiction of the City's Shoreline Master Program (KMC Chapter 24.05) and is in the Urban Mixed Use 2 (UM 2) Shoreline Environment. The UM 2 Shoreline Environment allows both Office and Moorage Structures and Facilities subject to approval of a Substantial Development Permit. The regulations for Moorage Facilities and Office uses are contained in Attachments 23 and 24, respectively.
- b. Fact: KMC Section 24.06.040 establishes that if the proposal that requires a Substantial Development Permit (SDP) also requires approval through Chapter 152 (Process IIB) of the Zoning Code, then the SDP will be reviewed through Process IB as well.

### 2. Moorage Structures and Facilities:

#### a. Facts:

- (1) Section 24.05.165 allows certain accessory uses, structures, and facilities as part of the moorage use.
- (2) Section 24.05.165 states that there is no minimum lot size for this use; provided, however, that the subject property must be large enough and be of sufficient dimensions to comply with the site design and other requirements of this chapter.

- b. Conclusion: The proposal is consistent with the standards concerning accessory uses, as described in Section II.G.5.b.(19) and (20) above. The subject property complies with site design and other requirements of Section 24.05.165.

#### c. Facts:

- (1) Section 24.05.165 states that moorage structures may not be larger than is necessary to provide safe and reasonable moorage for the boats to be moored. The City will specifically review the size and configuration of each proposed moorage structure to help ensure that:
  - (a) The moorage structure does not extend waterward beyond the point necessary to provide reasonable draft for the boats to be moored, but not beyond the outer harbor line;
  - (b) The moorage structure is not larger than is necessary to moor the specified number of boats; and
  - (c) The moorage structure will not interfere with the public use and enjoyment of the water or create a hazard to navigation; and
  - (d) The moorage structure will not adversely affect nearby uses; and

- (e) The moorage structure will not have a significant long-term adverse effect on aquatic habitats.
- (2) The size of moorage facilities is addressed in Section II.G.5.b(9) and (10) above.
- d. Conclusions: The conclusions presented in Section II.G.5.b(10) are applicable in response to this regulation.
- e. Fact: Section 24.05.165 establishes the setbacks for this use. Waterward of the high waterline, the required setbacks are as follows:
  - (1) No moorage structure on private property may be within one hundred feet of a public park.
  - (2) No moorage structure may be within fifty feet of an abutting lot that contains a detached dwelling unit.
  - (3) No moorage structure may be within twenty-five feet of another moorage structure not on the subject property.

The side property line setback is ten feet.

- f. Conclusion: The proposal complies with the required setbacks.
- g. Fact: Section 24.05.165 establishes that waterward of the high waterline, pier and dock decks may not exceed a height of twenty-four feet above mean sea level.
- h. Conclusion: The maximum height of proposed structures is twenty-four feet above mean sea level.
- i. Facts:
  - (1) Section 24.05.165 prohibits covered and aircraft moorage.
  - (2) The existing marina contains covered moorage on Piers A, B, C, and G2. No additional covered or aircraft moorage is proposed.
  - (3) KMC Section 24.05.210 states that nonconforming development may be continued provided that it is not enlarged, intensified, increased or altered in any way which increases its nonconformity.
  - (4) KMC Section 24.05.210 states that a nonconforming development which is moved any distance must be brought into conformance with the applicable master program and the act.
- j. Conclusion: No additional covered or aircraft moorage is proposed or approved. The existing dock does contain covered moorage. Since the covered moorage is not being altered in any way, it is not required to be brought into conformance with the provisions of KMC Section 24.05.165(i) at this time.

### 3. Office Uses

- a. Fact: KMC 24.05.160 establishes that a minimum view corridor of thirty percent of the average parcel width must be maintained. The view corridor must be in one continuous piece. Within the view corridor, structures, parking areas and landscaping will be allowed, provided that they do not obscure the view from these rights-of-way to and beyond Lake Washington.
- b. Conclusion: The proposal includes a view corridor that exceeds this requirement.
- c. Facts:
  - (1) The use regulations established in KMC 24.05.160 for office uses in the Urban Mixed Use 2 Shoreline Environment refer to KMC Section 24.05.205 for standards addressing lot size, required yards, and height.
  - (2) KMC 24.05.205 establishes that the city will determine setbacks, lot coverage, structure heights, landscaping and all other bulk and site design elements of the development based on the compatibility of the development with adjacent uses and the degree to which public access, use and views are provided in the proposed development.
- d. Conclusion: The proposed office building has been sited on the north portion of the site, closer to the existing commercial development of Carillon Point. The building design, including its height, bulk and setbacks is compatible with the existing commercial development. The southern portion of the site has been designed as a view corridor, with parking, a public pedestrian walkway, the access drive, a waterfront access area, and landscaping. A six-foot wide landscape strip is proposed to be installed along the south edge of the site, to provide a transition to the residential development to the south.
- e. Fact: KMC 24.05.205 establishes that the development must be approved as part of a master plan which encompasses the entire contiguous ownership of the applicant.
- f. Conclusion: The subject property includes the entire contiguous ownership of the applicant.

4. Public Access.

- a. Facts:
  - (1) KMC 24.05.065 establishes that public pedestrian access along the water's edge of all shoreline development, other than single-family residential or where unique and fragile shoreline areas would be adversely affected, should be required of all developments. All developments required to provide public pedestrian access along the water's edge should connect this access to the right-of-way unless access to the water's edge can easily be gained via existing access points.
  - (2) KMC 24.05.065 establishes that all developments required to provide public pedestrian access should be designed to visually and physically separate the public pedestrian access from adjacent private spaces. The separation may be accomplished vertically, horizontally, or by placing an intervening structural or landscape buffer.

- (3) The proposal public pedestrian trail is proposed to be vertically separated from adjacent private spaces. In addition, the pathway would be separated by a landscape buffer and rockeries located on the adjoining property to the south, as well as a proposed 6-foot wide landscape strip located on the subject property.
- (4) Access to and along the waterfront is addressed in Section II.G.4.b(4) above.
- b. Conclusions: The conclusions presented in Section II.G.4.b(4) are applicable in response to these regulations. The proposed public pedestrian trail design is consistent with the criterion related to separation from adjacent private spaces.

