



LAND USE SERVICES DIVISION
Department of Development and Environmental Services
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Shoreline Substantial Development Report and Decision

Date of Transmittal: August 13, 1998

SUBJECT:

File No: L96SH107 (Lakepointe)

Applicant: Gary Sergeant for Pioneer Towing Company, Inc.

Project Location: The site is located in the Kenmore area of unincorporated King County, near the intersection of NE Bothell Way (SR 522) and 68th Avenue NE.

The site is approximately bounded by Lake Washington to the west, the Sammamish River channel to the south, 68th Avenue NE to the east and NE Bothell Way to the north. On August 31, 1998, the City of Kenmore will incorporate and the site will be located within the City of Kenmore.

Project Proposal: With reference to the submitted revised plans (received June 9, 1998), the area under SMA jurisdiction which is the subject of the requested Shoreline Management Substantial Development Permit (SDP) is one element of larger mixed use Master Plan Proposal encompassing a ±50 acre site. The proposed overall project consists of phased development of 1,200 residential units, 205,588 square feet of professional office space, 438,627 square feet of retail and commercial space, a marina to include a total of 53 boat slips (27 on the southern side and 26 on the northern side), 4,508 parking stalls, and construction of a new public street connecting NE Bothell Way and 68th Avenue NE. Open space on the site would total 21.2 acres (47.2 percent of the site) and would include natural open space, public park area, pedestrian walkways and trails, and a public amphitheater. The open space areas on the site would provide public access and viewpoints to Lake Washington and the Sammamish River. The

Shoreline Substantial Development Permit is for all development within 200 feet of the Ordinary High Water Mark of the Sammamish River, Lake Washington, and the inner harbor within Building Areas A through H, Phases 1 through 7. The applicant is not proposing the construction of any buildings in Building Area H under this permit. Rather, the request is for development activities in the channel such as reconstructing bulkheads and constructing wharfs and moorage slips as part of the plan for the marina.

Comments received on the Draft Supplemental EIS have resulted in changes to the proposed marina plan. The marina plan, as described and analyzed in the Draft Supplemental EIS, contained 53 long-term moorage slips. The marina as revised would still contain 53 long-term moorage slips, but would substantially decrease the amount of in-water and over-water structures in the inner harbor. This decrease in in-water and over-water structures has been proposed to reduce the amount of shading and potential salmonid predator habitat in the marina compared to that under the marina plan described in the Draft Supplemental EIS. Refer to Chapter 3 for a summary of the updated fisheries analysis prepared for the Final Supplemental EIS.

The reduction in in-water and over-water structures would primarily result from a proposed reduction in the width of marina piers, reduction in the width of the boardwalk along the southern edge of the marina to eliminate water overhang, and elimination of the circular restaurant building at the western end of the inner harbor to eliminate the water over-hang associated with this structure (restaurant use originally proposed for this building would be relocated to building D). In addition, the existing bulkhead at the eastern end of the inner harbor, which was to be retained under the marina plan as described in the Draft Supplemental EIS, would be removed, and a more natural shoreline area would be provided.

The existing and proposed extent of over-water and in-water structures was illustrated in Table 16 of the Draft Supplemental EIS. The table has been revised to include the following: existing inner harbor conditions data as described in the Draft Supplemental EIS; updated existing inner harbor conditions data based on new information (inclusion of an existing covered moorage dock and tug and commercial boat berthing area discovered to be located on the site); proposed amount of marina structures described and analyzed in the Draft Supplemental EIS; and proposed marina structures under the revised marina plan.

**Summary of Shoreline Treatments and Water Structures
 Under Existing Conditions, Marina Described in DSEIS and
 Revised Marina
 (Table 16-A)**

	Existing Draft SEIS	Existing Updated	Proposed Draft SEIS	Proposed Current
Area of Surface Water Overhang (sq. ft.)	7,642	8,938*	32,488	9,504
Area of Floating Material				
Floats	7,795	7,795	12,700	9,340
Boats	25,800	29,648**	14,632	26,045
TOTAL Shaded Area	41,237	46,381	59,820	44,889
Lineal feet of Bulkhead	1,131	1,131	1,016	1,016
Number of In-Water pilings	365	395	449	255

Source: Beak Consultants, 1998

- * Surface water overhang and number of pilings increased due to inclusion of an existing private covered moorage dock that is located within the site. These structures were assumed to be off-site in the Draft Supplemental EIS.
- ** The amount of floating boat surface area increased to include tug berthing areas, commercial vessel berthing and other miscellaneous boat moorages shown in photographic documentation of the inner harbor during spring 1996. These areas were not incorporated into previous estimates of boat surface water coverage in the Draft Supplemental EIS

As indicated in Table 16-A, the number of in-water piles, lineal feet of bulkhead, and total shaded area under the revised marina plan would be less than under the updated existing conditions and less than under the marina plan described and analyzed in the Draft Supplemental EIS. Specifically, under the revised plan, there would be a 43 percent reduction in in-water pilings and a 25 percent reduction in total shaded area compared to the marina plan described and analyzed in the Draft Supplemental EIS. Under the revised plan, the proposed number of in-water pilings would be reduced to 64 percent of the number of existing pilings. The total lineal feet of bulkhead under the revised marina plan would be the same as that described and analyzed in the Draft Supplemental EIS, which is 90 percent of existing conditions. Total shaded area would be reduced to 97 percent of existing shaded area.

Waterbodies: Lake Washington and Sammamish River

Shoreline Designation: Urban

Shoreline State-wide

Significance: Yes (Lake Washington)
 No (Sammamish River)

BACKGROUND:

Prior to the issuance of this report and decision, the complete written record contained in the subject file was reviewed and a site investigation was conducted by staff. The record includes the applicant's submittal, notification forms, pertinent information included by staff, and all correspondence and comments in response to the proposal. Additionally, a detailed Supplemental Environmental Impact Statement (SEIS) was prepared by King County (Draft SEIS 11/97 and Final SEIS 7/98).

