

City of Kenmore



City of Kenmore - 18120 68th Avenue NE - PO Box 82607, Kenmore WA 98028 - Phone: 425-398-8900 - Fax: 425-481-3236

REVISED ON 9/22/11

City of Kenmore

City Council Executive Session

PURSUANT TO RCW 42.30.110(1)(b) - PROPERTY ACQUISITION

6:30 p.m., Monday, September 26, 2011

Kenmore City Hall

18120 68th Ave. NE, Kenmore, WA 98028

City of Kenmore

City Council Regular Meeting Agenda

7:00 p.m., Monday, September 26, 2011

Kenmore City Hall

18120 68th Ave. NE, Kenmore, WA 98028

AGENDA ITEMS ARE SUBJECT TO CHANGE up to and including the time of the meeting; items may be added or dropped. Please call the City Clerk if you have any questions or to confirm the agenda items prior to the meeting at (425) 398-8900, or stop by City Hall at 18120 68th Avenue NE, Kenmore. The agendas are also available on our website at: www.kenmorewa.gov. Our public meetings are accessible to all members of the public. If you require special accommodations, please call the City Clerk at least three (3) days prior to the meeting.

- I. CALL TO ORDER - 6:30 p.m.**
- II. ADJOURN TO EXECUTIVE SESSION**
- III. RECONVENE TO REGULAR SESSION**
- IV. CALL TO ORDER REGULAR MEETING - 7:00 p.m.**
- V. ROLL CALL**
- VI. FLAG SALUTE**
- VII. AGENDA APPROVAL**
- VIII. CONSENT AGENDA**

VIII. CONSENT AGENDA

- A. Minutes of the August 15, 2011 Special Regular Council Meeting; August 22, 2011 Special Council Meeting; and September 7, 2011 Special Council Meeting.
- B. Claim Nos. 24493 - 24580 in the Amount of \$404,359.87 for the Period Ending September 13, 2011.
- C. Set a Special Council Meeting/Workshop on Meeting Procedures and Robert's Rules of Order for Monday, October 3, 2011, 6:30 p.m.
- D. Authorize the Mayor to Execute Contract No.11-C963 with Prothman to Assist in the Recruitment of the next City Manager.
- E. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center - Jennifer Gordon, Public Works Operations Manager

IX. CITIZEN COMMENTS

This is an opportunity to express your views on issues that are important to you and to the community. Please limit your comments to three (3) minutes.

X. BUSINESS AGENDA

- A. Authorize the City Manager to Execute a Local Agency Agreement No. 11-C962 for the 61st Avenue NE and NE 181st Traffic Signal Construction Funding with the Washington Department of Transportation in the Amount of \$650,000 - Ron Loewen, City Engineer
- B. Consideration of Amendments to the Shoreline Master Program (SMP) as Required and Suggested by the Department of Ecology- Debbie Bent, Director of Planning and Community Development

XI. COUNCILMEMBER COMMENTS/REPORTS

XII. ADJOURNMENT

DRAFT

City of Kenmore
City Council Special Regular Meeting
Minutes
August 15, 2011

CALL MEETING TO ORDER - Mayor David Baker called the meeting to order at 6:00 p.m.

Councilmembers present: Mayor David Baker, Deputy Mayor Milton Curtis, Councilmembers Laurie Sperry, Allan Van Ness, and Glenn Rogers

Councilmembers excused: Councilmembers Bob Hensel and John Hendrickson

Staff present: Fred Stouder, City Manager; Nancy Ousley, Assistant City Manager; Joanne Gregory, Finance Director; Rod Kaseguma, City Attorney; and Lynn Suskin, City Clerk

CONSENT AGENDA

Councilmember Allan Van Ness moved to approve the consent agenda as submitted. Deputy Mayor Milton Curtis seconded the motion to Approve Claim Nos. 24276 - 244321 in the Amount of \$1,136,567.17 for the Period Ending August 11, 2011. The motion passed unanimously.

BUSINESS AGENDA

Authorize City Manager to Negotiate and Execute Memorandum of Agreement (11-C957) with King County Sheriff's Office Relating to Facility Charges and Credits - Joanne Gregory, Finance Director, was present to provide a staff report. She was also available to answer any questions.

Discussion.

Councilmember Glenn Rogers moved to Authorize City Manager to Negotiate and Execute Memorandum of Agreement (11-C957) with King County Sheriff's Office Relating to Facility Charges and Credits. Councilmember Laurie Sperry seconded the motion. The motion passed unanimously.

ADJOURN TO EXECUTIVE SESSION - At 6:17 p.m. Mayor David Baker adjourned the meeting to an EXECUTIVE SESSION PURSUANT TO PROPERTY ACQUISITION RCW 42.30.110(1)(b) for 45 minutes and that no action would be taken when the EXECUTIVE SESSION is reconvened back to regular session.

At 7:00 p.m. Mayor David Baker extended the EXECUTIVE SESSION for an additional 30 minutes.

RECONVENE BACK TO REGULAR SESSION – Mayor David Baker reconvened the EXECUTIVE SESSION meeting back to regular session at 7:30 p.m.

ADJOURNMENT

Mayor David Baker adjourned the special regular meeting at 7:30 p.m.

Mayor David Baker

ATTEST:

Lynn Suskin, City Clerk

DRAFT

City of Kenmore
City Council Special Regular Meeting
Minutes
August 22, 2011

CALL MEETING TO ORDER - Mayor David Baker called the meeting to order at 6:00 p.m.

EXECUTIVE SESSION – Mayor David Baker adjourned the regular meeting at 6:01 p.m. to an executive session to discuss Property Acquisition pursuant to RCW 42.30110(1)(b). He stated that the executive session will last for approximately 45 minutes and that no action is anticipated when the meeting is reconvened back to regular session.

RECONVENE BACK TO REGULAR SESSION – Mayor David Baker reconvened the meeting back to regular session at 6:45 p.m.

ADJOURNMENT

Mayor David Baker adjourned the special regular meeting at 6:45 p.m.

Mayor David Baker

ATTEST:

Lynn Suskin, City Clerk

DRAFT

City of Kenmore
City Council Special Regular Meeting
Minutes
September 7, 2011

CALL MEETING TO ORDER – Deputy Mayor Milton Curtis called the meeting to order at 6:00 p.m.

EXECUTIVE SESSION – Deputy Mayor Milton Curtis adjourned the regular meeting at 6:01 p.m. to an executive session to discuss Property Acquisition pursuant to RCW 42.30110(1)(b). He stated that the executive session will last for approximately 60 minutes and that no action is anticipated when the meeting is reconvened back to regular session.

RECONVENE BACK TO REGULAR SESSION – Deputy Mayor Milton Curtis reconvened the meeting back to regular session at 6:55 p.m.

ADJOURNMENT

Deputy Mayor Milton Curtis adjourned the special regular meeting at 6:55 p.m.

Milton Curtis, Deputy Mayor

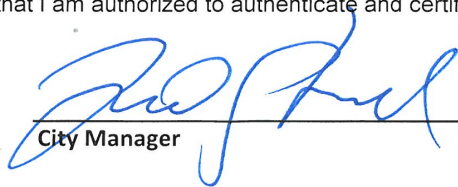
ATTEST:

Lynn Suskin, City Clerk

City of Kenmore

Voucher Certification and Approval

I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed as described herein and that the following claims, paid by checks 24493- 24580 which total \$404,359.87 are just, due, and unpaid obligations against the City of Kenmore/King County/Washington, and that I am authorized to authenticate and certify to said claims.


 City Manager _____ Date _____


 Finance Director _____ Date 9/21/11

Check	Name	Description	Net amount
24493	NATIONWIDE FINANCIAL 401a	Payroll Entry	\$ 9,819.86
24494	NATIONWIDE RETIREMENT SOLUTIONS 457	Payroll Entry	1,570.00
24495	ICMA RETIREMENT TRUST 457 - 304745	Payroll Entry	2,219.22
24496	DRS 457	Payroll Entry	1,706.66
24497	AFLAC	Payroll Entry	742.87
24498	CITY OF KENMORE FS	Payroll Entry	176.96
24499	BANK OF AMERICA 941	Payroll Entry	10,752.61
24500	AWC EMPLOYEE BENEFITS	Payroll Entry	30,606.45
24501	WA GUARANTEED EDUCATION TUITION	Payroll Entry	415.00
24502	DEPARTMENT OF RETIREMENT SYSTEMS	Payroll Entry	8,309.71
24503	DEPARTMENT OF LABOR AND INDUSTRIES	Payroll Entry	1,162.18
24504	UNITED WAY OF KING COUNTY	Payroll Entry	92.00
24505	NATIONAL LIFE OF VERMONT	Payroll Entry	328.34
24506	AMERICAN GENERAL	Payroll Entry	399.36
24507	STATE OF FLORIDA DISBURSEMENT UNIT	Payroll Entry	275.00
24508	BANNER BANK NO	Concerts, Parking, Rotary, & Shipping	1,518.11
24509	UNITED STATES POSTMASTER	Business Open House Postage	108.25
24510	OFFICE CLEANING CREW	Aug. 2011 Janitorial Services	1,920.00
24511	NATIONWIDE FINANCIAL 401a	Payroll Entry	9,885.68
24512	NATIONWIDE RETIREMENT SOLUTIONS 457	Payroll Entry	1,570.00
24513	ICMA RETIREMENT TRUST 457 - 304745	Payroll Entry	2,219.22
24514	DRS 457	Payroll Entry	1,706.66
24515	CITY OF KENMORE FS	Payroll Entry	176.96
24516	BANK OF AMERICA 941	Payroll Entry	10,818.74
24517	DEPARTMENT OF RETIREMENT SYSTEMS	Payroll Entry	8,406.76
24518	DEPARTMENT OF LABOR AND INDUSTRIES	Payroll Entry	1,391.33
24519	AMERICAN GENERAL	Payroll Entry	52.41
24520	STATE OF FLORIDA DISBURSEMENT UNIT	Payroll Entry	275.00
24521	WELLS FARGO FINANCIAL	Aug. 2011 Photocopier Lease	876.80
24522	ESA ADOLFSON	Swamp Creek Park	1,722.80
24523	BASTYR UNIVERSITY	CSP2008-046 Deposit Refund	26,289.50
24524	CARLSON, THOMAS G.	Sales Tax Audit	335.15
24525	CITY OF LAKE FOREST PARK	August 2011 Street Contracts	59,751.72

VIIIB. Claim Nos. 24493 - 24580 in the Amount of \$404,359.87 for the Period Ending September 13, 2011.

24526 COASTWIDE LABORATORIES	Facility Maintenance Supplies	90.62
24527 FERGUSON ENTERPRISES INC	Drainage Materials	377.87
24528 AFLAC	Aug. 2011 Service Fee	50.00
24529 FRUHLING SAND & TOPSOIL	Rhododendron Park Materials	264.00
24530 FULL MAINTENANCE GARDENING	6700 Building Grounds Maintenance	373.40
24531 CALPORTLAND COMPANY	Drainage Materials	96.26
24532 GRAY & OSBORNE, INC	July & August 2011 Professional Services	838.81
24533 GRIESEL, LEONARD	Release Deposit ENG2010-0469	5,830.70
24534 H.W. LOCHNER, INC.	SR 522 Improvements	36,818.83
24535 INSLEE, BEST, DOEZIE & RYDER, P.S.	July Attorney Fees	21,519.95
24536 KING COUNTY W.L.R.D.	King County Debt Service 2011	40,244.99
24537 KING COUNTY ANIMAL SVCS	Aug. 2011 Pet Licenses	570.00
24538 KING COUNTY FINANCE	July 2011 Disposal Fees	57.05
24539 KING COUNTY PUBLIC DEFENSE	July 2011 Public Defense Screening	765.10
24540 KING COUNTY RADIO COMM SERVICES	Aug. 2011 Emergency Radio Maintenance	240.53
24541 PENDLETON CONSULTING LLC	August 2011 Police Contract Consulting	945.00
24542 NEXXPOST	Postage Machine Supplies	287.31
24543 OFFICE TEAM	Temporary Office Employee	712.50
24544 OLYMPIC ENVIRONMENTAL RESOURCES INC	Kenmore Recycling Event	2,415.00
24545 PACIFIC TOPSOILS	Drainage Materials	920.63
24546 PUGET SOUND ENERGY	Electricity bills	9,113.92
24547 CEMEX	ROW Materials	208.31
24548 STAPLES ADVANTAGE	Office Supplies	714.50
24549 TOTAL LANDSCAPE CORP	SR 522 Weeding/ Spraying	1,007.40
24550 WA ASSOC OF CODE ENFORCEMENT	Annual WACE Membership Dues	40.00
24551 WASHINGTON STATE DEPT OF INFO SERV	August 2011 ListServ fees	210.00
24552 WASHINGTON TREE SERVICE INC	Parks Maintenance	1,423.50
24553 HEARTLAND	July 2011 Consulting	2,193.00
24554 SOUND LAW CENTER	Hearing Examiner Services	759.50
24555 DIGITAL REPROGRAPHICS SERVICES INC.	Building Plan Copies	60.72
24556 HDR	July 2011 SR 522 Phase 2	5,740.18
24557 STARLIGHT CHILDRENS FOUNDATION	Santa for Tree Lighting Ceremony	190.00
24558 iCOMPASS TECHNOLOGIES, INC.	Software Maintenance Agreement	8,600.00
24559 QUALITY BUSINESS SYSTEMS	August 2011 Photocopier Usage	1,026.92
24560 INGLEWOOD GOLF COURSE	Release Cash Deposit CG1999-001	2,475.00
24561 A+ CONFERENCING	Telephone Conference Calls	20.10
24562 SHRED-IT	August 2011 Monthly Shredding	49.50
24563 ALCALDE & FAY	August 2011 Consulting	5,000.00
24564 SUNBELT	Roadway & Drainage Materials	2,047.64
24565 GORDON THOMAS HONEYWELL	August 2011 Consulting	3,089.62
24566 TOWNE CENTRE HARDWARE	ROW & Building Maint. Materials	50.68
24567 HORIZON DISTRIBUTORS INC	ROW Materials/ Irrigation Parts	289.20
24568 SARAH ROBERTS	August 2011 Prosecution Services	9,300.00
24569 FIRE PROTECTION, INC	Annual Inspection	1,763.46
24570 FRONTIER	Aug. 2011 CH Phone Services	740.46
24571 MILNE ELECTRIC, INC	Facility Repairs	804.83
24572 SNOHOMISH COUNTY SHERIFF'S OFFICE	Aug. 2011 Jail Services	19,351.20
24573 HOPKINS, CRAIG	PD Dept. Volunteer Mileage Reimb.	56.06
24574 DEVRIES, DENIS	PD Dept. Volunteer Mileage Reimb.	20.54
24575 STEPHENS, MARY	July 2011 Public Defense Services	1,250.00
24576 NORTH CREST DEVELOPMENT CORP.	Refund Cash Deposit GDP Short Plat	1,794.00

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24577 PURDY, MICHAEL E.	Consulting Services	150.00
24578 DAS MANUFACTURING, INC.	Curb Markers	10,413.75
24579 AMERICAN REPROGRAPHICS COMPANY	Photocopying Services	127.43
24580 SPECIAL ASPHALT PRODUCTS	Roadway Crack Sealing Materials	3,258.59
		<u>\$ 404,359.87</u>

PRIOR VENDOR ACTIVITY

	Previous YTD
3CMA	\$ 375.00
A+ CONFERENCING	146.85
AA PARTY RENTALS	3,070.92
ABBOTT, CARRIE	250.00
ACTION ENTERTAINMENT	1,090.00
ACTIVE SHOOTER TRAINING LLC	815.90
ADT SECURITY SERVICES	1,092.76
ADVANCE TESTING & SERVICE INC	459.00
AFLAC	7,323.99
ALCALDE & FAY	50,469.96
ALLIANCE OF PEOPLE W/ DISABILITIES	386.25
ALLIED WASTE SERVICES #172	7,135.62
ALPHA COURIER SERVICES	33.60
AM TEST, INC	1,100.00
AMERICAN GENERAL	3,288.66
AMERICAN PLANNING ASSOCIATION	1,501.00
AMERICAN PUBLIC WORKS ASSOCIATION	503.42
AMERICAN SOCIETY OF COMPOSERS	305.00
AMES2BFIT	50.00
ANDERSON, LAURI	27.94
ANDONIADIS INC	1,302.44
APPLIED PROFESSIONAL SERVICES INC	1,536.93
ARGENS	15.88
ARTS OF KENMORE	500.00
ASP, ANGELA	210.00
ASSOCIATION OF WA CITIES	13,970.00
AT WORK	1,855.25
AURORA RENTS	2,094.82
AWC EMPLOYEE BENEFITS	270,680.34
BABB, MICHELLE	186.92
BADGLEY'S LANDSCAPE LLC	2,190.00
BAKER, DAVID	2,503.20
BANK OF AMERICA 941	216,534.03
BANNER BANK BH	463.61
BANNER BANK CS	5,232.11
BANNER BANK DB	930.49
BANNER BANK JG	7,370.57
BANNER BANK JGORDON	8,551.95
BANNER BANK KENMORE	27,117.06
BANNER BANK LB	1,855.30
BANNER BANK LD	5,685.74
BANNER BANK NO	3,518.62

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BARCLAY DEAN ARCHITECTUAL PRODUCTS	711.75
BASTYR UNIVERSITY	194,494.20
BAYLES, GREGORY	50.00
BEEGEE TOLPA	700.00
BEKINS NORTHWEST	303.45
BENNETT, STUART	29.36
BIG BUBBA DOG LLC	1,500.00
BIS	3,885.00
BLACKBAUD	4,956.23
BLUE WAVE CONSTRUCTION, INC	24,671.83
BODINE CONSTRUCTION SERVICES, INC	383.25
BOTHELL SKI & BIKE	120.44
BOWHEAD ENVIRONMENTAL & SAFETY	414.59
BRABEC, MARY	3,500.00
BRADY, DAVID	84.00
BRAVO ENVIRONMENTAL SERVICE	118,553.07
BULGER SAFE & LOCK, INC.	98.55
C. ANDERSON & CO.	1,209.98
CALIBRE HOMES, INC	7,500.00
CALPORTLAND COMPANY	3,629.18
CANOPIES BY FRED	647.15
CARLSON, THOMAS G.	858.16
CASCADE PEST CONTROL	1,527.56
CATHOLIC COMMUNITY SERVICES	4,512.75
CEMEX	5,634.37
CENTER FOR HUMAN SERVICES	24,040.00
CHAMPION COURIER	78.25
CHILDERS, MARK	1,069.96
CITY OF BELLEVUE	419,868.03
CITY OF CLYDE HILL	583.00
CITY OF KENMORE FS	3,257.15
CITY OF LAKE FOREST PARK	545,786.85
CITY OF RENTON	980.00
CITY OF SHORELINE	993.76
CLARITY SIGNS	2,602.28
CLUB NORTHWEST	30.00
CLYDE/WEST	1,215.87
COASTAL WEAR PRODUCTS INC	2,701.02
COASTWIDE LABORATORIES	5,228.11
CODE 4 PUBLIC SAFETY EDUCATION	198.00
CODE PUBLISHING COMPANY	547.50
COFFMAN, JON	183.00
COLUMBIA BANK	11,099.56
COLUMBIA FORD	26,352.28
COLUMBIA RIDGE LANDFILL	15,963.04
COMCAST	1,099.00
COMMERCIAL SOUND, INC.	1,444.26
CONSEJO COUNSELING & REF	2,125.00
CONSOLIDATED PRESS	4,383.06
CONTECH STORMWATER SOLUTIONS, INC	15,444.98
CORNERSTONE ROOFING	98.50

VIIIB. Claim Nos. 24493 - 24580 in the Amount of \$404,359.87 for the Period Ending September 13, 2011.

COSTCO RETAIL SERVICES	27.62
COX PRINTING & SIGNS	399.68
CPSWQ	100.00
CROWN PRODUCTS	1,491.50
CSAT, LLC	1,600.00
CURRY, ROSS	183.00
CUSTER SPORTSMEN'S CLUB, INC	150.00
DAILY JOURNAL OF COMMERCE	821.80
DANSOUND INC	6,487.89
DBM CONTRACTORS, INC	215,717.62
DELL MARKETING L.P.	4,275.06
DEPARTMENT OF ECOLOGY	5,082.52
DEPARTMENT OF LABOR AND INDUSTRIES	25,553.30
DEPARTMENT OF LICENSING	10.00
DEPARTMENT OF RETIREMENT SYSTEMS	139,790.59
DEVRIES, DENIS	139.41
DIGITAL REPROGRAPHICS SERVICES INC.	1,492.30
DISSTON, GALEN	1,500.00
DOWL HKM	11,725.00
DRS 457	29,761.38
DUNN LUMBER COMPANY	1,759.14
DURRANT, JEFF	879.25
EARTHCORPS	15,204.18
EAST JORDAN IRON WORKS	1,152.48
EDGE CONCRETE CONSTRUCTION, LLC	1,250.00
EFFICIENCY INC	949.37
EMERGENCY FEEDING PROGRAM	3,125.00
EMERGENCY SERVICE COORDINATING AGCY	56,137.00
EMPLOYMENT SECURITY DEPT	1,602.62
ENTERTAINMENT FIREWORKS INC	12,025.00
ENVIRONMENTAL SYSTEMS RESEARCH INST	2,554.01
ESA ADOLFSON	9,902.09
EVANS, C. WILLIAM	5,247.00
EVERGREEN PRINT SOLUTIONS	655.54
EVERGREEN SAFETY COUNCIL	175.00
EVER-MARK, LLC	1,320.33
EXTREME PROMOTIONS	522.00
FAZZARI MARKETING	1,689.29
FEARON, CLINTON	2,000.00
FEASEL, ROBERT	665.00
FEDEX OFFICE	26.61
FERGUSON ENTERPRISES INC	16,657.75
FIRE PROTECTION, INC	1,742.70
FRONTIER	59,994.89
FRUHLING SAND & TOPSOIL	1,848.81
FULL MAINTENANCE GARDENING	3,434.10
GEOENGINEERS INC	40,372.05
GIBBONS & RIELY, PLLC	750.00
GORDON DERR	4,266.00
GORDON THOMAS HONEYWELL	30,883.44
GOVERNMENT FINANCE OFFICERS ASSOC	190.00

VIIIB. Claim Nos. 24493 - 24580 in the Amount of \$404,359.87 for the Period Ending September 13, 2011.

GRAHAM CONTRACTING LTD.	443,599.44
GRAINGER	6,478.57
GRAY & OSBORNE, INC	3,465.46
GREGORY, JOANNE	1,021.66
GREYSTONE COMMERCIAL SERVICE LP	174.79
GRIESEL, LEONARD	18.80
H.W. LOCHNER, INC.	179,638.37
HAMMOND COLLIER WADE LIVINGSTONE	1,050.00
HANSON CONSULTING SERVICES	1,269.00
HARRIS COMPUTER SYSTEMS	6,317.06
HARRIS, LESLIE	864.67
HDR	184,720.00
HEARTLAND	20,727.97
HEATERMEALS	1,193.21
HEISSLER, ANDREW	1,800.00
HERO HOUSE	1,161.25
HOME DEPOT	893.20
HONEY BUCKET	1,020.40
HOPELINK	42,804.00
HOPKINS, CRAIG	308.10
HORIZON DISTRIBUTORS INC	391.28
ICMA RETIREMENT TRUST 457 - 304745	41,415.18
iCOMPASS TECHNOLOGIES, INC.	8,000.00
INDEPENDENT STATIONERS	5,730.38
INFRASOURCE CONTRACTING LLC	29.36
INSLEE, BEST, DOEZIE & RYDER, P.S.	209,283.56
INSTITUTE FOR FAMILY DEVELOPMENT	6,938.00
INSTRUMENTATION NORTHWEST INC.	1,560.58
INTEGRA TELECOM	7,454.48
INTERNATIONAL CITY/CNTY MGMT ASSOC	2,154.43
INTERNATIONAL INST OF MUNI CLERKS	560.00
iWORQ SYSTEMS	4,800.00
J&K ASSOCIATES	10,789.04
J. MURPHEY CONSTRUCTION	42.67
JBS INSTRUMENTS	3,360.75
JET CITY PRINTING	4,346.57
JOHN E. REID & ASSOCIATES	580.00
JONES & STOKES	129.31
JURASSIC PARLIAMENT	2,202.60
KCDA PURCHASING COOP	9,328.55
KEEP POSTED INC	173.00
KELLY PRINTING & GRAPHICS	5,362.23
KELLY THOMAS, INC.	11,587.29
KENMORE ELEMENTARY PTA	5,666.67
KENMORE HERITAGE SOCIETY	25.00
KENYON DISEND, PLLC	14,104.37
KEY EQUIPMENT FINANCE	2,697.00
KING COUNTY	200.00
KING COUNTY W.L.R.D.	234,242.31
KING COUNTY ANIMAL SVCS	4,265.00
KING COUNTY DEPT OF CONST PROP SVCS	1,503.57

VIIIB. Claim Nos. 24493 - 24580 in the Amount of \$404,359.87 for the Period Ending September 13, 2011.

KING COUNTY FINANCE	657,553.56
KING COUNTY FIRE DISTRICT	850.00
KING COUNTY LIBRARY SYS	33,440.00
KING COUNTY PARKS	5,339.21
KING COUNTY PUBLIC DEFENSE	6,879.81
KING COUNTY RADIO COMM SERVICES	9,222.99
KING COUNTY RECORDER'S OFFICE	408.00
KING COUNTY SHERIFF	2,293,687.01
KING COUNTY TREASURY	38,465.70
KONICA MINOLTA BUSINESS SOLUTIONS	7,876.41
KUKER-RANKEN INC	536.98
KUSTOM SIGNALS, INC.	500.33
LACHAPPELLE, NATALIE	300.00
LEE, MYUNG	2,252.00
LIGHTHOUSE CONSULTING INC	21,641.30
LOEWEN, RON	76.00
LONGFELLOW, JONATHAN	420.00
LORBIECKI, GLENN	50.00
LYONS, KEN	6,687.40
MAACO	368.96
MAAS, NORMAN	2,520.00
MAIL FINANCE	2,520.14
MATRIX CONSULTING GROUP	36,106.00
McKEE & SCHALKA	5,500.00
MIDMOUNTAIN CONTRACTORS, INC	82,850.60
MILNE ELECTRIC, INC	24,187.00
MINZGHOR, NICHOLAS	1,411.92
MOBILE ELECTRICAL DISTRIBUTORS INC	12.13
MR. T'S TROPHIES	983.38
NAMI EASTSIDE	400.00
NATIONAL ALLIANCE ON MENTAL ILLNESS	1,481.50
NATIONAL ASSOC OF PARLIAMENTARIANS	85.00
NATIONAL BARRICADE CO	2,943.91
NATIONAL LEAGUE OF CITIES	5,439.00
NATIONAL LIFE OF VERMONT	3,177.11
NATIONWIDE FINANCIAL 401a	180,174.96
NATIONWIDE RETIREMENT SOLUTIONS 457	21,080.00
NEBC	195.00
NetVersant	9,959.70
NEXTEL COMMUNICATIONS	8,132.64
NORTHSHORE FIRE DEPT	7,682.60
NORTHSHORE PAVING INC	537.90
NORTHSHORE SENIOR CENTER	12,250.00
NORTHSHORE UTILITY DIST	83,767.17
NORTHSHORE YOUTH & FAMILY SERVICES	25,000.00
OAC SERVICES, INC	44,469.71
OFFICE CLEANING CREW	4,022.85
OFFICE DEPOT	917.01
OFFICE TEAM	12,101.21
OLYMPIC ENVIRONMENTAL RESOURCES	19,804.19
OM WORKSPACE	5,418.58

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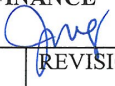
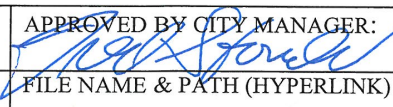
OSTROM DRUGS	557.40
OTAK	143,293.12
OUSLEY, NANCY	1,179.63
PACE ENGINEERS, INC.	3,057.50
PACIFIC NW TITLE CO OF WA, INC	1,095.00
PACIFIC TOPSOILS	7,550.31
PASSPORT TRAVEL AND TOURS	5,130.80
PAWS	6,665.00
PENDLETON CONSULTING LLC	9,099.47
PEOPLES STORAGE	1,714.00
PERKINS COIE	9,428.59
PETTY CASH CUSTODIAN	1,155.07
PHOTOTAINMENT	876.00
PHSI PURE WATER FINANCE	1,207.56
PLATT	506.41
PRIME PACIFIC BANK	60.00
PRO-VAC	15,817.98
PRSA	277.00
PRUDENTIAL	1,119.39
PUGET SOUND BUSINESS JOURNAL	94.00
PUGET SOUND CLEAN AIR AGENCY	10,989.00
PUGET SOUND ENERGY	672,155.90
PUGET SOUND FINANCE OFFICERS ASSOC	50.00
PUGET SOUND REFRIGERATION	2,207.52
PURE WATER TECH OF PUGET SOUND	136.88
QUALITY BUSINESS SYSTEMS	14,086.19
RICHARD & SHARON ARKLEY LIVING TRUS	2,300.00
RODGERS, MICHAEL	184.00
ROGERS, GLENN	2,512.74
RON KASPRISIN AIA	902.29
ROUNDY, CASSANDRA	50.00
S & S UPHOLSTERY	2,135.25
SAFRIN, PATTY	979.57
SARAH ROBERTS	82,800.00
SCHINDLER ELEVATOR CORPORATION	1,243.37
SCHLOTZHAUER FIRM PS	13,080.00
SEATTLE TIMES	4,464.67
SECRETARY OF STATE	55.00
SEES TREES AND EXCAVATION INC	3,131.70
SEMAIHM00 RESORT	520.56
SERVICE ELECTRIC	869.08
SHARAM FAMILY	19,444.40
SHATTUCK, NANCY	7,200.00
SHORELINE PUBLIC SCHOOLS	450.00
SHRED-IT	495.00
SMITH, JARRETT	50.35
SNOHOMISH COUNTY	78,742.06
SNOHOMISH COUNTY SHERIFF'S OFFICE	22,794.20
SOUND LAW CENTER	11,371.50
SOUND PUBLISHING, INC.	4,539.30
SPERRY, LAURIE	250.00

VIIIB. Claim Nos. 24493 - 24580 in the Amount of \$404,359.87 for the Period Ending September 13, 2011.

STAPLES ADVANTAGE	6,362.77
STAR NORTHWEST, INC	56,941.47
STATE AUDITOR'S OFFICE	14,081.54
STATE OF FLORIDA DISBURSEMENT UNIT	275.00
STEPHENS, MARY	6,250.00
STEWART BEALL MACNICHOLS	30,700.00
STOUDER, FRED	1,359.01
SUBURBAN CITIES ASSOC	11,829.87
SUNBELT	2,313.36
SUSKIN, LYNN	804.10
SUSSMAN/PREJZA & CO, INC	50,788.59
TACOMA SCREW PRODUCTS, INC.	159.70
TELESYSTEMS WEST	585.83
THE KIPLINGER TAX LETTER	89.00
THE PIN CENTER	920.00
THE WILDERS	2,000.00
TIGER CONSTRUCTION & EXCAVATION	5,950.00
TIMEMARK INCORPORATED	106.76
TITAN OUTDOOR, LLC	862.00
TOTAL LANDSCAPE CORP	66,998.60
TOWN & COUNTRY FENCE, INC	427.05
TOWNE CENTRE HARDWARE	737.64
TRAFFIC COUNT CONSULTANTS, INC	5,250.00
TRAN, SHAUN & DINH LIEU	415.80
T-TRAN LANDSCAPING & CONCRETE	8,760.00
ULI/SEATTLE DISTRICT CNCL	45.00
UNITED STATES POSTMASTER	1,440.19
UNITED WAY OF KING COUNTY	1,035.00
UNIVERSAL FIELD SERVICES	18,640.24
UNIVERSITY OF WASHINGTON	1,210.00
URBAN LAND INSTITUTE	225.00
US POSTAL SERVICE (HASLER)	4,450.82
VAN NESS, ALLAN	2,707.62
VAUGHAN, KENT	76.00
W.S.S.R.O.A.	450.00
WA ASSOC FOR FLOODPLAIN MANAGEMENT	100.00
WA CITIES INSURANCE AUTHORITY	124,502.00
WA FINANCE OFFICERS ASSOCIATION	450.00
WA GUARANTEED EDUCATION TUITION	3,735.00
WA RECREATION & PARK ASSOCIATION	129.00
WA STATE DEPARTMENT OF AGRICULTURE	33.00
WA STATE DEPT OF LABOR & INDUSTRIES	120.20
WA STATE DEPT OF TRANSPORTATION	5,472.01
WA STATE PARKS & RECREATION	2,700.00
WARDS NATURAL SCIENCE	1,237.95
WARNER, LOUIS	1.02
WASHINGTON CITY/COUNTY MGMT ASSOC	160.00
WASHINGTON ENERGY SERVICES	120.70
WASHINGTON MILITARY DEPARTMENT	5,009.34
WASHINGTON MUNICIPAL CLERKS ASSOC	75.00
WASHINGTON STATE DEPT OF INFO SERV	14,066.91

VIIIB. Claim Nos. 24493 - 24580 in the Amount of \$404,359.87 for the Period Ending September 13, 2011.

WASHINGTON STATE DEPT OF REVENUE	5,003.62
WASHINGTON STATE OFFICE CASH MGMT	769.50
WASHINGTON TREE SERVICE INC	1,423.50
WEINSTEIN AU	22,005.11
WELLS FARGO BANK	803.43
WELLS FARGO FINANCIAL	3,558.90
WONDERLAND DEVELOPMENT	11,415.00
YAKIMA COUNTY DEPT. OF CORRECTIONS	59,400.05
YAMASATO, JON	1,750.00
YAZDIDOOST, KAMRAN	4,305.60
ZESBAUGH, INC.	423.77
ZONAR SYSTEMS	525.33
ZORNES, GARY	230.00
ZUMAR	456.90
	<u>\$ 9,780,809.34</u>

CITY OF KENMORE, WASHINGTON			
AGENDA BILL SUMMARY			
AGENDA TITLE			MEETING DATE
Authorize the Mayor to execute Contract No.11-C963 with Prothman to Assist in the Recruitment of the next City Manager			September 26, 2011
DEPARTMENT	DIRECTOR	CONTACT PERSON	PHONE
Executive	Fred Stouder	Fred Stouder	425-398-8900
COST OF PROPOSAL: \$16,500 plus estimated expenses of \$3,500		ACCOUNT NUMBER: 01 13 5501	
AMOUNT BUDGETED: 2011-2012 Adopted Budget \$21,000		NAME AND FUND #: General Fund	
ATTACHMENT(S) TO AGENDA PACKET ITEM: 1. Prothman Contract No.11-C963			
SUMMARY STATEMENT: Attached is a contract and scope of services to be provided by Prothman in the recruitment of the next City Manager. In an effort to control costs, and complete the process within the adopted budget, the City has identified several areas where the City can perform certain tasks such as preparing the final interview materials and notebooks, arranging for and reimbursing directly any necessary travel expenses incurred by the final candidates, possibly performing site visits to cities where candidates have worked. A several thousand dollar credit for some of the work done in the 2008 recruitment process has been considered in this \$16,500 contract, although because of the time elapsed, some of the work will now have to be reviewed and refreshed.			
CONSISTENT WITH OR COMPARISON TO PAST COUNCIL POLICIES, ORDINANCES, DIRECTION: Consistent with the Adopted Budget for 2011-2012.			
RECOMMENDED CITY COUNCIL ACTION/SUGGESTED MOTION: Authorize the Mayor to execute Contract No.11-C963 with Prothman to Assist in the Recruitment of the next City Manager			
REVIEWED BY FINANCE DIRECTOR:	REVIEWED BY CITY ATTORNEY:	APPROVED BY CITY MANAGER:	
 TODAY'S DATE: September 21, 2011	REVISION DATE(S): 	 FILE NAME & PATH (HYPERLINK)	

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VIIID. Authorize the Mayor to Execute Contract No.11-C963 with Prothman to Assist in the Recruitment of the next City Manager.



Contract No.11-C963

September 15, 2011

Mr. David Baker
Mayor
City of Kenmore
18120 68th Ave NE
Kenmore, WA 98028

Dear Mayor Baker,

Thank you for your confidence in Prothman to assist the City of Kenmore in the recruitment for its next City Manager. The following represents a scope of work for this search and associated professional fees and expenses.