## I. COMPREHENSIVE PLAN

### 1. Land Use

- a. Fact: The subject property is located within the Lakeview neighborhood. Figure L-1 on page XV.A-2 designates the subject property for commercial development in Planned Area 15A (see Attachment 25).
- b. Conclusion: The proposal is consistent with the land use designation indicated in the Comprehensive Plan.

### 2. Neighborhood Plan Policies

#### a. Facts:

- (1) The subject property is located in Planned Area 15A of the Lakeview Neighborhood. The Lakeview Neighborhood Plan contains several policy statements concerning the marina property. The applicant has addressed project compliance with these provision in Attachment 26). These policy statements are included below, together with a brief staff analysis where appropriate in italics.

- (a) The primary objectives for development in PLA 15 are to maximum public access, use, and visual access to the lake...

*The site contains a marina, which offers recreational use opportunities of the lake. The site has been designed to include pedestrian access from Lake Washington Blvd NE to and along the waterfront area of the property, connecting to existing pedestrian walkway systems to the north and south. The site has also been designed to include a public plaza at the waterfront area. The site would contain a wide view corridor on the south portion of the site.*

- (b) Subarea A should be developed with a mixture of uses.

- (c) 'Water dependent' and 'water oriented' commercial uses should be included.

*The site contains the marina, which is a water-dependent use. The marina currently provides boat rental operations open to the public. With the proposed redevelopment, the site would*

*also be opened up for more public access to the shoreline area, including a public plaza area that would contain seating and interpretative signs at the waterfront. The proposed development would include an office use which would provide opportunities for greater use and enjoyment of the waterfront.*

- (d) Public access to and along the water's edge and waterfront public use areas should be developed.

*A public trail has been provided long the west portion of the site with a connection to Lake Washington Boulevard at the south end and at the Carillon Point development to the north. The proposal also includes a public plaza area which would be which are available for other public waterfront activities.*

- (e) Public improvements adjacent to Lake Washington Blvd are also desirable.

*The Public Works Department has recommended that the proposal be required to install a new 10-ft wide sidewalk with street trees in tree grates 30 ft on-center along Lake Washington Blvd NE in order to accommodate pedestrian traffic. The street improvements presently contain a bicycle lane.*

- (f) Visual access to Lake Washington from Lake Washington Blvd should be maintained. To achieve greater visual access, building height, setback, and view corridor requirements may be varied. Views from existing developments should be protected.

*The proposal includes a wider view corridor in exchange for greater building height, yet it has been demonstrated that the taller building will not significantly impair views from existing development to the east of Planned Area 15.*

- (g) Traffic impacts to Lake Washington Blvd should be considered. Access points should be limited.

*The proposal redevelopment contains only one access point onto Lake Washington Boulevard. Traffic impacts have been analyzed (see Section II.D above). A transportation demand management plan has been designed for the site and should be implemented as part of the redevelopment.*

- (h) The existing marina in Subarea A and south of Carillon Point should be retained.

*The proposed redevelopment plans include retention of the marina use.*

- b. Conclusion: The proposal is consistent with the policies statements addressing development in Planned Area 15A.

## **J. DEVELOPMENT STANDARDS**

1. Fact: Additional comments and requirements placed on the project are found on the Development Standards, Attachment 3.
2. Conclusion: The applicant should follow the requirements set forth in Attachment 3.

## **III. SUBSEQUENT MODIFICATIONS**

Modifications to the approval may be requested and reviewed pursuant to the applicable modification procedures and criteria in effect at the time of the requested modification.

## **IV. CHALLENGES, APPEALS AND JUDICIAL REVIEW FOR ZONING AND SHORELINE PERMITS**

The following is a summary of the deadlines and procedures for challenges and appeals. Any person wishing to file or respond to a challenge or appeal should contact the Planning Department for further procedural information.

### **A. CHALLENGE**

Section 152.85 of the Zoning Code allows the Hearing Examiner's recommendation to be challenged by the applicant or any person who submitted written or oral comments or testimony to the Hearing Examiner. A party who signed a petition may not challenge unless such party also submitted independent written comments or information. The challenge must be in writing and must be delivered, along with any fees set by ordinance, to the Planning Department by 5:00 p.m., \_\_\_\_\_, seven (7) calendar days following distribution of the Hearing Examiner's written recommendation on the application. Within this same time period, the person making the challenge must also mail or personally deliver to the applicant and all other people who submitted comments or testimony to the Hearing Examiner, a copy of the challenge together with notice of the deadline and procedures for responding to the challenge.

Any response to the challenge must be delivered to the Planning Department within seven (7) calendar days after the challenge letter was filed with the Planning Department. Within the same time period, the person making the response must deliver a copy of the response to the applicant and all other people who submitted comments or testimony to the Hearing Examiner.

Proof of such mail or personal delivery must be made by affidavit, available from the Planning Department. The affidavit must be attached to the challenge and response letters, and delivered to the Planning Department. The challenge will be considered by the City Council at the time it acts upon the recommendation of the Hearing Examiner.

### **B. APPEAL**

#### Appeal to Shoreline Hearings Board:

Pursuant to RCW 90.58.180 and WAC 173-27-220 any person aggrieved by the City's final decision on the Shoreline Substantial Development Permit may seek appeal to the State Shoreline Hearings Board. All petitions for review shall be filed with the Shoreline Hearings Board within twenty-one (21) calendar days of the date the Department of Ecology receives the City's decision. Within seven (7) calendar days of filing any petition for review with the Shoreline Hearings Board, the petitioner shall serve copies of the petition for review on the Department of Ecology, the State Attorney General and the City of Kirkland. The petition for review must contain items required by WAC 461-08-055.

### **C. JUDICIAL REVIEW**

Section 152.110 of the Zoning Code allows the action of the City in granting or denying this zoning permit to be reviewed in King County Superior Court. The petition for review must be filed within twenty-one (21) calendar days of the issuance of the final land use decision by the City.