FINDINGS:

1. The criteria for authorizing Shoreline Substantial Development Permits (SDPs) as set forth in WAC 173-27-140, WAC 173-27-150, KCC 25.04.010, and RCW 90.58.020 are hereby incorporated into these findings by reference.
2. The purpose of the requested SDP is to obtain consistency with the Shoreline Management Act of 1971 (RCW 90.58) and the King County Shoreline Management Master Program (KCSMP) in order to construct that portion of the project within Shorelines Management jurisdiction heretofore described above.

The overall Lakepointe Mixed Use Master Plan is a proposal to develop the 50 acre Kenmore Pre-mix site at the north end of Lake Washington. Approval is being requested concurrently for a Master Site Plan (A95P0105), a Commercial Site Development Permit (B96CS005), and the subject Shoreline Substantial Development Permit. The report and decision by King County DDES regarding the Master Site Plan and the Commercial Site Development Plan are herein incorporated by reference.

3. State Environmental Policy Act of 1971 (SEPA): On November 14, 1995, King County, as lead agency, issued a SEPA Determination of Significance for the Lakepointe project (DDES File No. E95E0198), which required the preparation of a supplement to the Environmental Impact Statement prepared for the 1993 Northshore Community Plan Update.

A Draft Supplemental EIS, published on November 4, 1997, described the Proposed Action and the two alternatives, evaluated environmental impacts, and identified mitigation measures. Comment letters to the Draft Supplemental EIS were received from agencies and citizens through December 19, 1997, and a public meeting was held on December 8, 1997, to receive oral comments. The applicant subsequently revised the Proposed Action in response to comments received. A Final Supplemental EIS was issued July 1998. The proposed changes reduce the amount of in-water and over-water structures in the inner harbor, reduce the overall amount of paved surface on the site, and increase the amount of natural and landscaped area. (See Chapter 2 Final Supplemental EIS.) The Draft and Final documents comprise the Supplemental EIS for the Lakepointe proposal and should be used together with the 1992 EIS for the

Executive Proposed Northshore Community Plan Update to evaluate the Proposed Action. The Draft SEIS and Final SEIS are herein incorporated by reference into the subject Shoreline Management Substantial Development Permit Decision.

4. Zoning History:

The Northshore Community Plan Update and Area Zoning, adopted by the King County Council on February 11, 1993, established the general design and development requirements for the subject property known as the Kenmore Pre-Mix site. The concept was to develop a mixed-use pedestrian oriented development that would provide public access to the Lake Washington shoreline and create an "Urban Village" extension of Kenmore.

In 1993, the King County Department of Public Works (now the King County Department of Transportation) and the property owner worked together to analyze traffic conditions and transit options, which resulted in actualizing the potential zoning from Industrial to Regional Business with P-Suffix conditions through the Countywide rezone to implement the 1994 King County Comprehensive Plan.

The P-suffix conditions adopted for this site require the approval of a Master Site Plan to meet the requirements for phasing, mitigation and development by subdistrict. The Master Site Plan is not a land use or building permit in itself, but is a required document that is being reviewed and approved as part of the Commercial Site Development Permit (CSD). The applicant submitted an application for approval of the Master Site Plan on May 5, 1995 (DDES File No. A95P0105). Concurrently, a request for a Commercial Site Development Permit (B96CS005) was reviewed by King County. (It should be noted that the Commercial Site Development Permit is generally a construction permit that would approve construction of all the site development work, such as building pads, roads, drainage systems, landscaping and parking. The applicant requested that the Commercial Site Development Permit application be reviewed only as a conceptual design in order to provide vesting for the Master Site Plan without the expense of preparing construction drawings. Therefore, approval of the CSD permit would not provide the applicant with the right to proceed with any site alteration or construction.) The report and decision regarding CSD permit B96CS005, dated July 22, 1998, is herein incorporated into the subject SDP decision by reference.

5. Existing Conditions:

The approximately 50 acre site consists of four tax parcels forming an irregularly shaped property, which is generally flat with elevations ranging from 23 to 28 feet, with an elevation of approximately 18 feet at the shoreline edge.

The site is a peninsula with the Sammamish River on the south, Lake Washington on the west and a man-made (dredged) harbor to the north. The inner harbor is

approximately 150 feet wide and 500 feet long and has been periodically dredged by the U.S. Army Corps of Engineers to maintain commercial navigation. The Sammamish River, which has been channelized by the U.S. Army Corps of Engineers for its entire length, supports runs of a variety of anadromous salmonids. The mouth of the Sammamish River, at the Lakepointe site, provides rearing habitat for salmonids and is a migration corridor for adult and juvenile salmon.

There are two wetlands on site. One is a long, narrow wetland located along the western edge of the site parallel to the Lake Washington shoreline. The second wetland is in the far southeast corner of the site near the Kenmore Bridge on 68th Avenue Northeast.

Most of the site has been cleared of vegetation to accommodate the existing industrial and outdoor storage uses. However, there is a narrow band of vegetation along the Sammamish River and Lake Washington shoreline.

Over the past 70 years, the site has undergone numerous physical changes, including the grading of the northern edge of the site for construction of a railroad line, SR 522 in 1916, establishment of a lumber mill in the late 1940's and the expansion of the site to the south by placement of fill behind a jetty in the 1960's.

Current land uses in the site, which are generally characterized as industrial and warehouse in nature, include the Kenmore Pre-Mix Concrete plant (including Sterling Asphalt), car storage for the Bill Pierre Ford dealership, and several light industrial businesses including Sepia Interior Supply, Western Truck School, Pioneer Towing, Waterfront Construction, and Nelbro Packing.

As a result, the overall site has typically been substantially impacted and environmentally degraded.