SCOPE OF SERVICES

Project Review

The first step will be to review the following topics with the City:

- ◆ Review the scope of work and amend as needed
- ◆ Review the project schedule
- ◆ Identify the geographic scope of the search (local, regional or national)
- ◆ Review the compensation package and review the market rate
- ◆ Identify key stakeholders

Information Gathering and Research

Our goal is to thoroughly understand the preferred candidate qualifications, as well as the values and culture of the organization. To accomplish this we will:

- ◆ Meet with City Personnel
 - City Council
 - Retiring City Manager
 - Department Directors
 - Other as directed by the City
- ◆ Review all documents related to the city manager position and the City of Kenmore

Position Profile Development

Once we have a firm understanding of the preferred candidate qualifications and the values, culture and challenges of the organization, we can begin to develop a profile of your ideal candidate. Once the Position Profile is written and approved by the City, it will serve as the foundation for our determination of a candidate's fit within the organization and community. Profiles include the following:

- ◆ A description of the ideal candidate's qualifications
 - Work experience
 - Education

- Personality traits
- Work habits
- ◆ Organization-specific information
 - Description of the position and key responsibilities
 - Description of the City of Kenmore and services summary
 - Number of employees and budget size
 - Priorities and current challenges facing the department
- ◆ Community-specific information
 - Overview of the city and the surrounding region
 - Description of the environment and quality of life details
 - Industry, services and tourist activities
- ◆ Compensation package details
- ◆ Information on how to apply

Recruitment and Advertising Strategy

We will design an effective advertising strategy to identify and reach the candidates who are best suited for the position. Our recruitment strategy involves the following:

- ◆ Print and internet-based ads placed in professional publications, journals and on related websites
- ◆ Recruitment brochures sent directly to hundreds of highly qualified managers who may not be actively searching
- ◆ Phone calls placed directly to administrators that we personally know
- ◆ Posting the Position Profile on the Prothman website, which receives over 10,000 hits per month

Candidate Screening

Once the application deadline has passed, we will screen the applicants in order to find the most outstanding candidates. The screening process has 5 key steps:

- 1) **Initial Application Review:** Using the Position Profile as our guide, we will screen the candidates based on the application materials they have provided. These materials include resumes, a Prothman application, and supplemental questions (to determine a candidate's writing skills, analytical abilities and communication style). We will then send all relevant application materials to the City for review.
- 2) **First Work Session (on-site):** We will meet with the City to review the most promising candidates and jointly identify the top 10 to 15 semifinalists. We will also begin discussions on the final interview design.
- 3) **Semifinalist Interviews:** We will conduct telephone, videoconference or in-person interviews with each of the chosen semifinalists. We will conduct a preliminary publication and internet search on these candidates.
- 4) **Second Work Session (on-site):** We will present our findings from the interviews and internet checks, make recommendations and work with you to pick the top 4 to 6 candidates to invite to the final interviews. We will complete the final interview design.
- 5) **Structured References and Background Checks:** We ask each applicant to provide 9 references comprised of supervisors, subordinates and peers from their last 3 jobs and we then conduct 5 to 6 references per candidate from this list. We also provide publication and internet research and we contract with



ABSO to provide education verification, criminal history, sex offender and driving record checks

Final Interviews

The final interview process is designed so that you can learn as much as possible about each candidate and best assess how each candidate will "fit" into your organization. This is done by giving you several opportunities to observe the candidates in various settings, as well as providing thorough background and reference details.

- ♦ **Final Interviews:** We will provide complete application and supplemental information on final candidates to the City who will schedule the interviews and prepare the interview materials including copying and notebooks.
- ♦ **Facilitate Employment Agreement:** Once the top candidate has been selected, we will offer any assistance the City requests in developing a letter of offer and negotiating terms of the employment agreement.

PROFESSIONAL SERVICE FEE & GUARANTEE

Professional Fee

Our fee for professional services is \$16,500 plus expenses.

Expenses

Expenses are the responsibility of the City and will be discussed with the City prior to expenditure. Expense items include but are not limited to:

- ♦ Newspaper, trade journal websites and other advertising
- ♦ Direct mail announcements and regret letters
- ♦ Delivery expenses
- ♦ Printing of documents and materials
- ♦ Consultant mileage
- ♦ Background checks performed by ABSO
- ♦ Any client-required licenses, fees or taxes

A 3% charge will be added to all expenses which reflect City and State B&O tax obligations. Professional fees are billed in three equal installments during the course of the search. Expenses are billed monthly.

Candidate Site Visits and Candidate Travel

If approved in advance by the City, visits to candidate sites will be billed at \$350 per site, plus expenses. The City may choose to conduct the site visits.

The City will arrange candidate travel, if necessary, and directly reimburse the candidates for travel related expenses.

Guarantee

Our record of success in placing highly qualified candidates provides that Prothman will guarantee the placement of a qualified candidate. If the selected finalist candidate is terminated for cause or resigns within **two years** from the employment date, we will conduct a replacement search with no additional professional fee.



VIIID. Authorize the Mayor to Execute Contract No.11-C963 with Prothman to Assist in the Recruitment of the next City Manager.

Cancellation

You have the right to cancel the search at any time. Your only obligation would be the fees and expenses incurred prior to cancellation.

Accepted by:

CITY OF KENMORE

PROTHMAN

Mr. David Baker Date
Mayor

Greg Prothman Date
President

At the Direction of the Kenmore City Council

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PROTHMAN

VIIID. Authorize the Mayor to Execute Contract No.11-C963 with Prothman to Assist in the Recruitment of the next City Manager.

CITY OF KENMORE, WASHINGTON			
AGENDA BILL SUMMARY			
AGENDA TITLE			MEETING DATE
Authorize the City Manager to execute Contract No. 11-C964 with The Jorve Corporation in the amount of \$32,058.32 for the roofing and gutter replacement project at the Senior Center.			September 26, 2011
DEPARTMENT	DIRECTOR	CONTACT PERSON	PHONE
Public Works	Jennifer Gordon	Jennifer Gordon	425-398-8900
COST OF PROPOSAL:		ACCOUNT NUMBER:	
Roof Replacement Cost (GAF Timberline HD Shingles)		01.76.6203	
Gutter /Downspout Replacement			
Versaguard Gutter Screens			
Sales Tax			
Total Cost			
Permitting \$500 (approximately) Administrative Staff Time			
AMOUNT BUDGETED: Approximately \$100,000 is available in unobligated maintenance line items in this fund, which will support this project.		NAME AND FUND #: General Fund Parks and Facility Maintenance	
ATTACHMENT(S) TO AGENDA PACKET ITEM:			
A. Senior Center Inspection Report B. Lease Agreement With Senior Center C. Three bids for the roofing and gutter installation: 1. The Jorve Corporation 2. Mike's Roofing Inc. 3. Meyer's Roofing D. Contract No. 11-C964			
SUMMARY STATEMENT:			
Earlier this year, the City Manager's office informed the City Council in the Manager's Friday letter, dated June 17, 2011 of the inspection of the City owned building housing the Senior Center. This inspection was part of City Management's efforts to review the condition and status of City owned facilities. The City performed a full inspection of the Senior Center Building in May 2011. See attached. Maintaining the building in sound condition is the City's responsibility according to the lease agreement with the Senior Center.			
The Public Works Department was provided with a report that included a list of safety concerns and			

VIII. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -

maintenance needs that should be addressed. Most of the items have been addressed by the Public Works crew. The reported noted a "sagging ceiling" which will be addressed after the roof is replaced, as the condition of the roof may be a cause of the "sagging ceiling". The new shut off valve for the water heater and pipe, will be completed soon and is estimated to cost approximately \$200.

The roof replacement work will need to be done by a contractor. Three quotes for the roofing and gutter replacement were obtained. Jorve Corporation submitted the lowest quote, \$32,058.32. Jorve Corporation is a recommended qualified contractor and references have been checked. The work will commence immediately upon Council approval. After the materials have been ordered and received, the work itself could be completed within ten days. The total project, we are estimating, will be completed by the end of October or early November.

CONSISTENT WITH OR COMPARISON TO PAST COUNCIL POLICIES, ORDINANCES, DIRECTION:
Management efficiencies

RECOMMENDED CITY COUNCIL ACTION/SUGGESTED MOTION:

Authorize City Manager to execute Contract No. 11-C964 with The Jorve Corporation in the amount of \$32,058.32 for the roofing and gutter replacement project at the Senior Center.

**REVIEWED BY FINANCE
DIRECTOR:**

gray

**REVIEWED BY CITY
ATTORNEY:**

APPROVED BY CITY MANAGER:

[Signature]

TODAY'S DATE:

9/21/11

REVISION DATE(S):

FILE NAME & PATH (HYPERLINK):

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works\2011 council meeting
agenda items\september 26,
2011\ab senior center roofing
project.doc



City Of Kenmore, Washington

Memorandum

Date: May 12th, 2011

To: Jennifer Gordon

CC: Fred Stouder, Bryan Hampson

From: Mark Schwarzwalter

Subject: Senior Center Inspection

Summary of Inspection:

On Thursday May 12th, I conducted an inspection of the Kenmore Senior Center at 6910 170th St. There were two buildings inspected for their overall condition and for the safety of the occupants that use the facility.

The main building is a two story wood framed structure originally built in 1948 as a single family residence with an attached garage or carport and totals 2220 square feet. At some date later the carport and porch were enclosed and converted to living space. The accessory structure was built in 1975 as a detached garage and totals 1310 square feet according to King County records.

The overall interior condition of the main building is fair for its age. Attached is the inspection checklist. Please note there are numerous items that warrant attention and/or repair. Items that will need immediate attention because of safety concerns are:

1. The shut off valve for the hot water tank is leaking and should be replaced. The drain line of the temperature and pressure relief valve of the water heater should be extended to within 6 to 24 inches of the ground.
2. The ramp installed between the main room and the porch has a gap at the bottom transition of a half inch. A quarter inch maximum is the acceptable standard. See picture.
3. The handrail for the ramp is open ended at the bottom of the ramp thus creating a safety hazard. The handrail should be reconfigured to return to the post or floor. See Picture.
4. The second story is used for storage only. An electrical box on the east wall has bare wires showing and should be covered with a plate.
5. There are several signs of rodent intrusion in the attic and closets of the second level.
6. The ceiling of the north room is sagging considerably and should be investigated further to determine the cause.
7. The condition of the roof is poor and is leading to deteriorating soffits and fascia. The roofing should be cleaned or replaced. The gutters are full of debris and should be cleaned.

18120 68th Ave NE PO Box 82607 Kenmore, WA 98028

Office: (425) 398-8900

Fax: (425) 481-3236

cityhall@kenmorewa.gov

www.kenmorewa.gov

VIII. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -



City Of Kenmore, Washington

8. The accessory structure has a stairway and deck leading to attic storage room. The stairs are deteriorated and are a safety hazard. The deck is a solid surface that is in disrepair and a safety hazard. The stairs should be removed or rebuilt. The decking should be removed and replaced with new material. The guardrail and handrails should be rebuilt.

Included: Inspector Checklist, Pictures

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VIII.E. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -



City Of Kenmore, Washington

Comment Key or Definitions

The following definitions of comment descriptions represent this inspection report. All comments by the inspector should be considered before purchasing this home. Any recommendations by the inspector to repair or replace suggests a second opinion or further inspection by a qualified contractor. All costs associated with further inspection fees and repair or replacement of item, component or unit should be considered before you purchase the property.

Inspected (IN) = I visually observed the item, component or unit and if no other comments were made then it appeared to be functioning as intended allowing for normal wear and tear.

Not Inspected (NI) = I did not inspect this item, component or unit and made no representations of whether or not it was functioning as intended and will state a reason for not inspecting.

Not Present (NP) = This item, component or unit is not in this home or building. Not Present items will be noted only in the Report and will NOT be in the Summary. Please read the entire report and consider items or components that are not present.

Repair = The item, component or unit is not functioning as intended, or needs further inspection by a qualified contractor. Items, components or units that can be repaired to satisfactory condition may not need replacement.

Investigate = refers to a system or component that needs additional investigation by a specialist to determine if repairs are needed.

In Attendance: <i>Inspector Attendant</i>	Type of building: <i>Wood Framed</i>	Approximate age of building: <i>60 years</i>
Temperature: <i>50's</i>	Weather: <i>Sunny</i>	Ground/Soil surface condition: <i>Moist</i>
Rain in last 3 days: <i>yes</i>	Water Test: <i>N/A</i>	Radon Test: <i>N/A</i>

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VIII.E. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -

Structural Components

The Inspector shall observe structural components including foundations, floors, walls, columns or piers, ceilings and roof. The home inspector shall describe the type of Foundation, floor structure, wall structure, columns or piers, ceiling structure, roof structure. The inspector shall: Probe structural components where deterioration is suspected; Enter under floor crawl spaces, basements, and attic spaces except when access is obstructed, when entry could damage the property, or when dangerous or adverse situations are suspected; Report the methods used to observe under floor crawl spaces and attics; and Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components. The inspector is not required to: Enter any area or perform any procedure that may damage the property or its components or be dangerous to or adversely affect the health of the inspector or other persons.

		IN	NI	NP	
1.0	FOUNDATIONS, BASEMENTS AND CRAWLSPACES (Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.)			X	Styles & Materials Foundation: <i>Slab on grade</i> Method used to observe Crawl space: <i>N/A</i>
1.1	WALLS (Structural)	X			Floor Structure: <i>Concrete</i>
1.2	COLUMNS OR PIERS			X	Wall Structure: <i>stick framed</i>
1.3	FLOORS (Structural) <i>SDG</i>	X			Columns or Piers: <i>N/A</i>
1.4	CEILINGS (structural)	X			Supporting walls
1.5	ROOF STRUCTURE AND ATTIC	X			Ceiling Structure:
		IN	NI	NP	Roof Structure: <i>Stick framed</i> Roof-Type: <i>Shake</i> Method used to observe attic: <i>Flashlite from opening</i> Attic info: <i>Appear structurally sound</i>

IN=Inspected, NI=Not Inspected, NP=Not Present

Exposed electric 2nd story storage alcove. (pic)
Holes in floor of another closet SE corner
2nd fl move droppings and NE closet
West room is an addition with wood floor, possibly
a garage or carport @ one time. The ground
around the accessory building should have 6" clear
to the siding

Comments:

Signs of rat/mouse infestation (droppings) in attic over 1st floor
closet marked #6 upstairs, more droppings, holes in walls to attic

2. Exterior

The inspector shall observe: Wall cladding, flashings, and trim; Entryway doors and a representative number of windows; Garage door operators; Decks, balconies, stoops, steps, areaways, porches and applicable railings; Eaves, soffits, and fascias; and Vegetation, grading, drainage, driveways, patios, walkways, and retaining walls with respect to their effect on the condition of the building. The inspector shall: Describe wall cladding materials; Operate all entryway doors and a representative number of windows; Operate garage doors manually or by using permanently installed controls for any garage door operator; Report whether or not any garage door operator will automatically reverse or stop when meeting reasonable resistance during closing; and Probe exterior wood components where deterioration is suspected. The inspector is not required to observe: Storm windows, storm doors, screening, shutters, awnings, and similar seasonal accessories; Fences; Presence of safety glazing in doors and windows; Garage door operator remote control transmitters; Geological conditions; Soil conditions; Recreational facilities (including spas, saunas, steam baths, swimming pools, tennis courts, playground equipment, and other exercise, entertainment, or athletic facilities); Detached buildings or structures; or Presence or condition of buried fuel storage tanks. The inspector is not required to: Move personal items, panels, furniture, equipment, plant life, soil, snow, ice or debris that obstructs access or visibility.

		IN	NI	NP	
2.0	WALL CLADDING FLASHING AND TRIM	X			Styles & Materials
2.1	DOORS (Exterior)	X			Siding Style:
2.2	WINDOWS	X			Siding Material:
2.3	DECKS, BALCONIES, STOOPS, STEPS, AREAWAYS, PORCHES, PATIO/ COVER AND APPLICABLE RAILINGS	X			Exterior Entry Doors:
2.4	VEGETATION, GRADING, DRAINAGE, DRIVEWAYS, PATIO FLOOR, WALKWAYS AND RETAINING WALLS (With respect to their effect on the condition of the building)	X			Appurtenance:
2.5	EAVES, SOFFITS AND FASCIAS	X			Driveway:
2.6	OTHER				Garage Door Type:
2.7	GARAGE DOOR OPERATORS (Report whether or not doors will reverse when met with resistance)			X	Material:
		IN	NI	NP	

IN=Inspected, NI=Not Inspected, NP=Not Present

Comments:

Some water damage to soffit over entry area, and various other areas due to gutter being full of debris

3. Roofing

The inspector shall observe: Roof covering; Roof drainage systems; Flashings; Skylights, chimneys, and roof penetrations; and Signs of leaks or abnormal condensation on building components. The inspector shall: Describe the type of roof covering materials; and Report the methods used to observe the roofing. The home inspector is not required to: Walk on the roofing; or Observe attached accessories including but not limited to solar systems, antennae, and lightning arrestors.

		IN	NI	NP	
3.0	ROOF COVERINGS	X			Styles & Materials Roof Covering: <i>1 Shale</i> Viewed roof covering from: <i>ground</i>
3.1	FLASHINGS	X			
3.2	SKYLIGHTS, CHIMNEYS AND ROOF PENETRATIONS	X			
3.3	ROOF DRAINAGE SYSTEMS	X			
		IN	NI	NP	Sky Light(s): Chimney (exterior): <i>Brick</i>

IN=Inspected, NI=Not Inspected, NP=Not Present

Comments:

Brick chimney missing top 1 or 2 courses. Roof covered with moss & debris. Gutter full of debris. Some roof to wall areas I was unable to see flashing due to shakes up against siding. One plumbing boot flashing is not flat against roof. This could be an entry point for mice.

4. Plumbing

The inspector shall observe: Interior water supply and distribution system, including: piping materials, supports, and insulation; fixtures and faucets; functional flow; leaks; and cross connections; Interior drain, waste, and vent system, including: traps; drain, waste, and vent piping; piping supports and pipe insulation; leaks; and functional drainage; Hot water systems including: water heating equipment; normal operating controls; automatic safety controls; and chimneys, flues, and vents; Fuel storage and distribution systems including: interior fuel storage equipment, supply piping, venting, and supports; leaks; and Sump pumps. The inspector shall describe: Water supply and distribution piping materials; Drain, waste, and vent piping materials; Water heating equipment; and Location of main water supply shutoff device. The inspector shall operate all plumbing fixtures, including their faucets and all exterior faucets attached to the house, except where the flow end of the faucet is connected to an appliance. The

inspector is not required to: State the effectiveness of anti-siphon devices; Determine whether water supply and waste disposal systems are public or private; Operate automatic safety controls; Operate any valve except water closet flush valves, fixture faucets, and hose faucets; Observe: Water conditioning systems; Fire and lawn sprinkler systems; On-site water supply quantity and quality; On-site waste disposal systems; Foundation irrigation systems; Spas, except as to functional flow and functional drainage; Swimming pools; Solar water heating equipment; or Observe the system for proper sizing, design, or use of proper materials.

		IN	NI	NP	
4.0	PLUMBING DRAIN, WASTE AND VENT SYSTEMS	X			Styles & Materials Water Source: ?
4.1	PLUMBING WATER SUPPLY AND DISTRIBUTION SYSTEMS AND FIXTURES	X			Water Filters: N/A
4.2	HOT WATER SYSTEMS, CONTROLS, CHIMNEYS, FLUES AND VENTS	X			Plumbing Water Supply (building): N/A
4.3	MAIN WATER SHUT-OFF DEVICE (Describe location)	X			Plumbing Water Distribution (inside building): Galvanized
4.4	FUEL STORAGE AND DISTRIBUTION SYSTEMS (Interior fuel storage, piping, venting, supports, leaks)			X	Washer Drain Size: N/A
4.5	MAIN FUEL SHUT OFF (Describe Location)			X	Plumbing Waste: Cast iron
4.6	SUMP PUMP			X	Water Heater Power Source: Electric
		IN	NI	NP	Capacity: 50 gal
IN=Inspected, NI=Not Inspected, NP=Not Present					Manufacturer: Bradford-White

Comments:

Water heater shut-off valve is leaking. Galvanized piping showing corrosion, lacking earthquake straps on water heaters
Pipe extension for HWT T+P drain to within 24" to 6" of ground

5. Heating

The inspector shall observe permanently installed heating and cooling systems including: Heating equipment; Cooling Equipment that is central to home; Normal operating controls; Automatic safety controls; Chimneys, flues, and vents, where readily visible; Solid fuel heating devices; Heat distribution systems including fans, pumps, ducts and piping, with supports, insulation, air filters, registers, radiators, fan coil units, convectors; and the presence of an installed heat source in each room. The inspector shall describe: Energy source; and Heating equipment and distribution type. The inspector shall operate the systems using normal operating controls. The inspector shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance. The inspector is not required to: Operate heating systems when weather conditions or other circumstances may cause equipment damage; Operate automatic safety controls; Ignite or extinguish solid fuel fires; or Observe: The interior of flues; Fireplace insert flue connections; Humidifiers; Electronic air filters; or The uniformity or adequacy of heat supply to the various rooms.

	IN	NI	NP	
6.0 HEATING EQUIPMENT		X		Styles & Materials Heat Type: <i>Baseboards</i> Energy Source: <i>Electric baseboard</i> Number of Heat Systems (excluding wood): Ductwork: Filter Type: Types of Fireplaces: <i>1 woodburning</i> Operable Fireplaces: <i>Do not use</i> Number of Woodstoves: <i>N/A</i>
6.1 NORMAL OPERATING CONTROLS		X		
6.2 AUTOMATIC SAFETY CONTROLS		X		
6.3 DISTRIBUTION SYSTEMS (including fans, pumps, ducts and piping, with supports, insulation, air filters, registers, radiators, fan coil units and convectors)			X	
6.4 PRESENCE OF INSTALLED HEAT SOURCE IN EACH ROOM	X			
6.5 CHIMNEYS, FLUES AND VENTS (for fireplaces, gas water heaters or heat systems)		X		
6.6 SOLID FUEL HEATING DEVICES (Fireplaces, Woodstove)	X			
6.7 GAS/LP FIRELOGS AND FIREPLACES	X			
	IN	NI	NP	

IN=Inspected, NI=Not Inspected, NP=Not Present

Comments:

6. Air Conditioning

		IN	NI	NP	Styles & Materials
7.0	COOLING AND AIR HANDLER EQUIPMENT			X	Cooling Equipment Type: <i>N/A</i>
7.1	DISTRIBUTION SYSTEMS (including fans, pumps, ducts and piping, with supports, insulation, air filters, registers, radiators, fan coil units and convectors)			X	Cooling Equipment Energy Source: <i>N/A</i>
7.2	PRESENCE OF INSTALLED COOLING SOURCE IN EACH ROOM			X	Number of AC Only Units: <i>N/A</i>
7.3	NORMAL OPERATING CONTROLS			X	
		IN	NI	NP	

IN=Inspected, NI=Not Inspected, NP=Not Present

Comments:

7. Interiors

The inspector shall observe: Walls, ceiling, and floors; Steps, stairways, balconies, and railings; Counters and a representative number of installed cabinets; and A representative number of doors and windows. The inspector shall: Operate a representative number of windows and interior doors; and Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components. The inspector is not required to observe: Paint, wallpaper, and other finish treatments on the interior walls, ceilings, and floors; Carpeting; or Draperies, blinds, or other window treatments.

		IN	NI	NP	Styles & Materials
8.0	CEILINGS	X			Ceiling Materials: <i>GWB, wood + tile</i>
8.1	WALLS	X			Wall Material: <i>GWB + paneling</i>
8.2	FLOORS	X			Floor Covering(s): <i>Carpet, sheet vinyl</i>
8.3	STEPS, STAIRWAYS, BALCONIES AND RAILINGS	X			
8.4	COUNTERS AND A REPRESENTATIVE NUMBER OF CABINETS		X		Interior Doors: <i>wood</i>
8.5	DOORS (REPRESENTATIVE NUMBER)		X		Window Types: <i>wood single pane</i>
8.6	WINDOWS (REPRESENTATIVE NUMBER)		X		Cabinetry: <i>wood</i>
		IN	NI	NP	Countertop: <i>linoleum</i>

IN=Inspected, NI=Not Inspected, NP=Not Present

ceiling @ 2nd level occasional tile or sagging in north room
Stairs to 2nd level very steep average 8" rise 9" run

Comments:

*Handrail @ ramp is open ended. Ramp approach is 1/2" above floor
 & then angle trim begins*

8. Insulation and Ventilation

The inspector shall observe: Insulation and vapor retarders in unfinished spaces; Ventilation of attics and foundation areas; Kitchen, bathroom, and laundry venting systems; and the operation of any readily accessible attic ventilation fan, and, when temperature permits, the operation of any readily accessible thermostatic control. The inspector shall describe: Insulation in unfinished spaces; and Absence of insulation in unfinished space at conditioned surfaces. The inspector shall: Move insulation where readily visible evidence indicates the need to do so; and Move insulation where chimneys penetrate roofs, where plumbing drain/waste pipes penetrate floors, adjacent to earth filled stoops or porches, and at exterior doors. The inspector is not required to report on: Concealed insulation and vapor retarders; or Venting equipment that is integral with household appliances.

		IN	NI	NP	
9.0	INSULATION IN ATTIC	X			Styles & Materials Attic Insulation:
9.1	INSULATION UNDER FLOOR SYSTEM		X		
9.2	VAPOR RETARDERS (ON GROUND IN CRAWLSPACE OR BASEMENT)			X	Ventilation:
9.3	VENTILATION OF ATTIC AND FOUNDATION AREAS	X			Exhaust Fans:
9.4	VENTING SYSTEMS (Kitchens, baths and laundry)	X			Dryer Power Source:
9.5	VENTILATION FANS AND THERMOSTATIC CONTROLS (ATTIC)			X	Dryer Vent:
		IN	NI	NP	Floor System Insulation:
IN=Inspected, NI=Not Inspected, NP=Not Present <i>Very little insulation in attic</i>					

Comments:

10. Built-In Kitchen Appliances

The inspector shall observe and operate the basic functions of the following kitchen appliances: Permanently installed dishwasher, through its normal cycle; Range, cook top, and permanently installed oven; Trash compactor; Garbage disposal; Ventilation

equipment or range hood; and Permanently installed microwave oven. The inspector is not required to observe: Clocks, timers, self-cleaning oven function, or thermostats for calibration or automatic operation; Non built-in appliances; or Refrigeration units. The inspector is not required to operate: Appliances in use; or Any appliance that is shut down or otherwise inoperable.

		IN	NI	NP	
10.0	DISHWASHER		X		Styles & Materials Dishwasher Brand: _____
10.1	RANGES/OVENS/COOKTOPS			X	Disposer Brand: _____
10.2	RANGE HOOD			X	Exhaust/Range hood: _____
10.3	TRASH COMPACTOR			X	Range/Oven: _____
10.4	FOOD WASTE DISPOSER			X	Built in Microwave: _____
10.5	MICROWAVE COOKING EQUIPMENT		X		
		IN	NI	NP	

IN=Inspected, NI=Not Inspected, NP=Not Present

Comments:

Accessory Biking: All doors have grasp or turn deadbolts on exterior exit doors, Stairs & deck unsafe, must be removed or rebuilt. Water heater need drain pan & drain to exterior. No straps. Signs of water damage on plywood floor by HWY & ext. wall & nice. Water damage/intrusion @ NE door under deck. Need 6" clearance to siding.



City Of Kenmore, Washington

Memorandum

Date: May 17, 2011

To: Fred Stouder

CC: Bryan Hampson, Jennifer Gordon

From: Mark Schwarzwalter

Subject: Cost Estimates for Senior Center Improvements

The following estimates are for repair costs of the item numbers listed on the memo dated 5/12/2011.

1. New shut-off valve and pipe extension. \$200.00
2. Repair ramp transition. \$150.00
3. Handrail repair. \$150.00
4. Cover plate and wire nuts. \$10.00
5. Rodent extermination. \$500.00
6. Ceiling Repair. \$200.00 to \$1000.00
7. Gutter and roof cleaning. \$2000.00
- Roof replacement. \$25,000.00
8. Stairs and deck repair. \$3000.00 to \$5000.00
- Totals: \$6210.00 to \$31,830.00

18120 68th Ave NE PO Box 82607 Kenmore, WA 98028

Office: (425) 398-8900 Fax: (425) 481-3236 cityhall@kenmorewa.gov www.kenmorewa.gov

VIII.E. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -

KENMORE PARK LEASE/USE AGREEMENT

THIS AGREEMENT is entered into between the City of Kenmore, Washington ("City") and the Northshore Senior Center and Senior Services and Centers ("Lessee"), for the consideration and mutual benefits to be derived as set forth below.

IN WITNESS WHEREOF, it is hereby mutually covenanted and agreed by and between the City and the Lessee as follows:

1. Premises. The City leases to the Lessee and the Lessee leases from the City the following Premises located within Kenmore Park, in the City of Kenmore, King County, Washington, and described as follows:

The Kenmore Park Building, including the main building structure, covered picnic shelter, and garage structure. See attached drawing, incorporated herein by this reference. The City retains right of use for the west meeting room in the main building on the second and fourth Wednesdays of each month from 6:00 to 10:00 p.m. for Downtown Task Force meetings.

2. Purpose. The Lessee shall use the premises described in Paragraph 1 solely for the purpose of operating the Senior Program and other programs as approved by the City. The Lessee shall have the right to rent the Kenmore Park Building and covered picnic area for temporary recreational or senior-oriented events consistent with this paragraph and the Statement of Intent attached as Exhibit A. All rental revenue from community and other use of the facilities will be retained by the Kenmore Senior Program to assist with off-setting program and facility operations as outlined in the 2005 Projected Budget, Exhibit B and subsequent annual budgets.

3. Term. The term of this lease shall be a period of five years and shall commence on the 8th day of November 2004 and end on the 31st day of December 2009 unless earlier terminated as provided for herein in paragraph 8. The City will consider renewing the lease to the Lessee upon the written request of the Lessee as set forth herein. The terms and conditions of any renewal lease shall be set forth in a written agreement signed by both the City and the Lessee. The Lessee shall give notice of its desire to renew this lease at least 90 days prior to the expiration of this lease to allow sufficient time for consideration by the City Council and negotiation of terms.

4. Rent. The rental amount for the use of the leased premises shall be \$1.00 per year for the term of the Agreement.

5. Access. The Lessee may access the Premises in accordance with park operating hours; provided, however, that the City and Lessee shall agree on a means of reasonable access to the Premises for programs and activities that occur later than the normal park closing time at dusk.

6. Use of Premises. The Lessee's use of the Premises is limited to the "Purpose" identified in paragraph 2 of this Lease Agreement. The Lessee represents that it has been granted and will maintain all necessary federal, state and local licenses and permits required to operate a Senior Center, and any other incidental activities thereto approved by the City. Lessee further covenants and agrees that it will not use or allow the use of the Premises or any part thereof for any purpose which shall be unlawful or a nuisance or contrary to any permits or licenses held by Lessee from any regulatory agency or contrary to any law, ordinance or regulation of any public authority.

7. Non-interference. The Lessee shall not use the premises or access areas in any way, which materially interferes with the use of the adjacent City property or the City's authorized use of the Premises. The City shall not use nor shall the City permit its officers, employees or agents to use, any portion of the City's property in any way, which materially interferes with the operations of the Lessee authorized in Paragraph 2 of this lease. Such interference shall be terminated upon written notice by the other party. In the event any such interference does not cease within 5 working days, the parties acknowledge that continuing interference may cause irreparable injury and, therefore, the injured party shall have the right to bring an action to enjoin such interference or to terminate this Lease immediately upon written notice.

8. Termination. The City may terminate this lease, without penalty or further liability upon thirty (30) days written notice to the Lessee, if the Lessee fails to cure a default for payment amounts due under this lease within that 30-day period; or if the Lessee defaults, other than for non-payment of rent and fails to cure such default within that 30-day period. Either the City or the Lessee may terminate this lease upon ninety (90) days written notice to the other party for any reason.

9. Encumbrances. The Lessee shall not encumber the Premises.

10. Laws, Ordinances, Regulations. The Lessee shall at all times and at its sole expense, comply with all laws and ordinances, orders, guidelines, policies, directives, rules and regulations of municipal, county, state and federal governmental authorities or regulatory agencies (Laws). The Lessee shall defend, indemnify and hold harmless the City, its officers, employees and agents against any claims arising from any violations by the Lessee, its officers, employees or agents of any such Laws. The indemnity provision of this paragraph shall survive the termination or expiration of this Lease.

11. Improvements. The Lessee shall make no improvements to the Premises without the written permission of the City.

12. Maintenance/Repairs. The Lessee shall, at its own expense and at all times, keep the Premises neat, clean and in a sanitary condition, and keep and use the Premises in accordance with all applicable laws, ordinances, rules, regulations and requirements of governmental authorities. The Lessee shall permit no waste, damage or injury to the Premises. The Lessee shall be responsible for the repair of any damage or injury the Lessee causes to the Premises, other than for ordinary wear and tear of the Premises. Exterior repairs to the main building structure and surrounding grounds will be the responsibility of the City. Lessee shall give prompt written notice to the City of any exterior condition that may require repair, but the decision to affect any such exterior repair shall remain wholly within the City's discretion.

Interior repairs shall be the responsibility of the Lessee and Lessee accepts the Premises in their present condition, and hereby covenants and agrees to make all necessary repairs to the interior of the Premises as determined by the City, including keeping all drainage pipes free and open.

13. Landscaping. The City shall provide at its sole discretion landscape materials, and installation and maintenance of the landscaping on the Premises. The Lessee agrees to cooperate with the City in the performance of this provision.

14. Signs. All signs or symbols placed in the windows or doors of the Premises, or upon any exterior or interior part of the Kenmore Park Building, shall be subject to the approval of the City. Any such signs shall be so placed upon the understanding and agreement that the Lessee will remove such signs at the termination of the tenancy herein created and repair of any damage or injury to the premises caused thereby, and if not so removed by the Lessee then the City may have such signs so removed at the Lessee's expense.

15. Taxes and Assessments. (a) The Lessee agrees to pay all taxes and assessments which are the result of the Lessee's uses of the Premises and/or which may hereafter become a lien on the interest of the Lessee. Lessee shall pay all taxes that may hereafter be levied or imposed upon the interest of the Lessee or by reason of this Lease.

(b) The Lessee shall be responsible to pay when due any and all leasehold taxes imposed on the Lessee and in the manner prescribed by the Kenmore Municipal Code and Chapter 82.29A of the Revised Code of Washington.

16. Utilities. The City is responsible for and agrees to pay for the garbage, sewer and water utilities that serve the Premises. The Lessee shall pay for all other outside services serving the Lessee including telecommunication and data transfer service connection and services fees.

17. Liens. Nothing in this Lease shall be deemed to make the Lessee the agent of the City for purposes of construction, repair, alteration, or installation of structures, improvements,

equipment or facilities on the Premises. The Lessee acknowledges that the City may not, and shall not, be subject to claims or liens for labor or materials in connection with such activities by the Lessee. The Lessee shall not encumber the Premises with any liens.

18. City's Right of Entry and Inspection. The City, for itself and its officers, employees and agents, reserves the right to enter upon the Premises at any time and without notice to the Lessee, for the purpose of operation, inspection, maintenance, construction, or reconstruction of the premises or any element thereof. The City will take all reasonable measures to minimize any disruption to the Lessee. The City shall in no way be responsible for any incidental or consequential damages, including, but not limited to, lost revenue due to such loss of use by the Lessee.

19. Insurance. At its sole expense, the Lessee shall secure and maintain in effect a policy of general liability insurance issued by an insurer licensed to conduct business in the State of Washington. The insurance policy shall provide liability coverage for any and all claims of bodily injury, property damage, and personal injury arising from the Lessee's use of the Premises, which is the subject of this Lease. The insurance policy required by the section shall provide coverage of no less than \$1,000,000 combined single limit of liability per occurrence, with a general aggregate limit of no less than \$1,000,000 per policy period. The Lessee agrees that the City may require increases in said coverages by written notice to the Lessee, as the City deems reasonably necessary. Coverage's under said policy shall be triggered on an "occurrence" basis. The City shall be named as an additional insured in the commercial general liability policy required by this section. The policy shall be endorsed with a provision relieving the City of any responsibility for the payment of any policy premium. The endorsement shall require the insurer to provide the City, with no less than thirty (30) days written notice before any cancellation of the coverage's required by this section. The liability coverage's required by this section shall not be subject to any self-insured retained limit of liability of any amount (No Liability Coverage Deductibles). Coverage's, if obtained by the Lessee in compliance with this section, shall not be deemed as having relieved the Lessee of any liability.