### **V. LAPSE OF APPROVAL**

Under Section 152.115 of the Zoning Code, the applicant must submit to the City a complete building permit application approved under Chapter 152, within four (4) years after the final approval on the matter, or the decision becomes void; provided, however, that in the event judicial review is initiated per Section 152.110, the running of the four years is tolled for any period of time during which a court order in said judicial review proceeding prohibits the required development activity, use of land, or other actions. Furthermore, the applicant must substantially complete construction approved under Chapter 152 and complete the applicable conditions listed on the Notice of Approval within six (6) years after the final approval on the matter, or the decision becomes void.

Pursuant to RCW 90.58.200 and WAC 173-27-090, construction or substantial progress toward construction of a project for which a Substantial Development Permit has been granted pursuant to the Shoreline Management Act must be undertaken within two (2) years after the date of approval. The project must be completed within five (5) years and a one (1) year extension may be considered.

"Date of approval" means the date of approval by the City of Kirkland, or the termination of review proceedings if such proceedings were initiated pursuant to RCW 90.58.180 and WAC 173-27-220.

### **VI. APPENDICES**

Attachments 1 through 29 are attached.

1. Vicinity Map
2. Project Drawings
  - a. Upland Improvements
  - b. Shoreline Improvements
3. Development Standards
4. Public Comment Letters
  - a. E-mail from Helen Rogers
  - b. Letter from Joan Schmidt
  - c. Letter from John Barnett
  - d. Letter from Fred and LouAnn Freeburg
  - e. E-mail from Fred and LouAnn Freeburg
  - f. Letter from J. Richard Aramburu
5. SEPA Determination and Enclosures
  - Enclosure 1: Vicinity Map
  - Enclosure 2: Project Drawings
  - Enclosure 3: Environmental Checklist
  - Enclosure 4: Concurrency Test Notice, August 2, 2005. Thang Nguyen, City of Kirkland Transportation Engineer, Traffic Analysis
  - Enclosure 5: Traffic Impact Analysis, William Popp Associates, January 20, 2005
  - Enclosure 6: Traffic Review Memo. February 21, 2006. Thang Nguyen, City of Kirkland Transportation Engineer, Traffic Analysis
  - Enclosure 7: Memo, April 14, 2006. Thang Nguyen, City of Kirkland Transportation Engineer, Traffic Analysis
  - Enclosure 8: Biological Evaluation, The Watershed Company, April, 2005.

- Enclosure 9: Preliminary Geotechnical Feasibility Report, Associated Earth Sciences, Inc. dated January 19, 2006
  - Enclosure 10: Arborist Report, Greenforest, Inc., December 2005
  - Enclosure 11: View Study
  - Enclosure 12: Public Comment Letters
6. SEPA Appeal
  7. SEPA Comments
    - a. Letter from LouAnn Freeburg
    - b. E-mail from Karen Walter, Muckleshoot Indian Tribe Fisheries Division
  8. Tree Ratings completed by Elizabeth Walker, Urban Forester
  9. Letter from Greenforest Incorporated dated July 5, 2006
  10. Yarrow Bay Marina Fueling Plan
  11. Yarrow Bay Marina Fueling Signage Plan
  12. Letter from Bill Popp, Jr. dated June 11, 2006
  13. Memo from Thang Nguyen dated June 14, 2006
  14. Preliminary Site Lighting Calculations completed by Candela
  15. 2001 Comprehensive Plan Amendment Materials
  16. Boundary and Topographic Survey completed by PACE
  17. Applicant Design Narrative and Criteria Analysis
  18. KZC Section 60.172.025
  19. Use Zone Chart Compliance KZC 60.172.025
  20. Transportation Management Plan
  21. KZC Section 60.172.050
  22. Use Zone Chart Compliance KZC 60.172.050
  23. KMC Section 24.05.165
  24. KMC Section 24.05.160
  25. Comprehensive Plan, Figure L-2 on page XV-A.2
  26. Comprehensive Plan, pages XV-A.8 through XV-A-11
  27. Dedication of Public Access Easement Area
  28. Geologically Hazardous Areas Covenant
  29. Maintenance Agreement – Landscape Strip and Sidewalk
  30. Notice of Application and Summary Notice

## **VII. PARTIES OF RECORD**

Applicant, Phil Goldenman, Waterfront Construction, 205 NE Northlake Way, Suite 230, Seattle, WA 98105  
Fred and LouAnn Freeburg, 4823 Lake Washington Blvd NE #6., Kirkland, WA 98033  
John Burnett, 4823 Lake Washington Blvd NE #5, Kirkland, WA 98033

Joan Schmidt, 4823 Lake Washington Blvd NE #7, Kirkland, WA 98033  
Helen Rodgers, 4823 Lake Washington Blvd NE #8, Kirkland, WA 98033  
BOARD OF DIRECTORS, BREAKWATER CONDOMINIUM ASSOCIATION, 4823 LAKE WA BLVD NE,  
KIRKLAND WA 98033  
Muckleshoot Indian Tribe Fisheries Division, 39015 172nd Ave SE, Auburn WA 98092, ATTN: Karen  
Walter  
J. Richard Aramburu, Suite 209, College Club Building, 505 Madison Street, Seattle, WA 98104  
Department of Planning and Community Development  
Department of Public Works  
Department of Building and Fire Services