Land uses in the vicinity include Kenmore Air Harbor, Davidson Marina, Harbor Village, and Tracy Own Station (Logboom) Park to the west; a boat launch park and Inglewood Country Club and residential area to the south across the Sammamish River; commercial and light industrial uses to the east across 68th Avenue NE; commercial uses to the immediate north, northeast and northwest along Bothell Way NE; and single detached residences up the hill further to the north. A King County (formerly Metro) sewage pump station is located adjacent to the northeast portion of the site.

6. In addition to the subject Shoreline Management Substantial Development Permit, a myriad of other federal, state, and local permits/authorizations will be required prior to any redevelopment of the site. These include:

King County

Master Plan Permit (required by the Northshore Community Plan (P-Suffix Conditions))

Shoreline Substantial Development Permit (required by KCC Title 25)
Binding Site Plan for subdividing land for condominiums (required by
KCC Title 19.34)
Clearing and Grading Permits (required by KCC Title 16.82)
Building Permits for all structures, including, but not limited to, building
signs, fences over six feet in height (required by KCC 16.04)
Variance from the King County Road Standards (required by KCC 14.42)
Fire System Permits for fire systems, including, but not limited to, water
main extensions, sprinklers, and alarms (required by KCC Title 17)
Right-of-Way Use Permits (required by KCC 14.28)
Boundary Line Adjustment (required by KCC 19.08)
Variance from the Surface Water Design Manual to use the draft Manual
update for depth of pipes (KCC Title 9)
Commercial Site Development Permit (KCC Title 21A.41)
Boundary Line Adjustment or a Short Subdivision

Other Agencies

Section 404 Permit, U.S. Army Corps of Engineers
Hydraulic Project Approval, Washington Department of Fish and Wildlife
Baseline General Permit for Stormwater, Washington Department of
Ecology
Water Quality Modifications Permit, Washington Department of Ecology

7. King County Shoreline Master Program (King County Ordinance Nos. 3688,
3692):

The proposed site is situated within an area which is designated under the King
County Shoreline Master Program (Map 4) as an "Urban" environment.

The following King County Shoreline Master Program policies are applicable to
the applicant's proposal:

(1) Purpose of the "Urban" Environment Designation:

*"The purpose of designating the Urban Environment is to ensure optimum
utilization of shorelines within urbanized areas by permitting intensive use and by
managing development so that it enhances and maintains the shoreline for a
multiplicity of urban uses. The Environment is designed to reflect a policy of
increasing utilization and efficiency of urban areas, to promote a more intensive
level of use through redevelopment of areas now under-utilized and to encourage
multiple use of the shoreline if the major use is shoreline dependent.*

General Policies

*"Policy 1. Emphasis should be given to development within already developed
areas.*

"Policy 2. Priority should be given to shoreline dependent and water oriented uses over other uses. Uses which are neither shoreline dependent or water oriented should be discouraged except for residential.

"Policy 3. Emphasis should be given to developing visual and physical access to the shoreline in the Urban Environment.

"Policy 5. To enhance the waterfront and insure maximum public use, industrial and commercial facilities should be designed to permit pedestrian waterfront activities consistent with public safety and security.

"Policy 6. Multiple use of the shoreline should be encouraged.

"Policy 7. Redevelopment and renewal of substandard areas should be encouraged in n order to accommodate future users and make maximum use of the shoreline resource.

"Policy 8. Aesthetic considerations should be actively promoted by means of sign control regulations, architectural design standards, planned unit development standards, landscaping requirements and other such means.

"Policy 9. Development should not significantly degrade the quality of the environment, including water quality and air quality, nor create conditions which would accentuate erosion, drainage problems or other adverse impacts on adjacent Environments."

COMMENT: The proposed site is situated within an area which has been historically utilized for industrial and commercial activities. The uses proposed by the applicant are both "Shoreline Dependent" (wet moorage) and "Water Oriented" (marina support activities, restaurant, and residential dwelling units). The applicant's submitted plans indicate that both visual and physical public access to the shoreline will be provided within the boardwalk area of the marina complex and the system of trails, viewpoints and rest areas around the perimeter of the site, and the amphitheater facility adjacent to Lake Washington. The Draft Supplemental Environmental Impact Statement (November 1997) and the Final Supplemental Environmental Impact Statement (July 1998) provide discussion as to the relationship of the proposed project to water quality, air quality and other environmental issues.

(2) Commercial Development: General Policies (pages 27-28):

"Policy 1. Boat moorage, launching facilities and other services should be located where existing vehicular access and parking are available or can be made available without disruption of the shoreline environment.

"Policy 2. Shoreline embankments of launching and servicing facilities should be stabilized both above and below the water's edge.

"Policy 3. Consideration should be made of the effect a structure will have on a scenic value.

"Policy 4. Commercial structures and ancillary facilities that are not shoreline dependent or water-oriented should be placed inland away from the immediate water's edge.

"Policy 5. Overwater commercial structures should be discouraged but, where allowed, should provide safe public access to the water and promote aesthetic and visual values for public benefit."

COMMENT: As part of the overall development proposal for Lakepointe, the applicant is proposing a variety of parking designs including open air, as well as above and below ground structures. Typically, said parking will be located greater than 100 feet from the Ordinary High Water Line (OHWL) of adjacent surface waters. The applicant is proposing the construction of 53 mooring slips (comprising floating and fixed structures) to accommodate watercraft varying in size from ± 40 feet to ± 100 feet in length. No launching facilities are proposed. The marina project envisions the installation of ± 255 pilings for shoreline stabilization and pier construction, a reduction over what currently exists at the site.