Further, the Lessee shall provide the City with a certificate of insurance and an additional named insured endorsement reflecting the insurance coverage required by this section within ten (10) business days of the execution of this Lease, and within ten (10) days of receiving a written notice from the City for an increase in the coverage amounts.

20. Hold Harmless; Indemnification.

A. Lessee shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Lessee's use of Premises, or from the conduct of Lessee's business, or from any activity, work or thing done, permitted, or suffered by Lessee in or about the Premises, except only such injury or damage as shall have been occasioned by the sole negligence of the City.

B. The Lessee further agrees to defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

For purposes of Paragraphs 20 A. and B., Lessee waives its immunity under Title 51 RCW, the Industrial Insurance Act, and agrees to protect, hold harmless, and indemnify the City for any claims asserted against it by employees or agents of Lessee. This waiver is specifically negotiated between the parties.

C. The indemnification provisions contained in this paragraph shall survive the termination or expiration of this Lease.

21. Nondiscrimination. The Lessee, for itself, its successors, and assigns as a part of the consideration hereof, does hereby covenant and agree to comply with all civil rights and anti-discrimination requirements of Chapter 49.60 RCW, as to the Premises.

22. Assignment.

A. Neither this Lease, nor any rights created by it, may be assigned, sublet, or transferred without written permission from the City. Any such assignment shall be in writing on a form approved by the City and shall include an assumption of this Lease by the assignee.

B. Should the City sell, lease, transfer, or otherwise convey all or any part of the Premises that is subject to this Lease to any transferee other than the Lessee, such transfer shall be subject to this Lease.

23. Vacation of Leased Premises. Upon termination of this Lease, the Lessee shall cease its operations on and/or use of the Leased Premises. In the event the Lessee fails to vacate the Leased Premises on the date of termination, it shall be liable for any and all costs to the City arising from such failure.

Upon termination of this lease or any extension or renewal thereof, all machinery, apparatus, equipment or other thing installed by Lessee or its agents in or upon the leased premises shall become property of the City, provided, that upon written notice to the City thirty (30) days or more prior to termination of the lease advising of Lessee's intent to remove any such thing, and upon written approval obtained from City, Lessee shall have the right to remove from the leased premises all such things installed by it or its agents not paid for in whole or in part by City. Lessee hereby covenants that it shall restore and repair any damage to the leased premises caused by the removal of such machinery, apparatus and equipment.

24. Modifications. This instrument contains all the agreements and conditions made between the parties hereto and may not be modified orally or in any manner other than by an agreement in writing signed by all parties thereto. No failure on the part of either party to

enforce any covenant or provision herein contained, nor any waiver of any right hereunder by the City, unless in writing, shall discharge or invalidate such covenant or provisions or affect the right of either party to enforce the same in the event of any subsequent breach or default.

25. Interpretation. This Lease shall be construed in accordance with the laws of the State of Washington. The titles to paragraphs or sections of this Lease are for convenience only and shall have not effect on the construction or interpretation of any paragraph hereof.

26. Invalid Provisions. If any provision or condition of this Lease is found to be void or invalid, such invalidity shall not affect the remaining terms of this Lease, which shall continue in full force and effect.

27. Totality of Agreement. It is understood that no guarantees, representations, promises, or statements expressed or implied have been made by the Lessee or the City, except to the extent that the same are expressed in this Lease. And it is further understood that this Lease shall not be valid and binding upon the City unless and until accepted and approved by the City Council.

28. Attorney Fees. The substantially prevailing party in any action or proceeding brought to enforce this Lease shall be entitled to recover its reasonable attorneys' fees, costs and expenses in connection with such action or proceeding from the other party.

29. Venue. The Lessee agrees that the venue of any action or suit concerning this Lease shall be in the King County Superior Court, and all actions or suits thereon shall be brought therein unless the parties mutually agree otherwise in writing.

30. Notices. Except as otherwise designated in this Lease, wherever in this Lease written notices are to be given or made, they will be delivered or sent by certified mail addressed to the parties at the address listed below unless a different address shall be previously designated in writing and delivered to the other party. Notice shall be deemed effective as of the delivery date. Lessee agrees to accept service of process or certified mail at the address provided for herein, provided such address is located in the State of Washington.

NORTHSHORE SENIOR CENTER
Marty Dennis, Executive Director
10201 East Riverside Drive
Bothell, WA 98011-3708
(425) 487-2441

THE CITY OF KENMORE
City Clerk
P.O. Box 82607
6700 N.E. 181st St.
Kenmore, WA 98028-0607
(425) 398-8900

DATED this 8th day of November, 2004.

NORTHSHORE SENIOR CENTER

By: Marty Dennis
Its DIRECTOR

SENIOR SERVICES AND CENTERS

By: Denise Klein
Its Executive Director

CITY OF KENMORE

By: [Signature]
Its City Manager

APPROVED AS TO FORM:

[Signature]
Michael Kenyon
City Attorney



DATE: 6/9/2011
PAGE: 1 OF 8

CITY OF KENMORE – SENIOR CITIZEN CENTER
6910 NE 170TH ST NE
KENMORE WA 98028

ATTN. JENNIFER GORDON

THE JORVE CORPORATION proposes to furnish all materials and perform all labor necessary to complete the following: Reroof Senior Citizen Center.

INSURANCE: All work in the following proposal is covered by Workmen's Compensation, Public Liability, Property Damage, Products Liability and Completed Operations Insurance.

PERMITS/PLANS/INSPECTIONS: Jorve will procure any required permits for the specifications outlined in this proposal and perform any required inspections or walk thru(s). However, the permit fees, any required architectural drawings/plans, or any required changes in the scope of work brought about by the building department, are not included in this proposal and will need to be executed and settled prior to the commencement of the project. Jorve Design Services is available for all feasibility, design, planning, drawing(s) and permit application. Rates: **Initial feasibility consultation/Review:** \$250.00 for the first 2 hours, \$80.00 an hour thereafter, plus total mileage @ .60 Cents per mile. **Plans, Permits, Procurement, and Inspection/Walk Thru:** \$80.00 an hour, plus mileage @ .60 Cents per mile, plus all fees charged by your local building dept. Note: All rates are plus tax.

Jorve Design: _____ Homeowner Design: _____

LEAD-SAFE WORK PRACTICES: The Environmental Protection Agency (EPA) defines lead-based paint activities as the "inspection, risk assessment, or abatement of lead in target housing". Target housing includes residential housing and any child-occupied facilities built prior to 1978. If the proposed Jorve project on your structure meets the requirements and criteria outlined by the EPA for lead containment or abatement, Jorve (An EPA certified organization) will follow the federally mandated lead management procedures provided by the EPA. All of these procedures will be billed as per the Time and Material agreement contained herein.

CONTRACTOR'S PERFORMANCE WARRANTY: The Jorve Corporation warrants all workmanship from the date of installation for as long as you own your home; see sample warranty for details.

SYSTEM-PLUS WARRANTY (GAF): All GAF projects include an exclusive non-prorated warranty on manufacturer's defects called the System-Plus Warranty. In the case of a manufacturer's defect, the transferable warranty covers full replacement cost, both labor and materials (not dump fees), for up to 20 years. All required paperwork and documentation will be procured and filed, on your behalf, by Jorve. See sample warranty for details.

NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN SEVEN DAYS OF THE ABOVE DATE.

ACCEPTED BY: _____
DATE: _____

RESPECTFULLY SUBMITTED BY: _____
BRAD LAMBE (206) 372-9021

The Jorve Corporation JORVEC 136CS 3211 Martin Luther King Jr Way S Seattle, WA 98144 Phone: (206) 933-8275 Fax: (206) 933-8622

VIII. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -



DATE: 6/9/2011
PAGE: 2 OF 8

CITY OF KENMORE – SENIOR CITIZEN CENTER
6910 NE 170TH ST NE
KENMORE WA 98028

ATTN. JENNIFER GORDON

SETUP: Jorve has your approval to access driveway for delivery of materials and staging of container and/or dumpster. If homeowner chooses not to assume liability for the consequences of having equipment access the property, there may be additional costs as outlined in Time and Materials. Proposal assumes access to power for the duration of the project. If sufficient power is not available, Jorve will rent a generator under the terms of Time & Materials. During any construction process some damage may occur to the surrounding plants or shrubbery. Jorve will take every precaution to protect the yard's plantings; however their replacement is not included in this proposal.

PREPARATION (ROOF REMOVAL): Jorve will remove (1) layer(s) of existing roofing material and haul all waste to the dump.

TIME AND MATERIALS (Structural Inspection): Any additional work not outlined in this proposal will be billed on a time plus materials basis (\$76.00 per man hour plus tax – includes drive time). Additional work to install the roof correctly, or to remedy any structural inadequacies, may include: Dry rot, delaminated plywood, broken skip sheathing, rotted fascia boards and rafters, damaged siding, sheetrock, stucco, masonry or plaster as a result of the roofing process, or asbestos abatement. Damage is not limited to these items. Fixed Costs (remove & replace); 1" x 4" skip sheathing – \$1.80 per linear foot, 1" x 4" beaded soffit – \$2.75 per linear foot. Jorve has your approval to replace or repair any damage found.

SHEETING: Jorve will sheet over existing skip sheathing with 1/2" exterior grade plywood to create a smooth surface for installation of shingles.

ICE & WATER: Jorve will install a leak barrier at all pipe, vent, valley, chimney and low sloped locations. This exceptional leak protection material is a rubberized, fiberglass reinforced membrane that ensures long-lasting and water tight seals in critical locations of your roof system.

VAPOR RETARDER: Vapor retarders are one of the key components contained within a true roof system. They resist the diffusion of moisture through a roof assembly by directing moisture away from the building's structure and onward to a drainage location or ventilation system; Moisture from air- transported water vapor within the attic is one of the main causes of condensation, mold and structural damage. **FelTex™** is a very effective vapor retarder on sloped roof applications. It is a high-strength, wrinkle-free, rip-stop, lightweight woven polypropylene fabric that is 20x stronger than Type 30 asphalt saturated felt. FelTex™ is 100% inorganic so it won't rot or promote mold growth and FelTex™ comes with a 30 year warranty when it is installed to mfg. specifications. Jorve will install FelTex™ to the

NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN SEVEN DAYS OF THE ABOVE DATE.

ACCEPTED BY: _____
DATE: _____

RESPECTFULLY SUBMITTED BY: _____
BRAD LAMBE (206) 372-9021

The Jorve Corporation JORVEC 136CS 3211 Martin Luther King Jr Way S Seattle, WA 98144 Phone: (206) 933-8275 Fax: (206) 933-8622

VIII. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -



DATE: 6/9/2011
PAGE: 3 OF 8

CITY OF KENMORE – SENIOR CITIZEN CENTER
6910 NE 170TH ST NE
KENMORE WA 98028

ATTN. JENNIFER GORDON

manufacturer's specifications with corrosive-resistant electro-galvanized roofing nails (Minimum head diameter of 3/8").

DRIP EDGE FLASHING: Flashings at all edges lets water drip off roof without affecting underlying construction. Jorve will install 26 gauge steel with a baked-on enamel finish along all **eave and rake edges**.

SIDEWALL/ENDWALL FLASHING: When a roof abuts a vertical wall the best method to protect the wall is to apply metal flashing over the end of each course or on top of a juncture/wall. Jorve will replace roof to wall flashings with 26 gauge steel with a baked-on enamel finish. Note: Damage to siding is possible (See Time and Materials).

SKYLIGHT FLASHINGS: All flashings on skylight will be replaced with 26 gauge steel. **Prior to replacement, a modified asphalt leak barrier will be installed to the entire perimeter of the skylight curb.** Work includes removal of unit, install custom mfg. apron at low point, step flashings per NRCA to sides, and custom mfg. soldered back pan to wrap outside corners of skylight curb. Work includes sealing curb with new insulated skylight tape and (re)install skylight.

VENT PIPE FLASHING: Jorve will replace existing plumbing vent pipe flashing with **new lead flashings complete with lead "Rain Caps"**. Lead flashing ensures a watertight installation and will last through the life of the roof. **All plumbing vents will be painted to match roofing material as close as possible.**

CHIMNEY FLASHING: Chimney flashing is as important as the roofing material itself. It protects the underlying wood around the perimeter edge of the chimney. Jorve will flash chimney complete with 24 gauge steel. Work includes: Remove existing flashings, cut in continuous flashing kerf, install endwall and sidewall flashings, install 24 gauge **counterflashings** around entire perimeter of chimney and seal flashings in place with high-grade masonry caulk. Note: Masonry needs work. It's repair is not a part of this proposal.

VALLEY FLASHING: The valley is exposed to maximum water erosion and foot traffic damage. For extra protection, a double lining system is recommended. Jorve will install 36" wide mineral surfaced roll roofing centered in the valley, shingles are to be installed overlapping the valley lining on lower section of roof; upper section to be cut open at center of valley with exposed tabs caulked securely into valley system.

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DATE: 6/9/2011
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CITY OF KENMORE – SENIOR CITIZEN CENTER
6910 NE 170TH ST NE
KENMORE WA 98028

ATTN. JENNIFER GORDON

STARTER SHINGLES: Starter shingles are the first row of shingles to be installed. They are also the most important, because each time it rains the starter shingles handle more water than any other shingle. We use asphalt starter shingles cut from the same material that is covering your entire house. They will be applied so that the seal strip is at the perimeter edge.

NAILS: Nails used to apply asphalt shingles to wood plank or plywood roof decks will be 11-12 gauge roofing nails having large heads (at least 3/8" diameter) and shanks 7/8-1" long. When recovering, Jorve will use fasteners long enough to penetrate the roof sheathing and or at least 3/4" into wood planks. **Nails will be applied 6 to a shingle** per the manufacturer's recommendations.

SLOPED ROOF VENTILATION: To prevent super heating of trapped air during the summer and harmful condensation during the winter, air must circulate freely under the roof deck. Jorve will install (108") of **ridge vent** for added ventilation.

RIDGE CAPS: At Jorve we install **high profile**, fiberglass/asphalt ridge caps that we cut to fit on the roof. This ensures a uniform watertight fit.

WALL VENTILATION: Jorve will install (10') of wall venting at all horizontal roof-to-wall locations for additional ventilation.

LOW END VENTING: Jorve will install 4" x 16" louvered vents under the eaves for additional attic ventilation.

FLAPPER VENTS: In order for moisture from bath and/or kitchen vents to escape, Jorve will install (2) 4" flapper vent(s).

NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN SEVEN DAYS OF THE ABOVE DATE.

ACCEPTED BY: _____
DATE: _____

RESPECTFULLY SUBMITTED BY: _____
BRAD LAMBE (206) 372-9021

The Jorve Corporation - JORVEC 136CS 3211 Martin Luther King Jr Way S Seattle, WA 98144 Phone: (206) 933-8275 Fax: (206) 933-8622

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DATE: 6/9/2011
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CITY OF KENMORE – SENIOR CITIZEN CENTER
6910 NE 170TH ST NE
KENMORE WA 98028

ATTN: JENNIFER GORDON

MATERIALS: Supply and install roofing material according to manufacturer's specifications for the shingle and warranty selected.

GAF TIMBERLINE HD SHINGLES	GAF TIMBERLINE ULTRA HD SHINGLES
Built for aesthetics	Built for performance
Seal tab	Seal Tab
Wind resistant	Wind Resistant
Heavy duty fiberglass	Heavy duty fiberglass
Class A rating	Class A fire rating
Heavy weight	Hide ability
Double coverage	Double coverage
Laminated no-slot	Laminated no-slots

CLEAN UP: At Jorve the cleanup is important. With the exception of any debris in the attic, we clean up all debris; we haul all waste to dump and magnet the yard for any nails or metal. Your home will be left in a broom-clean condition.

OPTION-GUTTERS: For an additional investment, Jorve will take off existing gutters and downspouts and will supply and install seamless K-line aluminum gutters and downspouts with a baked-on enamel finish.

COLOR: _____

OPTION-VERSAGUARD GUTTER PROTECTION SYSTEM: For an additional investment, Jorve will supply and install of Versaguard to protect the gutters from leaf and needle debris.

COLOR: _____

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DATE: 6/9/2011
PAGE: 6 OF 8

CITY OF KENMORE -- SENIOR CITIZEN CENTER
6910 NE 170TH ST NE
KENMORE WA 98028

ATTN. JENNIFER GORDON

INVESTMENT:

CASH

GAF TIMBERLINE HD SHINGLES: \$23,427.00 plus tax
GAF TIMBERLINE ULTRA HD SHINGLES: \$25,766.00 plus tax

OPTION-GUTTER/DOWNSPOUT REPLACEMENT: \$3,505.00 plus tax

OPTION-VERSAGUARD GUTTER SCREENS: \$2,345.00 plus tax

TOTAL: \$ plus tax

MFG: _____

COLOR: _____

TERMS: CASH*/CREDIT CARD

10% due upon acceptance.

40% due upon delivery of materials.

Balance due upon completion. *

*Acceptance 10% is to be paid on the day of agreement. Materials 40% is paid to Jorve supervisor or foreman on the first day of the project. Balance is paid to foreman upon completion of the project. Items that will be billed and/or paid separately include: Any non-roofing trades, gutters, skylights and Time & Materials. The Customer may cancel this contract with Jorve by written notice at any time prior to midnight of the fifth business day after the date of acceptance and agreement. With rescission under these terms, the customer will be entitled to a refund of the deposit. If the contract is cancelled at any other time, or if the owner does not allow work to begin within six months of the date of this agreement (unless otherwise specified in writing), customer will forfeit the deposit paid to Jorve. If any collection and/or legal action is required to enforce any provision of this contract, the prevailing party shall be entitled to the recovery of all its costs and attorney's fees incurred in such actions. Interest at 12% is applied on past due accounts. Any necessary permits that may be required for the project are not included in this proposal.

Your Scheduling, Production (with photos), Billing, Ongoing Maintenance Communications and Jorve News can be delivered via email. Would you like to receive these communications?

Yes _____ No _____

EMAIL: _____

NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN SEVEN DAYS OF THE ABOVE DATE.

ACCEPTED BY: _____
DATE: _____

RESPECTFULLY SUBMITTED BY: _____
BRAD LAMBE (206) 372-9021

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DATE: 6/9/2011
PAGE: 7 OF 8

CITY OF KENMORE – SENIOR CITIZEN CENTER
6910 NE 170TH ST NE
KENMORE WA 98028

ATTN: JENNIFER GORDON

**Department of Labor and Industries Construction Compliance
DISCLOSURE STATEMENT - NOTICE TO CUSTOMER**

This contractor is registered with the state of Washington, registration no. JORVEC*136CS, and has posted with the state a bond or deposit of 12,000 for the purpose of satisfying claims against the contractor for breach of contract including negligent or improper work in the conduct of the contractor's business. The expiration date of the contractor's registration is May 1, 2011.

THIS BOND OR DEPOSIT MIGHT NOT BE SUFFICIENT TO COVER A CLAIM THAT MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.

This bond or deposit is not for your exclusive use because it covers all work performed by this contractor. The bond or deposit is intended to pay valid claims up to 12,000 that you and other customers, suppliers, subcontractors, or taxing authorities may have.

FOR GREATER PROTECTION YOU MAY WITHHOLD A PERCENTAGE OF YOUR CONTRACT.

You may withhold a contractually defined percentage of your construction contract as retainage for a stated period of time to provide protection to you and help insure that your project will be completed as required by your contract.

YOUR PROPERTY MAY BE LIENED.

If a supplier of materials used in your construction project or an employee or subcontractor of your contractor or subcontractors is not paid, your property may be liened to force payment and you could pay twice for the same work.

FOR ADDITIONAL PROTECTION YOU MAY REQUEST THE CONTRACTOR TO PROVIDE YOU WITH THE ORIGINAL "LIEN RELEASE" DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR AT YOUR PROJECT.

The contractor is required to provide you with further information about lien release document if you request it. General information is also available from the state Department of Labor and Industries.

I have received a copy of this disclosure statement.

Dated this _____ day of _____ of the year _____.

NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN SEVEN DAYS OF THE ABOVE DATE.

ACCEPTED BY: _____
DATE: _____

RESPECTFULLY SUBMITTED BY: _____
BRAD LAMBE (206) 372-9021

The Jorve Corporation • JORVEC 136CS • 3211 Martin Luther King Jr Way S • Seattle, WA 98144 • Phone: (206) 933-8275 • Fax: (206) 933-8622

VIII. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -



DATE: 6/9/2011
PAGE: 8 OF 8

CITY OF KENMORE – SENIOR CITIZEN CENTER
6910 NE 170TH ST NE
KENMORE WA 98028

ATTN. JENNIFER GORDON

APPLICANT'S SIGNATURE	DATE	CO-APPLICANT'S SIGNATURE	DATE
CREDIT CARD			
CARDHOLDER NAME: _____		BILLING ADDRESS OF CARD: _____	
VISA OR MASTERCARD NUMBER: _____		EXPIRATION DATE: _____ LAST THREE DIGITS ON BACK OF CARD: _____	
TRANSACTION AMOUNT: _____		CARDHOLDERS SIGNATURE: _____	
☐ PLEASE EMAIL MY SECURED RECEIPT ("USA EPAY" WILL EMAIL YOUR RECEIPT)			

NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN SEVEN DAYS OF THE ABOVE DATE.

ACCEPTED BY: _____
DATE: _____

RESPECTFULLY SUBMITTED BY: _____
BRAD LAMBE (206) 372-9021

The Jarve Corporation JORVEC 136CS · 3211 Martin Luther King Jr Way S · Seattle, WA 98144 Phone: (206) 933-8275 Fax: (206) 933-8622

VIIIIE. Authorize City Manager to Execute Contract No. 11-C964 with the Jarve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -



PROPOSAL & CONTRACT

Jennifer Gordon
Public Works Operations Manager
City of Kenmore 425-398-8900
JGORDON@KENMOREWA.GOV

Project Address; 6910 NE 170th ST Kenmore (Senior Center)

August 19, 2011

1. Landscape Protection
2. Remove existing roof
3. Furnish and install 1/2" CDX plywood roof sheathing
4. Furnish and install new Titanium UDL 25 plus synthetic roofing underlayment (customer's choice)
5. Furnish and install new 1" x 3" starter flashing at all eave edges (pre-painted baked on enamel coating)
6. Furnish and install Lifetime CertainTeed Landmark architectural composition shingles
7. Furnish and install new "W" valley flashings (pre-painted baked on enamel coating)
8. Furnish and install new RVO-38 roof vents to meet current building code (pre-painted baked on enamel coating)
9. Furnish and install new RCV-4 roof vents at all existing kitchen and bathroom vents (pre-painted baked on enamel coating)
10. Furnish and install new continuous vent at ridge (35 feet)
11. Furnish and install new drip-edge flashings at all gables/rake edges (pre-painted baked on enamel coating)
12. Furnish and install new 4" x 4" roof-to-wall flashings at lower edge of chimney
13. Furnish and install metal step-flashings at (2) sides of chimney
14. Furnish and install new pipe flashings at all plumbing pipe vents
15. Furnish and install new chimney counter-flashings (pre-painted baked on enamel)
16. Convert existing 3:12 roof area to composition roofing
17. Clean ground and haul away all debris (includes disposal fee)
18. Clean out gutters
19. Perform magnetic sweep of grounds

- LIFETIME LIMITED WARRANTY, MATERIALS
- LIFETIME LIMITED WARRANTY, WORKMANSHIP

All work to be completed in a substantial and workmanlike manner according to standard practices

For the sum of	\$24,221.00
Sales tax	\$2,300.99
Total	\$26,521.99

**** Any bad plywood to be replaced at an additional \$65.00 per sheet (installed) ****

Option:

Furnish and install new roof system on small 8x10 roof Add \$774.00 + tax to cost of contract

**Initial here for this option _____

Payments to be ZERO DOWN, balance due upon completion. Late payments shall be subject to an eighteen (18%) percent interest charge per annum. Payments made by check to Mike's Roofing, Inc. that are not honored by the bank will incur a returned check fee of \$25.00. In the event this contract is referred to an attorney or other person for collection or other advise or action, the customer shall reimburse Mike's Roofing, Inc. all costs and reasonable attorney's fees. By signing below, I/we hereby authorize the above-mentioned work to be performed at the cost listed above, and acknowledge receipt of "notice to customer".

VIII. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -



PROPOSAL & CONTRACT

Customer: 2011993
 Jennifer Gordon
 Public Works operations Manager
 City of Kenmore 425-3987-8900
jgordon@kenmorewa.gov

September 20th 2011

1. Landscape Protection
2. Furnish and install new continuous 5-K aluminum gutters and 2" x 3" downspouts
3. Clean grounds and haul away all debris (includes disposal fee)

All work to be completed in a substantial and workmanlike manner according to standard practices.

For the sum of	\$3,448.00
Sales tax	\$327.56
Total	\$3,775.56

OPTIONS:

Upgrade to Furnish and install new Rain Strain 30 mesh stainless steel gutter cover on new K-5 gutters
 = \$2,662.00 + tax

****Initial here for this option** _____

Payments to be ZERO DOWN, balance due upon completion. Late payments shall be subject to an eighteen (18%) percent interest charge per annum. Payments made by check to Mike's Roofing, Inc. that are not honored by the bank will incur a returned check fee of \$25.00. In the event this contract is referred to an attorney or other person for collection or other advise or action, the customer shall reimburse Mike's Roofing, Inc. all costs and reasonable attorney's fees. By signing below, I/we hereby authorize the above-mentioned work to be performed at the cost listed above, and acknowledge receipt of "notice to customer".

Respectfully submitted by,
 Rob Sutton, Project Manager

I/WE HEREBY AUTHORIZE MIKE'S ROOFING, INC. TO PERFORM THE ABOVE-MENTIONED WORK FOR THE SUM MENTIONED ABOVE.

X _____

PO Box 489, Duvall, WA 98019 * Phone 425-771-7534 / Fax 425-745-9617 * e-mail - info@mikesroofs.com
 LICENSED, BONDED & INSURED SINCE 1988
 Contractor's License # MIKESRI044BK

VIIIIE. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -



PROPOSAL SUBMITTED TO:

Kenmore City

August 31, 2011

Kenmore, WA

PH: (206) 375-0812

Fax:

Subject: Post Office and Sr. Ctr Bids

Attention: Jennifer Gordon

jgordon@kenmorewa.gov

Page 1 of 2

Post Office PVC roof:

MBRI has inspected the project area prior to preparing this proposal.
MBRI will remove the existing roof to the deck and dispose.
Insulation will be mechanically fastened to the deck and a .25" primed cover board will be adhered to the insulation.
The insulation will be tapered at .25" per foot and slope toward the scupper, and crickets will be added to direct the water to the scupper. The system R-value is 29.71, as calculated by a weighted average piece count.
A new clad scupper will be formed and installed so the membrane can be welded to it, and a new conductor will be fabricated and installed. The existing downspout will be re-used.
Carlisle 60 mil PVC will be adhered to the cover board and the roof will be flashed with Carlisle approved details.
New copings and sheet metal counter flashings will be installed and provided.
Carlisle will provide a 20 year system warranty and MBRI will provide a 2 year leak repair warranty.

Base Bid: \$11,069.00 + WSST

SR. Center R-roof:

Shingle Option: MBRI will remove the existing roof the deck and dispose. The deck will be covered with 1/2" plywood, exterior cdx, and clip the joints to prevent curling. The venting will be verified so there is at least one vent per every 600 Sq. Ft.. The shingle used is a 30 year laminate shingle, CertainTeed Presidential Tri Laminate.
The roof perimeter by section will receive a ice and water layer that is approximately 36' wide and then the base sheet will be installed. The base sheet is a Underlayment designed for shingle application.
A new shingle will be installed by applying 6 nails per shingle, with an appropriately adjusted nail gun.
New edge metal, roof vents, pipe flashings, gutters will be provided and installed.
The shingle option will probably take 2 weeks.

30 Year Landmark 3 tab

Base Bid: \$64,892.00 + WSST

Upgrade to a Trilaminate

Base Bid Alt 1: \$75,144.00 + WSST

Shake Option: MBRI will remove the existing roof to the deck and dispose. The existing skip sheathing will remain in place and used to secure the new cedar shakes.

New perimeter metal and rake edge metal will be installed.

Cedar shakes will be installed using 18" felt underlayment and lapped to match the exposure of the shake. In essence there will be 2 layers of felt applied, to the entire roof surface. The felt is the primary weather protection, the shake is for protecting the felt from the sun and anything that might penetrate the felt.

New ridge shakes, gutters, pipe flashings, and roof vents.

Premium 18" raw shake

Base Bid: \$90,654.00 + WSST

Premium 18" CCA treated

Base Bid: \$93,457.00 + WSST

Gutter Covers

\$1200.00 + WSST

Zinc Strips at 6 feet o.c. approx. 1560 L ft

\$10,140.00 + WSST

mbr@meyerbrothersroofing.com

Meyer Brothers Roofing, INC.
2301 Lincoln AVE, Tacoma, WA 98421

PH: (253) 596-5005
Fax (253) 596-5011

VIIIE. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -



PROPOSAL SUBMITTED TO:
Kenmore City

August 31, 2011

Kenmore, WA

PH: (206) 375-0812

Fax:

Subject: Post Office and Sr. Ctr Bids

Attention: Jennifer Gordon
jgordon@kenmorewa.gov

Page 2 of 2

Scope of Work:

Exclusions UNO (Unless Noted Otherwise):

- * Bonds, Permits, Taxes unless noted
- * Blocking and carpentry other than plywood
- * Substrate repair or demo unless noted
- * Premium time, drying labor, temp roof in base bid
- * HVAC, electrical, plumbing inc penetrations
- * Saw Cuts or Core Cuts : unless noted
- * Brick or Chimney repair
- * Asbestos Disposal or Removal
- * Excavation, Backfilling, scaffolding
- * Tree trimming costs or tree or shrub or plant protection
- * Penetrations other than VTS or RVO
- * All materials and assemblies unless noted
- * Price control for materials
- * Mold or Mildew insurance
- * Unrelated caulking or sealing
- * Protection or Cleaning of the interior UNO
- * Structural Repair or replacement. UNO
- * scaffolding or man lifts
- * Dumpster or dump truck or trash bin
- * Sheet metal flashings not in scope of bid
- * ground protection other than plywood

Expressed Terms and Conditions:

Estimator: Rich Meyer date prepared 083011

1. The roofing industry prices are very unstable. Suppliers have sent notices that raw material costs are fluctuating due crude oil price changes. MBRI can only guarantee prices for 30 days and reserves the right to adjust prices at the current with the time of installation.
2. MBRI does not provide any coverage or protection for the interior during the normal occurrence of the work performed unless it is part of the written contract.
3. Any change to the scope of the work, whether it is written, verbal, a field supervisors directive constitutes a change and may be billable. If a field directive is given by the customer, a representative of the customer or a field supervisor, and MBRI performs the work it shall be called a change order and will be billable as such.
4. MBRI reserves the right to bill 50% of the project amount 30 days prior to the start of the work
5. Acceptance of our proposal implies the acceptance of the scope of work, and the terms and conditions contained within. Accepting our

mbr@meyerbrothersroofing.com

Meyer Brothers Roofing, INC.
2301 Lincoln AVE, Tacoma, WA 98421

PH: (253) 596-5005
Fax (253) 596-5011

VIII. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -

**City of Kenmore
CONTRACT FOR SERVICES
Senior Center Roofing Replacement Project**

This Agreement is entered into by and between the City of Kenmore, Washington, a noncharter optional municipal code city referred to as "the City", and The Jorve Corporation, hereinafter referred to as "the Contractor", whose principal office is located at 3211 Martin Luther King Jr. Way South, Seattle, Washington, 98144.

WHEREAS, the City has determined the need to have certain services performed for its citizens but does not have the manpower or expertise to perform such services, and

WHEREAS, the City desires to have the Contractor perform such services pursuant to certain terms and conditions, now, therefore,

IN CONSIDERATION OF the mutual benefits and conditions hereinafter contained, the parties hereto agree as follows:

1. Scope and Schedule of Services to be Performed by Contractor. The Contractor shall perform those services described on Exhibit A attached hereto and incorporated herein by this reference as if fully set forth. In performing such services, the Contractor shall at all times comply with all Federal, State, and local statutes, rules and ordinances applicable to the performance of such services and the handling of any funds used in connection therewith. The Contractor shall request and obtain prior written approval from the City if the scope or schedule is to be modified in any way.
2. Compensation and Method of Payment. The City shall pay the Contractor for services rendered according to the rate and method set forth on Exhibit A attached hereto and incorporated herein by this reference. The total amount to be paid shall not exceed \$32,058.32.
3. Contractor Budget. The Contractor shall apply the funds received under this Agreement within the maximum limits set forth in this Agreement. The Contractor shall request prior approval from the City whenever the Contractor desires to amend its budget in any way.
4. Duration of Agreement. This Agreement shall be in full force and effect for a period commencing September 26, 2011 and ending, December 31, 2011 unless sooner terminated under the provisions hereinafter specified.
5. Independent Contractor. Contractor and City agree that Contractor is an independent contractor with respect to the services provided pursuant to this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither Contractor nor any employee of Contractor shall be entitled to any benefits accorded City employees by virtue of the services provided under this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or

contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Contractor, or any employee of the Contractor.

6. Indemnification. The Contractor shall indemnify, defend and hold harmless the City, its agents and employees, from and against any and all liability arising from injury or death to persons or damage to property resulting in whole or in part from acts or omissions of the Contractor, its agents, servants, officers or employees, irrespective of whether in connection with such act or omission it is alleged or claimed that an act of the City, or its agents or employees caused or contributed thereto. In the event that the City shall elect to defend itself against any claim or suit arising from such injury, death or damage, the Contractor shall, in addition to indemnifying and holding the City harmless from any liability, indemnify the City for any and all expense incurred by the City in defending such claim or suit, including attorneys' fees.

7. Insurance.

A. The Contractor shall procure and maintain in full force throughout the duration of the Agreement comprehensive general liability insurance with a minimum coverage of \$500,000.00 per occurrence/aggregate for personal injury and property damage. Said policy shall name the City of Kenmore as an additional named insured and shall include a provision prohibiting cancellation or reduction in the amount of said policy except upon thirty (30) days prior written notice to the City. Cancellation of the required insurance shall automatically result in termination of this Agreement.

B. Certificates of coverage as required by paragraph A above shall be delivered to the City within fifteen (15) days of execution of this Agreement.

8. Record Keeping and Reporting.

A. The Contractor shall maintain accounts and records, including personnel, property, financial and programmatic records which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed in the performance of this Agreement and other such records as may be deemed necessary by the City to ensure the performance of this Agreement.

B. These records shall be maintained for a period of seven (7) years after termination hereof unless permission to destroy them is granted by the office of the archivist in accordance with RCW Chapter 40.14 and by the City.

9. Audits and Inspections. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review or audit by law during the performance of this Agreement.

10. Termination. This Agreement may at any time be terminated by the City giving to the Contractor thirty (30) days written notice of the City's intention to terminate the same. Failure to provide products on schedule may result in contract termination. If the Contractor's insurance coverage is canceled for any reason, the City shall have the right to terminate this Agreement.

11. Discrimination Prohibited. The Contractor shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Contractor to be provided under this Agreement on the basis of race, color, religion, creed, sex, age, national origin, marital status or presence of any sensory, mental or physical handicap.

12. Assignment and Subcontract. The Contractor shall not assign or subcontract any portion of the services contemplated by this Agreement without the written consent of the City.

13. Entire Agreement. This Agreement contains the entire Agreement between the parties hereto and no other Agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or bind any of the parties hereto. Either party may request changes in the agreement. Proposed changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

14. Notices. Notices to the City of Kenmore shall be send to the following address:

City Clerk
City of Kenmore
P.O. Box 82607
Kenmore, Washington 98028-0607

Notices to the Contractor shall be sent to the address provided by the Contractor upon the signature line below.

15. Applicable Law; Venue; Attorney's Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration, or other proceeding instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be properly laid in King County, Washington. The prevailing party in any such action shall be entitled to its attorney's fees and costs of suit.

DATED this 26th day of September, 2011.

CITY OF KENMORE:

CONTRACTOR:

BY: _____
Frederick C. Stouder
Title: City Manager

BY: _____
Title: _____

Attest/Authenticated:

Lynn Suskin, City Clerk

Address: The Jorve Corporation
3211 Martin Luther King Jr. Way S.
Seattle, Washington 98144



DATE: 6/9/2011
PAGE: 1 OF 8

CITY OF KENMORE -- SENIOR CITIZEN CENTER
6910 NE 170TH ST NE
KENMORE WA 98028

ATTN. JENNIFER GORDON

THE JORVE CORPORATION proposes to furnish all materials and perform all labor necessary to complete the following: Reroof Senior Citizen Center.