### **HOUGHTON COMMUNITY COUNCIL**

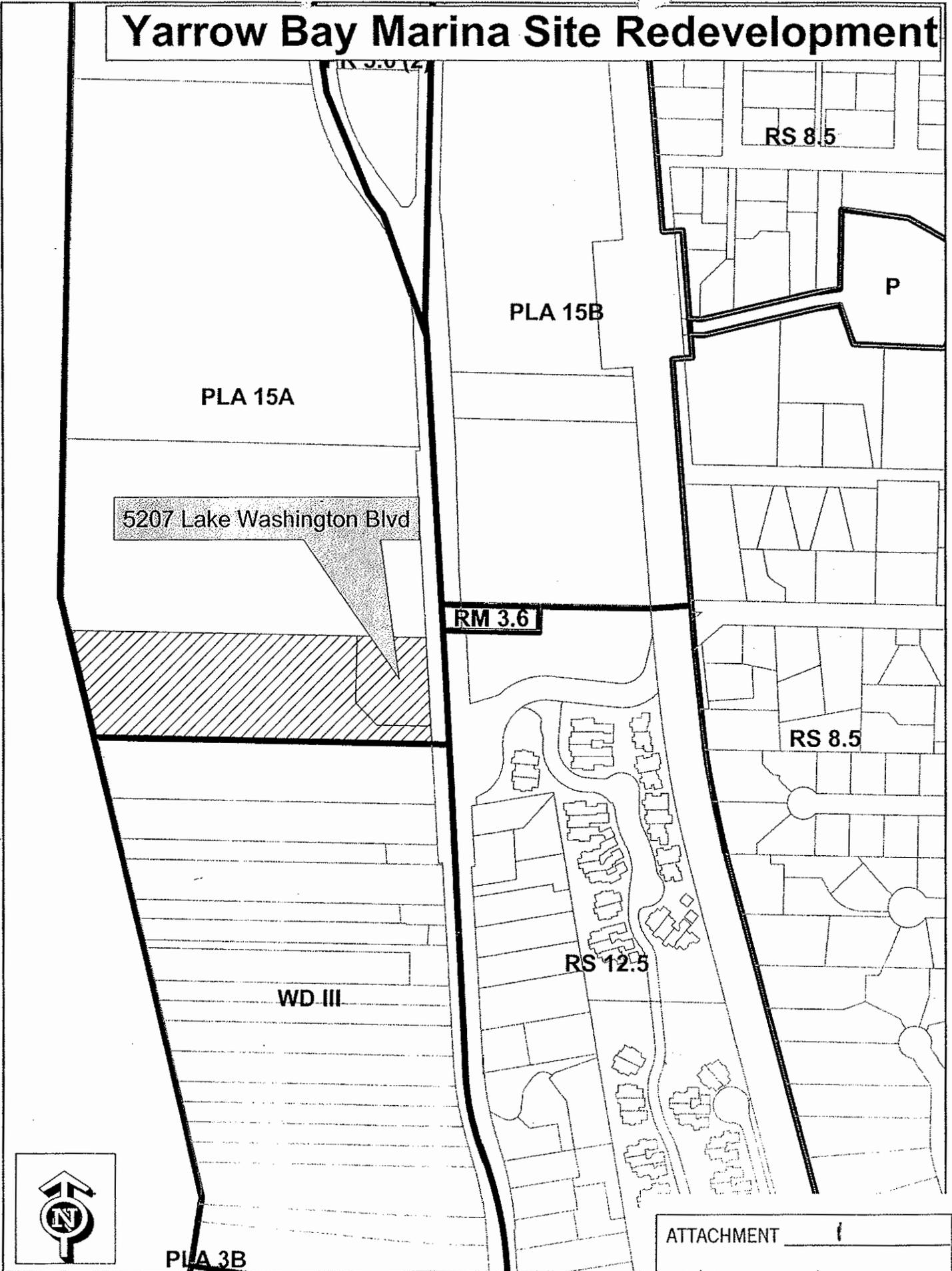
A written recommendation will be forwarded to the Hearing Examiner within 10 days of the close of the public hearing, unless additional time is needed to receive further written testimony.

### **HEARING EXAMINER**

A written recommendation on the shoreline and zoning permit applications and a written decision on the SEPA appeal will be issued by the Hearing Examiner within eight calendar days of the date of the open record hearing.



# Yarrow Bay Marina Site Redevelopment

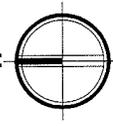
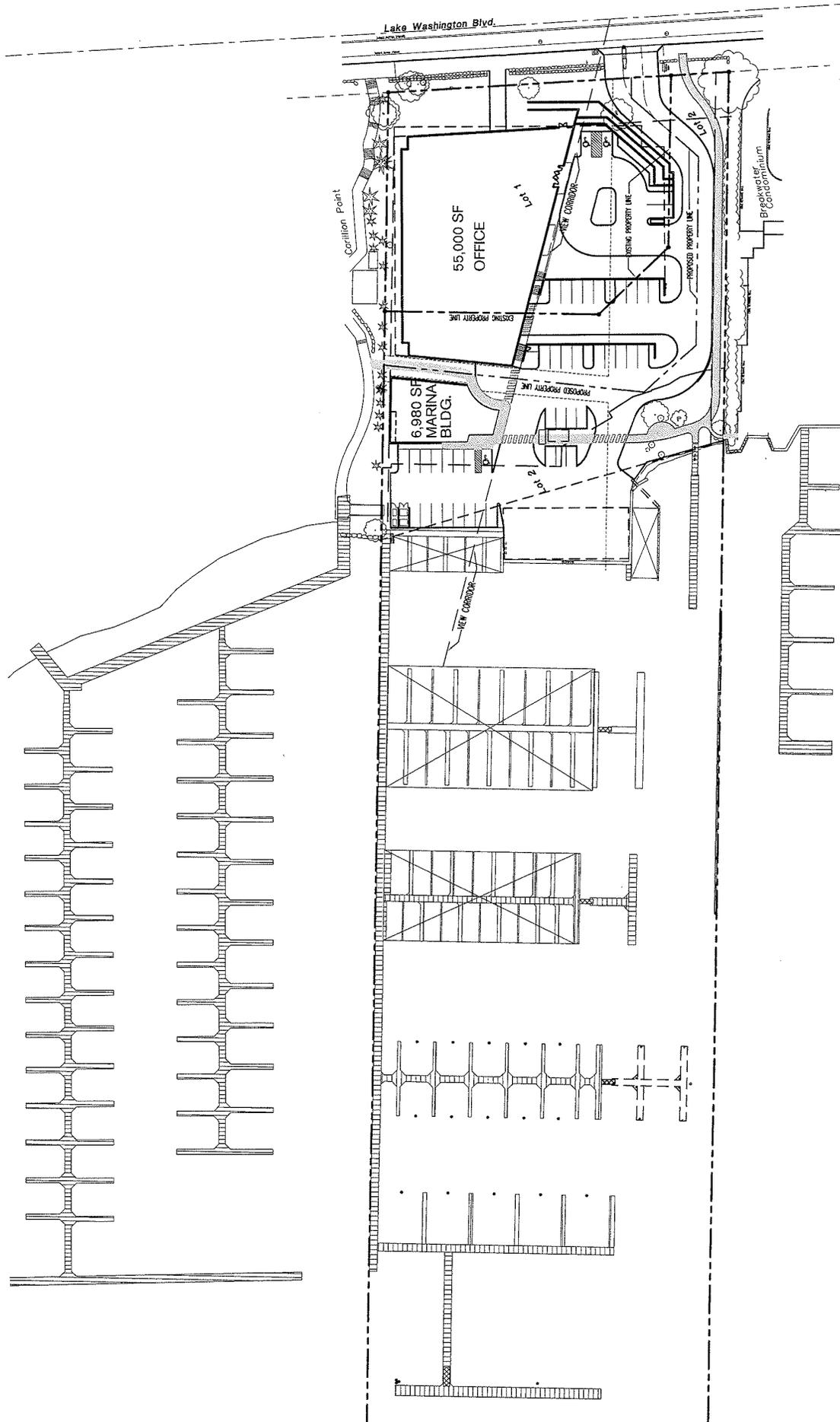