With reference to Figures 22-29, pages 3-168 to 3-177 of the Draft Supplemental Environmental Impact Statement (November 1997), no significant view obstructions should be realized due to the topographic relationships of the subject property to view corridors and single family residences located to the north, across Bothell Way NE. The uses proposed by the applicant within the submitted site plan, are shoreline dependent or water related uses. Those uses proposed waterward of the Ordinary High Water Line are shoreline dependent, while those uses proposed landward of the Ordinary High Water Line are water related. The applicant proposes to provide public access to the water by way of a boardwalk which would run along the marina shoreline and by providing physical access to the shoreline of Lake Washington and the Sammamish River by way of an integrated trail system.

(3) Pleasure Boat Marinas: General Policies (Pages 28-30):

"Policy 1. Marinas should be distributed regionally for convenient and water access only to the extent of the region's land and water carrying capacity and balanced against other shoreline dependent uses.

"Policy 3. Marinas should be located with regard to most favorable physiographic conditions, such as wind and current protection, and adequate water depth for expected boat drafts.

"Policy 5. Marinas should be located and designed in a manner that will minimize environmental pollution.

"Policy 6. Marinas should be located within existing or potential high intensity use areas and at shoreline locations adjacent to waters used for navigation.

"Policy 7. Marina development and ancillary facilities should be designed to use minimal shoreline.

"Policy 9. Parking areas that serve marinas shall conform to the parking regulations of the "Transportation Facilities" Use Activity.

"Policy 10. Land-water access to marinas should be planned to minimize traffic congestion and to minimize pedestrian/vehicle conflicts.

"Policy 11. Boats should be dry stored whenever possible to retain shoreline for other shoreline dependent uses or so that the greatest number of boats per front foot of shoreline can be accommodated.

"Policy 12. The general public should be allowed use of the marina except in specific areas that may require security.

"Policy 13. Viewpoints, walkways, picnic facilities, benches, telephones, restrooms, drinking fountains and other public use facilities should be encouraged.

"Policy 14. Covered moorage should be discouraged except for repair or construction activity."

COMMENT: For a complete discussion of the physical and social impacts of the proposed development on the environment, see the Draft Supplemental Environmental Impact Statement (November 1997) and Final Supplemental Environmental Impact Statement (July 1998).

The applicant proposes to develop 53 wet moorage slips catering primarily to pleasure craft within the range of 40 feet up to 100 feet in length. It is reasonable to assume that pleasure craft of this size may frequent Puget Sound on a more regular basis than pleasure craft of smaller dimensions. Given this consideration, the proposed site is not optimally located relative to the recreational waters which may be utilized by the boats to be moored at the proposed marina. However, given the limited availability of potential marina sites within Puget Sound, Lake Union, and Lake Washington, relative to the demand for wet moorage space, the location of the proposed site is not unreasonably situated although energy consumption would be somewhat higher relative to locations which are closer to Central Lake Washington and Puget Sound.

The area in the general vicinity of the marina is designed to be pedestrian oriented. Parking areas associated with the marina retail area are typically located greater than 100 feet from the OHWL. As previously mentioned, full public access to the shorelines of Lake Washington and the Sammamish River are a central design element of the Lakepointe project. No covered moorage slips are proposed.

(4) Piers for Moorages: General Policies (Pages 41-43)

"Policy 1. Open pile pier construction should be preferred where there is significant littoral drift, where scenic values will not be impaired and where minimal damage to aquatic resources can be assured.

"Policy 2. Floating pier construction should be preferred in those areas where scenic values are high.

"Policy 3. Piers should be discouraged where conflicts with recreational boaters and other recreational water activities would be created by pier construction.

"Policy 4. The random proliferation of single purpose piers should be discouraged. Preference should be given to shared use of piers in all shoreline areas.

Policy 9. Piers, docks, buoys and other moorages should only be authorized after consideration of:

"a. The effect such structures have on wildlife and aquatic life, water quality, scenic and aesthetic values, unique and fragile areas, submerged lands, and shoreline vegetation.

"b. The effect such structures have on navigation, water circulation, recreational and commercial boating, sediment movement and littoral drift and shoreline access."

COMMENT: For a discussion of the effect of the proposed construction and operation of the wet moorage upon the physical environment of Lake Washington, see the Draft Supplemental Environmental Impact Statement (November 1997) and the Final Supplemental Environmental Impact Statement (July 1998).

The marina consists of one fixed dock with two pile-supported wharf structures and fixed access ramps. The wharf structures will provide public lookout platforms for views of Lake Washington. A floating dock is also provided. The inner harbor is along the migration route of fish that spawn in the Sammamish River and Cedar River watersheds. Since migrating fish tend to follow along the shoreline rather than taking the most direct route, it is estimated that millions of fish pass through the mouth of the Sammamish River and inner harbor on their way through the ship channel to Puget Sound. The Supplemental Environmental Impact Statement has identified a number of impacts to fisheries resources as a result of the development of the marina. Specifically, the development of over-water structures, which creates shading for non-native predator fish. To mitigate this impact, the use of grating or glass prisms to achieve 50% light passage on all docks will be required. In-water pilings also attract predator fish so the marina will be designed to use a minimum number of pilings and many existing pilings will be removed for an overall net loss of in-water pilings. In addition, if floating docks are separated

by between 10 to 15 feet from the fixed wharf, the prey fish would be outside of the striking range of a predator fish.

To protect water quality, a waste holding tank pump station must be provided and liveaboards will be prohibited in the marina. Many of the amenities normally found at public marinas, such as showers and cable television, will not be allowed to also help assure that liveaboards are not allowed. Also, no underwater cleaning of any boat will be allowed in the inner harbor. A near shore restoration plan for the inner harbor will be required that eliminates the use of quarry spalls, which are unacceptable habitat.

5. Dredging: General Policies (Page 38):

"Policy 2. In all cases, dredging and excavation operations should be conducted to minimize adverse effects on the shoreline development.

"Policy 3. Dredging operations should be scheduled so as to not materially interfere with the movements of fish."