INSURANCE: All work in the following proposal is covered by Workmen's Compensation, Public Liability, Property Damage, Products Liability and Completed Operations Insurance.

PERMITS/PLANS/INSPECTIONS: Jorve will procure any required permits for the specifications outlined in this proposal and perform any required inspections or walk thru(s). However, the permit fees, any required architectural drawings/plans, or any required changes in the scope of work brought about by the building department, are not included in this proposal and will need to be executed and settled prior to the commencement of the project. Jorve Design Services is available for all feasibility, design, planning, drawing(s) and permit application. Rates: **Initial feasibility consultation/Review:** \$250.00 for the first 2 hours, \$80.00 an hour thereafter, plus total mileage @ .60 Cents per mile. **Plans, Permits, Procurement, and Inspection/Walk Thru:** \$80.00 an hour, plus mileage @ .60 Cents per mile, plus all fees charged by your local building dept. Note: All rates are plus tax.

Jorve Design: _____ Homeowner Design: _____

LEAD-SAFE WORK PRACTICES: The Environmental Protection Agency (EPA) defines lead-based paint activities as the "inspection, risk assessment, or abatement of lead in target housing". Target housing includes residential housing and any child-occupied facilities built prior to 1978. If the proposed Jorve project on your structure meets the requirements and criteria outlined by the EPA for lead containment or abatement, Jorve (An EPA certified organization) will follow the federally mandated lead management procedures provided by the EPA. All of these procedures will be billed as per the Time and Material agreement contained herein.

CONTRACTOR'S PERFORMANCE WARRANTY: The Jorve Corporation warrants all workmanship from the date of installation for as long as you own your home; see sample warranty for details.

SYSTEM-PLUS WARRANTY (GAF): All GAF projects include an exclusive non-prorated warranty on manufacturer's defects called the System-Plus Warranty. In the case of a manufacturer's defect, the transferable warranty covers full replacement cost, both labor and materials (not dump fees), for up to 20 years. All required paperwork and documentation will be procured and filed, on your behalf, by Jorve. See sample warranty for details.

NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN SEVEN DAYS OF THE ABOVE DATE.

ACCEPTED BY: _____
DATE: _____

RESPECTFULLY SUBMITTED BY: _____
BRAD LAMBE (206) 372-9021



DATE: 6/9/2011
 PAGE: 2 OF 8

CITY OF KENMORE – SENIOR CITIZEN CENTER
 6910 NE 170TH ST NE
 KENMORE WA 98028

ATTN. JENNIFER GORDON

SETUP: Jorve has your approval to access driveway for delivery of materials and staging of container and/or dumpster. If homeowner chooses not to assume liability for the consequences of having equipment access the property, there may be additional costs as outlined in Time and Materials. Proposal assumes access to power for the duration of the project. If sufficient power is not available, Jorve will rent a generator under the terms of Time & Materials. During any construction process some damage may occur to the surrounding plants or shrubbery. Jorve will take every precaution to protect the yard's plantings; however their replacement is not included in this proposal.

PREPARATION (ROOF REMOVAL): Jorve will remove (1) layer(s) of existing roofing material and haul all waste to the dump.

TIME AND MATERIALS (Structural Inspection): Any additional work not outlined in this proposal will be billed on a time plus materials basis (\$76.00 per man hour plus tax – includes drive time). Additional work to install the roof correctly, or to remedy any structural inadequacies, may include: Dry rot, delaminated plywood, broken skip sheathing, rotted fascia boards and rafters, damaged siding, sheetrock, stucco, masonry or plaster as a result of the roofing process, or asbestos abatement. Damage is not limited to these items. Fixed Costs (remove & replace): 1" x 4" skip sheathing – \$1.80 per linear foot, 1" x 4" beaded soffit – \$2.75 per linear foot. Jorve has your approval to replace or repair any damage found.

SHEETING: Jorve will sheet over existing skip sheathing with 1/2" exterior grade plywood to create a smooth surface for installation of shingles.

ICE & WATER: Jorve will install a leak barrier at all pipe, vent, valley, chimney and low sloped locations. This exceptional leak protection material is a rubberized, fiberglass reinforced membrane that ensures long-lasting and water tight seals in critical locations of your roof system.

VAPOR RETARDER: Vapor retarders are one of the key components contained within a true roof system. They resist the diffusion of moisture through a roof assembly by directing moisture away from the building's structure and onward to a drainage location or ventilation system; Moisture from air-transported water vapor within the attic is one of the main causes of condensation, mold and structural damage. **FelTex™** is a very effective vapor retarder on sloped roof applications. It is a high-strength, wrinkle-free, rip-stop, lightweight woven polypropylene fabric that is 20x stronger than Type 30 asphalt saturated felt. FelTex™ is 100% inorganic so it won't rot or promote mold growth and FelTex™ comes with a 30 year warranty when it is installed to mfg. specifications. Jorve will install FelTex™ to the

NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN SEVEN DAYS OF THE ABOVE DATE.

ACCEPTED BY: _____
 DATE: _____

RESPECTFULLY SUBMITTED BY: _____
 BRAD LAMBE (206) 372-9021



DATE: 6/9/2011
PAGE: 3 OF 8

CITY OF KENMORE – SENIOR CITIZEN CENTER
6910 NE 170TH ST NE
KENMORE WA 98028

ATTN. JENNIFER GORDON

manufacturer's specifications with corrosive-resistant electro-galvanized roofing nails (Minimum head diameter of 3/8").

DRIP EDGE FLASHING: Flashings at all edges lets water drip off roof without affecting underlying construction. Jorve will install 26 gauge steel with a baked-on enamel finish along all **eave and rake edges**.

SIDEWALL/ENDWALL FLASHING: When a roof abuts a vertical wall the best method to protect the wall is to apply metal flashing over the end of each course or on top of a juncture/wall. Jorve will replace roof to wall flashings with 26 gauge steel with a baked-on enamel finish. Note: Damage to siding is possible (See Time and Materials).

SKYLIGHT FLASHINGS: All flashings on skylight will be replaced with 26 gauge steel. **Prior to replacement, a modified asphalt leak barrier will be installed to the entire perimeter of the skylight curb.** Work includes removal of unit, install custom mfg. apron at low point, step flashings per NRCA to sides, and custom mfg. soldered back pan to wrap outside corners of skylight curb. Work includes sealing curb with new insulated skylight tape and (re)install skylight.

VENT PIPE FLASHING: Jorve will replace existing plumbing vent pipe flashing with **new lead flashings complete with lead "Rain Caps"**. Lead flashing ensures a watertight installation and will last through the life of the roof. **All plumbing vents will be painted to match roofing material as close as possible.**

CHIMNEY FLASHING: Chimney flashing is as important as the roofing material itself. It protects the underlying wood around the perimeter edge of the chimney. Jorve will flash chimney complete with 24 gauge steel. Work includes: Remove existing flashings, cut in continuous flashing kerf, install endwall and sidewall flashings, install 24 gauge **counterflashings** around entire perimeter of chimney and seal flashings in place with high-grade masonry caulk. Note: Masonry needs work. It's repair is not a part of this proposal.

VALLEY FLASHING: The valley is exposed to maximum water erosion and foot traffic damage. For extra protection, a double lining system is recommended. Jorve will install 36" wide mineral surfaced roll roofing centered in the valley, shingles are to be installed overlapping the valley lining on lower section of roof; upper section to be cut open at center of valley with exposed tabs caulked securely into valley system.

NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN SEVEN DAYS OF THE ABOVE DATE.

ACCEPTED BY: _____

RESPECTFULLY SUBMITTED BY: _____

DATE: _____

BRAD LAMBE (206) 372-9021

The Jorve Corporation JORVEC 136CS 3211 Martin Luther King Jr Way S Seattle, WA 98144 Phone: (206) 933-8275 Fax: (206) 933-8622



DATE: 6/9/2011
PAGE: 4 OF 8

CITY OF KENMORE – SENIOR CITIZEN CENTER
6910 NE 170TH ST NE
KENMORE WA 98028

ATTN. JENNIFER GORDON

STARTER SHINGLES: Starter shingles are the first row of shingles to be installed. They are also the most important, because each time it rains the starter shingles handle more water than any other shingle. We use asphalt starter shingles cut from the same material that is covering your entire house. They will be applied so that the seal strip is at the perimeter edge.

NAILS: Nails used to apply asphalt shingles to wood plank or plywood roof decks will be 11-12 gauge roofing nails having large heads (at least 3/8" diameter) and shanks 7/8-1" long. When recovering, Jorve will use fasteners long enough to penetrate the roof sheathing and or at least 3/4" into wood planks. **Nails will be applied 6 to a shingle** per the manufacturer's recommendations.

SLOPED ROOF VENTILATION: To prevent super heating of trapped air during the summer and harmful condensation during the winter, air must circulate freely under the roof deck. Jorve will install (108') of **ridge vent** for added ventilation.

RIDGE CAPS: At Jorve we install **high profile**, fiberglass/asphalt ridge caps that we cut to fit on the roof. This ensures a uniform watertight fit.

WALL VENTILATION: Jorve will install (10') of wall venting at all horizontal roof-to-wall locations for additional ventilation.

LOW END VENTING: Jorve will install 4" x 16" louvered vents under the eaves for additional attic ventilation.

FLAPPER VENTS: In order for moisture from bath and/or kitchen vents to escape, Jorve will install (2) 4" flapper vent(s).

NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN SEVEN DAYS OF THE ABOVE DATE.

ACCEPTED BY: _____
DATE: _____

RESPECTFULLY SUBMITTED BY: _____
BRAD LAMBE (206) 372-9021

The Jorve Corporation · JORVEC 136CS · 3211 Martin Luther King Jr Way S · Seattle, WA 98144 Phone: (206) 933-8275 Fax: (206) 933-8622

VIII. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -



DATE: 6/9/2011
PAGE: 5 OF 8

CITY OF KENMORE – SENIOR CITIZEN CENTER
6910 NE 170TH ST NE
KENMORE WA 98028

ATTN. JENNIFER GORDON

MATERIALS: Supply and install roofing material according to manufacturer's specifications for the shingle and warranty selected.

GAF TIMBERLINE HD SHINGLES	GAF TIMBERLINE ULTRA HD SHINGLES
Built for aesthetics	Built for performance
Seal tab	Seal Tab
Wind resistant	Wind Resistant
Heavy duty fiberglass	Heavy duty fiberglass
Class A rating	Class A fire rating
Heavy weight	Hide ability
Double coverage	Double coverage
Laminated no-slot	Laminated no-slots

CLEAN UP: At Jorve the cleanup is important. With the exception of any debris in the attic, we clean up all debris; we haul all waste to dump and magnet the yard for any nails or metal. Your home will be left in a broom-clean condition.

OPTION-GUTTERS: For an additional investment, Jorve will take off existing gutters and downspouts and will supply and install seamless K-line aluminum gutters and downspouts with a baked-on enamel finish.

COLOR: _____

OPTION-VERSAGUARD GUTTER PROTECTION SYSTEM: For an additional investment, Jorve will supply and install of Versaguard to protect the gutters from leaf and needle debris.

COLOR: _____

NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN SEVEN DAYS OF THE ABOVE DATE.

ACCEPTED BY: _____
DATE: _____

RESPECTFULLY SUBMITTED BY: _____
BRAD LAMBE (206) 372-9021

The Jorve Corporation · JORVEC 136CS 3211 Martin Luther King Jr Way S · Seattle, WA 98144 Phone: (206) 933-8275 Fax: (206) 933-8622

VIII. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -

EXHIBIT A



DATE: 6/9/2011
PAGE: 6 OF 8

CITY OF KENMORE – SENIOR CITIZEN CENTER
6910 NE 170TH ST NE
KENMORE WA 98028

ATTN. JENNIFER GORDON

INVESTMENT:

CASH

GAF TIMBERLINE HD SHINGLES: \$23,427.00 plus tax
GAF TIMBERLINE ULTRA HD SHINGLES: \$25,766.00 plus tax

OPTION-GUTTER/DOWNSPOUT REPLACEMENT: \$3,505.00 plus tax
OPTION-VERSAGUARD GUTTER SCREENS: \$2,345.00 plus tax

TOTAL: \$ plus tax

MFG: _____ **COLOR:** _____

TERMS: CASH*/CREDIT CARD

10% due upon acceptance.
40% due upon delivery of materials.
Balance due upon completion. *

*Acceptance 10% is to be paid on the day of agreement. Materials 40% is paid to Jorve supervisor or foreman on the first day of the project. Balance is paid to foreman upon completion of the project. Items that will be billed and/or paid separately include: Any non-roofing trades, gutters, skylights and Time & Materials. The Customer may cancel this contract with Jorve by written notice at any time prior to midnight of the fifth business day after the date of acceptance and agreement. With rescission under these terms, the customer will be entitled to a refund of the deposit. If the contract is cancelled at any other time, or if the owner does not allow work to begin within six months of the date of this agreement (unless otherwise specified in writing), customer will forfeit the deposit paid to Jorve. If any collection and/or legal action is required to enforce any provision of this contract, the prevailing party shall be entitled to the recovery of all its costs and attorney's fees incurred in such actions. Interest at 12% is applied on past due accounts. Any necessary permits that may be required for the project are not included in this proposal.

Your Scheduling, Production (with photos), Billing, Ongoing Maintenance Communications and Jorve News can be delivered via email. Would you like to receive these communications?

Yes _____ No _____

EMAIL: _____

NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN SEVEN DAYS OF THE ABOVE DATE.

ACCEPTED BY: _____
DATE: _____

RESPECTFULLY SUBMITTED BY: _____
BRAD LAMBE (206) 372-9021

The Jorve Corporation JORVEC 136CS 3211 Martin Luther King Jr Way S Seattle, WA 98144 Phone: (206) 933-8275 Fax: (206) 933-8622

VIII. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -



DATE: 6/9/2011
PAGE: 7 OF 8

CITY OF KENMORE – SENIOR CITIZEN CENTER
6910 NE 170TH ST NE
KENMORE WA 98028

ATTN. JENNIFER GORDON

**Department of Labor and Industries Construction Compliance
DISCLOSURE STATEMENT - NOTICE TO CUSTOMER**

This contractor is registered with the state of Washington, registration no. JORVEC*136CS, and has posted with the state a bond or deposit of 12,000 for the purpose of satisfying claims against the contractor for breach of contract including negligent or improper work in the conduct of the contractor's business. The expiration date of the contractor's registration is May 1, 2011.

THIS BOND OR DEPOSIT MIGHT NOT BE SUFFICIENT TO COVER A CLAIM THAT MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.

This bond or deposit is not for your exclusive use because it covers all work performed by this contractor. The bond or deposit is intended to pay valid claims up to 12,000 that you and other customers, suppliers, subcontractors, or taxing authorities may have.

FOR GREATER PROTECTION YOU MAY WITHHOLD A PERCENTAGE OF YOUR CONTRACT.

You may withhold a contractually defined percentage of your construction contract as retainage for a stated period of time to provide protection to you and help insure that your project will be completed as required by your contract.

YOUR PROPERTY MAY BE LIENED.

If a supplier of materials used in your construction project or an employee or subcontractor of your contractor or subcontractors is not paid, your property may be liened to force payment and you could pay twice for the same work.

FOR ADDITIONAL PROTECTION YOU MAY REQUEST THE CONTRACTOR TO PROVIDE YOU WITH THE ORIGINAL "LIEN RELEASE" DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR AT YOUR PROJECT.

The contractor is required to provide you with further information about lien release document if you request it. General information is also available from the state Department of Labor and Industries.

I have received a copy of this disclosure statement.

Dated this _____ day of _____ of the year _____.

NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN SEVEN DAYS OF THE ABOVE DATE.

ACCEPTED BY: _____

DATE: _____

RESPECTFULLY SUBMITTED BY: _____

BRAD LAMBE (206) 372-9021

The Jorve Corporation • JORVEC • 136CS • 3211 Martin Luther King Jr Way S • Seattle, WA 98144 • Phone: (206) 933-8275 • Fax: (206) 933-8622

VIII. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -

EXHIBIT A



DATE: 6/9/2011
PAGE: 8 OF 8

CITY OF KENMORE – SENIOR CITIZEN CENTER
6910 NE 170TH ST NE
KENMORE WA 98028
ATTN. JENNIFER GORDON

APPLICANT'S SIGNATURE	DATE	CO-APPLICANT'S SIGNATURE	DATE
CREDIT CARD			
CARDHOLDER NAME:		BILLING ADDRESS OF CARD:	
VISA OR MASTERCARD NUMBER:		EXPIRATION DATE:	LAST THREE DIGITS ON BACK OF CARD:
TRANSACTION AMOUNT:		CARDHOLDERS SIGNATURE:	
☐ PLEASE EMAIL MY SECURED RECEIPT ("USA EPAY" WILL EMAIL YOUR RECEIPT)			

NOTE: THIS PROPOSAL MAY BE WITHDRAWN BY US IF NOT ACCEPTED WITHIN SEVEN DAYS OF THE ABOVE DATE.

ACCEPTED BY: _____
DATE: _____

RESPECTFULLY SUBMITTED BY: _____
BRAD LAMBE (206) 372-9021

The Jorve Corporation JORVEC 136CS 3211 Martin Luther King Jr Way S Seattle, WA 98144 Phone: (206) 933-8275 Fax: (206) 933-8622

VIIIIE. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -

EXHIBIT C

City of Kenmore
Billing Invoice

To: City of Kenmore
Attn: _____
PO Box 82607
Kenmore, Washington 98028
Phone: (425) 398-8900
Fax: (425) 481-3236

Invoice Number: _____ Date of Invoice: _____

Consultant: _____

Mailing Address: _____

Telephone: () _____

Contract Period: _____ Reporting Period: _____

Amount requested this invoice: \$ _____

Attach itemized description of services provided.

Specific Program: _____

Authorized signature

For Department Use Only

BUDGET SUMMARY

Total contract amount	\$ _____
Previous payments	\$ _____
Current request	\$ _____
Balance remaining	\$ _____

Approved for Payment by: _____ Date: _____

i:\forms\contract templates\draft contract exhibit c - billing invoice 02 03 2011.docx

VIII.E. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -

EXHIBIT D

CITY OF KENMORE
P.O. Box 82607
Kenmore, WA 98028
Phone: (425) 398-8900
Fax: (425) 481-3236

TAX IDENTIFICATION NUMBER

In order for you to receive payment from the City of Kenmore, the must have either a Tax Identification Number or a Social Security Number. The Internal Revenue Service Code requires a Form 1099 for payments to every person or organization other than a corporation for services performed in the course of trade or business. Further, the law requires the City to withhold 20% on reportable amounts paid to unincorporated persons who have not supplied us with their correct Tax Identification Number or Social Security Number.

Please complete the following information request form and return it to the City of Kenmore prior to or along with the submittal of the first billing invoice.

Please check the appropriate category:

☐ Corporation ☐ Partnership ☐ Government Consultant
☐ Individual/Proprietor ☐ Other (explain)

TIN No.: _____

Social Security No.: _____

Print Name: _____

Title: _____

Business Name: _____

Business Address: _____

Business Phone: _____

Date

Authorized Signature (Required)

i:\forms\contract templates\draft contract exhibit d - tax identification 02 03 2011.docx

VIII. Authorize City Manager to Execute Contract No. 11-C964 with the Jorve Corporation in the Amount of \$32,058.32 for the Roofing and Gutter Replacement Project at the Senior Center -

CITY OF KENMORE, WASHINGTON			
AGENDA BILL SUMMARY			
AGENDA TITLE			MEETING DATE
Authorize the City Manager to execute an interlocal agreement with the Washington State Department of Transportation for the construction of the 61st Ave NE and NE 181st Street Traffic Signal in the amount of \$650,000			September 26, 2011
DEPARTMENT	DIRECTOR	CONTACT PERSON	PHONE
Engineering	Ron Loewen	Ron Loewen	425 398 8900
COST OF PROPOSAL: <u>Staff Cost</u> Preparing Agenda Bill 2 hours Grant preparation and administration 80 hours <u>WSDOT Reimbursable Costs</u> Providing a CA Engineer \$ 5,000 Construction Costs Complying with Federal Specifications \$15,000 Total \$20,000		ACCOUNT NUMBER: 09 00 7097 – 61 st Ave/NE 181 st Signal	
AMOUNT BUDGETED: <u>Construction Budget:</u> \$1,501,000 <u>Overall Project Budget:</u> Project Budget: \$2,771,900 Expended Budget as of July 22: \$ 131,354 Obligated ¹ Budget as of July 31: \$ 226,815 Remaining Budget ² as of July 31: \$2,435,085 Estimated Remaining Expenditures \$1,639,385 (Over) / Under Budget: \$ 795,700 ¹ Obligated includes funds spent and obligated through signed agreements. ² Remaining Budget is the total budget less the obligated amount.		NAME AND FUND #: Arterial Street Fund No. 09	
ATTACHMENT(S) TO AGENDA PACKET ITEM: • Local Agency Agreement • Kenmore's 2011-13 Transportation Budget Request for the 61st Ave NE & NE 181st Street signal project. • WSDOT letter dated May 16, 2011 informing the City of project selection for funding. • September 12, 2011 Agenda Bill • June 27, 2011 Agenda Bill			

S:\0159 61st Ave NE and NE 181st St Traffic Signal\WSDOT\AgendaBill - WSDOT Local Agency Agreement.doc

XA. Authorize the City Manager to Execute a Local Agency Agreement No. 11-C962 for the 61st Avenue NE and NE 181st Traffic Signal Construction Funding with the Washington Department of

SUMMARY STATEMENT:

As part of the City's efforts to secure funding for the SR 522 Corridor projects the State Legislature was approached regarding a smaller improvement that would both begin corridor improvements and ease the burden of SR 520 tolling on the citizens of Kenmore. A grant proposal was made for \$650,000 to assist with the construction funding of the 61st Avenue NE and NE 181st Street Traffic Signal. The City was successful and received a \$650,000 federal funding grant from the States 2011-13 Transportation Budget. These funds are available at 100 percent and require no local match. In order for the City to receive these funds and the State to obligate them the City must enter into a Local Agency Agreement and agree to adhere to the "Local Agency Guidelines".

CONSISTENT WITH OR COMPARISON TO PAST COUNCIL POLICIES, ORDINANCES, DIRECTION:

Council action on June 27, 2011, discussion of 61st Avenue NE and NE 181st Street Signal Improvement Project scope of work and right-of-way requirements.

City Council action on September 27, 2010 selecting an alternative authorizing the design and right of way acquisition for the 61st Avenue and NE 181st signal project.

RECOMMENDED CITY COUNCIL ACTION/SUGGESTED MOTION:

Authorize the City Manager to execute an interlocal agreement with the Washington State Department of Transportation for the construction of the 61st Ave NE and NE 181st Street Traffic Signal in the amount of \$650,000

**REVIEWED BY FINANCE
DIRECTOR:****REVIEWED BY CITY
ATTORNEY:****APPROVED BY CITY MANAGER:****TODAY'S DATE:**

9.15.2011

REVISION DATE(S):**FILE NAME & PATH (HYPERLINK):**

S:\0159 61st Ave NE and NE 181st St Traffic
Signal\WSDOT\AgendaBill - WSDOT Local
Agency Agreement.doc

S:\0159 61st Ave NE and NE 181st St Traffic Signal\WSDOT\AgendaBill - WSDOT Local Agency Agreement.doc

XA. Authorize the City Manager to Execute a Local Agency Agreement No. 11-C962 for the 61st Avenue NE and NE 181st Traffic Signal Construction Funding with the Washington Department of



Washington State
Department of Transportation

Local Agency Agreement

Agency City of Kenmore
Address 18120 68th Avenue NE
P.O. Box 82607
Kenmore, WA 98028

CFDA No. **20.205**

(Catalog of Federal Domestic Assistance)

Project No. _____

Agreement No. _____

For OSC WSDOT Use Only

The Local Agency having complied, or hereby agreeing to comply, with the terms and conditions set forth in (1) Title 23, U.S. Code Highways, (2) the regulations issued pursuant thereto, (3) Office of Management and Budget Circulars A-102, A-87 and A-133, (4) the policies and procedures promulgated by the Washington State Department of Transportation, and (5) the federal aid project agreement entered into between the State and Federal Government, relative to the above project, the Washington State Department of Transportation will authorize the Local Agency to proceed on the project by a separate notification. Federal funds which are to be obligated for the project may not exceed the amount shown herein on line r, column 3, without written authority by the State, subject to the approval of the Federal Highway Administration. All project costs not reimbursed by the Federal Government shall be the responsibility of the Local Agency.

Project Description

Name 61st Avenue NE & NE 181st Street Traffic Signal Project Length 0.09 miles

Termini 61st Avenue NE from 200 feet south of NE 181st Street to 300 feet north of NE 181st Street

Description of Work

Installation of a traffic signal at the intersection and the widening of 61st Avenue NE approaches to facilitate opposing left-turn lanes. Work will also include sidewalk and illumination improvements for pedestrians and upgraded drainage improvements. The right-of-way will be acquired by Agency forces and the project is expected to go out for bid in January 2012

Type of Work		Estimate of Funding		
		(1) Estimated Total Project Funds	(2) Estimated Agency Funds	(3) Estimated Federal Funds
PE _____% Federal Aid Participation Ratio for PE	a. Agency			
	b. Other			
	c. Other			
	d. State			
	e. Total PE Cost Estimate (a+b+c+d)			
Right of Way _____% Federal Aid Participation Ratio for RW	f. Agency			
	g. Other			
	h. Other			
	i. State			
	j. Total R/W Cost Estimate (f+g+h+i)			
Construction 100 % Federal Aid Participation Ratio for CN	k. Contract	1,005,563.00	355,563.00	650,000.00
	l. Other Construction Management	177,041.00	177,041.00	
	m. Other Utility Undergrounding	300,000.00	300,000.00	
	n. Other Public Art	9,288.00	9,288.00	
	o. Agency			
	p. State	10,000.00	10,000.00	
	q. Total CN Cost Estimate (k+l+m+n+o+p)	1,501,892.00	851,892.00	650,000.00
	r. Total Project Cost Estimate (e+j+q)	1,501,892.00	851,892.00	650,000.00

Agency Official

By _____

Title Frederick Stouder, City Manager

Washington State Department of Transportation

By _____

Director of Highways and Local Programs

Date Executed _____

XA. Authorize the City Manager to Execute a Local Agency Agreement No. 11-C962 for the 61st Avenue NE and NE 181st Traffic Signal Construction Funding with the Washington Department of

Construction Method of Financing (Check Method Selected)

State Ad and Award

- ☐ Method A - Advance Payment - Agency Share of total construction cost (based on contract award)
- ☐ Method B - Withhold from gas tax the Agency's share of total construction cost (line 4, column 2) in the amount of \$ _____ at \$ _____ per month for _____ months.

Local Force or Local Ad and Award

- ☒ Method C - Agency cost incurred with partial reimbursement

The Local Agency further stipulates that pursuant to said Title 23, regulations and policies and procedures, and as a condition to payment of the federal funds obligated, it accepts and will comply with the applicable provisions set forth below. Adopted by official action on

_____, _____, Resolution/Ordinance No. _____

Provisions

I. Scope of Work

The Agency shall provide all the work, labor, materials, and services necessary to perform the project which is described and set forth in detail in the "Project Description" and "Type of Work."

When the State acts for and on behalf of the Agency, the State shall be deemed an agent of the Agency and shall perform the services described and indicated in "Type of Work" on the face of this agreement, in accordance with plans and specifications as proposed by the Agency and approved by the State and the Federal Highway Administration.

When the State acts for the Agency but is not subject to the right of control by the Agency, the State shall have the right to perform the work subject to the ordinary procedures of the State and Federal Highway Administration.

II. Delegation of Authority

The State is willing to fulfill the responsibilities to the Federal Government by the administration of this project. The Agency agrees that the State shall have the full authority to carry out this administration. The State shall review, process, and approve documents required for federal aid reimbursement in accordance with federal requirements. If the State advertises and awards the contract, the State will further act for the Agency in all matters concerning the project as requested by the Agency. If the Local Agency advertises and awards the project, the State shall review the work to ensure conformity with the approved plans and specifications.

III. Project Administration

Certain types of work and services shall be provided by the State on this project as requested by the Agency and described in the Type of Work above. In addition, the State will furnish qualified personnel for the supervision and inspection of the work in progress. On Local Agency advertised and awarded projects, the supervision and inspection shall be limited to ensuring all work is in conformance with approved plans, specifications, and federal aid requirements. The salary of such engineer or other supervisor and all other salaries and costs incurred by State forces upon the project will be considered a cost thereof. All costs related to this project incurred by employees of the State in the customary manner on highway payrolls and vouchers shall be charged as costs of the project.

IV. Availability of Records

All project records in support of all costs incurred and actual expenditures kept by the Agency are to be maintained in accordance with local government accounting procedures prescribed by the Washington State Auditor's Office, the U.S. Department of Transportation, and the Washington State Department of Transportation. The records shall be open to inspection by the State and Federal Government at all reasonable times and shall be retained and made available for such inspection for a period of not less than three years from the final payment of any federal aid funds to the Agency. Copies of said records shall be furnished to the State and/or Federal Government upon request.

V. Compliance with Provisions

The Agency shall not incur any federal aid participation costs on any classification of work on this project until authorized in writing by the State for each classification. The classifications of work for projects are:

1. Preliminary engineering.
2. Right of way acquisition.
3. Project construction.

In the event that right of way acquisition, or actual construction of the road, for which preliminary engineering is undertaken is not started by the closing of the tenth fiscal year following the fiscal year in which the agreement is executed, the Agency will repay to the State the sum or sums of federal funds paid to the Agency under the terms of this agreement (see Section IX).

The Agency agrees that all stages of construction necessary to provide the initially planned complete facility within the limits of this project will conform to at least the minimum values set by approved statewide design standards applicable to this class of highways, even though such additional work is financed without federal aid participation.

The Agency agrees that on federal aid highway construction projects, the current federal aid regulations which apply to liquidated damages relative to the basis of federal participation in the project cost shall be applicable in the event the contractor fails to complete the contract within the contract time.

VI. Payment and Partial Reimbursement

The total cost of the project, including all review and engineering costs and other expenses of the State, is to be paid by the Agency and by the Federal Government. Federal funding shall be in accordance with the Federal Transportation Act, as amended, and Office of Management and Budget circulars A-102, A-87 and A-133. The State shall not be ultimately responsible for any of the costs of the project. The Agency shall be ultimately responsible for all costs associated with the project which are not reimbursed by the Federal Government. Nothing in this agreement shall be construed as a promise by the State as to the amount or nature of federal participation in this project.

The Agency shall bill the state for federal aid project costs incurred in conformity with applicable federal and state laws. The agency shall minimize the time elapsed between receipt of federal aid funds and subsequent payment of incurred costs. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for federal participation unless a current indirect cost plan has been prepared in accordance with the regulations outlined in the federal Office of Management & Budget (OMB) circular A-87, and retained for audit.

The State will pay for State incurred costs on the project. Following payment, the State shall bill the Federal Government for reimbursement of those costs eligible for federal participation to the extent that such costs are attributable and properly allocable to this project. The State shall bill the Agency for that portion of State costs which were not reimbursed by the Federal Government (see Section IX).

1. Project Construction Costs

Project construction financing will be accomplished by one of the three methods as indicated in this agreement.

Method A – The Agency will place with the State, within (20) days after the execution of the construction contract, an advance in the amount of the Agency's share of the total construction cost based on the contract award. The State will notify the Agency of the exact amount to be deposited with the State. The State will pay all costs incurred under the contract upon presentation of progress billings from the contractor. Following such payments, the State will submit a billing to the Federal Government for the federal aid participation share of the cost. When the project is substantially completed and final actual costs of the project can be determined, the State will present the Agency with a final billing showing the amount due the State or the amount due the Agency. This billing will be cleared by either a payment from the Agency to the State or by a refund from the State to the Agency.

Method B – The Agency's share of the total construction cost as shown on the face of this agreement shall be withheld from its monthly fuel tax allotments. The face of this agreement establishes the months in which the withholding shall take place and the exact amount to be withheld each month. The extent of withholding will be confirmed by letter from the State at the time of contract award. Upon receipt of progress billings from the contractor, the State will submit such billings to the Federal Government for payment of its participating portion of such billings.

Method C – The Agency may submit vouchers to the State in the format prescribed by the State, in duplicate, not more than once per month for those costs eligible for Federal participation to the extent that such costs are directly attributable and properly allocable to this project. Expenditures by the Local Agency for maintenance, general administration, supervision, and other overhead shall not be eligible for Federal participation unless claimed under a previously approved indirect cost plan.

The State shall reimburse the Agency for the Federal share of eligible project costs up to the amount shown on the face of this agreement. At the time of audit, the Agency will provide documentation of all costs incurred on the project.

The State shall bill the Agency for all costs incurred by the State relative to the project. The State shall also bill the Agency for the federal funds paid by the State to the Agency for project costs which are subsequently determined to be ineligible for federal participation (see Section IX).

VII. Audit of Federal Consultant Contracts

The Agency, if services of a consultant are required, shall be responsible for audit of the consultant's records to determine eligible federal aid costs on the project. The report of said audit shall be in the Agency's files and made available to the State and the Federal Government.

An audit shall be conducted by the WSDOT Internal Audit Office in accordance with generally accepted governmental auditing standards as issued by the United States General Accounting Office by the Comptroller General of the United States; WSDOT Manual M 27-50, Consultant Authorization, Selection, and Agreement Administration; memoranda of understanding between WSDOT and FHWA; and Office of Management and Budget Circular A-133.

If upon audit it is found that overpayment or participation of federal money in ineligible items of cost has occurred, the Agency shall reimburse the State for the amount of such overpayment or excess participation (see Section IX).

VIII. Single Audit Act

The Agency, as a subrecipient of federal funds, shall adhere to the federal Office of Management and Budget (OMB) Circular A-133 as well as all applicable federal and state statutes and regulations. A subrecipient who expends \$500,000 or more in federal awards from all sources during a given fiscal year shall have a single or program-specific audit performed for that year in accordance with the provisions of OMB Circular A-133. Upon conclusion of the A-133 audit, the Agency shall be responsible for ensuring that a copy of the report is transmitted promptly to the State.

IX. Payment of Billing

The Agency agrees that if payment or arrangement for payment of any of the State's billing relative to the project (e.g., State force work, project cancellation, overpayment, cost ineligible for federal participation, etc.) is not made to the State within 45 days after the Agency has been billed, the State shall effect reimbursement of the total sum due from the regular monthly fuel tax allotments to the Agency from the Motor Vehicle Fund. No additional Federal project funding will be approved until full payment is received unless otherwise directed the Director of Highways and Local Programs.

X. Traffic Control, Signing, Marking, and Roadway Maintenance

The Agency will not permit any changes to be made in the provisions for parking regulations and traffic control on this project without prior approval of the State and Federal Highway Administration. The Agency will not install or permit to be installed any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administration and MUTCD. The Agency will, at its own expense, maintain the improvement covered by this agreement.

XI. Indemnity

The Agency shall hold the Federal Government and the State harmless from and shall process and defend at its own expense all claims, demands, or suits, whether at law or equity brought against the Agency, State, or Federal Government, arising from the Agency's execution, performance, or failure to perform any of the provisions of this agreement, or of any other agreement or contract connected with this agreement, or arising by reason of the participation of the State or Federal Government in the project, PROVIDED, nothing herein shall require the Agency to reimburse the State or the Federal Government for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the Federal Government or the State.

XII. Nondiscrimination Provision

No liability shall attach to the State or Federal Government except as expressly provided herein.

The Agency shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract and/or agreement or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts and agreements. The WSDOT's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Agency of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The Agency hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the Secretary of Labor in 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee or understanding pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the required contract provisions for Federal-Aid Contracts (FHWA 1273), located in Chapter 44 of the Local Agency Guidelines.

The Agency further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the applicant so participating is a State or Local Government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The Agency also agrees:

(1) To assist and cooperate actively with the State in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and rules, regulations, and relevant orders of the Secretary of Labor.

(2) To furnish the State such information as it may require for the supervision of such compliance and that it will otherwise assist the State in the discharge of its primary responsibility for securing compliance.

(3) To refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order.

(4) To carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the State, Federal Highway Administration, or the Secretary of Labor pursuant to Part II, subpart D of the Executive Order.

In addition, the Agency agrees that if it fails or refuses to comply with these undertakings, the State may take any or all of the following actions:

- (a) Cancel, terminate, or suspend this agreement in whole or in part;
- (b) Refrain from extending any further assistance to the Agency under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the Agency; and
- (c) Refer the case to the Department of Justice for appropriate legal proceedings.