ATTACHMENT 1

SHR06-00001







# MARINA PLAN

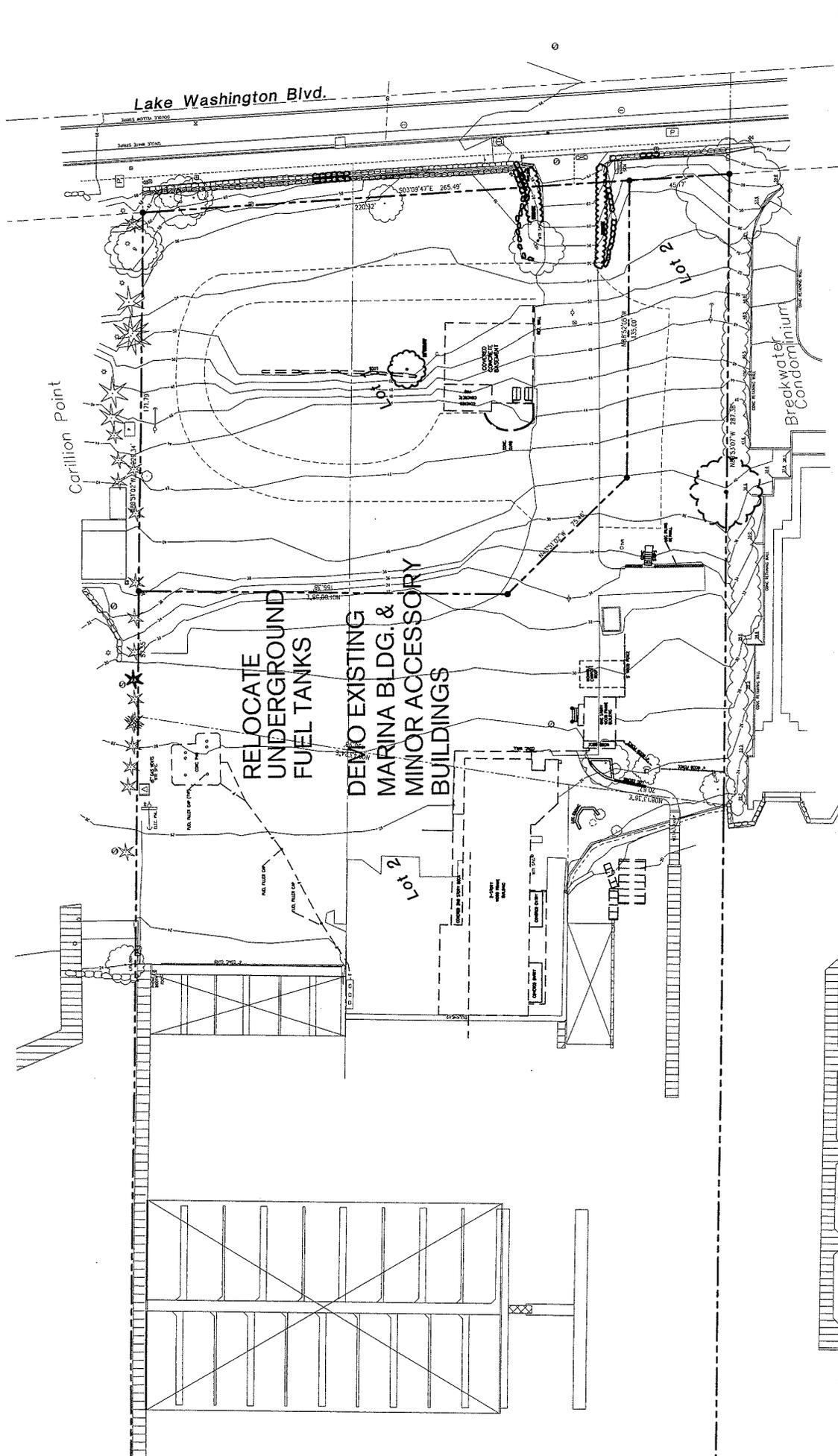
710 SECOND AVENUE  
 SUITE 1400  
 SEATTLE WASHINGTON - 98104-1710  
 T. 206 245 2100 F. 206 245 2101  
 COLLINSGERMAN.COM



MARINA SUITES  
 KIRKLAND, WASHINGTON

0001  
 JAN 20, 2008

PROJECT NUMBER  
 ISSUE DATE



Lake Washington Blvd.