COMMENT: The proposed project does not include any plans for dredging of adjacent waters.

8. King County Shoreline Master Program Regulations
[King County Code (KCC), Title 25]

a. KCC 25.16.030, General Requirements (Urban Environment):

"(B) Except in those cases when the height requirements of the underlying zones are more restrictive, no structure shall exceed a height of thirty-five feet above average grade level. This requirement may be modified if the view of a substantial number of residences will not be obstructed, if permitted by the applicable provisions of the underlying zoning, and if the proposed development is agricultural, water related or water dependent.

"(C) All development shall be required to provide adequate surface water retention and sedimentation facilities during the construction period.

"(E) Parking facilities except facilities associated with detached single family and agricultural development shall conform to the following minimum conditions:

(1) parking areas serving a water-related or a non-water related use must be located beneath or upland of the development which the parking area serves;

(2) *any outdoor parking area perimeter, excluding entrances and exits, must be maintained as a planting area with a minimum width of five feet.*

(3) *one live tree with a minimum height of four feet shall be required for each 30 linear feet of planting area;*

(4) *one live shrub of one gallon container size or larger for each 60 linear inches of planting area shall be required;*

(5) *additional perimeter and interior landscaping of parking areas may be required, at the discretion of the Director, when it is necessary to screen parking areas or when large parking areas are proposed.*

“(F) Collection facilities to control and separate contaminants shall be required where stormwater run-off from impervious surfaces would degrade or add to the pollution of recipient waters or adjacent properties.

“(H) Development proposed in shorelines of the state shall maintain setbacks, provide easements or otherwise develop the site to permit a trail to be constructed or public access to continue, where:

(1) there is a proposed trail in the King County Trail System, or

(2) part of the site is presently being used and has historically been used for public access.”

COMMENT: According to the revised Shoreline Permit Application plans received June 9, 1998, the proposed building heights along the Sammamish River within Shoreline Management jurisdiction will be 45 feet; building heights along the Lake Washington shoreline and the inner harbor are proposed to be 45 feet, 72 feet, and 92 feet (see Draft Supplemental EIS). It should be noted that the DSEIS indicates that structures near the Sammamish River, within Shoreline Management jurisdiction, would not be higher than 35 feet. Further environmental review would be necessary in order to consider the additional height illustrated in the revised Shoreline Permit Plans for the residential structures in the vicinity of the Sammamish River. King County has reviewed the figures and information contained in the Draft Supplemental EIS (pages 3-166 through 3-178) and aerial photographs, and has conducted on-site inspections and analyses of properties in the vicinity of the Lakepointe site. Based on that review, King County has concluded that the proposed building heights within the shoreline jurisdiction while being an intrusion into views, would not constitute an obstruction. Because of the size and scope of the proposed development, the Lakepointe project would become a dominant feature in the landscape and would intrude into territorial views; however, it would not constitute an “obstruction of views of a substantial number of residences” given its distance, orientation, and topographic separation from the residences. Therefore, a shoreline (height) variance is not required.

King County's Shoreline Master Program (KCC 25.08.600) defines "water-related" as a use which "Promotes the public's enjoyment of or access to the water and includes "residential development, boat sales or restaurants." The Lakepointe development would include residential development, restaurants, and pedestrian walkways to promote the public's enjoyment of, and access to, the water.

The underlying zoning for the site is Regional Business with P-suffix conditions (RB-P) and Industrial/Potential RB-P zones (I-Pot RB-P) (see Draft Supplemental EIS, pages 2-2 and 2-3). The applicant has submitted a Master Plan and applications for the Commercial Site Development Permit and the subject Shoreline Substantial Development Permit. King County has reviewed the applications and determined that the proposed project is a permitted use in the RB-P zone, as defined in KCC 21A and the NSCP. Please see pages 3-119 and 3-135 through 3-154 in the Draft Supplemental EIS for a discussion of zoning and P-suffix conditions.

The applicant will be required to comply with King County Ordinances relating to stormwater runoff control both during the construction and operational phases of the proposed project. Conditions can be stipulated to implement the intent of KCC 25.16.030(E) as it relates to landscaping on the subject property. As indicated by the submitted site plans and within the text of the Draft and Final Supplemental Environmental Impact Statements, the applicant is proposing a variety of public access opportunities to the shorelines of Lake Washington and the Sammamish River.

b. KCC 25.16.070: Commercial Development

“(C) Water dependent commercial development shall not be required to maintain a shoreline setback.

“(D) Water related commercial development shall maintain a shoreline setback of either twenty (20) feet from the Ordinary High Water Mark or ten (10) feet from the edge of the floodway, whichever is greater. This shoreline setback may be reduced to either ten (10) feet from the Ordinary High Water Mark or the edge of the floodway, whichever is greater; if the water related development provides limited public access or public access.

“(E) Nonwater related commercial development shall maintain a shoreline setback of either fifty feet from the Ordinary High Water Mark or twenty feet from the edge of the floodway, whichever is greater. This shoreline setback may be reduced either to twenty feet from the Ordinary High Water Mark or to ten feet from the edge of the floodway, whichever is greater, if the nonwater related development provides limited public access. This shoreline setback may be reduced either to ten feet from the Ordinary High Water Mark or to the edge of the floodway, whichever is greater, if the nonwater related development provides public access.