XIII. Liquidated Damages

The Agency hereby agrees that the liquidated damages provisions of 23 CFR Part 635, Subpart 127, as supplemented, relative to the amount of Federal participation in the project cost, shall be applicable in the event the contractor fails to complete the contract within the contract time. Failure to include liquidated damages provision will not relieve the Agency from reduction of federal participation in accordance with this paragraph.

XIV. Termination for Public Convenience

The Secretary of the Washington State Department of Transportation may terminate the contract in whole, or from time to time in part, whenever:

- (1) The requisite federal funding becomes unavailable through failure of appropriation or otherwise.
- (2) The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.
- (3) The contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor.
- (4) The Secretary determines that such termination is in the best interests of the State.

XV. Venue for Claims and/or Causes of Action

For the convenience of the parties to this contract, it is agreed that any claims and/or causes of action which the Local Agency has against the State of Washington, growing out of this contract or the project with which it is concerned, shall be brought only in the Superior Court for Thurston County.

XVI. Certification Regarding the Restrictions of the Use of Federal Funds for Lobbying

The approving authority certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, and contracts and subcontracts under grants, subgrants, loans, and cooperative agreements) which exceed \$100,000, and that all such subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification as a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Additional Provisions

XA. Authorize the City Manager to Execute a Local Agency Agreement No. 11-C962 for the 61st Avenue NE and NE 181st Traffic Signal Construction Funding with the Washington Department of

CITY OF KENMORE, WASHINGTON

STATE ROUTE 522 PROJECT

2011-13 TRANSPORTATION BUDGET REQUEST

SIGNAL IMPROVEMENTS AT 61ST AVE NE AND NE 181ST STREET

\$650,000

- State Route 522 Corridor traverses the north end of Lake Washington, connecting I-5 and I-405 via State Route 104 (NE Ballinger Way) and State Route 523 (NE 145th St). The corridor through Kenmore carries 48,000 vehicles per day, with expected increase to 62,000 per day in 2026.
- The State Route 522 Corridor is a primary detour route for the SR 520 Bridge, and significant diversion of traffic to SR 522 is expected when SR 520 tolling /construction begins in April 2011. A recent SurveyUSA survey reports that 75% of those surveyed would consider taking an alternate route to avoid the SR 520 tolls.
- Projects to improve transit, business access and pedestrian safety have been completed or are in progress in the Cities of Kenmore, Bothell, and Lake Forest Park. Funding needed to complete remaining improvements in the Corridor totals over \$50 million; the remaining segment in Kenmore has a total cost of \$23.1M.
- 32nd District Delegation has requested \$650,000 in the Transportation Budget to help fund a targeted, lower cost improvement in Kenmore just north of State Route 522 that will improve safety and access to the downtown commercial district. This project, which has a total cost of \$1.2M, ties in with the longer term planned improvements on the SR 522 Corridor itself.
- The requested project includes a new traffic signal and left turn pockets at the intersection NE 181st Street and 61st Avenue NE; this will allow local traffic to avoid SR 522 congestion and will provide more efficient access to the Uplake neighborhood. WSDOT will be able to close an existing left turn pocket on SR 522 at 60th Avenue NE to Uplake, which is now often full and contributes to congestion on the Corridor.
- Vehicle and pedestrian safety will be improved with this project—19 accidents have occurred at the 61st NE and NE 181st intersection in the past 4 years.
- The City of Kenmore will continue to pursue federal, regional and state partnerships to support future improvements to the Corridor.



Washington State
Department of Transportation
Paula J. Hammond, P.E.
Secretary of Transportation

RECEIVED
MAY 19 2011

CITY OF KENMORE

Transportation Building
210 Maple Park Avenue S.E.
P.O. Box 47300
Olympia, WA 98504-7300
360-705-7000
TTY: 1-800-833-6388
www.wsdot.wa.gov

May 16, 2011

Mr. Frederick Stouder
Interim City Manager
City of Kenmore
PO Box 82607
Kenmore, WA 98028-0607

**2011-13 Transportation Budget
Federal Funding**

Dear Mr. Stouder:

WSDOT is pleased to advise you that in the 2011-13 Transportation Budget the following project was selected to receive federal funding. The federal funding is limited to:

SR 522 / 61st Avenue NE and NE 181st Street **\$650,000**
Scope: Improve the intersection to increase safety for travel to and from SR 522.

These federal funds are available at 100 percent and require no local match.

In order to meet the state and federal requirements, the following are required:

- Project funding packages must include the following new federal mandatory information or your project cannot be authorized:
 - ✓ **Central Contractor Registration (CCR) expiration date.** This new federal mandatory requirement that all local agencies receiving any federal funds must be registered in the Central Contractor Registration (CCR) at <https://www.bpn.gov/ccr/default.aspx>. Agencies must have a DUNS number to register in the CCR. In addition, all agencies must update/renew their registration annually to maintain an active status. It is essential your agency review the information on the website to ensure authorization of your project is not delayed.
 - ✓ **Place of performance:**
 - Nearest (city) – provide the name of the nearest city to where the work is located. For projects that span multiple locations, provide the name of the city where the majority of the work is located.
 - 9 digit Zip Code – provide the zip code where the majority of the work is located.

Mr. Frederick Stouder
Interim City Manager
City of Kenmore
2011-13 Transportation Budget
Federal Funding
May 16, 2011

- Project must be obligated by **May 31, 2012**.
- Quarterly Project Report is required to be completed by the end of March, June, September, and December to maintain funding. The online database can be found at the following website: <http://www.wsdot.wa.gov/TA/ProgMgt/QPR/QPR.html>. To access the database, your account name is **Kenmore** and password is **Kenmo985** (the password is case sensitive).

To obligate funding for this project, please refer to the information above and your Local Agency Guidelines (LAG) manual for additional information. Projects utilizing federal funds must be included in your current Transportation Improvement Program (TIP). Once your TIP amendment is approved, WSDOT will amend the Statewide Transportation Improvement Program (STIP).

Project expenditures incurred before receiving notice from H&LP of federal fund obligation are not eligible for reimbursement. As a reminder, H&LP encourages all agencies to submit monthly progress billings to ensure timely reimbursement of eligible federal expenditures.

For assistance please contact Ed Conyers, your Region Local Programs Engineer, at 206.440.4734.

Sincerely,



Kathleen B. Davis
Director
Highways & Local Programs Division

KBD:st:sas

cc: Ed Conyers, Northwest Region Local Programs Engineer, MS NB82-121
Charlie Howard, Transportation Director, PSRC

CITY OF KENMORE, WASHINGTON			
AGENDA BILL SUMMARY			
AGENDA TITLE			MEETING DATE
Adopt Ordinance No 11-0324 authorizing by condemnation or negotiation of real property interests necessary for the 61 st Avenue NE & NE 181 st Street Traffic Signal Project			September 12, 2011
DEPARTMENT	DIRECTOR	CONTACT PERSON	PHONE
Engineering	Ron Loewen	Ron Loewen	425 398 8900
COST OF PROPOSAL: <u>Right of Way Activities</u> Staff Cost: Preparing agenda bill: 6 hours Administering right of way acquisition: 40 hours Contract Services: Design/Legal Description: \$ 27,200 Appraisals: \$ 37,400 Negotiations: \$ 39,900 Compensation: \$204,800 Total \$309,300		ACCOUNT NUMBER: 09 00 7097 61 st Ave/NE 181 st Signal	
AMOUNT BUDGETED: <u>Right of Way Budget:</u> \$1,105,000 <u>Overall Project Budget:</u> Project Budget: \$2,771,900 Expended Budget as of July 22: \$ 131,354 Obligated ¹ Budget as of July 31: \$ 226,815 Remaining Budget ² as of July 31: \$2,435,085 Estimated Remaining Expenditures \$1,639,385 (Over) / Under Budget ³ : \$ 795,700 ¹ Obligated includes funds spent and obligated through signed agreements. ² Remaining Budget is the total budget less the obligated amount. ³ See explanation in Summary Statement		NAME AND FUND #: Arterial Street Fund No. 09	
ATTACHMENT(S) TO AGENDA PACKET ITEM: Exhibit A - Ordinance No 11-0324 Exhibit B - Right of Way Graphic Exhibit C - Example Notification Letter Exhibit D - June 27, 2011 Agenda Bill Exhibit E - September 27,2010 Agenda Bill			

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XA. Authorize the City Manager to Execute a Local Agency Agreement No. 11-C962 for the 61st Avenue NE and NE 181st Traffic Signal Construction Funding with the Washington Department of

SUMMARY STATEMENT:

The City has initiated right of way activities on the 61st Avenue NE and NE 181st Street traffic signal project. Appraisals have been completed and formal offer letters have been submitted to all property owners. Each property owner has been contacted multiple times and negotiations are proceeding on an amicable basis on all. However in order to meet our schedule of starting construction early next year we may need to proceed with condemnation on one or more properties. The condemnation ordinance, see Exhibit A, authorizes the City Manager to pursue condemnation if negotiations are at an impasse.

A public hearing has been scheduled to hear public testimony prior to considering the adoption of the ordinance. Notice has been provided on the City's web site, in the official paper and certified letters sent to the affected property owners.

DISCUSSION:

The 61st Avenue NE and NE 181st Street traffic signal project will be acquiring street right of way from 4 parcels, see Exhibit B, at an estimated cost of \$309,300. Parcel acquisitions areas and locations have been identified based on design drawings and are included in a right of way map. Appraisals are completed and the acquisition will include the following real property rights: fee simple, right of way easement, permanent utility easements, and temporary construction easements. The right of way process for this project must comply with State and Federal regulations. The process is as follows:

- Preparation of a right of way plan based on design plans.
- Preparation of either appraisals or administrative offer worksheets in lieu of an appraisal, based on market research. Administrative offer worksheets are completed when the value of the acquisition, during the project funding estimate phase, is anticipated to be less than \$25,000. This is typically the case for very small acquisitions or easements. If the property owner requests a full appraisal, then one will be prepared.
- An independent review appraiser reviews the appraisals. The reviewer will either agree or recommend a revised amount. Based on the reviewer's recommendation, the City approves the amount of just compensation to the property owner.
- Offers to property owners are made in person. All offers are explained in detail including the legal instruments that need to be signed. The initial offer is followed by several additional contacts to resolve issues and answer questions. We will make every reasonable effort to negotiate settlement of the acquisition.
- Upon settlement, the City will reimburse property owner's expenses for evaluating offers, up to \$750 upon submission of a bill or paid receipt.
- During negotiations, and if necessary, we will ask for voluntary possession and use of property to be acquired for the project. This will allow the City to construct the project while we continue to discuss the value of the real property rights needed.
- If we are unable to reach a settlement then the City will file a condemnation action in King County Superior Court. The proposed condemnation ordinance will give the City Manager the authority to file the condemnation action.
- Prior to trial we will once again request a possession and use agreement. The condemnation process will be in two parts, first a court hearing of "Use and Necessity" and secondly a court trial to determine the value of the property acquisition.
- Once the court case is resolved or if the property owner signs the agreements closing and escrow

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will proceed and the City will deposit a check for the agreed upon amount.

- Prior to construction, the Washington State Department of Transportation will review right of way property acquisition files and certify the process. The Department of Transportation certification is required before bid advertising.

During the negotiations we will make every reasonable effort to reach agreement on acquisition. The right of way consultants understand Federal and State acquisition requirements and the need to provide property owners with the time to consider offers and ask questions. They are available on short notice and prepared to answer questions. If issues arise the project designers are also available to discuss modifications or explain design decisions. We will also share appraisal information with property owners upon request. However there are times when negotiations reach an impasse and condemnation is necessary.

We are recommending the City Council authorize the City manager to file a condemnation action if acquisition negotiations reach an impasse. Authorizing condemnation now avoids delays to the project and demonstrates the City's intent to acquire land and proceed with the project. Without the condemnation ordinance at this time we would wait until the impasse and then schedule consideration of an ordinance. This process would interject several months into the project schedule and delay the bid advertising date. In addition the ordinance would likely be repeated several times for each parcel as negotiations reach an impasse adding expense to the project and consuming Council agenda time.

As part of the legal requirements each property owner was sent a letter, see Exhibit C, advising them of the City Council's consideration of the condemnation ordinance. These letters were sent two weeks prior to the hearing date certified mail. Additionally each property owner or their representatives were verbally advised of the condemnation process and the hearing.

During the City Council discussion authorizing the project in September 2010, the City Council decided to pursue the additional right-of-way needed for the SR522 Phase I, Stage 2 project (Jack in the Box, Uplake Town Center, and Burke-Gilman Trail). The right-of-way budget for those 3 parcels and the 4 required for the 61st Avenue NE and NE 181st Street Signal Project totaled \$1,105,000 of which \$795,700 was allocated for the 3 Stage 2 parcels. Since then the City was awarded a \$2.5 million Federal Surface Transportation grant for acquisition of Stage 2 right of way. If we were to proceed with acquisition on these parcels, make an offer or authorize condemnation the acquisition costs would not be eligible for Federal grant reimbursements. Therefore the acquisition process for these 3 parcels has been placed on hold until an agreement for the Federal grant can be executed sometime in late September. This will reduce the signal project budget by \$795,700.

As a footnote, the \$2.5 million grant requires a match amount \$337,500 saving the City \$458,200 while allowing the acquisition of all right of way for the Stage2 project.

Since the last time the City Council reviewed the right of way acquisition requirements there have been some changes:

- The parcel on the northeast corner of the intersection is a condominium. In order to acquire fee title for the right of way all condominium owners would be required to authorize acquisition. However the Home Owners Association has the authority to grant easements. We are therefore requesting a right of way easement rather than fee title which will reduce the acquisition time and project costs.
- Based on discussions with the owner of the parcel on the southwest corner of the intersection the acquisition requirements have been reduced to reduce the impacts on their business and existing improvements. This will also reduce the project costs.

With respect to the overall project, the City issued a SEPA determination of non-significance (DNS) on August

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24, 2011.

RECOMMENDATION:

City staff recommends the adoption of Ordinance 11-0324 authorizing the acquisition by negotiation or condemnation of real property interests needed for the 61st Ave NE and NE 181st Street traffic signal project.

CONSISTENT WITH OR COMPARISON TO PAST COUNCIL POLICIES, ORDINANCES, DIRECTION:

Council set a priority for SR 522 in 2008 and reaffirmed in 2009 with council action on December 1, 2008 - Agenda title: Consider Projects for Federal Stimulus Package and Potential Action for Authorization to Design and Right of way Acquisition for SR 522 Phase I Stage 2.

City Council action on September 27, 2010 selecting an alternative authorizing the design and right of way acquisition for the 61st Avenue and NE 181st signal project.

City Council action on June 27, 2011 selecting an alternative authorizing the design and right of way acquisition for the 61st Avenue and NE 181st signal project.

RECOMMENDED CITY COUNCIL ACTION/SUGGESTED MOTION:

Adopt Ordinance No 11-0324 authorizing by condemnation or negotiation of real property interests necessary for the 61st Avenue NE & NE 181st Street Traffic Signal Project

**REVIEWED BY FINANCE
DIRECTOR:**

**REVIEWED BY CITY
ATTORNEY:**

APPROVED BY CITY MANAGER:

TODAY'S DATE:
August 24, 2011

REVISION DATE(S):

FILE NAME & PATH (HYPERLINK):
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XA. Authorize the City Manager to Execute a Local Agency Agreement No. 11-C962 for the 61st Avenue NE and NE 181st Traffic Signal Construction Funding with the Washington Department of

CITY OF KENMORE, WASHINGTON			
AGENDA BILL SUMMARY			
AGENDA TITLE			MEETING DATE
Discussion of 61 st Avenue NE and NE 181 st Street Signal Improvement Project scope of work and right-of-way requirements.			June 27, 2011
DEPARTMENT	DIRECTOR	CONTACT PERSON	PHONE
Engineering	Ron Loewen	Ron Loewen	425 398 8900
COST OF PROPOSAL: <u>Staff Cost:</u> Preparing agenda bill 5 hours Administering design agreement 240 hours <u>Contract Services:</u> Design, Right of Way, Construction: \$2,771,900		ACCOUNT NUMBER: 09 00 7097 61 st Ave/NE 181 st Signal	
AMOUNT BUDGETED: Adopted 2011-12 Budget \$2,048,550 Approved 2011-16 CIP \$3,338,300		NAME AND FUND #: Arterial Street Fund No. 09	
ATTACHMENT(S) TO AGENDA PACKET ITEM: • Table: 61st Avenue and NE 181st Street Signal Project Options • September 27, 2010 Agenda Bill • July 26, 2010 Agenda Bill • February 8, 2010 Agenda Bill			
SUMMARY STATEMENT: The City Council approved this project on September 27, 2010 with the acquisition of additional right of way and modified the budget as part of the 2011-16 Capital Improvement Program (CIP) adoption in April. During the CIP adoption City staff suggested the project scope be discussed in further detail as the cost estimate had increased from \$2,048,550 to \$3,338,300. Staff is recommending Alternative 4 as described below which is estimated to cost \$2,771,900. The funds are available from Real Estate Excise Tax (REET) in the amount of \$1,675,645, Traffic Impact Fees in the amount of \$446,255, and a Federal Grant in the amount of \$650,000 (not yet received). The adopted 2011-2012 budget appropriated \$2,048,550 for this project, therefore Council action to amend and increase the budget in the amount of \$723,350 would be required. The additional REET funds would be borrowed from existing cash set aside for the sidewalk program which would result in the sidewalk program being delayed for at least two years. Where funds are noted as available, this assumes that the revenue as budgeted in the adopted 2011-2012 biennial budget will be realized. The following is a discussion of the project scope and cost estimates. BACKGROUND The proposed SR 522 Phase I Stage 2 Corridor Improvement Project, from 57th Avenue NE to 65th Avenue NE (the last section) was divided into segments in February 2010, to allow more favorable			

XA. Authorize the City Manager to Execute a Local Agency Agreement No. 11-C962 for the 61st Avenue NE and NE 181st Traffic Signal Construction Funding with the Washington Department of

funding proposals. In July of 2010 the Council received word that Senator Murray intended to sponsor the direct allocation of \$600,000 to the SR 522 project. On July 26th the Council authorized the design of the signal improvements at NE 181st Street and 61st Avenue NE with the provision that right-of-way acquisition and improvements be consistent with the overall SR 522 project. The City has also now learned that a Federal Grant allocation has been made by the Washington State Legislature in the amount of \$650,000.

DISCUSSION

During the City Council discussion authorizing the project in September, the City Council decided to pursue the additional right of way. During revisions to the 2011-16 CIP, concern arose over the increase in project cost estimates from the approved \$2,058,550 to \$3,338,300. Since then more detailed cost estimates for the retaining wall and updated right of way estimates have been received. This has resulted in reductions to the 2011-16 CIP estimate, however the project cost estimate remains higher than previously approved. Additionally an estimate for undergrounding aerial facilities has been provided for consideration. The alternatives presented in this agenda bill provide the City Council with 4 distinct project scopes of work with increasing right-of-way acquisition and improvements.

ALTERNATIVES

City staff have prepared 4 alternative project scopes of works and cost estimates for discussion. These are very similar to the project alternatives discussed in September of last year. Several of the alternatives have the same right-of-way acquisition but all vary the extent of construction.

Alternative 1 - This alternative would construct only the traffic signal at 61st Avenue NE and NE 181st Street and acquire right of way at the intersection for future improvements. Under this alternative, right of way would be acquired from 4 parcels and construction would only include the traffic signal and ADA ramps. Total cost is estimated at \$975,400 and would be funded with the Federal Grant of \$650,000 and Traffic Impact Fee funds of \$325,400 which are available. The cost of this Alternative is less than the adopted 2011-2012 biennial budgeted amount of \$2,048,550 and does not require Council action to amend or increase the project budget.

In summary, **Alternative 1** is a minimal project and would provide a traffic signal but no left turn pockets. This would improve circulation and use of NE 181st Street and possibly allow the closure of the 60th Avenue NE left turn from SR 522.

Alternative 2 - This alternative would construct the traffic signal and left turn pockets at NE 181st Street and some curbs along 61st Avenue NE. Aerial facilities would remain. Under this alternative right of way would be acquired from 4 parcels and construction would include the traffic signal, storm drainage, sidewalks, landscaping, ADA ramps, and pavement. Total cost is estimated at \$1,675,900 and would be funded with the Federal Grant of \$650,000, Traffic Impact Fee funds of \$446,255, and \$579,645 of REET of which \$200,000 would be "borrowed" from the sidewalk program funds set aside and which are available. The cost of this Alternative is less than the adopted 2011-2012 biennial budgeted amount of \$2,048,550 and does not require Council action to amend or increase the project budget. This estimate is higher than the September Alternative 2 estimate due to revised right of way estimates and updated costs for the retaining wall.

In summary, **Alternative 2** matches the City Council's stated project scope. Circulation along NE 181st Street would be improved and the left turn at 60th Avenue NE on SR 522 could be eliminated.

Alternative 3 - This alternative would construct the traffic signal and left turn pockets at NE 181st Street and some curbs along 61st Avenue NE. Aerial facilities would remain.

Under this alternative right of way would be acquired from 8 parcels and construction would include the traffic signal, storm drainage, sidewalks, landscaping, ADA ramps and pavement. Total cost is estimated at \$2,471,900 and would be funded with the Federal Grant of \$650,000, Traffic Impact Fee funds of \$446,255, and \$1,375,645 of REET of which \$650,000 would be "borrowed" from the sidewalk program funds set aside and which are available. The cost of this Alternative is \$423,350 greater than the adopted 2011-2012 biennial budgeted amount of \$2,048,550 and would require Council action to amend and increase the project budget. This alternative was chosen by the City Council in September. The additional costs, (the September cost estimate was \$2,058,550), are the result of updated right of way and retaining wall estimates. The additional right of way acquisition would secure several significant pieces of right of way for a portion of the last segment of the SR 522 project.

In summary, **Alternative 3** matches the City Council's stated project scope and direction at the September meeting of including right of way for future SR 522 projects.

Alternative 4 - This alternative would construct the traffic signal and left turn pockets at NE 181st Street and some curbs along 61st Avenue NE and underground aerial facilities. Under this alternative right of way would be acquired from 8 parcels and construction would include the traffic signal, storm drainage, sidewalks, landscaping, ADA ramps, undergrounding of aerial facilities and pavement. Total cost is estimated at \$2,771,900 and would be funded with the Federal Grant of \$650,000, Traffic Impact Fee funds of \$446,255, and \$1,675,645 of REET of which \$950,000 would be "borrowed" from the sidewalk program funds set aside and which are available. The cost of this Alternative is \$723,350 greater than the adopted 2011-2012 biennial budgeted amount of \$2,048,550 and would require Council action to amend and increase the project budget. This alternative is new as previous alternatives did not consider undergrounding aerial facilities.

In summary, **Alternative 4** matches the City Council's stated project scope and direction at the September meeting of including right of way for future SR 522 projects. In addition it provides undergrounding of aerial facilities at the intersection.

RECOMMENDATION

City staff recommends **Alternative 4** which is consistent with the previous City Council direction and provides for undergrounding at the intersection. Undergrounding would allow for the removal of wood poles and aerial facilities now rather than waiting until a future SR 522 project.

The cost of this Alternative is \$723,350 greater than the adopted 2011-2012 biennial budgeted amount of \$2,048,550 and will require Council approval to amend and increase the project budget from \$2,058,000 to \$2,771,900. The project would be funded with the Federal Grant of \$650,000, Traffic Impact Fee funds of \$446,255, and \$1,675,645 of REET of which \$950,000 would be "borrowed" from the sidewalk program funds set aside and which are available.

2011-16 CIP provides adequate financial resources for the project by delaying other SR 522 project segments.

CONSISTENT WITH OR COMPARISON TO PAST COUNCIL POLICIES, ORDINANCES, DIRECTION:

Council set a priority for SR 522 in 2008 and reaffirmed in 2009 with council action on December 1, 2008 - Agenda title: Consider Projects for Federal Stimulus Package and Potential Action for Authorization to Design and Right of way Acquisition for SR 522 Phase I Stage 2.

City Council action on July 26th, authorizing the design and right of way acquisition for the 61st Avenue NE and NE 181st Street signal.

City Council action on September 27, 2010 selecting an alternative authorizing the design and right of way acquisition for the 61st Avenue and NE 181st signal project.

RECOMMENDED CITY COUNCIL ACTION/SUGGESTED MOTION: Authorize City staff to proceed with 61 st Avenue NE and NE 181 st Street Signal Improvement Project scope of work and right-of-way acquisition as described in Alternative 4.		
REVIEWED BY FINANCE DIRECTOR: 	REVIEWED BY CITY ATTORNEY:	APPROVED BY CITY MANAGER: 
TODAY'S DATE: June 8, 2011	REVISION DATE(S):	FILE NAME & PATH (HYPERLINK): S:\0159 61st Ave NE and NE 181st St Traffic Signal\Council\110620_agenda_bill.doc

XA. Authorize the City Manager to Execute a Local Agency Agreement No. 11-C962 for the 61st Avenue NE and NE 181st Traffic Signal Construction Funding with the Washington Department of

CITY OF KENMORE, WASHINGTON			
AGENDA BILL SUMMARY			
AGENDA TITLE			MEETING DATE
Consideration of amendments to the Shoreline Master Program (SMP) as required and suggested by the Department of Ecology.			September 26, 2011
DEPARTMENT	DIRECTOR	CONTACT PERSON	PHONE
Community Development	Debbie Bent	Debbie Bent	425-398-8900
COST OF PROPOSAL: ESA Adolfson consultant contract \$188,900 (Contract 07-C632 with amendments #1, 2, and 3). Planning Commission and Citizen Advisory Committee volunteer time to attend approximately 18+ meetings from 2007 through January 2010. Community Development staff support for project management, review of materials, meeting attendance, and mailings.		ACCOUNT NUMBER: 01 58 5506	
AMOUNT BUDGETED: Consultant costs (\$188,900) were reimbursed from Department of Ecology Shoreline Grant (\$146,200). Costs not reimbursed from the grant were budgeted and paid from the City's General Fund (\$42,700). The 2007 budget included \$25,000; 2008 budget: \$38,000; 2009-2010 budget: \$49,000; 2011-2012 budget: \$5,000.		NAME AND FUND #: General Fund No. 01	
ATTACHMENT(S) TO AGENDA PACKET ITEM: 1. Memo dated 9/9/11 from Debbie Bent and Lauri Anderson explaining amendments to the September 2010 SMP requested by the Department of Ecology (Ecology). This memo includes 10 attachments, including additional proposed Code amendments. 2. Memo dated 9/14/11 from Debbie Bent and Lauri Anderson explaining an amendment to one of Ecology's required changes requested on 9/12/11 by CalPortland.			
SUMMARY STATEMENT: The City Council approved two ordinances in September 2010 adopting an updated Shoreline Master Program for the city after reviewing the Planning Commission recommendation and conducting a public hearing. The approved ordinances were sent to the Department of Ecology (Ecology) for their review and approval as they must give final approval to the Shoreline Master Program before it can become effective. In a letter dated July 25, 2011, Ecology provided a list of required changes to the SMP that would make it "approvable." Ecology also has provided several suggested changes. By October 31, 2011, the City must respond to Ecology with any "alternative proposals" to their changes. These alternative proposals can be provided to Ecology in the form of a letter signed by the Mayor. Staff is recommending two alternative proposals. Representatives of CalPortland met with staff on August 12, 2011 and requested two additional alternative proposals for consideration by the City Council. Once Ecology has acted on any alternative proposals, an ordinance will be brought forward for Council consideration.			
CONSISTENT WITH OR COMPARISON TO PAST COUNCIL POLICIES, ORDINANCES, DIRECTION: Council included the update of the SMP on the 2008 and 2009 dockets and forwarded the docket work program item to the Planning Commission for review and recommendation. At the 2/25/10 Council meeting, the Planning Commission presented their final recommendation on the SMP to the Council. The Council opened a public hearing on the draft SMP on 3/29/10, continued it to 5/27/10, and then agreed to continue it to 9/13/10. The Council considered amendments to the Planning Commission's recommendation at several meetings (July 8, July 13 and July 26). The Council adopted two ordinances (10-0312 and 10-0313) approving the City's Shoreline Master Program on 9/13/10—to be effective upon Department of Ecology's approval.			
RECOMMENDED CITY COUNCIL ACTION/SUGGESTED MOTION: Council motion to authorize staff to prepare a letter to the Department of Ecology describing "alternative proposals" as requested by Council for signature by the Mayor.			
REVIEWED BY FINANCE DIRECTOR:	REVIEWED BY CITY ATTORNEY:	APPROVED BY CITY MANAGER:	
TODAY'S DATE:	REVISION DATE(S):	FILE NAME & PATH (HYPERLINK):	
September 9, 2011			

XB. Consideration of Amendments to the Shoreline Master Program (SMP) as Required and Suggested by the Department of Ecology- Debbie Bent, Director of Planning and Community



The City of Kenmore

18120 68TH AVENUE NE PO Box 82607
KENMORE, WASHINGTON 98028

MEMO

TO: Frederick Stouder, City Manager

FROM: Debbie Bent, Director of Planning & Community Development DR .
Lauri Anderson, Senior Planner LWA

DATE: September 9, 2011

SUBJECT: Revisions to Adopted Shoreline Master Program

On September 13, 2010, the City Council adopted two ordinances (10-0312 and 10-0313) approving the city's Shoreline Master Program. These ordinances were to be effective upon Department of Ecology (Ecology) approval. As required by WAC 173-26-110, the approved ordinances were then forwarded to Ecology for their review.

In a letter dated July 25, 2011 and received on July 28, 2011, Ecology provided their response to the adopted program in Findings and Conclusions, including required and suggested changes (see Attachment 1). At the request of staff in a letter to Ecology dated August 9, 2011 (see Attachment 2), David Radabaugh of the Department of Ecology issued a clarification of Ecology's Findings and Conclusions for Required Change #9 (see Attachment 3).

Ecology is requiring fourteen amendments to the Shoreline regulations for final approval (Attachment B to their Findings and Conclusions) and is suggesting eleven others (Attachment C to their Findings and Conclusions). Their response follows a month-long public comment period and a public hearing held on March 31, 2011. Eighteen individuals or organizations commented to Ecology. A summary of those public comments, along with Ecology's and the city's responses, is included in Attachment D to Ecology's Findings and Conclusions.

Staff recommends that the City Council adopt all of Ecology's required changes, along with eight of their eleven suggested changes. Changes that adjust policy direction for the SMP as approved by Council last year are Required Changes #2, #3, #5 and #9 and Suggested Changes #2, #3, #10 and #11. The other changes do not alter the fundamental policy direction of the previously adopted SMP, but do make grammatical corrections, update citations, and clarify standards.

Staff does not recommend incorporating Suggested Changes #3 and #4.

For Suggested Change #10, staff recommends that the City Council forward an "alternative proposal" to Ecology for their consideration. Alternative proposals must be provided to Ecology by October 31, 2011 for their further review and approval. Staff also

recommends that the City Council forward one additional "alternative proposal" to Ecology that would amend KMC 18.55.320 to reflect the development code amendments approved in July 2011. A sample draft letter is attached (see Attachment 4).

A draft revised ordinance with amended exhibits is enclosed (see Attachment 5) with changes from the September 2010 approval identified using yellow highlighting. Along with Ecology's changes and the staff-recommended "alternative proposals," the ordinance includes a limited number of non-substantive changes necessitated by the development code amendments approved in July 2011 (to correct cross-references, for example).

Staff does not believe that the scope of these amendments warrants an additional public hearing.

A brief summary of each change and the staff recommendation follows.

Required Changes (assigned numbers are from Attachment B to Attachment 1)

1. **Section 16.50.100.** This new section would add regulations for the channel migration zone (CMZ) along Swamp Creek. The CMZ is the area within which the stream channel moves over time. As a study identifying the CMZ has not been completed in the city, Ecology is requesting that the CMZ be defined to include the 500-year floodplain within shoreline jurisdiction and all area within 112.5' of the creek. Within the CMZ, no subdivision would be allowed (except to create open space tracts). Fill would be restricted if it impaired channel migration, and no new development would be allowed where future stabilization would be necessary. Existing legal nonconforming uses could be repaired and maintained as long as no significant ecological impacts or increased flood hazards to other uses were created. If an applicant provided a study demonstrating that the property was outside the CMZ, then these requirements would not apply.

The 112.5' distance from Swamp Creek correlates to the smallest allowable buffer in the city's critical area rules without a variance. New development is not expected in this area. The Federal Emergency Management Agency (FEMA) map showing the 500-year floodplain along Swamp Creek is included as Attachment 6. As most of the area in the 500-year floodplain is in wetlands/buffers and/or public ownership, the overall impact of this change would be minor and staff recommends approval.

2. **Section 16.65.020.B.7. THIS REQUIRED CHANGE WOULD BE AN ADJUSTMENT TO POLICY DIRECTION.** The section would be amended to reduce allowable heights within 112.5' of the ordinary high water mark in height exception areas H-3 and H-4 near Swamp Creek and along a portion of the north side of the Sammamish River (see Attachment 7). Area H-3 includes the Plywood Supply property. As mentioned above, the 112.5' distance correlates to the smallest allowable buffer in the city's critical area rules without a variance, and no new development is expected in this area. New criteria for approving increased heights also have been requested by Ecology, including that increased height shall not impair the ecological functions of the shoreline. Given that the area in question is not really developable as it is in required critical area buffers, the actual impacts of this change would be minor and staff recommends approval.

3. **Section 16.75.050.D. THIS REQUESTED CHANGE WOULD BE AN ADJUSTMENT TO POLICY DIRECTION.** These amendments would clarify the extent to which a nonconforming dock could be expanded in exchange for reducing impacts on critical fish habitat. In no case could a nonconforming dock be expanded to exceed its current size or the maximum size established in the standards for a new dock, whichever is greater. The regulations approved by the Council last year included an allowance for 25% increase in size for a nonconforming dock in exchange for reduced impacts. This incentive would no longer be available to applicants. Incentives still exist for other dock standards and for replacing nonconforming bulkheads when a pocket cove or beach is provided. Staff recommends approval.
4. **Section 16.50.030.B.2.a.i.** This section, which sets out exceptions to the requirement for water-dependent uses in the Downtown Waterfront designation for mixed use development, would be amended to clarify that land area within the shoreline jurisdiction on the project site could also be in water-related uses and that uses accessory to a water dependent use must be fully incidental and subordinate to the water-dependent use. Staff recommends approval as this is a clarification of the intent of the regulation.
5. **Shoreline Environment Designations Map. THIS REQUIRED CHANGE WOULD BE AN ADJUSTMENT TO POLICY DIRECTION.** This change would designate King County Tax Parcels 1426049013 and 1426049014, just north of St. Edward State Park, as Natural on the shoreline environment designation map. (See Attachment 8 for a map of the parcels in question.) The change to a Natural designation would mean that construction of a single-family residence *within the 200' shoreline jurisdiction* would require a conditional use permit, rather than being allowed outright. Given the large size of these two parcels (6 and 9+ acres), there would continue to be opportunities for development on these properties outside of the 200' area along the shoreline, and the overall impact of this change would be minor and staff recommends approval. Owners of the properties in question have been contacted and advised of this specific requested change. Owners were contacted earlier in the Shoreline Master Program process to invite their ongoing participation.

With the required change to Map 1, Shoreline Environment Designations, to reflect the changed shoreline designation of these two parcels, changes also must be made to the Shoreline Environment Designations Map attached to the Shoreline Master Program Policies originally adopted in Ordinance 10-0312.
6. **Section 16.55.050.** These amendments provide more detail on modifying dock and pier standards. They clarify that only some standards are subject to modification, and that modifications should only occur for residential and commercial water-dependent uses, or to provide public access. Staff recommends approval of these changes.
7. **Section 16.10.110.** This amendment adds the definition of critical areas to the shoreline code (previously, this section referenced the definition in KMC Title 18). Staff recommends approval of this change.