Carillion Point

Breckwater Condominium

RELOCATE  
UNDERGROUND  
FUEL TANKS

DEMO EXISTING  
MARINA BLDG. &  
MINOR ACCESSORY  
BUILDINGS

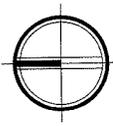
Lot 2

Lot 1

CONCRETE  
STRUCTURE

SCALE 1"=40'-0"

PROJECT NUMBER  
ISSUE DATE



# DEMO PLAN

710 SECOND AVENUE  
SUITE 1400  
SEATTLE WASHINGTON, 98104-1710  
COLLINSWOERMAN.COM



MARINA SUITES  
KIRKLAND, WASHINGTON











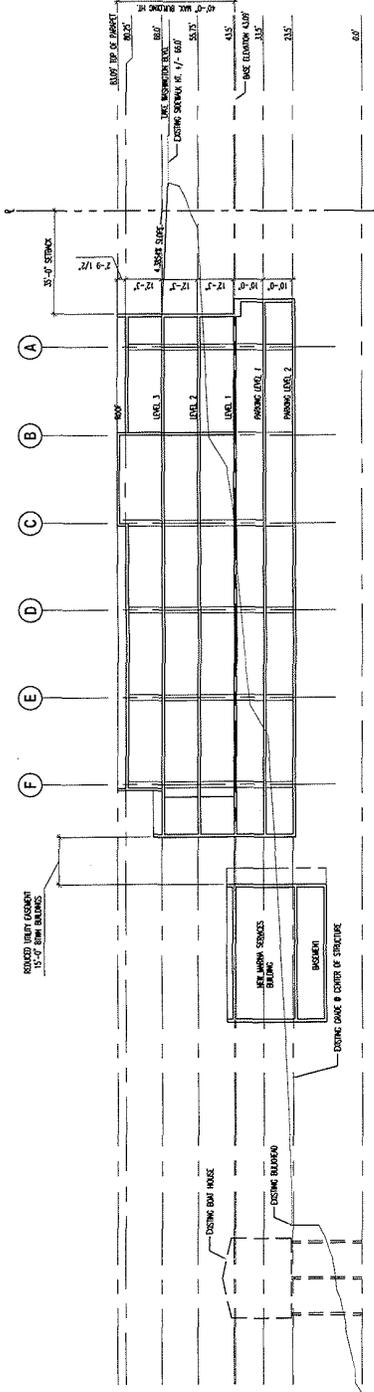




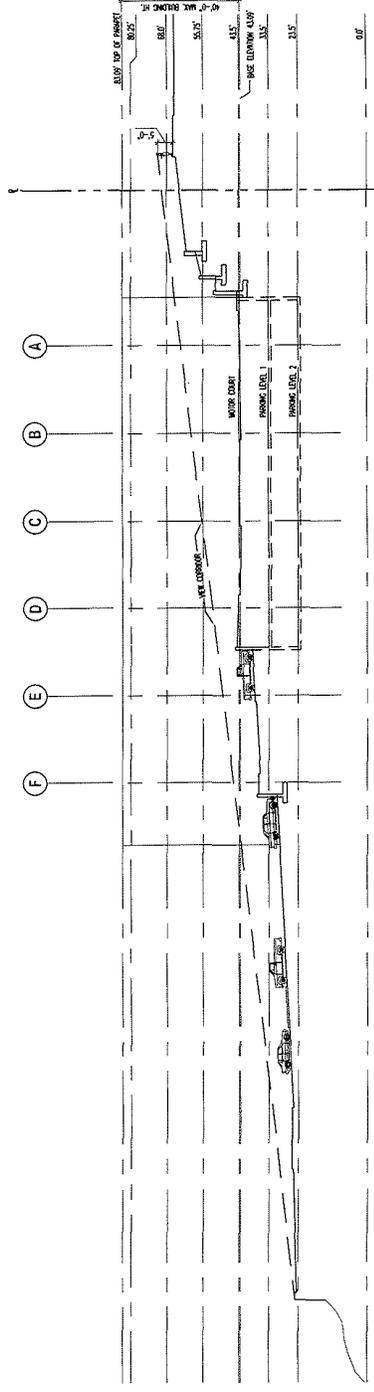






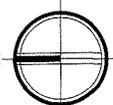