“(F) Piers, moorages, floats and launching facilities may be permitted accessory to commercial development, provided:

1. The structure will serve a water dependent or water related use;

2. *The structure does not constitute a hazard to navigation.*

COMMENT: The uses proposed by the applicant are water dependent and water related uses under the King County Shoreline Master Program. With reference to the applicant's submitted plans, the proposed setbacks for the water related structures comply with the intent of KCC 25.16.070 (D) (E).

c. KCC 25.16.090 – Residential Development:

- A. *Multifamily development is permitted in the underlying zone.*
- B. *Multifamily residential development shall not be permitted waterward of the Ordinary High Water Mark.*
- C. *Setbacks. Multifamily residential development shall maintain a minimum setback of fifty feet from the Ordinary High Water Mark, except that:*
 1. *If the minimum setback from the Ordinary High Water Mark of a river or stream falls within the floodway, the development shall be required to locate past the upland edge of the floodway.*
 2. *If development is proposed on shorelines, including one or more sensitive areas, as defined in KCC 21.06, such development shall be done in accordance with regulations and procedures set forth in KCC 21A.24.*

COMMENT: The proposed residential dwelling units are allowed within the underlying zoning and are to be setback from the Ordinary High Water Line of Lake Washington and the Sammamish River such as to satisfy the provisions of KCC 25.16.090(c).

d. KCC 25.16.180 – Shoreline Protection

- A. *Shoreline protection to replace existing shoreline protection shall be placed along the same alignment as the shoreline protection it is replacing, but may be placed waterward directly abutting the old structure in cases where removal of the old structure would result in construction problems.*
- E. *Shoreline protection shall not have adverse impact on the property of others.*
- G. *Shoreline protection shall not significantly interfere with normal surface and/or subsurface drainage into the water body.*
- I. *Shoreline protection shall be designed so as not to constitute a hazard to navigation and to not substantially interfere with visual access to the water.*
- L. *Bulkheads must be approved by the Washington State Department of Fisheries.*

COMMENT: The applicant is proposing to essentially replace and reduce the existing pilings within the inner harbor area and rehabilitate portions thereof. No structural shoreline protection is proposed for the Lake Washington and Sammamish River areas of the property. These areas are to be enhanced with vegetation to reestablish riparian habitat. The applicant will be required to obtain approval to reconstruct Shoreline Protection from the Washington State Department of Fish and Wildlife through the issuance of an Hydraulic Project Approval (HPA). The HPA review process will assure that appropriate consideration of fisheries resources will occur. Any approval of the subject Shoreline Permit shall carry with it the requirement to obtain an HPA and abide by any conditions contained therein.

e. KCC 25.16.190 Excavation, Dredging and Filling

Excavation, dredging and filing may be permitted in the urban environment, only as part of an approved overall development plan not as an independent activity provided:

A. Any fill or excavation regardless of size, shall be subject to the provisions of KCC 16.82.100;

B. Landfill may be permitted below the Ordinary High Water Mark only when necessary for the operation of a water dependent or water related use, or when necessary to mitigate conditions which endanger public safety.

COMMENT: While general grading, excavating, and filling of the overall site will occur, such activities are not proposed below the Ordinary High Water Line or within designated Wetlands "A" and "B." Prior to any development of the property, detailed grading and site restoration plans will need to be prepared and approved.

f. KCC 25.16.200 Recreation

“(E) marinas may be developed provided:

(1) The traffic generated by such a facility can be safely and conveniently handled by the streets serving the proposed facility; . . .

“(F) Upland facilities constructed with a recreational development shall be setback and/or sited to avoid contamination of the shorelines of the state.

“(G) All service facilities within and associated with marinas shall have provisions to prevent and control contaminants from entering the water. Provisions shall be available for cleanup of accidental spills of contaminants.

“(I) Public pedestrian and bicycle pathways shall be permitted adjacent to water bodies.

“(J) Public contact with unique and fragile areas shall be permitted where it is possible without destroying the natural character of the area.

“(K) Water viewing, nature study, recording and viewing shall be accommodated by space, platforms, benches or shelter, consistent with public safety and security.

COMMENT: As mentioned previously, the findings, conclusions, and conditions of Commercial Site Development Permit Report and Decision B96CS005 are incorporated herein by reference. The applicant's project includes: (a) provisions for drainage systems to control contaminants, (b) sufficient building setbacks from the OHWL, (c) pedestrian/bicycle pathways, (d) assorted opportunities for public access to Lake Washington and the Sammamish River and (e) an agreement between Kenmore Air Harbor and Lakepointe Marina. (See SDEIS and FEIS and submitted plans.) The Lakepointe project includes a 53-slip marina, which could result in increased boat conflicts with existing Kenmore Air Harbor operations. To mitigate these impacts, the marina will be limited to moorage for boats 30 feet or longer, to eliminate fast, highly maneuverable boats, such as runabouts and jet skis, which are the primary safety concern of seaplanes during takeoffs and landings. In addition, over-water marina structures will be designed low enough to allow a seaplane main wing to pass over the structure.

9. RCW 90.58.020 Legislative findings — State policy enunciated – Use preference.

The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition, it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of state-wide significance. The Department, in adopting guidelines for shorelines of state-wide significance, and local government, in developing master programs for shorelines of state-wide

significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the state-wide interest over local interest;*
- (2) Preserve the natural character of the shoreline;*
- (3) Result in long term over short term benefit;*
- (4) Protect the resources and ecology of the shoreline;*
- (5) Increase public access to publicly owned areas of the shorelines;*
- (6) Increase recreational opportunities for the public in the shoreline;*
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.*

In the implementation of this policy, the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the Department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of Chapter 90.58 RCW.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

COMMENT: The subject property is located adjacent to Lake Washington, a "Shoreline of state-wide significance." The project design and environmental analysis of the Lakepointe proposal has taken into account that the site lies adjacent to "Shoreline of State-wide Significance" and is designated as an "Urban" environment under the King County Shoreline Master Program. The site has historically been used for industrial activities culminating in a ranking of 1 on the Washington State Department of Ecology's Site Hazard Assessment List. The Proposed Action includes a mixture of water-dependent uses (marina, recreation, and open

space) and water-related uses (residential and commercial). The Proposed Action includes **public access** to the shoreline, which is not currently available, and will provide restoration and enhancement of shoreline areas adjacent to Lake Washington and the Sammamish River.