8. **Section 16.10.640.** This amendment modifies the definition of "wetlands" so that it exactly matches the definition in State law. Staff recommends approval of this change.
9. **Sections 16.65.010.C and 18.55.55.330.G.1. THIS REQUIRED CHANGE WOULD BE AN ADJUSTMENT TO POLICY DIRECTION.** This required change would increase wetland mitigation ratios for areas under the shoreline jurisdiction. The concern over mitigation ratios was raised by Ecology after the City Council adoption of the proposed SMP. Ecology believes the mitigation ratios in the current critical area rules do not meet best available science, particularly for wetland areas along the shoreline. In their initial proposal, Ecology requested that the city modify the mitigation ratios to reflect the State's four-tier classification system (not used in the city). The city's wetland consultant and staff requested that the change address only wetlands within the shoreline and also use a classification system reflective of the existing city's three-tier wetland classification approach. The city's wetland consultant prepared background material for Ecology's consideration during staff-level conversations about this issue (see Attachment 9) and, ultimately, Ecology endorsed the staff proposal. Staff recommends approval of this change as a compromise between Ecology's initial proposal and the city's current approach.
10. **Section 18.55.320.F.2.** This amendment updates standards for defining the wetland edge consistent with state law. Staff recommends approval of this change.
11. **Section 18.55.330.A.** This section updates the Ecology citation to their guidelines related to wetland mitigation plans. Staff recommends approval of this change.
12. **Section 18.55.210.** This section brings the city's mitigation sequencing language into conformance with State requirements. Staff recommends approval of this change.
13. **Section 16.65.010.** This amendment corrects a code citation in the SMP. Staff recommends approval of this change.
14. **Section 16.65.020.A.** This amendment corrects an oversight in the buffer standards, adding missing buffer dimensions in four places. Staff recommends approval of this change.

Suggested Changes (assigned numbers are from Attachment C to Attachment 1)

1. **Section 16.50.060.** This change clarifies that public access is required for all "land divisions" of more than four lots, regardless of whether or not the project is a subdivision or short subdivision. Staff recommends approval of this change.
2. **Section 16.65.020.B.2.a. THIS SUGGESTED CHANGE WOULD BE AN ADJUSTMENT TO POLICY DIRECTION.** This change would require a minimum 5' building setback from a shoreline buffer. The SMP adopted last year has a 0' building setback from the buffer. Having a building setback from a buffer is consistent with standards for other critical areas that require a 5' building setback from a critical area buffer to leave space around possible structures for

maintenance work to occur outside of the buffer and staff recommends approval of this change.

3. **Restoration Plan Chapter 4. THIS SUGGESTED CHANGE WOULD BE AN ADJUSTMENT TO POLICY DIRECTION.** Staff does not support this change to prioritize restoration activities at this time. The Restoration Plan, as written, allows restoration projects to be considered individually as opportunities arise. If the City Council wishes to add prioritization of restoration activities to a future work program, staff could provide additional information and recommendations.
4. **Restoration Plan Map No. 4.** Staff does not support this change to Map No. 4 on page 22 of the Restoration Plan to identify Swamp Creek Wetland No. 4 as high quality habitat to be protected. This wetland is outside of the shoreline jurisdiction (see Attachment 10) and is not, therefore, appropriately addressed in the Shoreline Master Program Restoration Plan.
5. **Section 18.55.120.B.** This change fixes a minor grammatical error. Staff recommends approval of this change.
6. **Section 16.50.060.** This change adds a cross-reference to required vegetation management standards for public access improvements and staff recommends its approval.
7. **Sections 16.60.020.B and 16.65.020.B.4.** These changes relocate public access standards for Swamp Creek Park and mixed use development in the Urban Conservancy environment. Previously, these standards were found in an unrelated section discussing buffers to Lake Washington. The standards, themselves, are unchanged. Staff recommends approval of these changes.
8. **Section 16.65.020.B.1.** This change clarifies that all criteria in the section allowing non-water-dependent uses within the shoreline buffer along the inner harbor must be satisfied, not just a single criterion. Staff recommends approval of this change.
9. **Section 16.65.020.B.3.** This change clarifies allowable locations for outdoor storage. Staff recommends approval of this change.
10. **Section 16.75.050.C. THIS SUGGESTED CHANGE WOULD BE AN ADJUSTMENT TO POLICY DIRECTION.** This change would add a new, restrictive standard addressing expansion of nonconforming structures. Staff recommends that the City Council forward an "alternative proposal" to Ecology (see Attachment 4) in order to preserve the incentive to significantly improve the shoreline in exchange for expansion of a nonconforming structure. The recommended alternative language appears in the draft ordinance. As this is a suggested change, the Council could also choose not to adjust the language adopted last September in Ordinance 10-0313 or to adopt the Ecology recommendation verbatim.
11. **H-4 Mapping. THIS SUGGESTED CHANGE WOULD BE AN ADJUSTMENT TO POLICY DIRECTION.** This change redraws the boundary of the H-4 (height exception) area to eliminate mapped wetlands along Swamp Creek, clarifying that development in the wetlands is to be avoided. This is a corollary change to the

Memo to Fred Stouder
Page 6
September 9, 2011

adjustment to height regulations in required change #2 and staff recommends approval.

Attachments

- Attachment 1: Letter from Ecology with four attachments (A-D), including Findings and Conclusions and Required and Suggested Changes
- Attachment 2: Letter to Ecology from Debbie Bent, dated August 9, 2011, requesting clarification of Required Change #9 regarding wetland mitigation ratios
- Attachment 3: Clarification from Ecology received August 19, 2011 for Required Change #9 regarding wetland mitigation ratios
- Attachment 4: Sample draft letter to Ecology including staff-recommended "Alternative Proposals"
- Attachment 5: Draft ordinance and exhibits with changes identified
- Attachment 6: Map of the 500-year floodplain along Swamp Creek
- Attachment 7: Map showing height exception areas H3 and H4 as approved in September 2010
- Attachment 8: Map of the parcels north of St. Edward State Park
- Attachment 9: Memo dated June 20, 2011 from ESA regarding wetland mitigation ratios
- Attachment 10: Map of Swamp Creek Wetland No. 4



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

July 25, 2011

The Honorable David Baker, Mayor
City of Kenmore
18120 68th Avenue NE
Kenmore, WA 98028

**Re: City of Kenmore Comprehensive Shoreline Master Program Update
Ordinance Number 10-312 and 10-313**

Dear Mayor Baker:

I would like to take this opportunity to commend the city of Kenmore (City) for its efforts in developing the proposed comprehensive Shoreline Master Program (SMP) Update.

As we have already discussed with your staff, the Washington State Department of Ecology (Ecology) approves this comprehensive SMP update, subject to required changes detailed in Attachment B. Recommended changes are proposed in Attachment C. The findings and conclusions that support Ecology's decision are enclosed as Attachment A. Also enclosed is a Responsiveness Summary for Public Comments as Attachment D.

Because required changes are involved in this proposed SMP, the amendment will not become effective until Ecology receives written notice that the City agrees to the changes¹. Receipt of the City's written agreement to the required changes will constitute final action by Ecology approving the Kenmore SMP comprehensive update.

If you do not agree to the changes listed in Attachment B, then pursuant to WAC 173-26-120(7)(b)(ii), you may propose to Ecology alternative amendments consistent with the scope of the original submittal, SMA policy, and the applicable guidelines. At that point, Ecology will need to review and approve the alternative amendment(s) before they become effective.

¹ WAC 173-26-120(7)(b)(i)



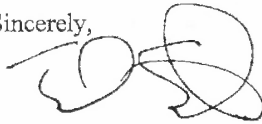
The Honorable David Baker
July 25, 2011
Page 2

To summarize, please advise us whether the required and recommended changes are acceptable. If the City agrees with the changes, it must notify Ecology in writing by sending the notice to the Director's Office at the following address:

WA State Department of Ecology
Attention: Director's Office
PO Box 47600
Olympia, WA 98504-6700

Thank you again for your efforts. If you have any questions, please contact our Regional Planner, David Radabaugh, at David.Radabaugh@ecy.wa.gov (425) 649-4260.

Sincerely,



Ted Sturdevant
Director

Enclosures

By certified mail [7003 1010 0005 0569 1598]

cc: Debbie Bent, Director, Kenmore DCD
Laurie Anderson, Senior Planner, Kenmore DCD
David Radabaugh, Department of Ecology
Peter Skowlund, Department of Ecology
Geoff Tallent, Department of Ecology

**ATTACHMENT A
FINDINGS AND CONCLUSIONS
FOR PROPOSED AMENDMENTS TO THE CITY OF KENMORE
SHORELINE MASTER PROGRAM**

SMP Submitted November 8, 2010, and Complete on February 14, 2011, Ordinance Numbers
10-312 and 10-313

Prepared by David Radabaugh, on June 23, 2011

Brief Description of Proposed Amendments:

The City of Kenmore is proposing a comprehensive update to their Shoreline Master Program (SMP). The City has requested that the Department of Ecology approve the following:

- Shoreline Policies,
- Shoreline Regulations (including incorporated ordinances), and
- Shoreline Restoration Plan.

The updated SMP will reside as a chapter in the Kenmore Comprehensive Plan, a chapter in the Kenmore Municipal Code with many provisions of the Kenmore Critical Areas Ordinance incorporated by reference.

FINDINGS OF FACT

Need for Amendment: The proposed amendments are needed to comply with the statutory deadline for comprehensive update of the local Shoreline Master Program pursuant to RCW 90.58.100.

Amendment History, Review Process: The record indicates the proposed SMP amendments originated from a local planning process that began in 2007. The City started its shoreline planning process in 2007 with a grant from the Department of Ecology (Grant No. G0800032). The City established a Technical Advisory Committee (TAC) in January, 2008. The TAC met with the Planning Commission until April 29, 2009. The Kenmore Planning Commission considered the SMP between December, 2007 and February 3, 2010. The Planning Commission held a public hearing on the SMP on September 21, 2009.

The Kenmore City Council considered the SMP from February 25, 2010 to September 13, 2010. The City Council opened a public hearing on the SMP on March 29, 2010. The public hearing was held open for public comment until September 13, 2010.

During the development of its SMP, the City received comments from property owners and their representatives, environmental organizations, government agencies, consultants, and various individuals.

The Department of Ecology provided comments on the Draft SMP on September 14, 2009, November 20, 2009, April 26, 2010, June 7, 2010, and July 20, 2010.

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CITY OF KENMORE

The City issued a Determination of Nonsignificance for the SMP on August 25, 2009. With passage of Ordinances 10-312 and 10-313, on September 13, 2010, the City authorized staff to forward the proposed amendments to Ecology for approval.

The proposed SMP amendments were received by Ecology for state review on November 5, 2010. The submittal was found incomplete on January 21, 2011. Submittal of additional information was made on February 2, 2011 and February 11, 2011. The SMP submittal was verified as complete on February 11, 2011. The state comment period began on March 15, 2010 and continued through April 15, 2011. On March 31, 2011, Ecology held a public hearing in Kenmore to seek input on the proposed amendments. Notice of the hearing, including a description of the proposed amendment and the authority under which the action is proposed, the times and locations of the hearing/s and the manner in which interested persons may obtain copies and present their views was provided in the March 10, 2011 edition/s of the Seattle Times, the City official newspaper of record. Notices were mailed to interested parties identified by the City on March 11, 2011. Eighteen individuals or organizations submitted comments on the proposed amendments. Ecology sent all oral and written comments it received to the City on April 25, 2011. On May 3, 2011, the City submitted to Ecology its responses to issues raised during the state comment period. Ecology's own responses to issues raised during the comment period are available as part of the SMP amendment process record.

Consistency with Chapter 90.58 RCW: The proposed amendments have been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3),(4) and (5). The City has also provided evidence (see above) of its compliance with SMA procedural requirements for amending an SMP contained in RCW 90.58.090.

Consistency with "applicable guidelines" (Chapter 173-26 WAC, Part III): The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program guidelines (WAC 173-26-171 through 251 and -020 definitions). This included review of a SMP Submittal Checklist, which was completed by the city.

Ecology reviewed SMP Inventory and Characterization Report, the Restoration Plan, and Cumulative Impacts Analysis for consistency with the Guidelines. Ecology reviewed the SMP goals, policies, regulations, environment designations, maps, administrative provisions, definitions, and legal provisions for consistency with the Guidelines.

The Inventory and Characterization Report and Chapters 4 and 7 of the SMP provide a foundation for the environment and buffer system contained in the SMP. The SMP contains provisions for shoreline environments, archaeological and historic resources, critical areas, flood hazard reduction, public access, shoreline vegetation conservation, shoreline stabilization, piers and docks, fill, and dredging, breakwaters, jetties, groins, and weirs. Shoreline habitat and natural systems enhancement is addressed through the restoration plan, and buffer requirements.

The SMP addresses uses that could be relevant to the Kenmore shoreline including

aquaculture, boating facilities, commercial development, manufacturing, recreational development, residential development, transportation, and utilities. The SMP is also addresses shorelines of statewide significance. The SMP contains procedures for administering the shoreline regulations. Kenmore's Lake Washington and Sammamish River shorelines are shoreline of statewide significance.

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance for the proposed SMP amendments on August 25, 2009. Ecology did not comment on the DNS

Other Studies or Analysis supporting the SMP update: Ecology reviewed the following reports, studies, map portfolios and data prepared for the City/County in support of the SMP amendment:

- Draft Inventory of Data Sources dated November 5, 2007
- Draft Shoreline Inventory and Characterization Report dated July 3, 2008
- Shoreline Inventory and Characterization Report dated April 2008
- Shoreline Restoration Plan dated June 24, 2009
- Shoreline Restoration Plan dated November 2010
- Public Access Memorandum dated June 30, 2009
- Cumulative Impacts Analysis dated February 4, 2010
- Cumulative Impacts Analysis revised November 5, 2010
- SEPA Checklist dated August 2009
- Draft Shoreline Master Program dated June 30, 2009
- Draft Shoreline Master Program dated February 2010
- Shoreline Master Program dated September 13, 2010
- Shoreline master program Checklist dated November 5, 2010

Summary of Issues Raised During The Public Review Process: There was on-going public interest expressed during the City's SMP amendment drafting/public review process. Ecology conducted a formal public comment period and public hearing during its review of the SMP. Issues raised during the Ecology comment period have been addressed in a responsiveness summary. Considerable debate centered on the following topics:

Pier and Dock Standards

One individual advocated for less strict pier and dock standards. The standards adopted by the City substantially follow the standards articulated in the United States Army Corps of Engineers, Seattle District, Regional General Permit 3. This is an appropriate method to achieve no net loss of ecological function in this subject area.

Environment Designation of Log Boom Park

One individual advocated for designating Log Boom Park as a Natural environment. Given the level of development at the park, including a pier, parking and walkways, the Urban Conservancy designation adopted by the City seems appropriate.

Restoration Plan

Concern was raised that the Restoration Plan was not detailed enough and did not adequately identify priorities and funding. It is a suggested change that additional information regarding restoration priorities and funding be added.

Industrial Activities in Shoreline Areas

One individual raised concerns regarding the operation for water-dependent industrial uses. The City noted that water-dependent uses can be located on the shoreline, including within buffers, so long as the use achieves no net loss of ecological function.

Height Limits- H-3 and H-4 Areas

Late in the City adoption process, building height limits were somewhat relaxed in two areas where redevelopment is anticipated or advocated. These were identified as the H-3 and H-4 areas. Building heights could be up to 45 feet if the building is at least 50 feet from the Ordinary High Water Mark and 65 feet if the building is at least 100 feet from the Ordinary High Water Mark.

Most of Area H-3 is in a floodway. Within a floodway, commercial buildings cannot cause any rise in the flood elevation and residences are prohibited. The increased height limits are inconsistent with other provisions for this area and inconsistent with recognizing the statewide interest of limiting development in floodways. This provision does not protect a statewide interest as discussed in WAC 173-26-181. A proposal is being made to reduce the area of the floodway in this area. A change to the SMP is required to ensure that increased building heights are not located in floodways or critical area buffers.

Most of Area H-4 is in a floodway, floodplain or critical area. The standard buffer for a Class 1 stream (as the Sammamish River is classified) is 150 feet. The necessary critical area buffers largely render the provision for increased height limits meaningless. As drafted, this provision is inconsistent with critical area provisions for this area as articulated in WAC 173-26-221. A change is required to ensure that increased building heights are not located in floodways or buffers.

Accessory uses counted as part of a water-dependent use

While accessory uses may be necessary for certain water-dependent uses to function, a focus on accessory uses should not be allowed to minimize the water-dependent uses in shoreline jurisdiction. Concern was raised that nonwater-dependent uses could be counted as water-dependent uses in this portion of the SMP. A change is required to ensure that a nonwater-dependent accessory uses are associated with a water-dependent use and are the minimum necessary to support the water-dependent use. This change provides a limit for how much an accessory use can encumber a site dedicated to a water -dependent use consistent with WAC 173-26-201(2)(d).

Shoreline Designations

During the review of the Draft SMP, we noted that:

The southern portion of Reach Lake WA – 2 is designated Urban Conservancy in the SMP. This area appears to have much in common with Reach Lake WA – 1, which is designated Natural. Why is this area designated Urban Conservancy rather than Natural?

The Planning Commission did not believe that private property should be placed in a Natural designation. After reviewing this rationale, Ecology believes that private property can be designated Natural if it meets that designation criteria for doing so. The designation of the property immediately north of St. Edwards Park on Lake Washington should be based on the designation criteria at WAC 173-26-211(5)(a) and (e) and the Natural and Urban Conservancy designation criteria in the SMP. This change is consistent with WAC 173-26-211(5)(a)(iii).

Alternative Pier Design

Concern was expressed regarding the SMP's allowance for piers serving commercial or industrial uses. While the SMP allows for alternative pier design so long as the pier achieves no net loss of ecological function, it is not a well defined provision. The required changes make it clear that commercial piers can be proposed that are the documented minimum necessary to accomplish the water dependent for which they are designed and that the meets or exceeds the specific ecological protective measures in the remainder of the pier and dock section. This change provides consistency with WAC 173-26-231(3)(b) and WAC 173-26-201(2)(c).

Commercial Uses in Urban Conservancy Environment Designation

Concern was expressed regarding commercial uses in the Urban Conservancy environment. While the Kenmore SMP does allow for commercial uses in the Urban Conservancy environment, it is required that any such project demonstrate ecological enhancement. Given that the standard buffer from Lake Washington for commercial uses is a minimum of 115 feet. The standard buffers on the Sammamish River and Swamp Creek are 150 feet in the Urban

Conservancy environment, the environment designation is consistent with the Urban Conservancy management policies found at WAC 173-26-211(5)(e).

Summary of Issues Identified by Ecology as Relevant To It's Decision:

Channel Migration Zone on Swamp Creek

In order to meet the requirements of WAC 173-26-221(3)(c) provision for a channel migration zone on Swamp Creek has been added as a required change. As adopted by the City Council, the Kenmore SMP relies on a future administrative policy will regulate channel migration zones. This is insufficient to be compliant with the Shoreline Guidelines. In order to be consistent with WAC 173-26-221(3)(c), a required change identifies the channel migration area for Swamp Creek and provides regulations to be minimally compliant with the Guideline requirements.

Expansion of Nonconforming Piers and Docks

The SMP has a strong set of design standards for new piers and docks that include a requirement for 3 foot wide ramps, 4 foot wide piers, deck grating, size limits on the first set of piles near shore, and a 150 foot overall limitation. The adopted SMP allows for an expansion of a legally existing dock of 25 percent of the existing size so long as there is a demonstration that the proposal would reduce the impacts to critical fish habitat and cause no harm to adjacent uses of the shoreline. The required change incorporates many of the design standards for new piers and docks and requires that expanded docks be no larger than the minimum necessary to accomplish their water dependent use. This change is necessary to address public comments while still providing an incentive to improve the environmental performance of docks consistent with WAC 173-26-231(3)(b).

Definition of Critical Areas

Rather than simply make a reference to another section of the Kenmore Municipal Code the definition of "critical areas" should be within, or incorporated into, the SMP. The definition of critical areas is being added to the SMP.

Wetland Definition

The definition of wetland is being changed to ensure that wetland definition is current.

Wetland Mitigation Ratios

The SMP incorporates the following wetland mitigation ratios:

Table 1
Adopted Mitigation Ratios

Wetland Class	Mitigation Ratio
Class 1	3 to 1
Class 2	2 to 1
Class 3	1 to 1

Current Department of Ecology guidance calls for the following mitigation ratios:

Table 2
Ecology Recommended Mitigation Ratios

<u>Category and Type of Wetland</u>	<u>Creation or Re- establishment</u>	<u>Rehabilitation</u>	<u>Enhancement</u>	<u>Preservation</u>
<u>Category I:</u> <u>Bog,</u> <u>Natural</u> <u>Heritage</u> <u>site</u>	<u>Not considered</u> <u>possible</u>	<u>6:1</u>	<u>Case by case</u>	<u>10:1</u>
<u>Category I:</u> <u>Mature</u> <u>Forested</u>	<u>6:1</u>	<u>12:1</u>	<u>24:1</u>	<u>24:1</u>
<u>Category I:</u> <u>Based on</u> <u>functions</u>	<u>4:1</u>	<u>8:1</u>	<u>16:1</u>	<u>20:1</u>
<u>Category II</u>	<u>3:1</u>	<u>6:1</u>	<u>12:1</u>	<u>20:1</u>
<u>Category III</u>	<u>2:1</u>	<u>4:1</u>	<u>8:1</u>	<u>15:1</u>

The mitigation ratios found in the adopted KMC 18.55.330(G) compare unfavorably with Table 8C-11 from *Wetlands in Washington State, Volume 2 – Protecting and Managing Wetlands, April 2005 – Ecology Publication #05-06-008*. The city has not demonstrated that the inclusion of the standards for mitigation ratios in KMC 18.55.330(G) meets current BAS and will not result in a net loss of functions within the shoreline jurisdiction. The submittal of a single page (Page 10 of “Draft BAS Technical Memorandum” – Section 2.6.2 Mitigation Ratios) does not demonstrate that the proposed mitigation replacement ratios would assure no net loss of shoreline ecological functions necessary to sustain shoreline natural resources. The proposed ratios are not consistent with BAS which Ecology utilized in the creation of Table 8C-11 from *Wetlands in Washington State, Volume 2 – Protecting and Managing Wetlands, April 2005 – Ecology Publication #05-06-008*.

After additional discussion, the City and Ecology agreed to the following mitigation ratios:

Table 3
Ecology/City of Kenmore Agreed Mitigation Ratios

<u>Category and Type of Wetland</u>	<u>Creation or Reestablishment (C/R)</u>	<u>Creation (C) or Reestablishment (R) plus Enhancement (E)</u>	<u>Enhancement (E) Only</u>
Class 1	3:1	1:1 C/R plus 6:1 E	Not Allowed
Class 1 (Mature Forested)	6:1	1:1 C/R plus 20:1 E	Not Allowed
Class 2	2:1	1:1 C/R plus 4:1 E	Not Allowed
Class 3	1.5:1	1:1 C/R plus 2:1 E	6:1

The City provided supplemental analysis on June 21, 2011 supporting the revised mitigation ratios. The analysis noted that:

This proposed mitigation ratios are similar to Ecology’s recommended ratios, except with regard to the creation-plus-enhancement ratio recommended by Ecology for Category II. The slightly smaller enhancement component (6:1 proposed versus 8:1 in the Ecology system) still more than mitigates for wetland impacts in the City’s shoreline, and provides sufficient disincentive to prevent most wetland impacts. The mitigation sequencing and prohibition on impacts to Class 1 wetlands, which represents the majority of wetlands in Kenmore’s shoreline, has proven effective in the five years since the Kenmore CAO was adopted.

Ecology has concluded that the memo adequately explains the City of Kenmore’s proposed wetland mitigation ratios for the city’s 3-tier wetland rating system relative to Ecology’s

recommended ratios based on a 4-tier system and Ecology's wetland functional rating system. Ecology is prepared to accept the alternative proposal for the City of Kenmore's SMP update for wetland mitigation ratios as presented in Table 3.

Ecology has noted its strong preference to see the city adopt Ecology's 4-tier wetland ratings system and the corresponding mitigation ratios. Ecology has also noted that any proposed impacts to wetlands within shoreline jurisdiction that require state or federal authorization will also require the use of Ecology's 4-tier wetland rating system and corresponding mitigation ratios.

Measurement of Wetland Buffers

A change within the incorporated critical area ordinance is necessary to ensure that wetlands are delineated correctly and that wetland buffers are measured correctly.

Wetland buffers shall be measured from the wetland edge as delineated and marked in the field using the Washington State Wetland Delineation Manual (1997) or as may be revised in WAC 173-22-035 and WAC 173-22-080.

This minor change will allow the SMP to stay current with state law.

Mitigation Standards

Change is necessary to ensure that wetland standards are current. This section in the adopted SMP references outdated mitigation guidelines for developing freshwater wetland mitigation plans. While it does say "as revised" it is not clear whether this means that applicants should be using the most current Ecology guidance on developing wetland mitigation plans. Adopting the current language found in KMC 18.55.330(A) within the SMP update would not be consistent with BAS. This section of code should be amended

Mitigation Sequencing

A change is necessary to make the mitigation sequencing requirements in the SMP consistent with the mitigation sequencing requirements in the Guidelines. The required change clarifies that mitigation sequencing is a requirement for all projects consistent with WAC 173-26-201(2)(e)(i). The incorporated mitigation sequencing section was missing the requirement to monitor the impact of compensation projects and take appropriate corrective action, if necessary.

Buffers for the Urban Conservancy Environment

The shoreline density and dimensions table at KMC 16.65.020 does not have buffer dimensions for commercial development in the Urban conservancy environment. This was an oversight. The intended buffers are 115 feet for water-dependent related commercial development and 150 feet for nonwater-dependent and nonwater-related commercial development.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City's SMP proposal, subject to and including Ecology's required changes (itemized in Attachment B), is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that the proposed SMP, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new master program amendments (WAC 173-26-201(2)(c)).

Ecology also concludes that a separate set of recommended changes to the submittal (identified during the review process and itemized in Attachment C) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required, but can, if accepted by the City, be included in Ecology's approved SMP amendments.

Ecology concludes that those SMP segments relating to shorelines of statewide significance provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP amendment process.

Ecology concludes that the City has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City's SMP amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3)(a) and (h) requiring a SMP Submittal Checklist.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in WAC 173-26-120.

Ecology concludes that the City has chosen not to exercise its option pursuant to RCW 90.58.030(2)(f)(ii) to increase shoreline jurisdiction to include buffer areas of all critical areas within shorelines of the state. Therefore, as required by RCW 36.70A.480(6), for those

designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the City's critical areas ordinance. In such cases, the updated SMP shall also continue to apply to the designated critical area, but not the portion of the buffer area that lies outside of SMA jurisdiction. All remaining designated critical areas (with buffers NOT extending beyond SMA jurisdiction) and their buffer areas shall be regulated solely by the SMP.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments are consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules, once required changes set forth in Attachment B are approved by the City. Ecology approval of the proposed amendments with required changes, is effective on the date at which Ecology receives written notice that the City has agreed to the required changes.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit an alternative to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action on the amendment.

Attachment B:

Kenmore Shoreline Master Program

Ecology Required Changes –

The following changes are required to comply with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III):

ITEM	DRAFT SMP Provision (Cite)	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE	SUGGESTED ALTERNATIVE BY LOCAL GOVERNMENT
1		Channel Migration Zone on Swamp Creek	ADD Section 16.50.100 to read: A. <u>The Channel Migration Zone shall include:</u> <u>1. The 500-year floodplain of Swamp Creek within shoreline jurisdiction, and</u> <u>2. All area within 112.5 feet of Swamp Creek.</u> B. <u>Within the Channel Migration Zone:</u> <u>1. There shall be no subdivision of land within the channel migration zone except for the purpose of creating permanent, non-buildable open space tracts.</u> <u>2. Fill shall not be allowed that impairs channel migration within the channel migration zone.</u> <u>3. No new development is allowed where future stabilization, including bank stabilization as well as structural flood hazard reduction would be necessary.</u> <u>4. Existing structures can be protected but must use natural stabilization unless proven a</u>	Necessary to meet the requirements of WAC 173-26-221(3)(c) provision for a channel migration zone.	

2	Height Limits- H-3 and H-4 Areas KMC 16.65.020.B.7	<u>scientifically and technically valid study that the natural stabilization measures will not work.</u> 5. <u>Existing legal uses in the Swamp Creek floodplain can be repaired and maintained, provided that such actions do not cause significant ecological impacts, increase flood hazards to other uses, and is consistent with other relevant laws.</u> 6. <u>Before new structural flood hazard reduction measures in shoreline jurisdiction can be approved, it must be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development, that nonstructural measures are not feasible, that impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss of ecological function, and that appropriate vegetation conservation actions are undertaken.</u> C. <u>A project proponent may have a channel migration zone study completed by a qualified professional hydrogeologist to be reviewed by the City. If the study demonstrates that the entirety of the development property is outside of the channel migration zone, then this section will not further apply to the project.</u> <u>Modify subsection KMC 16.45.010.B.12:</u> All development activities shall be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization, landfills, levees, dikes, groins, jetties or substantial site regrades. All development in the floodplain shall also include an assessment of potential effects the project would have on channel migration, and incorporate measures to mitigate any adverse impacts on channel migration. Modify KMC 16.65.020.B.7 to read: Additional height may be permitted under the following conditions: a. The structures would not obstruct the view of a substantial number of residences, and b. The structures are located in an area designated area on Map 1 (Shoreline Environment Designations) as allowing these additional heights, and	Most of Area H-3 is in a floodway. Commercial buildings cannot cause any rise in the	
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c. The structure height complies with the allowable height of the underlying zone and the following additional height limits within the shoreline, and

d. The additional height of the structures would not impair the ecological functions of the stream, lake, wetland, or the required buffer. In particular, the effects of shading and light impacts on the viability of vegetation in the buffer shall be considered when making this determination, and

e. Be outside of the floodway in effect at the time of permit application, and

f. Not be within a wetland or wetland buffer as regulated by 18.55 KMC.

Distance from Structure to Ordinary High Water Mark	Maximum Height Allowed Area H-1	Maximum Height Allowed Area H-2	Maximum Height Allowed Areas H-3 and H-4
Less than 50 feet	35 feet	35 feet	35 feet
50 to 100 feet	50 feet	45 feet	35-45 feet
100 to 112.5 feet	50 feet	75 feet	35-65 feet
112.5 to 200 feet	50 feet	75 feet	65 feet

The burden to demonstrate that the proposal meets the criteria of this section is on the applicant. The director may require technical studies as necessary to demonstrate compliance.

The Director has the authority to require a person seeking additional structure require a person seeking additional structure height to submit an analysis performed by a qualified expert which

flood elevation and residences are prohibited. This provision is inconsistent with other provisions for this area and inconsistent with recognizing the statewide interest of limiting development in floodways. This provision does not protect a statewide interest as discussed in WAC 173-26-181.

Most of Area H-4 is in a floodway, floodplain or critical area. The standard buffer for a Class 1

3	KMC 16.75.050.D	Expansion of Nonconforming Dock	demonstrates compliance with subsection 7 a: KMC 16.75.050.D shall be modified to read: 16.75.050 Alteration or reconstruction of nonconforming use or development. D. Expansion of a nonconforming dock may be allowed by the director when the applicant demonstrates the following: The expansion would not increase the existing overwater coverage of the dock by more than 25 percent, and The existing nonconformance results from noncompliance with the standards in KMC 16.55.050 B6, B8, B9 or B15, and The proposed expansion would not increase the existing overwater coverage of the dock to more than the existing condition or by the limits established in KMC 16.55.050.F, whichever is greater, and The expanded dock project would reduce the impacts of the existing dock on critical fish habitat as demonstrated through the habitat management plan for the development, and The proposed expansion would not cause adverse impacts on adjacent shoreline uses.	stream is 150 feet. The necessary critical area buffers largely render this provision meaningless. As drafted, this provision is inconsistent with critical area provisions for this area as articulated in WAC 173-26-221. This change is necessary to address public comments while still providing an incentive to improve the environmental performance of docks consistent with WAC 173-26-231(3)(b).
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4	KMC 16.50.030.B.2.i	Accessory uses counted as part of a water- dependent use	KMC 16.50.030.B.2.i shall be modified to read: Part of a mixed-use development that includes a water-dependent use and in which at least fifty percent of the land area within the shoreline jurisdiction on the project site is in a water-dependent use or water-related use (including uses accessory to a water dependent use <u>that are fully incidental and subordinate to the water-dependent use</u>), dedicated public access, or substantial shoreline habitat enhancement consistent with KMC 16.60.010;	While accessory uses may be necessary for certain water-dependent uses to function, a focus on accessory uses should not be allowed to minimize the water-dependent uses in shoreline jurisdiction. This change provides a limit for how much an accessory use can encumber a site dedicated to a water - dependent use consistent with WAC 173-26-	
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5	Shoreline Designations	Shoreline Designations North of St Edwards Park	King County Tax Parcels 1426049013 and 1426049014 shall be designated Natural on the shoreline environment designation map.	201(2)(d). This change is consistent with WAC 173-26-211(5)(a)(iii).	
6	KMC 16.55.050	Alternative Pier Design	KMC 16.55.050 shall be modified to read: 16.55.050 Docks, piers, moorage, buoys, floats or launching facilities. A. Any dock, pier, moorage, buoy, float or launching facility authorized by this chapter shall not interfere with navigation and. B. Any dock, pier, moorage, buoy, float or launching facility authorized by this chapter shall be subject to the following requirements, or must demonstrate that the project provides an equal or greater degree of protection of ecological functions and anadromous species habitat. For the purposes of meeting this requirement, the director will review the required habitat management plan to determine whether the project is adequately protective. Docks, piers, moorage, buoys, floats or launching facilities serving more than four single family residences must also meet the standards in KMC 16.50.050. 1. Docks, piers, moorage, buoys, floats or launching facilities shall not exceed the minimum size necessary to serve the use for which they are designed (see 16.55.030.B.4). 2. Docks, piers, moorage, buoys, floats or launching facilities serving more than four single family residences must also meet the standards in KMC 16.50.050. A3. Only joint use boat lift, dock, pier, moorage, buoys, float or launching facilities may be permitted for multiple family dwelling unit development proposals. B4. Only one boat lift, dock, pier, moorage, buoy, float and launching facility may be permitted for each parcel developed with a single detached residential unit and only if the applicant demonstrates there is no other feasible option for shared use	This change is necessary to provide consistency with WAC 173-26-231(3)(b) and WAC 173-26-201(2)(c).	

				2b. Piers shall not exceed four feet wide and shall be fully grated; 3c. Ramps shall not exceed three feet wide and shall be fully grated; 4d. Ells are allowed only over water with depths of nine feet or greater at the landward end of the ell; ell may be up to 6 feet wide by 20 feet long with a 2-foot-wide strip of grating down the center; or ell may be up to 6 feet wide by 26 feet long with grating over the entire ell; 5e. Floats are allowed only over water with depths of 10 feet or greater at the landward end of the float; and floats may be up to 6 feet wide by 20 feet long with a 2-foot-wide strip of grating down the center; 6f. In no case may any moorage facility extend more than 150 feet waterward of the ordinary high water mark; 7g. The first (nearest shore) piling shall be steel, 4-inch piling and at least 18 feet waterward of the ordinary high water mark. Piling sets beyond the first are not required to be steel, shall be spaced at least 18 feet apart and shall not be greater than 12 inches in diameter; 8h. Piles shall not be treated with pentachlorophenol, creosote, chromated copper arsenate or comparably toxic compounds. If ammoniacal copper zinc arsenate pilings are proposed, the applicant will meet all of the Best Management Practices, including a post-treatment procedure, as outlined in the amended Best Management Practices of the Western Wood Preservers; and 9i. When steel piles are installed, approved sound attenuation measures must be used. H10. Existing habitat features (e.g., large and small woody debris, substrate material, etc.) shall be retained and new or expanded moorage facilities placed to avoid	
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				disturbance of such features.
				<u>J11.</u> Invasive aquatic weeds may be removed with nonchemical means only, except that milfoil may be removed using chemicals provided that the chemicals are applied by a licensed applicator and approved for aquatic use. <u>J12.</u> In order to mitigate the impacts of new or expanded commercial moorage facilities, the applicant shall plant emergent vegetation (if site-appropriate) and a buffer of vegetation a minimum of ten feet wide along the entire length of the lot immediately landward of the ordinary high water mark. Planting shall consist of native shrubs and trees and, when possible, emergent vegetation. At least five native trees will be included in a planting plan containing one or more evergreen trees and two or more trees that like wet roots (e.g., willow species), per every 100 lineal feet of shoreline. Such planting shall be monitored for a period of five years according to an approved monitoring plan. This subsection is not intended to prevent reasonable access through the shoreline critical area buffer to the shoreline, or to prevent recreational use of the shoreline critical area. This requirement may be waived or reduced for water-dependent transportation uses where it is demonstrated that vegetation could result in safety or navigation hazards. <u>K13.</u> No private moorage or other structure waterward of the ordinary high water mark, including structures attached thereto, shall be closer than twelve feet to any adjacent property line except when there is a mutual agreement of adjoining property owners. Excepted from the requirements of this section are boat lifts or portions of boat lifts that do not exceed thirty inches in height measured from ordinary high water mark. <u>L14.</u> Proposals to repair existing legally established moorage facilities where the nature of the repair is not described in KMC 16.55.030 of this section shall be considered minor repairs and are permitted, consistent with any applicable standards of this

			Title, Title 18 and any other applicable codes or regulations. M15. No covered boat lift, dock, pier, covered moorage, covered float, or other covered structure is permitted waterward of the ordinary high water mark, except as provided below: 4a. Submerged, free-standing mechanical boat lifts associated with single detached residential docks or piers and recreational watercraft may be covered with a canopy, provided: aj. No canopy shall be more than twenty-five feet in length or wider than fifteen feet; bij. No portion of the canopy shall exceed a height of twelve feet above the ordinary high water mark; eiij. The canopy shall at no time have any side partly or wholly enclosed; div. The highest portion of the canopy shall be located below the lowest grade point on the waterward side of the existing homes on surrounding properties; ev. Canopies shall be made out of canvas or other such non-toxic materials; fyi. Canopies shall be of a translucent material to allow light transmission; gyji. The total overwater coverage of the piers, floats, ramps, ells, and canopy for a single family residence with a single-use moorage shall not exceed 600 square feet ; and hyiii. Only one boat lift canopy per single detached residence shall be allowed.		
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			2b. Covered moorage may be provided for commercial boat repair facilities. N15. No dwelling unit may be constructed on a dock or pier. O17. Buoys shall meet the following conditions: 4a. Buoys shall not impede navigation; 2b. The use of buoys for moorage of recreational and commercial vessels is preferred over pilings or float structures; 3c. Buoys shall be located and managed in a manner that minimizes impacts to aquatic habitat; 4d. No more than four buoys per acre are allowed. C. Proposals that do not meet the requirements of subsections B.6, 8, 9 or 15 of this section and that are designed to support a commercial water-dependent use, or to provide public access, or to serve residential uses, may be considered by the director. For any alternative proposal, the applicant must demonstrate that the proposed deviation is the minimum necessary to meet the needs of the specific use proposed, and provides an equal or greater degree of protection of ecological functions and anadromous species habitat than would strict adherence to the standards. For purposes of meeting this requirement, the director will review the required habitat management plan to determine whether the project is adequately protective.		
7	KMC 16.10.110	Definition of Critical Areas	KMC 16.10.110 shall be revised as follows: 16.10.110 Critical areas. The definitions for "critical areas" in KMC 18.20 shall apply in shorelines. "Critical areas" means any of the following areas or ecosystems: aquifer recharge areas, fish	The definition of "critical areas" should be in the SMP.	