**A**  
SECTION A  
1" = 40'-0"



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

SCALE 1"=40'  
PROJECT NUMBER  
ISSUE DATE



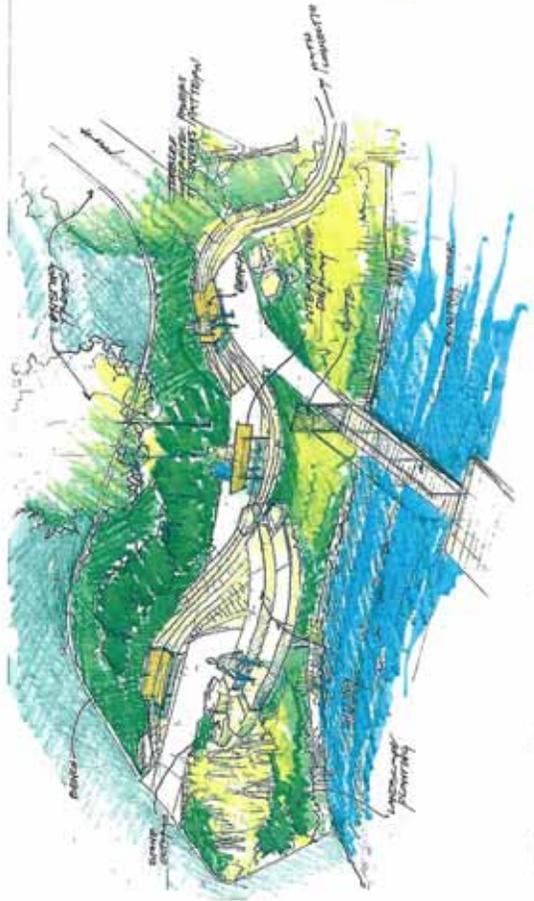
**SITE SECTIONS**

710 SECOND AVENUE  
SUITE 1400  
SEATTLE WASHINGTON - 98104-1710  
COLLINS@GERMAN.COM



**MARINA SUITES  
KIRKLAND, WASHINGTON**

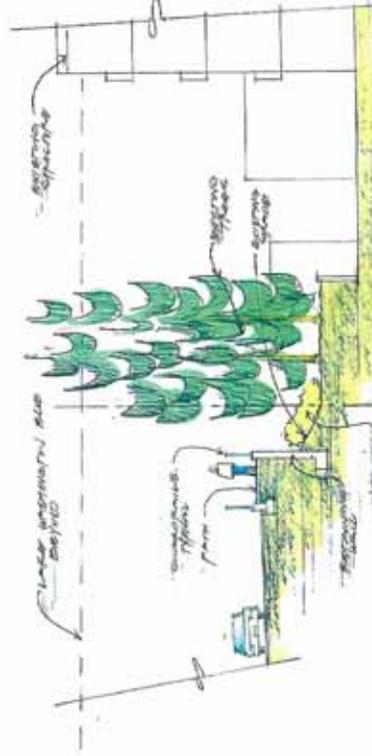




Plaza Perspective



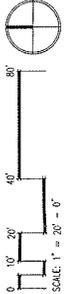
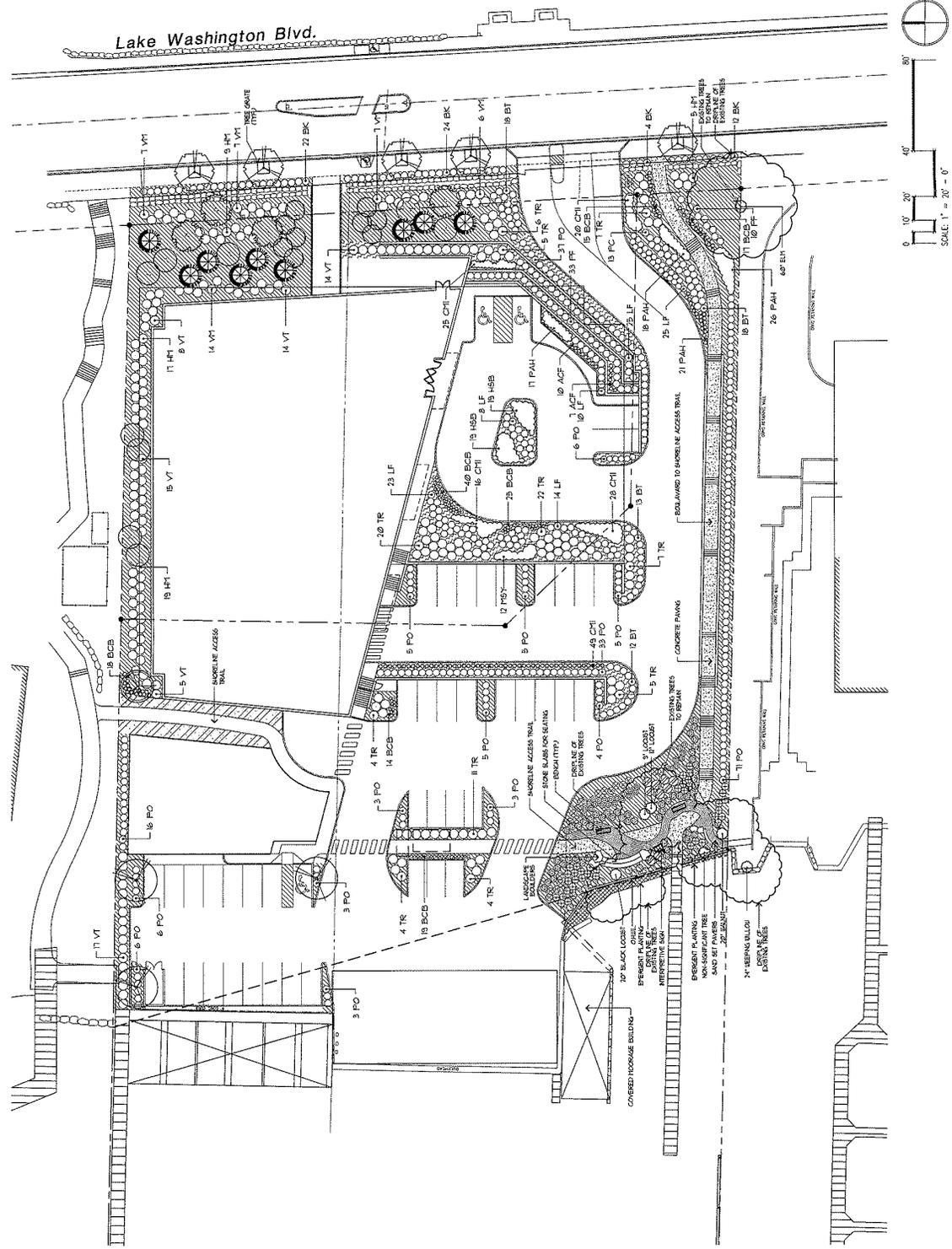
Plaza Plan and Section



Trail Section '1'