CONCLUSIONS

1. The uses proposed within the submitted revised plans, received June 9, 1998, for that portion of the Lakepointe project lying within the jurisdiction of the State Shoreline Management Act, are permitted within the Urban Shoreline Environment Designation and the underlying zone classifications.
2. Sufficient information has been provided through the Draft SEIS and the Final SEIS process (E95E0198) as well as the Master Site Plan (A95P0105) and Commercial Site Development Permit (B96CS005) from which to adequately assess the environmental impacts of the proposed project and to establish conditions to ensure that the spirit and intent of the goals, policies, objectives, and regulations of the King County Shoreline Master Program have been satisfied.
3. Subject to the conditions listed hereafter, the proposed Lakepointe project will be consistent with the provisions of RCW 90.58.020 (State Shoreline Management Act of 1971) and the King County Shoreline Master Program (KCC, Title 25).
4. Approval of this application, subject to the conditions listed below, would not be unreasonably incompatible with the surrounding environment.
5. The pertinent findings and conclusions regarding the Report and Decision for the Commercial Site Development Permit (B96CS005), dated July 22, 1998, are incorporated herein by reference as findings/conclusions of this Shoreline Substantial Development Permit Decision.
6. Approval of the subject Shoreline Permit authorizes the proposed uses and general site design layout. Subsequent reviews through the myriad of required local, state and federal permits, will further refine the site development process as each phase of the project is constructed.
7. With the conditions listed hereafter, the proposed shoreline open space/public access amenities and riparian restoration would constitute a substantial rehabilitation of the shoreline environment over the historic and current industrial uses of the property. As such, approval of the requested Shoreline Management Substantial Development Permit is appropriately in the public interest.

ACTION:

APPROVE Shoreline Management Substantial Development Permit No. L96SH107, subject to the following conditions:

1. Nothing in this permit shall be construed as excusing the applicant from compliance with any federal, state, or local statutes, ordinances, or regulations applicable to this project other than the permit requirements of the Shoreline Management Act of 1971.
2. This permit may be rescinded pursuant to Section 14(7) of the Shoreline Management Act of 1971 in the event the permittee fails to comply with any conditions thereof.
3. Construction pursuant to this permit may not begin or be authorized until twenty-one (21) days from the date of filing the final order of King County with the Department of Ecology or the Attorney General; or until all review proceedings initiated within twenty-one (21) days from the date of such filing have been terminated.
4. TIME REQUIREMENTS OF THE PERMIT (WAC 173-27-090). The following requirements shall apply to all permits.
 - ... b. Where neither local government nor the Department include specific provisions establishing time limits on a permit as a part of action on the permit, the following time limits shall apply:
 - i. Construction shall be commenced or, where no construction is involved, the use or activity shall be commenced within two years of the effective date of a shoreline permit. Provided, that local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the department.
 - ii. Authorization to conduct development activities shall terminate five years after the effective date of a shoreline permit. Provided, that local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the department.
 - iii. The effective date of a shoreline permit shall be the date of the last action required on the shoreline permit and all other government

permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval. It is the responsibility of the applicant to inform the local government of the pendency of other permit applications filed with agencies other than the local government and of any related administrative and legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given to the local government prior to the date established by the shoreline permit or the provisions of this section, the expiration of a permit shall be based on the shoreline permit.

- iv. When permit approval is based on conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to commencement of a nonstructural activity: *Provided*, That an alternative compliance limit may be specified in the permit.
 - v. Revisions to permits under WAC 173-27-100 may be authorized after original permit authorization has expired under subsection (2) of this section: *Provided*, That this procedure shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.
 - vi. Local government shall notify the department in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by this section shall require a new permit application.
5. Except as specifically modified by the conditions of this Shoreline Permit, construction of the project shall substantially conform to the revised Shoreline Permit Plans, received June 9, 1998, as well as the pertinent information/mitigations contained within the Draft SEIS (November 1997) and Final SEIS (July 1998).
 6. Development of the site within Shoreline Management jurisdiction shall be consistent with the conditions of the Commercial Site Development Permit (CSDP) (B96CS005), dated July 22, 1998. Conditions of the CSDP shall be considered conditions of this shoreline permit.
 7. A Hydraulic Project Approval (HPA) shall be obtained from the Washington State Department of Fish and Wildlife prior to any work. Any conditions of the HPA shall be considered conditions of this Shoreline Permit. It is acknowledged that conditions regarding impacts to fisheries habitat and salmonid migration may modify the final design and construction of the marina, as proposed. A copy of this SDP shall be submitted to the Washington State Department of Fish and Wildlife in conjunction with the HPA application.


8. To minimize impacts to water quality from chemicals used to treat stringers, caps, and decking wood, the use of wood treated with creosote or pentachlorophenol is not allowed. Additionally, topical application of any wood treatment chemicals is not allowed. For materials used to build water-dependent structures, wood commercially pressure-treated with copper naphthanate or copper-8-quinilinolate is required. If such stock is not available, wood commercially pressure-treated with ammoniacal copper-zinc arsenate (ACZA) or chromated copper arsenate (CCA) may be substituted.
9. To prevent impacts to water quality due to construction of water-dependent structures, prompt removal of any construction debris floating in the water is required.
10. During construction, the applicant must use materials and construction methods that prevent toxic materials, petrochemicals, and other pollutants from entering the surface water.
11. Prior to construction, a clearing and grading permit shall be obtained and conditions of said permit shall be considered conditions of this Shoreline Permit.
12. All structures to be placed within Shoreline Management jurisdiction lying parallel to the Sammamish River shall be no higher than 35 feet above average grade level. Construction above 35 feet in height will require further environmental review and revision of this SDP pursuant to the provisions of WAC 173-27-100.
13. "Live aboards" shall not be permitted at any time. The marina management shall be responsible for the strict enforcement of this regulation and repeated violations of said regulations shall be considered to be a violation of the approved Shoreline Management Substantial Development permit. The applicant shall record this restriction with the King County Records and Elections Division as a Notice on Title prior to final approval of the marina.
14. The following improvements shall be provided to the satisfaction of the King County Fire Marshal:
 - a. Provide and install on-site fire hydrants and mains to meet fire protection standards.
 - b. All moorage docks shall have installed fire protection devices as spelled out in the uniform fire code. This includes stand pipe systems and portable extinguishers.