8	KMC 16.10.640	Wetland Definition	and wildlife habitat areas of importance, frequently flooded areas, geologically hazardous areas, streams, and wetlands, as defined in Chapter 36.70A RCW and this chapter. [Ord. 06-0244 § 21.]		
			KMC 16.10.640 shall be modified as follows: 16.10.640 Wetlands. "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands. For identifying and delineating a wetland, local government shall use the Washington State Wetland Identification and Delineation Manual (1997)	Change is necessary to ensure that wetland definition is current.	
9	KMC 18.55.330.G.1	Wetland Mitigation Ratios	KMC 18.55.330.G.1 shall be modified as follows: Acreage Replacement Ratios. The following ratios shall apply to creation or restoration that is in-kind, on-site, the same class, timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply on a case-by-case basis. These ratios do not apply to the use of credits from a state-certified wetland mitigation bank. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered. Class 1 — 3 to 1 Class 2 — 2 to 1 Class 3 — 1 to 1	Change is necessary to ensure that wetland mitigation ratios are current.	

Wetland Mitigation Ratios:																								
			<table><tr><th>Category and Type of Wetland</th><th>Creation or Reestablishment (C/R)</th><th>Creation (C) or Reestablishment (R) plus Enhancement (E)</th><th>Enhancement (E) Only</th></tr><tr><td>Class 1</td><td>3:1</td><td>1:1 C/R plus 6:1 E</td><td>Not Allowed</td></tr><tr><td>Class 1 (Mature Forested)</td><td>6:1</td><td>1:1 C/R plus 20:1 E</td><td>Not Allowed</td></tr><tr><td>Class 2</td><td>2:1</td><td>1:1 C/R plus 4:1 E</td><td>Not Allowed</td></tr><tr><td>Class 3</td><td>1.5:1</td><td>1:1 C/R plus 2:1 E</td><td>6:1</td></tr></table>	Category and Type of Wetland	Creation or Reestablishment (C/R)	Creation (C) or Reestablishment (R) plus Enhancement (E)	Enhancement (E) Only	Class 1	3:1	1:1 C/R plus 6:1 E	Not Allowed	Class 1 (Mature Forested)	6:1	1:1 C/R plus 20:1 E	Not Allowed	Class 2	2:1	1:1 C/R plus 4:1 E	Not Allowed	Class 3	1.5:1	1:1 C/R plus 2:1 E	6:1	
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Class 3	1.5:1	1:1 C/R plus 2:1 E	6:1																					
10	KMC 18.55.320.F.2	Measurement of Wetland Buffers	KMC 18.55.320.F.2 shall be modified as follows: Measurement of Wetland Buffers. Wetland buffers shall be measured from the wetland edge as delineated and marked in the field using the 1987 4997 U.S. Army Corps of Engineers Wetland Delineation Manual and current Regional Supplements <u>Washington State Wetland Identification and (Ecology)</u> or as may be revised in WAC 173-22-035 and WAC 173-22-080 or the most recent approved federal manual and regional supplements. KMC 18.55.330.A shall be modified as follows:	Change is necessary to ensure that wetland standards are current.																				
11	KMC 18.55.330.A	Mitigation Standards	Mitigation Shall Achieve Equivalent or Greater Ecological Functions. Mitigation for alterations to wetlands and buffers shall achieve equivalent or greater ecologic functions than exist in the impacted wetland and buffer. Mitigation plans shall be generally consistent with the Department of Ecology Guidelines found in <u>Wetland Mitigation in Washington State - Part 1, Version 1, March 2006, Publication #06-060-011a</u> and <u>Wetland Mitigation in Washington State - Part 2, Version 1, March 2006, Publication #06-060-011b</u> for Developing Freshwater Wetlands	Change is necessary to ensure that wetland standards are current.																				

12	KMC 18.55.210	Mitigation Sequencing	Mitigation Plans and Proposals, 1994, as revised: KMC 18.55.210 shall be modified as follows: Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for as outlined by WAC 197-11-768, in the following order of preference: A. Avoiding the impact altogether by not taking a certain action or parts of actions; B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation; <u>by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;</u> C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment; D. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and/or E. Compensating for the impact by replacing or providing substitute resources or environments; <u>and/or</u> F. <u>Monitoring the impact and the compensation projects and taking appropriate corrective measures.</u>	Change is necessary to make the mitigation sequencing requirements in the SMP consistent with the mitigation sequencing requirements in the Guidelines.
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13	KMC 16.65.010	Clarification of applicable standards	Mitigation for individual actions may include a combination of the above measures. [Ord. 06-0244 § 59 (Exh. 1).] KMC 16.65.010 shall be modified as follows: 16.65.010 Interpretation of shoreline density and dimensions table. A. The shoreline density and dimensions table in KMC 16.65.020 establishes the shoreline standards within each of the shoreline environments. The shoreline environment is located on the vertical column and the density and dimensions standard is located on the horizontal row of the table. The table should be interpreted as follows: 1. If the cell is marked with a Z in the box at the intersection of the column and the row, the shoreline does not impose a specific buffer requirement on that use, although the standards for the underlying zoning apply. In some cases, no standard is provided because the use is prohibited under KMC 16.450. 2. If the cell has a number in the box at the intersection of the column and the row, that number is the density or dimension standard for that shoreline environment. 3. If the cell has a parenthetical number in the box at the intersection of the column and the row, that parenthetical number identifies specific conditions listed in KMC 16.65.020.B that are related to the density and dimension standard for that environment. B. The density and dimensions enumerated in this section apply to any lot within the shoreline jurisdiction. If there is a conflict between the density and dimension standards in this section and the underlying zoning regulations, the more restrictive standard shall apply. C. For development in critical areas and critical area buffers, the applicable provisions of Section 18.55 apply unless a specific exception is provided in the shoreline code. Because	Corrects a code citation within the SMP	

14	KMC 16.65.020.A	Buffers listed in shoreline modification table	Lake Washington, the Sammamish River, and Swamp Creek are all fish and wildlife habitats of importance, a habitat management plan is required for any in-water or overwater development or activity, per KMC 18.55.520.																																												
			KMC 16.65.020.A shall be modified as follows: 16.65.020 Shoreline density and dimensions table and development conditions. A. Shoreline Density And Dimensions Table <table> <tr> <th></th><th>DOWNTOWN WATERFRONT</th><th>SHORELINE RESIDENTIAL</th><th>URBAN CONSERVANCY</th><th>NATURAL</th><th>AQUATIC</th></tr> <tr> <td colspan="6">Standards</td></tr> <tr> <td colspan="6">Shoreline Buffers from OHWM on Lake Washington</td></tr> <tr> <td>Water-dependent commercial development</td><td>20 ft (1)</td><td>Z</td><td>115 ft (1)Z</td><td>Z</td><td>0</td></tr> <tr> <td>Water-related commercial development</td><td>20 (1) ft</td><td>Z</td><td>115 ft (1)Z</td><td>Z</td><td>0</td></tr> <tr> <td>Non-water-dependent and non-water-related commercial development</td><td>50 ft (1)</td><td>Z</td><td>150 ft</td><td>Z</td><td>Z</td></tr> <tr> <td>Government services</td><td>20 ft (6)</td><td>20 ft (6)</td><td>20 ft (6)</td><td>20 ft (6)</td><td>0</td></tr> </table>		DOWNTOWN WATERFRONT	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC	Standards						Shoreline Buffers from OHWM on Lake Washington						Water-dependent commercial development	20 ft (1)	Z	115 ft (1)Z	Z	0	Water-related commercial development	20 (1) ft	Z	115 ft (1)Z	Z	0	Non-water-dependent and non-water-related commercial development	50 ft (1)	Z	150 ft	Z	Z	Government services	20 ft (6)	20 ft (6)	20 ft (6)	20 ft (6)	0	This corrects an oversight in the buffer standards.	
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Attachment C: Kenmore Shoreline Master Program Ecology Suggested Changes –

The following changes are recommended to create a more effective SMP:

ITEM	DRAFT SMP Provision (Cite)	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE	SUGGESTED ALTERNATIVE BY LOCAL GOVERNMENT
1	KMC 16.50.060	Land Divisions	Modify Section 16.50.60 (first paragraph) to read: Public access, shall be required for public projects and development on public lands (KMC 16.45.010.B.16), commercial and manufacturing uses (KMC 16.50.030.B2), boating facilities and marinas (KMC 16.50.050), multifamily development (KMC 16.50.090.A.1), and subdivisions- land divisions of more than four lots (KMC 16.50.090.A.2). For development on private property, public access shall be required when such development would either generate or increase demand for public access and/or would impair existing legal access opportunities or rights.	This changes is to avoid confusion. Kenmore may have 9 lot short plats. This makes it clear that any land division of greater than 4 lots is subject to public access requirements.	
2	KMC 16.65.020.B.2.a	Minimum building setback	Modify KMC 16.65.020.B.2.a to read: 2. Single family residential development shall provide buffers and setbacks as follows: a. On Lake Washington in Shoreline Residential areas:	This would maintain a minimum separation between buildings and the shoreline buffer for maintenance purposes.	

			i. A minimum shoreline buffer of 25 feet from the ordinary high water mark shall be provided as a vegetation conservation area. ii. The minimum building setback of 25 feet from the shoreline buffer may • be reduced to five (5) feet if vegetation in the required buffer is reestablished or enhanced, according to the standards in KMC 16.60.010.0.		
	Restoration Plan, Chapter 4	Identification of Restoration Priorities	Identify the relative priority for restoration activities listed in Chapter 4, Restoration Actions. This can include applying the Restoration Plan priorities to activities listed in Table 3, beginning on page 25 and expansion of the discussion in the implementation section on pages 32 and 33.	This is suggested by public comments.	
4	Restoration Plan Map No. 4	Identification of Swamp Creek Wetland #4 as high quality habitat	Identify Swamp Creek Wetland No. 4 as high quality habitat on Map 4 of the Restoration plan	This is suggested by public comments.	
5	KMC 18.55.120.B	Minor grammatical correction.	Modify KMC 18.55.120.B to read: First sentence of subsection, the word "association" should be replaced with "associated".	This is a minor grammatical correction.	
6	KMC 16.50.060	Public access	Modify KMC 16.50.060 to read:	Vegetation management	

			standards application to public access	
		16.50.060 Public Access. Public access shall be required for public projects and development on public lands (KMC 16.45.010.B.16), commercial and manufacturing uses (KMC 16.50.030.B2), boating facilities and marinas (KMC 16.50.050), multifamily development (KMC 16.50.090.A.1), and subdivisions of more than four lots (KMC 16.50.090.A.2). For development on private property, public access shall be required when such development would either generate or increase demand for public access and/or would impair existing legal access opportunities or rights. A. Where public access is required, it shall: 1. Connect to other public and private public access and recreation facilities on adjacent parcels along Lake Washington and the Sammamish River shorelines whenever feasible; 2. Be sited to ensure public safety; 3. Be open to the general public and accessible directly from a public right-of-way or by an easement granted to the City for public access; 4. Enhance access and enjoyment of the shoreline and provide features in scale with the development such as, but not limited to: a. View points; b. Places to congregate in proportion to the scale of the development;		

			c. Benches and picnic tables; d. Beach or water access for boats; and e. Pathways for pedestrians and bicycles. B. Where public access is required, the area dedicated and improved for public access shall be roughly proportional to the scale and character of the proposed development and its impacts. C. Where public access is required, the Director shall prepare written findings demonstrating that the conditions imposed are consistent with the principles of nexus and rough proportionality, the Act and all relevant constitutional and other legal limits on regulation of private property. D. Public access improvements shall be designed to be compatible with the purpose and intent of the shoreline environment in which they are constructed. E. Trails and other public access improvements are subject to the standards for recreational uses in section KMC 16.65.020 and the vegetation management standards in KMC 16.60.020.B. F. The provisions of this section do not apply to the following: 1. Short plats of four or fewer lots; 2. Where public access is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline		
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			environment; or			
			3. Where constitutional or other legal limitations apply.			
7	KMC 16.60.020.B and KMC 16.65.020.B.4	Vegetation management	Modify KMC 16.60.020.B to read: B. Vegetation management standards established in KMC 18.55.420 for streams and their buffers shall apply within Sammamish River and Swamp Creek shorelines. In addition to provisions for recreational uses in KMC 16.65.020 allowing limited modifications to critical area buffers for the purposes of public access improvements, the following standards shall apply in shorelines: 1. In Swamp Creek Park, public access trails may be located within critical areas and required buffers, when planned along with a habitat restoration project and it is demonstrated that the ecological functions of the overall standard stream buffer area would be substantially improved. Trails in Swamp Creek Park roughly paralleling the shoreline of the Sammamish River or Swamp Creek shall generally be located at least 50 feet from the ordinary high water mark, but trails may extend closer to the water if necessary to reduce impacts on critical areas or adjacent properties, or access a pedestrian bridge across Swamp Creek. Spur trails may be extended to the water's edge but such access areas should be limited in order to protect ecological functions of the stream buffer.	Vegetation management standards application to public access		

			and wetlands. B2. When public access is being provided as a part of mixed use development allowed in the Urban Conservancy environment under KMC 16.50.030.B.2.a.ii, the director may allow public access trail development within the buffer in order to link with adjacent shoreline access, provided any new trail is farther from the shoreline than the waterward extent of existing development on the site and the proposed trail plan is accompanied by a plan demonstrating that the ecological functions of the overall required buffer area on a project site would be substantially improved. Modify KMC 16.65.020.B.4 to read: 4. New public access improvements shall comply with the requirements of KMC 18.55, provided that new public access improvements may be allowed within critical areas, or shoreline or critical area buffers if impacts are mitigated consistent with the requirements in KMC 18.55.190-220, 18.55.330 and 18.55.430 such that there is no net loss of shoreline ecological processes or functions, and the public access improvements meet the following standards: a. In order to encourage public access improvements and improved shoreline habitat in the Downtown Waterfront shoreline, a public access trail may be	
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			located within the stream buffer required in KMC 18.55.420, when accompanied by a plan demonstrating that the ecological functions of the overall required buffer area on a project site would be substantially improved. Trails paralleling the shoreline of the Sammamish River in the Downtown Waterfront environment shall be located at least 50 feet from the ordinary high water mark. Spur trails may be extended to the water's edge but such access areas should be limited in order to protect ecological functions of the buffer. b. In order to allow for a waterfront promenade area along the inner harbor area of the Downtown Waterfront environment, public access improvements may extend to the water's edge when accompanied by a plan demonstrating that the ecological functions of the overall required buffer area on a project site would be substantially improved. c. In Swamp Creek Park, public access trails may be located within critical areas and required buffers, when planned along with a habitat restoration project and it is demonstrated that the ecological functions of the overall standard stream buffer area would be substantially improved. Trails in Swamp Creek Park roughly paralleling the shoreline of the Sammamish River or Swamp Creek shall generally be located at least 50 feet from the ordinary high water mark, but trails may extend closer to the water if	
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				necessary to reduce impacts on critical areas or adjacent properties, or access a pedestrian bridge across Swamp Creek. Spur trails may be extended to the water's edge but such access areas should be limited in order to protect ecological functions of the stream buffer and wetlands. d. When public access is being provided as a part mixed use development allowed in the Urban Conservancy environment under KMC 16.50.030.B.2.a.ii, the director may allow public access to trail development within the buffer in order to link with adjacent shoreline access, provided any new trail is farther from the shoreline than the waterward extent of existing development on the site and the proposed trail plan is accompanied by a plan demonstrating that the ecological functions of the overall required buffer area on a project site would be substantially improved.		
8	KMC 16.65.020.B.1	Standards for water dependent uses	Modify KMC 16.65.020.B.1 to read: Development conditions (Footnotes to Shoreline Density And Dimensions Table KMC 16.65.020.A). 1. New water-dependent uses may be allowed within a shoreline buffer only if impacts are mitigated consistent with the requirements in KMC 18.55.190-220, 18.55.330 and 18.55.430 such that there is no net loss of shoreline ecological processes or functions. The director may allow non-water-dependent uses within the shoreline buffer along	Clarifying that all parts of subsection are applicable		

			the inner harbor portion of the Downtown Waterfront area at the northeast end of Lake Washington, <u>only if</u> :		
			a. The uses are developed in conjunction with a public access promenade adjacent to the water; <u>and</u> b. The uses do not interfere with public access or preclude the use of the shoreline for water dependent uses; <u>and</u> c. Mitigation is provided consistent with the requirements in KMC 18.55.190-220, 18.55.330 and 18.55.430 such that there is no net loss of shoreline ecological processes or functions.		
9	KMC 16.65.020.B.3	Standards for water dependent uses	Modify KMC 16.65.020.B.3 to read: 3. Outdoor storage for water-dependent manufacturing and industrial uses must be at least 20 feet from the ordinary high water mark in the Downtown Waterfront environment and is prohibited in all other environments.	Clarifying location of outdoor storage.	
10	KMC 16.75.050.C	Nonconforming uses and structures	Modify KMC 16.75.050.C to read: C. Expansion of a nonconforming use or structure may be approved through the provisions of KMC 16.75.040 when the applicant demonstrates the following.	Clarifying the limits on expansion of nonconforming structures.	

Attachment D Summary of Public Comments - City of Kenmore SMP Update

June 23, 2011

The Department of Ecology (Ecology) held a comment period for the Kenmore Shoreline Master Program (SMP) update from March 15, 2011 through April 15, 2011 and a public hearing on March 31, 2011. Testimony was provided by 7 individuals at the public hearing and 17 written comment letters submitted during the comment period. With one exception, individuals that testified at the public hearing also provided written comment.

City of Kenmore responses to the public comment summaries are provided below in italics. Some of the issues raised during Ecology's public comment period--mitigation ratios, for example--were not identified during the local public process preceding City Council adoption of the SMP. Staff will be working with Ecology on any issues they identify as needing attention, and may present additional recommendations to the City Council in response.

1. **Dave Douglas, Integrity Shoreline Permitting, testimony at the public hearing on March 31, 2011 and comment letter received March 31, 2011.**

Douglas is of the view that the City of Council and the Planning Commission were not appropriately advised by the City's SMP consultant or the Department of Ecology (Ecology). Douglas also believes that Regional General Permit (RGP) 1 was not appropriately emphasized and that Ecology misapplied RGP 3.

- a. **16.55.030 Shoreline modification table and conditions**
B2 on page 40: How does a property owner wishing to repair and maintain an existing shoreline stabilization structure document that work will be conducted in a manner that does not cause a net loss of ecological functions to the satisfaction of the City?

City Response: The property owner would submit a report to the city prepared by a qualified professional addressing impacts to ecological functions and how those impacts are avoided or mitigated.

Ecology Conclusion: An exempt activity must meet the standards of an SMP even though a SSDP is not required. It is within the authority of the city to require a No Net Loss assessment for pier repair activities.

- b. **16.55.040 Shoreline stabilization**
C on page 40: Where is the 4 foot maximum height of a shoreline stabilization structure measured from? Please clarify and reconsider changing this standard to a height that will provide adequate protection to property, dwellings and authorized uses.

City Response: This height is intended to be measured from average existing grade at the lake bottom. We are not aware of any circumstance where this height of structure located at the ordinary high water mark (OHWM) would not be adequate to protect any structure or authorized use in Kenmore.

Ecology Conclusion: It is within the authority of the City to regulate bulkhead height.

- c. 16.55.050 Docks, piers, moorage, buoys, floats or launching facilities
Opening paragraph on page 41: How does a property owner demonstrate that a project provides an equal or greater degree of protection of ecological functions and anadromous fish habitat without the need of a very expensive Habitat Management Plan? Why can't an experienced planner or the City's Planning Director evaluate projects, especially for replacement of an existing structure, based on reasonable comparison or accept a permit from the Army Corps of Engineers as proof that the project results in a "not likely to adversely affect" (NLAA) listed species or critical habitat? By requiring a Habitat Management Plan the City is placing a financial burden on property owners that the federal agencies charged with protecting threatened and endangered species and their critical habitat do not require. Please explain the City's position for requiring a Habitat Management Plan when state (WDFW) and federal (Army Corps, USFWS and NMFS) regulatory agencies with qualified fish and habitat biologists will review projects to ensure they result in a NLAA or "no net loss" determination?

City Response: The habitat management plan is not a new regulation in Kenmore and is currently required under the City's critical areas ordinance for all shorelines of the state. The plan is to be prepared by a qualified professional in consultation with the state Department of Fish and Wildlife (WDFW). WDFW approves the plan. If a habitat management plan approved by WDFW is submitted to the City, the City will accept the plan as adequate. Ecology, in an email dated June 8, 2010, advised the City that inserting language that would accept an issued permit from the Corps as proof of habitat protection would not be approvable by Ecology.

Ecology Conclusion: The City is obligated to ensure that projects achieve no net loss of ecological function pursuant to its SMP. While the City has discretion in how it accomplishes this, it cannot simply abdicate its responsibility. The city may or may not have the expertise on its staff to conduct the technical planning and review that the commenter suggests. Ecology finds that the City's approach is acceptable.

- d. B on page 41: Why must the owner of a single family detached unit (single family residence) demonstrate there is no other feasible option for shared use facilities? Piers accessory to a single family residence are considered water dependent uses and WAC 173-26-231(3)(b) states, "Where new piers or docks are allowed, master programs should contain provisions to require new residential development of two or more dwellings to provide joint use or community dock facilities, when feasible, rather than allow individual docks for each residence. Did the City leaders understand that this

was not required under the WAC or SMP Update Requirements? Can the City reconsider its position to align with the WAC? How does a person demonstrate no other "feasible" option?

City Response: The requirement for shared use facilities is applied only to projects of two or more dwelling units, not single-family residences. The applicant for a pier or dock accessory to a single-family residence may investigate other feasible options for sharing facilities by asking adjacent waterfront neighbors if joint development or use of a dock would be a possibility, and it is understood that the neighbors may decline. Since the City cannot force a neighbor to share a dock, if the adjacent neighbors decline the City would accept this as evidence of infeasibility. For new development containing more than one proposed single family detached residence, the City may require that docks be shared.

Ecology Conclusion: This provision does not preclude single family piers; but rather requires an alternatives analysis. This provision is part of a reasonable approach to minimize the impacts of piers and docks.

- e. G3 on page 42: Although ramps are rarely used for projects on fresh water lakes when they are the standard requiring them to be no wider than 3 feet must be clarified or changed. The City should allow the walking surface to be 3 feet wide and not the overall ramp width which is typically 3'-8" wide to allow for engineered rails. If this standard is retained the walking surface will only be 2'-4" which greatly limits access. Can the City change this to state, "The walking surface of ramps shall not be wider than 3 feet and shall be fully grated?" If not, please explain why since ramps actually promote more light penetration than a standard pier section so they should be encouraged.

City Response: The use of this standard (taken from the Corps of Engineers RGP-3 standards) was deliberate because there were consultations with federal fish and wildlife services on the RGP-3 standards, reflecting best available science. Flexibility is allowed (see 16.55.050 first paragraph, page 41) and it is anticipated that alternative designs could be developed and approved. For example, if a qualified biologist preparing a habitat management plan for the proposal determined that a 3'-8" ramp would not have any greater impacts than a 3' wide ramp, or that the marginal impact could be mitigated, such a ramp could be allowed. Handrails installed outboard of the ramp surface instead of in-line with the ramp surface would not be considered in the overall width of the ramp, since the concern is shading of nearshore habitat.

Ecology Conclusion: The purpose of this section is to provide nearshore habitat for migrating juvenile Chinook salmon. The City's utilization of standards taken from the USACE RGP-3 is appropriate.

- f. G4 and G5 on page 42: By requiring ells to be over 9 feet of water and floats to be over 10 feet of water it is likely to require longer piers to attain such depths. Please remove these standards from the Kenmore SMP and allow WDFW and the Corps to determine if an ell or float needs to be over the water depths prescribed on a project-by-project basis.

City Response: The use of this RGP-3 standard was deliberate because there were consultations with federal fish and wildlife services on the standard reflecting best available science. Flexibility is allowed (see 16.55.050 first paragraph, page 41) and it is anticipated that alternative designs could be developed and approved.

Ecology Conclusion: Ecology concurs with the City response. Locating active use areas of piers to water deep enough to avoid nearshore habitat and prop wash is positive and fully within the City's discretion.

- g. G7 on page 42. The size of the first set (nearest shore) piling should be determined by the contractor, structural engineer, and local building department and not by the SMP. Please remove this standard from the Kenmore SMP and allow the Corps to determine the size of the first set of inwater piles or direct the City to allow a maximum pile diameter of 8" for the first set. If not, please explain why?

City Response: While we recognize the concern that in some instances 4-inch piles would not be appropriate for structural reasons, the code allows for flexibility as long as the alternative would not have greater impacts. The purpose for this standard is to minimize impacts to nearshore habitat, since larger piles provide areas for predators of small fish. If the structural engineer demonstrates that a larger size is necessary for stability, it may be possible to also establish that the location or design of the piles is such that they would not provide any greater predator cover than smaller piles.

Ecology Conclusion: The size and location of the first set of piles is an important environmental concern. It is appropriately regulated by the SMP. Ecology concurs with the City response.

- h. L on page 43. Most if not all of Kenmore's existing overwater structures are likely to become legally nonconforming when the updated SMP goes into effect. Can existing legally conforming and nonconforming structures be maintained, repaired and replaced within the existing footprint, and even expanded in some cases without being brought into conformity?

City Response: Nonconforming structures are regulated in 16.75.050, where standards discuss nonconforming bulkheads, expansion of a nonconforming use or structure, and expansion of a nonconforming dock.

Ecology Conclusion: The SMP allows for maintenance and expansion of existing piers and docks.

- i. At section M.1.g on page 43, the SMP restricts the total overwater coverage of the piers, floats, ramps, ells, and canopy to 600 square feet. This may be the most restrictive and onerous regulation in any Lake Washington or Lake Sammamish waterfront community and was generated as a result of the biological consultant comingling, misinterpreting and misapplying the development standards in the Corps RGP-3 and RGP-1 combined with an old regulation from the previous King County SMP. Douglas requests that Ecology recommend to the City that it eliminate regulation in 16.55.050(M)(1)(g) limiting total overwater coverage to 600sqft including the canopy from the Kenmore SMP.

City Response: This standard is over and above the RGP standards but was retained in order to limit the extent of canopies over water.

Ecology Conclusion: This provision is within the City's discretion. Ecology concurs with the City response.

2. Elizabeth Mooney, comment emails received April 15, 2011.

- a. Mooney advocates for the strictest plan for us to protect the ecological functions of the shoreline.

Mooney asks that Ecology increase paths and protect the habitat by making landowners increase buffers and decrease height so that we do what is best for future generations. Mooney believes that there should be lower heights at the site of the existing plywood supply and that the buffer and setbacks should be maximum widths to protect the highest degree of ecological function, utilizing best available science, not best available economic profit. Kenmore and the surrounding area will prosper if the standard is high for ecological protection, salmon recovery, natural habitat enhancements and environmental education. We need the widest buffers, the best trees, the wisest ecological plans for building plans. We must protect our clean water and make it cleaner than it is presently.

City Response: Comments noted. The SMP requires 150' buffers plus 15' building setbacks from Swamp Creek, the Sammamish River and associated wetlands. These standards were based on the best available science at the time the critical area regulations were adopted and are consistent with current guidance for wetland protection. On the Plywood Supply site, the maximum

allowable height under the SMP in the area outside of the critical area buffer and building setback but within the shoreline jurisdiction (between 165' and 2009 would be 65' if consistent with underlying zoning and if structures would not obstruct the view of a substantial number of residences.

Ecology Conclusion: One of the required changes addresses the H-3 height area. Ecology is concerned that much of this area is within a floodway, rendering it inappropriate for intensive development.

- b. Mooney would rather see the eastern shoreline of Log Boom Park, where Stream 08.0056 enters Lake Washington, be designated "natural" instead of "urban conservancy" since, the city's phase 1 park "improvements" already caused significant adverse environmental impacts by adding too much concrete, creosote posts and irrigation pipes- all actions that did not reflect high standards for protection of ecological function.

City Response: The purpose of the Natural Environment is to protect public shoreline areas that include ecologically intact or minimally altered shorelines. Only low intensity uses are to be allowed in this environment. Log Boom Park is a developed park, with parking and a play area inside the shoreline jurisdiction. For this reason, the Urban Conservancy Environment designation was applied. The purpose of the Urban Conservancy Environment is to protect and restore ecological functions of open space, floodplain, and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

Ecology Conclusion: Ecology is of the view that the Log Boom Park site best fits the designation criteria for Urban Conservancy. The important criteria, at WAC 173-26-211(5)(e)(iii), states

(iii) Designation criteria. Assign an "urban conservancy" environment designation to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring of the ecological functions of the area, that are not generally suitable for water-dependent uses and that lie in incorporated municipalities, urban growth areas, or commercial or industrial "limited areas of more intensive rural development" if any of the following characteristics apply:

(A) They are suitable for water-related or water-enjoyment uses;

(B) They are open space, flood plain or other sensitive areas that should not be more intensively developed;

(C) They have potential for ecological restoration;

(D) They retain important ecological functions, even though partially developed; or

(E) They have the potential for development that is compatible with ecological restoration.

By comparison, the Natural criteria at WAC 173-26-21(5)(a)(iii) does not fit this partially developed park site as well.

3. Rudy Hillinga, comment email received April 15, 2011.

Hillinga is opposed to Kenmore's Shoreline Management Plan for the high rise building project on the River, request that the Department of Ecology deny the plan and send it back to the Kenmore City Council for revision.

City Response: The SMP does not authorize a high rise building project on the Sammamish Rivet; rather it establishes a critical area buffer of 150' plus a 15' building setback from the river and would allow a height limit of from 65' to 75' upland of this buffer and building setback, if permitted by underlying zoning and if structures would not obstruct the view of a substantial number of residences.

Ecology Conclusion: One of the required changes addresses the H-3 height area. Ecology is concerned that much of this area is within a floodway, rendering it inappropriate for intensive development.

4. Joan Hardy, comment email received April 15, 2011.

- a. Hardy supports a plan that would incorporate natural areas, in particular waterfront areas, into the design for Kenmore's shoreline. Parks are a valuable asset to a community and this plan provides an opportunity to incorporate parks for use by local and other citizens.

- As part of a parks system, Hardy supports more public access to the waterfront.

City Response: The plan requires public access for all public projects and development on public lands, as well as for multifamily and commercial projects and subdivisions of more than 4 lots, unless safety concerns require limited access.

Ecology Conclusion: Ecology concurs with comment and the City's response.

- b. Hardy supports Kenmore in raising funds needed to buy land for more parks and open space.

City Response: Comment noted.

Ecology Conclusion: Ecology supports parks and open space acquisition. Ecology notes that capital budgeting for parks is a local prerogative.

- c. Hardy would like to see a public access area for kayaks, canoes, and other non-powered boats incorporated into the plan.

City Response: Public boat launches are permitted by the SMP in the Downtown Waterfront, Urban Conservancy, and Aquatic designations. In the Urban Conservancy designation, a boat launch that accommodates motorized vehicles for launching vessels is a conditional use. Facilities for hand launching of non-motorized vessels are allowed.

Ecology Conclusion: Ecology concurs with the City response.

- d. Hardy supports lower building heights and bigger set back areas to keep the waterfront areas open and views accessible for the largest number of Kenmore citizens.

City Response: Comment noted.

Ecology Conclusion: The City has local discretion regarding building heights and setbacks within the limits of the SMA. Ecology is proposing to modify the H-3 and H-4 Special Building Height Areas (SBHA).

5. Valerie Nygaard, comment email received April 15, 2011.

The Department of Ecology needs to send Kenmore's Shoreline Management Plan back to the city for revision. How is it that a plywood company can put an office, with tall buildings so close to the shoreline. Nygaard understands this would include disturbing the wetlands along Swamp Creek.

Nygaard believes that Ecology needs to make sure that as many residents as possible understand the consequences of the SMP provisions.

City Response: The SMP requires 150' buffers plus 15' building setbacks from Swamp Creek, the Sammamish River and associated wetlands. On the Plywood Supply site, the maximum allowable height under the SMP between 165' and 200' (outside of the critical area buffer and building setback but within the shoreline jurisdiction) would be 65' if permitted by underlying zoning and if structures would not obstruct the view of a substantial number of residences.

Ecology Conclusion: Ecology has included a required change modifying the H-3 SBHA due to much of its location being in a floodway. Development in the floodway must meet floodway development standards which are extremely limiting.

6. Tom Fitzpatrick, comment email received April 15, 2011.

Fitzpatrick endorses Eric Adman's comments on the City of Kenmore's update of its SMP. Fitzpatrick believes that the flaws in Kenmore's effort as pointed out by Mr. Adman are fatal. Ecology should direct Kenmore's elected officials and staff to direct their efforts toward truly protecting what little natural shoreline environment we have left in our part of urban King County.

City Response: See responses to Mr. Adman's comments, page 13.

Ecology Conclusion: Ecology is requiring a number of changes to the SMP to address various concerns. Some of those concerns were cited by Mr. Adman.

7. Victoria Rhoades, comment email received April 15, 2011.

Rhoades agrees with Eric Adman's expressed objections to the Kenmore Shoreline Management Plan. Swamp Creek floods regularly. Rhoades questions Swamp Creek's suitability for development. Additionally, the heron rookery behind the Park-and-Ride is well-known to birders in the area. The SMP allows too much change in sensitive areas, when there are plenty of better-suited empty spaces in Kenmore for building either residential or commercial structures. Rhoades advocates sending the SMP back to the City of Kenmore for revision.

City Response: See responses to Mr. Adman's comments, page 13. The SMP incorporates the City's existing critical area rules for the Sammamish River, Swamp Creek and the heron rookery. These rules require 150' buffers plus 15' building setbacks from the river; Swamp Creek and associated wetlands. The rookery has a 900' protected buffer area, with requirements for a habitat management plan if any activity is proposed.

Ecology Conclusion: In addition to the standards cited by the City, the required changes will include a provision for limiting development in the channel migration area of swamp Creek.

8. Manny Mankowski, comment email received April 14, 2011.

- a. The City of Kenmore appears to have added some special height zones, designated H-1 through H-4 on the Shoreline Environment Designations map.