DATE	ISSUE
DESIGNED BY	6/20/06
CHECKED BY	6/20/06
DATE	6/20/06



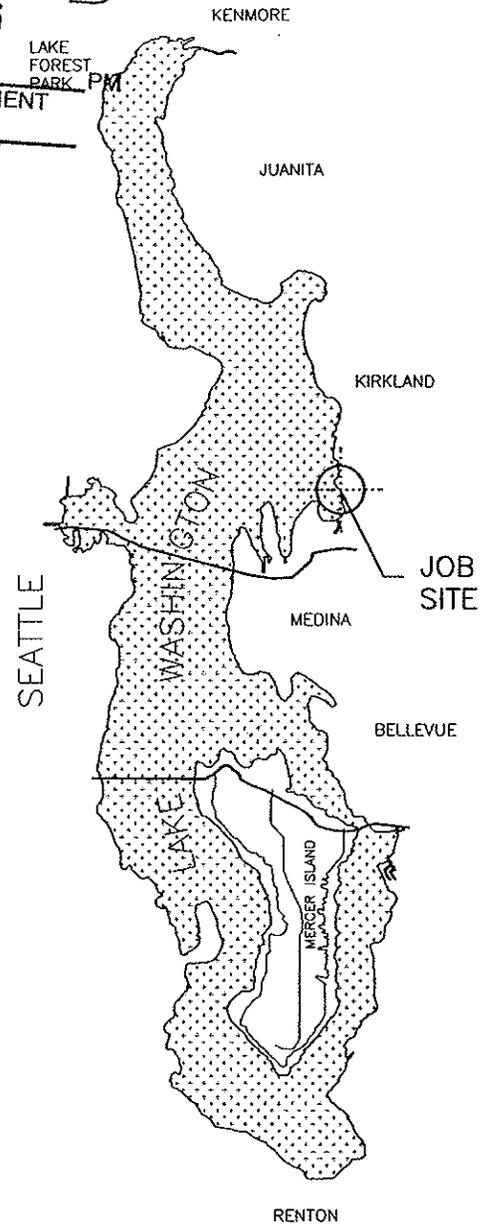
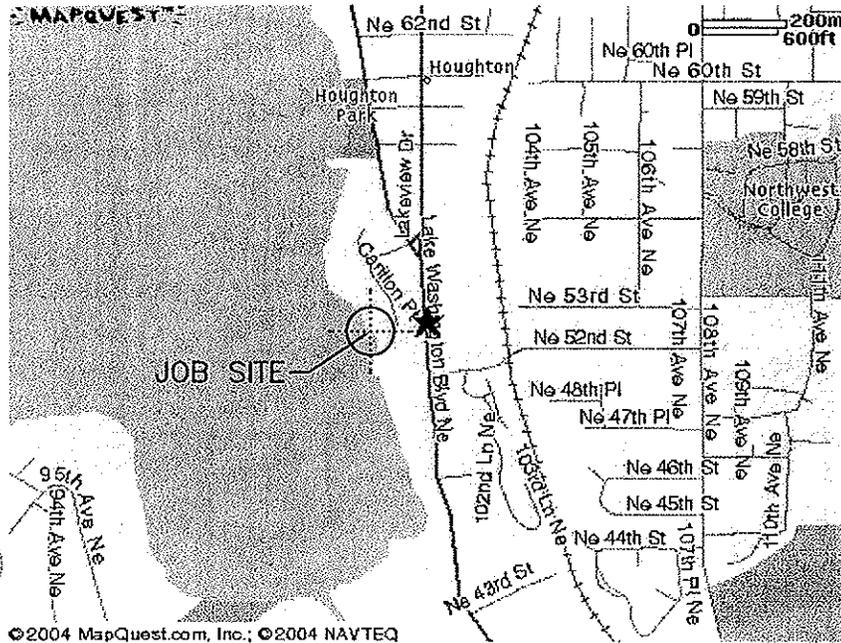




RECEIVED  
JAN 20 2006

PROJECT DESIGNED BY:  
Waterfront Construction Inc.  
205 NE NORTHLAKE WAY, Suite 230  
SEATTLE, WA. 98105 (206) 548-9800

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



VICINITY MAP/NO SCALE

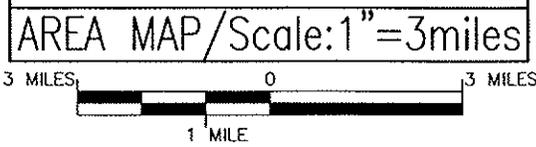
**LEGAL DESCRIPTION**

1/4 SEC: NW 17-25N-05E  
TAXLOT #: 172505 9130

172505 9130 SOUTH HALF OF S HALF OF GOVT LOT 2 IN NW QTR STR 17-25-05 & OF 2ND CLASS SHORE LANDS ADJ LESS THE FOLLOWING DESCRIBED PARCEL: COMM AT INTERSECTION OF NORTH LINE SD SOUTH HALF OF SOUTH HALF & WLY MGN OF LAKE WASHINGTON BLVD NE TH ALG SD MGN S 03-09-47 E 75 FT TO TPOB TH CONTG ALG SD MGN S 03-09-47 E 220.32 FT TH N88-52-05 W 135 FT TH N 43-51-02 W 75.46 FT TH N 01-08-58 E 166.38 FT TO SOUTH LINE OF TRACT DEEDED TO G.A. & E.M. DAHLSTROM BY DEED REC NO 2980236 TH ALG SD SOUTH LINE S 88-51-02 E 171.79 FT TO TPOB & LESS PORTION SOUTH HALF OF SOUTH HALF LYING NORTHERLY OF SOUTH LINE SD DAHLSTROM TRACT-- AKA LOT 2 CITY OF KIRKLAND ALTERATION OF LOT LINE NO LL-97-57 REC NO 9707160998

LAT: 47°-39'-15"  
LONG: 122°-12'-21"

REVISED  
1-19-06



<p>PURPOSE: EXPAND 1 FLOATING PIER. INSTALL A WALKWAY. REMOVE EXISTING FLOATS. DATUM: C.O.E. 0.0' EST 1919</p>	<p>PROJECT NAME: YARROW BAY</p>	<p>PROPOSED: EXPAND PUBLIC MOORAGE AVAILABILITY. INSTALL FLOATING PVC BOOM.</p>
<p>ADJACENT OWNERS: ① CARILLON PROPERTIES W. BLVD. 5245 LAKE WASHINGTON BLVD NE ② BREAKWATER CONDOMINIUMS 4823 LAKE WASHINGTON BLVD NE</p>	<p>REFERENCE #: SITE LOCATION ADDRESS: 5001 LAKE WASHINGTON BLVD NE KIRKLAND, WA. 98033 DWG#: 04-3320-A.1-1</p>	<p>ATTACHMENT <u>Z.B</u> <u>SH20060001</u></p>