15. The applicant shall provide the following improvements to the satisfaction of the King County Department of Public Health:
 - a. Provide a sewage pump-out facility which is easily accessible to pleasure boats utilizing the proposed marina.
 - b. If water service is to be provided to the boats, vacuum breakers must be installed to prevent back siphonage into the public water supply.
 - c. An oily bilge water pump-out station shall be provided, as may be required, in an easily accessible location.
 - d. The applicant shall provide to King County a detailed contingency plan indicating how chemical/oil spills would be removed in the event such an occurrence should take place. Said plan shall clearly indicate the type of equipment to be maintained on site at all times and the personnel available to carry out said program. This plan shall be submitted to the King County Fire Marshal and the Department of Ecology for their approval.
16. Boat fueling is specifically prohibited at the marina. The applicant shall record this restriction with the King County Records and Elections Division as a Notice on Title prior to final approval of the marina.
17. The applicant shall provide waste/garbage disposal receptacles in conspicuous places, on the docks and adjacent to the shoreline of the marina complex.
18. In-water maintenance and repair of boats moored at the marina facility shall not be permitted. Only minor maintenance related to day-to-day upkeep of boats is allowed. In no instances shall chemicals or other contaminants be allowed to enter Lake Washington. The marina management will have the responsibility of strictly enforcing this condition. If repeated violations of this condition take place, revocation of the approved Shoreline Management Substantial Development may be warranted. The applicant shall record this restriction with the King County Records and Elections Division as a Notice on Title prior to final approval of the marina.
19. Boats less than 30 feet in length may not be moored at the marina.
20. The applicant shall at all times abide by the conditions of agreement with Kenmore Air Harbor.
 - a. Moorage shall be for permanent residents only,
 - b. or guests of permanent residents,
 - c. or hotel guests.

- d. No moorage for daily/hourly boats will be allowed in the inner harbor. Signage shall be provided stating this prohibition.
 - e. Over-water structures nearest Kenmore Air Harbor Terminal shall be designed to allow main wings to pass over the structure.
21. Shower facilities for marina patrons shall not be allowed.
22. Prior to construction, silt fences and containment curtains shall be placed, as appropriate, along the perimeter of the construction zones to prevent escapement of silts and contaminants.
23. Erosion controls and Best Management Practices (BMPs) shall be implemented and maintained to prevent uncontrolled discharge of concrete, cement, water, petroleum products, soil, and other deleterious materials from entering adjacent surface waters.
24. All manmade debris from the project within the construction zone shall be removed and disposed of at an upland location licensed for such disposal.
25. Public viewpoints of Lake Washington and the Sammamish River shall be provided as generally shown on the Commercial Site Development Permit Plan Sheets dated and received May 22, 1998.
26. A public trail system shall be provided as conceptually shown on the On-Site Recreation Plan Sheet L1.2 (Alt.) contained in the Commercial Site Development Permit dated and received May 22, 1998. The public trail system shall include: the Public Access Trail/Fire Lane; the Lake Washington Shoreline Trail and Amphitheater; the Marina Boardwalk; the Fragrant Garden; the Sammamish Shoreline Interpretive Trails, additional Revised Pathways and View Platforms.
- The trail system shall be improved with each phase of development to provide a continuous access route along the entire shoreline.
- A public access easement, as set forth in the Transportation Mitigation Agreement, shall be recorded over the trail system with each phase of development.
27. A shoreline restoration special study report and plan for the Lake Washington shoreline shall be provided through the required grading permit that provides for:
- a. Near shore debris removal
 - b. Revegetation using hardstem bullrush (*Scirpus acutus*) and similar reference site species.

- c. Buoy signs to alert boaters to the presence of sensitive areas near shore wetland and salmon habitat.
 - d. A near shore restoration plan for the inner harbor that eliminates the use of quarry spalls.
28. All docks shall provide grating, or other similar translucent material acceptable to the Washington State Department of Fish and Wildlife, to allow 50 feet of light passage through pier docks.
29. A minimum 10-foot separation shall be provided between the fixed wharf and floating docks. This distance may be modified by the Washington State Department of Fish and Wildlife through the HPA process.
30. The applicant shall either prepare a new or submit an existing informational brochure to DDES for review and approval regarding the regulations concerning illegal discharge of waste holding tanks. The brochure shall be provided to all boat owners at the time of lease agreements for boat slips in the marina.
31. In-water construction below the Ordinary High Water Mark is prohibited during the juvenile salmonid outmigration period. The specific dates shall be determined by the State Department of Fish and Wildlife.
32. Construction of a breakwater or wave attenuation wall shall include openings for unimpeded fish passage.
33. A copy of the approved shoreline plans and any necessary revisions shall be kept on-site at all times during construction.

NOTE: This decision may be appealed to the State Shoreline Hearings Board. Information on appeal procedures may be obtained from the Shoreline Hearings Board at (360) 459-6327 or the Washington State Department of Ecology Shoreline Appeals Coordinator at (360) 407-6528. Requests for review by the Hearings Board must be received by the Shoreline Hearings Board within twenty-one (21) days of the "date of filing." The "date of filing" is the date the local decision on the permit is received by the Department of Ecology.



Mark D. Mitchell
Shorelines Administrator
Current Planning Section

Transmittal Date: August 13, 1998

Transmitted to the parties and persons of interest – See Attachment A

MM/clc