The H-3 area is currently occupied by Plywood Supply and a mobile home park. This area would be allowed to have heights up to 65 feet, depending on setback. Until there is a specific analysis and plan for these possible impacts, Mankowski does not support the increased heights for this area.

City Response: The SMP requires 150' buffers plus 15' building setbacks from the Sammamish River and associated wetlands. On the Plywood Supply site, the maximum allowable height would be 65' upland of this buffer and building setback if permitted by underlying zoning and if structures would not obstruct the view of a substantial number of residences. H-3 properties are currently developed with commercial and mobile home park uses. The existing mobile home park extends to the edge of the river. The Cumulative Impacts Analysis takes into account the fact that areas affected by the height increases are already developed and were developed under less stringent standards for shoreline, habitat, and water quality protection than would apply to redevelopment. As such, although buildings could be taller in the shoreline jurisdiction outside of the wetland/stream buffers and building setbacks than at present the shoreline environment would be better protected after redevelopment than it is currently.

In one limited area, where area H-3 abuts Swamp Creek Park, the additional height could have a limited shading effect on the park, which is designated Natural. However, because this location at just west of Swamp Creek Park, contains both the mouth of Swamp Creek and is shown to contain wetlands on the NWI data set, setbacks and buffers would restrict any new structures to the area furthest from the shoreline, and any impacts would likely be small. Specific review of such impacts would occur with any permit application on that site.

Ecology Conclusion: Ecology has included a required change eliminating the H-3 SBHA because it is located primarily in a floodway.

- b. Area H-4 is an area of greater question and concern for Mankowski. Area H-4 appears to be the area along Swamp Creek from Bothell Way north to NE 185 St. The area encompassed is a large area of what is also known as, and identified in the Shoreline Inventory as, Swamp Creek Wetland # 3. This is identified as "highest quality wetland" by description in the inventory. The area is designated Urban Conservancy. Setting aside "H-4" as an area allowing increased heights suggests a plan for increased density of development.

City Response: The City recognizes the large wetland areas along Swamp Creek and the SMP includes regulations to protect them. The shoreline jurisdiction extends from Swamp Creek to the edge of the protected associated wetlands. In most of the residential portion of the H-4 area, the boundaries were

drawn to follow property lines and include large parcels that are partially in the wetlands and partially outside of them. In those limited cases where the shoreline jurisdiction extends beyond the associated wetlands (when the 200' distance from Swamp Creek extends beyond the associated wetlands), increased height could only occur outside of the wetland/stream buffers and building setbacks. Analysis shows that only one parcel appears to have area outside of the associated wetland and within the shoreline jurisdiction. This parcel is located in the R- 18 zone north of the commercial zone and adjacent to the main stem of Swamp Creek. Like the commercially zoned lots to the south of it, this one lot is already developed within the required stream buffer and would be subject to the nonconformance standards of the SMP.

In the commercial zoned portion of H-4, on the north side of NE Bothell Way, the wetland/stream buffers and building setbacks apply, as would the nonconformance sections of the SMP for those developed portions of the site inside those buffers/setbacks. The standards of 16.50.030.B.2 prevent new non-water-dependent development in the 200' shoreline jurisdiction unless accompanied by enhancement of existing buffers, and the only water-dependent uses allowed would be low intensity uses like public access trails. For redevelopment to occur on any lots in the commercial area of H-4 outside of the wetland/stream buffers and building setbacks, the buffer areas would have to be restored substantially, which would offset any minor impacts from shading that might result from 65-foot tall buildings at the outer edge of the shoreline jurisdiction.

Ecology Conclusion: Ecology has included a required change that makes it clear that the increased height limits are only allowed outside of the critical area buffer, and in no case closer than 112.5 feet from the OHWM.

- c. Mankowski does not believe that the Cumulative Impacts Analysis, or its Future Shoreline Ecological Function Performance Analysis provide an adequate analysis of the impact of allowing increased heights in this area. The impacts which could be reasonably foreseen include increased impervious surface, the need for increased infrastructure, increased runoff, decreased vegetation, impaired water quality, decreased habitat function, decreased flood storage capacity, and increased flooding. It would require a very detailed and persuasive analysis to support increased heights and density in the area designated H-4, analysis which has not been presented.

City Response: The Cumulative Impacts Analysis takes into account the fact that areas affected by the height increases in H-4 are already developed and were developed under less stringent standards for shoreline, habitat, and water quality protection than would apply to redevelopment. As such, although buildings could be taller in the shoreline jurisdiction outside of the wetland/stream buffers and building setbacks than at present, the shoreline environment would be better protected after redevelopment than it is currently.

The analysis does acknowledge that some shading to the buffer could occur as a result of taller buildings in the outer portion of the shoreline jurisdiction. However within the shoreline jurisdiction, in the commercial area of H-4 along NE Bothell Way and the residential zone immediately north of it, commercial or mixed use redevelopment would result in buffer enhancement, reduced runoff rates, reduced impervious surface area and would not impact flood storage capacity.

Ecology Conclusion: Ecology has included a required change that makes it clear that the increased height limits are only allowed outside of the critical area buffer, and in no case closer than 112.5 feet from the OHWM. With the change, Ecology believes that the issue has been adequately addressed.

- d. The measures suggested as "Recommended restoration and protection actions" in Table 3 are very general, not project-specific, and not prioritized. The Restoration Plan needs to list specific discrete projects, prioritize them, and set in motion a process where action is taken on them.

City Response: The City Council did not change the Planning Commission's recommendation which did not prioritize the restoration plan projects. The restoration projects will be considered individually as opportunities arise.

Ecology Conclusion: While the Restoration Plan does list certain projects, it only prioritizes more general categories of actions. It is noted in the restoration Plan, at Page 32, that:

During the 7-year interim period between SMP updates, it is valuable to develop implementation and monitoring programs for the individual restoration actions. Due to the nature of restoration actions (i.e., diverse project or site- specific factors that influence their implementation), performance standards and monitoring plans should be developed for individual projects or actions once the City has determined priorities and identified funding sources.

While the Restoration Plan is not specific about individual restoration activity timing, it does infer that the City needs to engage in identified restoration programs and activities in order to implement the SMP. A clear description and listing of project priorities could be a suggested change.

- e. The table on page 20 listing Restoration Opportunities on reaches of Swamp Creek omits reaches 01 and 02 as opportunities for "Restoration and preservation of floodplain wetlands" and "preservation of remaining natural areas". These activities seem appropriate for these reaches. These should be added to the table.

City Response: In general, the table indicates opportunities that were identified in previous plans and through the public outreach process. It does not include every possible action that could be undertaken in every reach. The suggestions in this comment were not received during the plan development and are not specific enough to understand what opportunities are implied. The table identifies restoration opportunities in these reaches, just not in these specific categories.

Ecology Conclusion: On Page 20 of the Restoration Plan "attenuation of storm water lows" is listed for Swamp Creek reaches 3 and 4. It is unclear what restoration or preservation activities are intended by the comment.

- f. Map # 4 in the Restoration Plan identifies a number of wetlands by map legend as "Protect High Quality Habitat". However, none of Swamp Creek Wetland # 4 (Reach "SWAM_CK_03") is designated as such, despite its having been described as "some of the highest quality wetlands in the Kenmore area" on p. 11 of the plan. The map should be modified to show the status of the wetlands and their priority.

City Response: This is a good suggestion and the change could readily be made to the map, as it does reflect what the text already states.

Ecology Conclusion: Ecology will recommend this as a suggested change.

- g. The two parcels on the shore of Lake Washington north of St. Edwards State Park have characteristics associated with the Natural environment designation and should be designated as such. The City has failed to provide a better rationale as to why this parcel not be designated Natural.

City Response: The Natural Environment designation is to protect public shoreline areas that include ecologically intact or minimally altered shoreline. One of the characteristics for Natural Environment designation is that the shoreline is in public ownership. The two parcels in question are not in public ownership and were, therefore, designated Urban Conservancy. Urban Conservancy management policy LU-I 7.3.13 states that, "Because the parcels located to the north of Saint Edward State Park and designated Urban Conservancy are largely ecologically intact, if one or more of those parcels are acquired by a public agency for open space purposes, the City should consider redesignating those parcels as Natural if they meet applicable criteria."

Ecology Conclusion: Ecology is including a required change to designate these parcels as Natural. Besides being part of a larger ecologically intact area primarily in public ownership, the area may be difficult to develop without impacting ecological functions.

- h. With regard to the area designated as H-4 on the Shoreline Area Designations map, if the intention is to re-develop already paved and developed areas with the possibility of environmental enhancement, the area should be re-drawn so that it does not encompass a large area of wetland, but rather just the already-developed area adjacent to the wetland.

City Response: The boundaries of the H-4 area were chosen to follow property lines and incorporate large parcels that are partially in the associated wetlands and partially outside of those wetlands. As previously discussed no new development can occur in the wetland, or in the 150' wetland/stream buffers plus 15' building setbacks.

Ecology Conclusion: The required changes include a modification to the H-4 SBHA to exclude Swamp Creek wetlands and buffers from the increased height allowances.

- i. The ratios (presumably for wetland mitigation) specified in the KMC (3:1 for Class 1, 2:1 for Class 2, 1:1 for Class 3) are much less specific, and are require vastly lower amounts of replacement than the ranges specified in the guidance documents provided to the City by the Department of Ecology.

City Response: The adopted mitigation ratios come from the City's existing critical areas ordinance.

Ecology Conclusion: A required changes increases the wetland mitigation ratios to be consistent with Ecology standards.

9. Ann Hurst, comment email received April 14, 2011.

- a. The steep slope hazard areas that have native growth protection easements in place are not protected by City enforcement. A solution would be to designate these lands as Natural.

City Response: Steep slope areas in the shoreline are regulated by the city's critical areas regulations (KMC Chapter 18.55) which have been incorporated into the SMP.

Ecology Conclusion: Ecology concurs with the City response. Many factors go into environment designations such as ecological function and existing development. Steep slope areas may not be appropriate for the Natural designation.

- b. The Kenmore shoreline over and adjacent to the Kenmore Dump looks to be up for major development no matter what lies beneath the site. If Kenmore won't protect the Lake, Hurst believes that Ecology can require protection.

City Response: Assuming that the "Kenmore Dump" is the Lakepointe property, there are shoreline regulations applicable to the site. These regulations encourage water-dependent uses, but acknowledge that the area is degraded and that restoration and public access may be appropriate tradeoffs for allowing additional development on the site if impacts are mitigated such that there is no net loss of shoreline ecological processes or functions.

Ecology Conclusion: As part of an agreement separate from the SMP, hazardous materials must be cleaned up on the LakePointe property prior to any new development occurring.

- c. Hurst believes that the City should address the upland wetlands directly associated with Kenmore's major bodies of water, such as the upland wetland of Saint Edward State Park where Stream #0226 originates.

City Response: The Shoreline Master Program regulates only 'associated' wetlands. Associated wetlands to the shoreline include only those directly adjacent to the shoreline. The upland wetland of Saint Edward State Park is not an associated wetland and is not, therefore, part of the shoreline discussion.

Ecology Conclusion: Ecology concurs with the City response.

- d. Hurst believes that the City should utilize inter-local agreements with other cities to protect Lake Washington.

City Response: Comment noted.

Ecology Conclusion: While interlocal agreements may be excellent tools to accomplish certain tasks, such agreements are not typically part of an SMP.

10. Matthew Hinck, Cal Portland, comment letter received April 15, 2011.

CalPortland owns and operates a major water-dependent barge-offloading operation in Kenmore, at the north end of Lake Washington. Hinck states that the operation is a critical component of CalPortland's business, and is essential to its continued ability to supply affordable aggregate materials and concrete products throughout King County and Snohomish County.

The facility is in an area that would be designated Downtown Waterfront. The barge-offloading facility appears to come within the definition of "pier" in the SMP.

- a. KMC 16.55.050(G)(2). It is not clear how the four-foot limitation on the width of piers applies to an offloading facility that has multiple components, including pilings. Hinck suggests this regulation be revised to clarify that the limitation applies to "pier walkways," not the facility as a whole.

City Response: The standards were developed primarily to address residential docks. There were no specific standards adopted for commercial or industrial piers, but flexibility was included to allow for alternative designs for other uses (see 16.55.050 first paragraph, p. 41). The cement plant appears to use a retractable gangway system, which would not be regulated in the same manner as a permanent overwater pier or ramp, since it would only be over water during loading and unloading activities. At least at present, it appears that the old piers at the cement plant site have been abandoned and are in disrepair.

Ecology Conclusion: A required change is included to clarify that commercial piers are allowed in Kenmore so long as they are built to only serve their intended use and achieve project specific no net loss of ecological function. Specific design features of commercial docks need to serve the water dependent use and achieve non net loss of ecological function.

- b. KMC 16.55.050(G)(3) The three-foot limitation on ramps is not realistic for vehicular ramps, such as those serving our offloading facility. Hinck suggests that this regulation be revised to apply to "pedestrian ramps."

City Response: The retractable gangway ramp would not be regulated in the same manner as a permanent overwater pier or ramp, since it would only be over water during loading and unloading activities.

Ecology Conclusion: A required change is included to clarify that commercial piers are allowed in Kenmore so long as they are built to only serve their intended use and achieve project specific no net loss of ecological function. Specific design features of commercial docks need to serve the water dependent use and achieve non net loss of ecological function.

- c. KMC 16.55.050(G)(7) The limitations on piling widths might be feasible for residential structures, but they are inadequate for pilings serving other types of water-dependent structures. We suggest this regulation be modified to take into account the loads created by larger vessels (such as barges) using piers. At a minimum, pilings that are at least 24 inches in diameter should be allowed in the first 18 feet waterward of the Ordinary High Water Mark.

City Response: The standards were developed primarily to address residential docks. There were no specific standards adopted for commercial or industrial piers, but flexibility was included to allow for alternative designs for other uses (see 16.55.050 first paragraph, p. 41). The standards are designed to result in no net loss of ecological functions, so any design that can demonstrate that it meets that standard could be approved.

Ecology Conclusion: A required change is included to clarify that commercial piers are allowed in Kenmore so long as they are built to only serve their intended use and achieve project specific no net loss of ecological function. Specific design features of commercial docks need to serve the water dependent use and achieve non net loss of ecological function.

- d. The buffer standards should allow for adjustments when areas that are already intensively developed, or contain impervious surface, up to the OHWM. We see no ecological benefit to imposing buffers that would only leave asphalt surfaces bare rather than potentially used in a productive manner.

City Response: Water-dependent and water-related uses may be allowed within shoreline buffers if impacts are mitigated and there is no net loss of shoreline ecological processes or functions. Non-water-dependent uses may also be allowed along the inner harbor if the uses are developed in conjunction with public access and mitigation is provided. Otherwise, a 20' buffer applies.

Ecology Conclusion: Ecology concurs with the City response.

- e. Hinck suggests that the word "or" be added at the end of KMC 16.65.020(B)(1)(b) to clarify that buffer uses within the specified shoreline locations are allowed if any (as opposed to all) of the three specified standards are met.

City Response: The provision of flexibility for non-water-dependent facilities in the shoreline was discussed extensively through the public process, and the provisions described in this section were expressly indicated as being necessary as a package, not as alternatives. Water dependent uses are not subject to these limitations.

Ecology Conclusion: Ecology concurs with the City response.

- f. It is unclear why outdoor storage for water-dependent use is singled out in KMC 16.65.020(A)(B)(3). In many cases such storage would have no adverse effect at all on shoreline ecological processes or functions, especially when a site is already intensively developed. Hinck suggests that B(3) be deleted, and that outdoor storage

be treated like any other use related to a water-dependent activity. Alternatively, B(B) should be revised to allow outdoor storage within the buffer if there is not net loss of ecological function or value.

City Response: Outdoor storage carries risks of spills, generally requires impervious surfaces and removal of vegetation, and often includes lighting, all of which adversely affect ecological functions. Outdoor storage is not water-dependent in and of itself, therefore a minimal setback has been added to provide a small buffer from the shoreline, while still allowing continued operation of a water-dependent use. This standard would make already developed areas nonconforming, which means they could continue to be used as in the past provided there is no expansion of the nonconformity, and subject to all other limits on nonconforming uses. Any redevelopment would be required to provide the required setbacks for outdoor storage.

Ecology Conclusion: Ecology concurs with the city response.

11. Lauralya Feetham, comment email received April 15, 2011.

- a. Provision should be made to retain the vibrant liveaboard community at Harbour village Marina within the guidelines specified in their DNR Lease.

City Response: The new regulations would allow live-aboard communities if they meet certain standards. Other city regulations, including P-suffix conditions on the Harbour Village Marina site, currently prohibit live-aboards and would require a change to the Municipal Code, separate from the shoreline regulations.

Ecology Conclusion: The City has elected to make live-aboards a permitted use with reasonable environmental safeguards.

- b. Feetham is concerned that the changes in plans for the Lake Pointe project which increase building heights and reduce the square footage of public access to the waterfront.

City Response: The shoreline regulations do not change the components of the approved Lakepointe Master Plan and Commercial Site Development Permit. The project would have to obtain a new shoreline permit before it could proceed as the shoreline permit has expired. The new regulations focus on continued provision of public access, encourage water-dependent uses, and, in fact, reduce the height limits for a portion of the project within shoreline jurisdiction.

Ecology Conclusion: The SMP sets out minimum standards for public access, water dependent uses, and restoration areas. Half of the area within shoreline jurisdiction within the LakePointe project must be used for these purposes. Ecology concludes that public access, restoration, and water-dependent uses are adequately addressed for this area in the SMP.

12. Eric Adman, testimony at the public hearing on March 31, 2011 and comment letter received March 31, 2011.

Special Height Areas

- a. The City appears to have added some special height zones, designated H-1 through H-4 on the Shorelines Environment Designations map.

The Cumulative Impacts Analysis or its future shoreline Ecological function Performance Analysis do not provide an adequate analysis for allowing increased heights in the H-3 area. A number of impacts which could be reasonably foreseen include increased impervious surface, the need for increased infrastructure, increased runoff from the site, decreased vegetation, and impaired water quality. Until there is a specific analysis and a plan for addressing these possible impacts, Adman does not support the increased heights for this area.

City Response: The SMP establishes critical area buffers of 150' plus 15' building setbacks from the Sammamish River and associated wetlands and would allow a height limit of up to 65' only in areas outside of these buffers and building setbacks on the upland portions of these properties, consistent with existing zoning. Separate city regulations control stormwater impacts and protect water quality.

H-3 properties are currently developed with commercial and mobile home park uses. The existing mobile home park extends to the edge of the river. The Cumulative Impacts Analysis takes into account the fact that areas affected by the height increases are already developed and were developed under less stringent standards for shoreline, habitat, and water quality protection than would apply to redevelopment. As such, although buildings could be taller in the shoreline jurisdiction outside of the wetland/stream buffers and building setbacks than at present the shoreline environment would be better protected after redevelopment than it is currently.

In one limited area, where area H-3 abuts Swamp Creek Park, the additional height could have a limited shading effect on the park, which is designated Natural. However because this location is just west of Swamp Creek Park contains both the mouth of Swamp Creek and is shown to contain wetlands on the NWI data set setbacks and buffers would restrict any new structures to the

area furthest from the shoreline, and any impacts would likely be small. Specific review of such impacts would occur with any permit application on that site.

Ecology Conclusion: A required change is to modify the H-3 SBH-A. Much of this area is within a floodway and is not suitable for residential development for floodway encroachments.

- b. The H-4 area encompassed is a large area of what is also known as, and identified in the Shoreline Inventory as Swamp Creek Wetland #3. This is identified as a "highest quality wetland" by description in the inventory. This is one of the largest remaining wetlands on Swamp Creek, about 90 acres. It provides wildlife habitat and flood attenuation functions. Most of the area shown on the map is undeveloped wetland. This area is within the 100-year floodplain on FEMA maps. Urban flooding has increased dramatically in this area, and is expecting to worsen. The city of Kenmore continues to have to acquire properties along the perimeter of this wetland because they get flooded so much.

The H-4 area is designated Urban Conservancy. Designating an area H-4 suggests a plan for increased density of development. To quote the regulations, "The purpose of the Urban conservancy Environment is to protect and restore ecological functions of open space, streams, wetlands, and floodplain, including areas below the ordinary high water mark in Swamp Creek.

The cumulative impacts Analysis does not provide an adequate analysis of the impact of allowing increased heights in this area, the impacts which would be reasonably foreseen include increased impervious surface, the need for increased infrastructure, increased runoff, decreased vegetation, impaired water quality, decreased habitat function, decreased flood storage capacity, and increased flooding. It would require a very detailed and persuasive analysis to support increased heights and density in the area designated H4. Such analysis has not been provided.

City Response: The City recognizes the large wetland areas along Swamp Creek, and the SMP includes regulations to protect them. The shoreline jurisdiction extends from Swamp Creek to the edge of the protected associated wetlands. In most of the residential portion of the H-4 area, the boundaries were drawn to follow property lines and include large parcels that are partially in the wetlands and partially outside of them. In those limited cases where the shoreline jurisdiction extends beyond the associated wetlands (when the 200' distance from Swamp Creek extends beyond the associated wetlands), increased height could only occur outside of the wetland/stream buffers and building setbacks. Analysis shows that only one parcel appears to have area outside of the associated wetland and within the shoreline jurisdiction. This parcel is located in the R- 18 zone north of the commercial zone and adjacent to the main stem of Swamp Creek. Like the commercially zoned lots to the south

of it, this one lot is already developed within the required stream buffer and would be subject to the nonconformance standards of the SMP.

In the commercial zoned portion of H-4, on the north side of NE Bothell Way, the wetland/stream buffers and building setbacks apply, as would the nonconformance sections of the SMP for those developed portions of the site inside those buffers/setbacks. The standards of 16.50.030.B.2 prevent new non-water-dependent development in the 200' shoreline jurisdiction unless accompanied by enhancement of existing buffers, and the only water-dependent uses allowed would be low intensity uses like public access trails. For redevelopment to occur on any lots in the commercial area of H-4 outside of the wetland/stream buffers and building setbacks, the buffer areas would have to be restored substantially, which would offset any minor impacts from shading that might result from 65-foot tall buildings at the outer edge of the shoreline jurisdiction.

The Cumulative Impacts Analysis takes into account the fact that areas affected by the height increases in H-4 are already developed and were developed under less stringent standards for shoreline, habitat, and water quality protection than would apply to redevelopment. Within the shoreline jurisdiction, in the commercial area of H-4 along NE Bothell Way and the residential zone immediately north of it, commercial or mixed use redevelopment would result in buffer enhancement reduced runoff rates, reduced impervious surface area and would not impact flood storage capacity.

Ecology Conclusion: A required change will only allow the H-4 height to be increased at least 112.5 feet from the OHWM of Swamp Creek. The change will make this provision consistent with the critical area protections.

Restoration Plan

- c. The measures suggested as "Recommended restoration and protection actions" in table 3 of the Restoration Plan are very general, not project -specific, and not prioritized. The Restoration Plan should list discrete projects.

City Response: The City Council did not change the Planning Commission's recommendation which did not prioritize the restoration plan projects. The restoration projects will be considered individually as opportunities arise.

Ecology Conclusion: While the Restoration Plan does list certain projects, it only prioritizes more general categories of actions. It is noted in the restoration Plan, at Page 32, that:

During the 7-year interim period between SMP updates, it is valuable to develop implementation and monitoring programs for the individual restoration actions. Due to the nature of restoration actions (i.e., diverse project or site- specific factors that influence their implementation), performance standards and monitoring plans should be developed for individual projects or actions once the City has determined priorities and identified funding sources.

While the Restoration Plan is not specific about individual restoration activity timing, it does infer that the City needs to engage in identified restoration programs and activities in order to implement the SMP. A clear description and listing of project priorities could be a suggested change.

- d. The table on page 20 listing Restoration Opportunities on reaches of Swamp Creek omit reaches 01 and 02 as opportunities for "restoration and preservation of floodplain wetlands" and "preservation of remaining natural areas." These activities seem appropriate for these reaches.

City Response: In general, the table indicates opportunities that were identified in previous plans and through the public outreach process. It does not include every possible action that could be undertaken in every reach. The suggestions in this comment were not received during the plan development and are not specific enough to understand what opportunities are implied. The table identifies restoration opportunities in these reaches, just not in these specific categories.

Ecology Conclusion: On Page 20 of the Restoration Plan "attenuation of stormwater lows" is listed for Swamp Creek reaches 3 and 4. It is unclear what restoration or preservation activities are intended by the comment.

- e. Map #4 in the Restoration Plan identifies a number of wetlands by map legend as "Protect High Quality Habitat". However, none of Swamp Creek Wetland #4 is designated as such, despite its having been described as "some of the highest quality wetlands in the Kenmore area" on p. 11 of the plan.

City Response: This is a good suggestion and the change could readily be made to the map, as it does reflect what the text already states.

Ecology Conclusion: This is included as a suggested change.

Area Designations

- f. The two parcels on the shore of Lake Washington, immediately north of St. Edwards Park, have characteristics associated with Natural Environment Designation and should be designated as such. The City has failed to provide a better rationale as to why this parcel is not being designated Natural.

City Response: The Natural Environment designation is to protect public shoreline areas that include ecologically intact or minimally altered shoreline. One of the characteristics for Natural Environment designation is that the shoreline is in public ownership. The two parcels in question are not in public ownership and were, therefore, designated Urban Conservancy. Urban Conservancy management policy LU-I 7.3.13 states that, "Because the parcels located to the north of Saint Edward State Park and designated Urban Conservancy are largely ecologically intact, if one or more of those parcels are acquired by a public agency for open space purposes, the City should consider redesignating those parcels as Natural if they meet applicable criteria."

Ecology Conclusion: Ecology is including a required change to designate these parcels as Natural. Besides being part of a larger ecologically intact area primarily in public ownership, the area may be difficult to develop without impacting ecological functions.

- g. With regard to the area designated as H4 on the Shoreline Area Designations map, if the intention is to redevelop already paved areas with the possibility of environmental enhancement, the area should be redrawn so that it does not encompass a large area of wetland, but rather just the already-develop area adjacent to the wetland.

City Response: The H-4 boundaries were chosen to follow property lines and incorporate parcels that are partially in the wetland and wetland/stream buffers and partially outside those buffers. As previously discussed no new development can occur in the 150' wetland/stream buffers plus 15' building setbacks.

Ecology Conclusion: A required change will refine the H-4 standards to not allow increased building heights within 112.5 feet of Swamp Creek.

Mitigation Ratios

- h. The Kenmore Municipal Code should be modified so that its rating system (3 classes) is consistent with department of Ecology's 4 category system. The mitigation ratios provide vastly lower amounts of replacement than ranges specified in the guidance documents provided by the department of Ecology. Wetland mitigation, while allowed, is generally considered, by environmental professionals, to be ineffective. This portion of the plan should not be approved until the mitigation ratios are consistent with Department of Ecology guidelines.

City Response: The adopted wetland classes are from the City's existing critical areas ordinance. The Department of Ecology has approved use of the City's 3-tier wetland classification system as it is based on the jurisdiction's best available science. The adopted mitigation ratios also are from the City's existing critical areas ordinance.

Ecology Conclusion: The City has adequately demonstrated that the 3-tier wetland classification system in the critical area ordinance adequately protects wetlands. Ecology is requiring a change to the mitigation ratios to ensure adequate mitigation. The mitigation ratios will still reflect the city's 3-tier wetland system, but requires additional mitigation to be similar to Ecology's wetland mitigation ratio guidance.

13. Karen McFadden, testimony at the public hearing on March 31, 2011 and comment letter received April 6, 2011.

- a. McFadden is concerned that the Cumulative Impact Analysis does not cite specific standards and regulations to address the No Net Loss of Ecological Functions. Increasing the density development in H-3 and H-4, without the specifics and regulations, renders the Shoreline Master Plan incapable of mitigation of impacts required in WAC 1762762013D, including, but not limited to impacts of building heights, parking requirements, and additional roads.

DOE Guidelines direct that existing urban areas, such as Kenmore Village, should be utilized before expanding into other areas, such as development by any water bodies. The infrastructure is in place in existing urban areas and they need to operate at full capacity before leapfrogging into undeveloped areas. There are other adjacent urban areas that are already planned with existing infrastructure that should be utilized first. I request that you not adopt H3 and H4 density standards.

City Response: The SMP establishes critical area buffers of 150' plus 15' building setbacks from the Sammamish River Swamp Creek and associated wetlands and would allow development in areas outside of these buffers and building setbacks on the upland portions of these properties, consistent with existing zoning and if structures would not obstruct the view of a substantial number of residences.

Ecology Conclusion: Ecology agrees that the Cumulative Impacts Analysis is not specific as to which potential ecological impact will be addressed by which regulation. While such specificity is desirable, it is not a requirement. Changes to the SMP required by Ecology will significantly alter the H-3 and H-4 SBHAs. The policy to develop in established urban areas before non-urban areas is a GMA principle - not an SMA principle.

- b. The small map provided in the proposal made it difficult to identify the specific locations. Swamp Creek is in a flood plain that would require building to FEMA standards, which do not address No Net Loss of Ecological Functions.

City Response: The city has prepared a full-size map of the shoreline environments showing underlying property boundaries. Most of the Swamp Creek floodplain is within the buffers protecting Swamp Creek.

Ecology Conclusion: In response to Ecology concerns, the City has prepared a map adequate to show the shoreline environment for each individual parcel.

- c. The two parcels north of St. Edward State Park should be designated Natural. State Senator Marilyn Chase has applied for funds to buy these two parcels under a Wildlife Grant.

City Response: The Natural Environment designation is to protect public shoreline areas that include ecologically intact or minimally altered shoreline. One of the characteristics for Natural Environment designation is that the shoreline is in public ownership. The two parcels in question are not in public ownership and were, therefore, designated Urban Conservancy. Urban Conservancy management policy LU-I 7.3.13 states that, "Because the parcels located to the north of Saint Edward State Park and designated Urban Conservancy are largely ecologically intact, if one or more of those parcels are acquired by a public agency for open space purposes, the City should consider redesignating those parcels as Natural if they meet applicable criteria."

Ecology Conclusion: A required change is to designate these parcels Natural.

14. Diane Bates, testimony at the public hearing on March 31, 2011 and comment letter received April 6, 2011.

- a. How can it be legal to increase the heights along Swamp Creek? There is a heron rookery in that area that is a very sensitive area. A few people have had to move their houses out of that area because of flooding from Swamp Creek because so many of the floodways have been developed on the Snohomish County side of Swamp Creek.

City Response: The new height limits would not apply within the wetlands or buffers associated with Swamp Creek. The city's critical area rules continue to apply in the area (they are adopted into the SMP), including the protections for the heron rookery. The SMP height change does not change existing zoning, which already allows these heights on portions of the property outside of the wetlands and buffers.

Ecology Conclusion: Ecology has included a required change that makes it clear that the increased height limits are only allowed outside of the critical area buffer, and in no case closer than 112.5 feet from the OHWM.

- b. Bates asks that Ecology send the Kenmore Shoreline Management Plan back to the city to remove the H-1, H-2, H-3, and H-4 height areas over the shoreline and wetland areas.

City Response: Comment noted.

Ecology Conclusion: The H-1 and H-2 SHBA does not create an obvious conflict with the SMA. However, a required Ecology change to the SMP will required that proposals for taller buildings demonstrate that they will not block view of a substantial number of residents, not cause environmental degradation or net loss of ecological function. The H-3 and H-4 areas have been significantly altered and minimized.

- c. For the portion of area H-4 that is over Swamp Creek, Bates has concerns because that area is essentially a flood plain that is continually flooded at this point.

Due to the overdevelopment over the north end of Swamp Creek, a lot of the water has been forced to the lower part of the creek. Wetland #3, which is between 73rd, Bothell Way, and 80th, is the one area where there is enough undeveloped land for the creek to spread out. The creek has taken over this wetland over the last few years. The water has caused continuous flooding for houses along 73rd street and the city has had to buy a few properties along Swamp Creek.

The Mayor has indicated that no buildings would be built within the buffer of the wetland. But the H-4 area overlays class 1 wetland and part of Swamp Creek itself. If there is no intention of building over this area, then take the height overlay out of the plan completely.

On 73rd, Bates is concerned that at least one property owner is planning to put tall buildings on his land which overlays wetland buffers. This development will cause further water problems for properties that surround wetland #3 as water is directed away from the new buildings.

City Response: The SMP establishes critical area buffers of 150' plus 15' building setbacks from the creek and associated wetlands and would allow a height limit of up to 65' only in areas outside of these buffers and building setbacks on the upland portions of these properties, consistent with existing zoning and if structures would not obstruct the view of a substantial number of residences.

Ecology Conclusion: The H-4 area is being significantly minimized to eliminate any potential impact to Swamp Creek or its associated wetlands.

15. Ann Aagaard, testimony at the public hearing on March 31, 2011 and comment letter received April 15, 2011.

Plywood Supply

- a. In 1991, when Plywood Supply proposed storage structures, there was supposed to be a 100 foot setback. In addition, there was a permanent bio-filtration swale, a 50-foot landscape buffer and a 30-foot river protection easement and public access easement. The outfall was to be total vegetated. Aagaard asks that Kenmore's compliance officer go back and double-check to be sure that the 100 foot setback is being met.

City Response: Comment noted.

Ecology Conclusion: This comment relates to compliance with previous permit conditions rather than the current SMP proposal.

- b. The geotechnical report indicated that peat ranged from 18 to 23 feet deep on this site. Ground water table was up to the surface to 3 feet deep on the site. The ecological function so the site cannot be replicated. Aagaard is opposed to the H-3 height limits. The revised height limits have not been addressed in the Cumulative Impacts Analysis. Increase height limits would impose impacts on the park across the street and the natural area which is Swamp Creek Park. The H-3 area also includes a portion of the Shoreline Residential area as well. SMP policies 17.2.1.2 and 17.2.1.3 talk about how this is for multi-family with recreational and community recreational facilities and adequate utilizes and public services. None of these things are currently planned for the area.

City Response: The SMP establishes critical area buffers of 150' plus 15' building setbacks from the Sammamish River and associated wetlands and would allow a height limit of up to 65' only in areas outside of these buffers and building setbacks on the upland portions of these properties, consistent with existing zoning and if structures would not obstruct the view of a substantial number of residences.

Ecology Conclusion: A required change is to modify the H-3 SBHA. Much of this area is within a floodway and is not suitable for residential development for floodway encroachments.

Restoration Plan

- c. The City should prepare a memo to supplement their Restoration Plan.

City Response: Comment noted.

Ecology Conclusion: While the Restoration Plan does list certain projects, it only prioritizes more general categories of actions. It is noted in the restoration Plan, at Page 32, that:

During the 7-year interim period between SMP updates, it is valuable to develop implementation and monitoring programs for the individual restoration actions. Due to the nature of restoration actions (i.e., diverse project or site-specific factors that influence their implementation), performance standards and monitoring plans should be developed for individual projects or actions once the City has determined priorities and identified funding sources.

While the Restoration Plan is not specific about individual restoration activity timing, it does infer that the City needs to engage in identified restoration programs and activities in order to implement the SMP. A clear description and listing of project priorities could be a suggested change.

Parcels Located North of St. Edward State Park

- d. The two parcels of private land located north of St. Edward State Park in Lake Washington Reach WA-2 have proposed designations of Urban Conservancy in the Kenmore Shoreline Master Program. (KSMP). These two parcels appear to have much in common with Reach Lake WA-1, which is designated Natural. This area meets all the criteria of a Natural Environment designation "ecologically intact or minimally altered shorelines" and the designation criteria of WAC 173-26-211(5)(a) and (e)

Low intensity uses are allowed in this environment [with a setback of 150']. In order to develop the area i.e. to provide access, adverse impacts to the ecological functions of the naturally vegetated, minimally altered, intact steep shoreline would occur. Policy language of LU-17.3.13 and the designation in the KSMP of Urban Conservancy is not consistent with Ecology's Guidelines. The Policy Language and Urban Conservancy designation should not be approved as proposed in the KSMP.

City Response: The Natural Environment designation is to protect public shoreline areas that include ecologically intact or minimally altered shoreline. One of the characteristics for Natural Environment designation is that the shoreline is in public ownership. The two parcels in question are not in public ownership and were, therefore, designated Urban Conservancy. Urban Conservancy management policy LU-I 7.3.13 states that, "Because the parcels

located to the north of Saint Edward State Park and designated Urban Conservancy are largely ecologically intact, if one or more of those parcels are acquired by a public agency for open space purposes, the City should consider redesignating those parcels as Natural if they meet applicable criteria.”

Ecology Conclusion: the required changes include changing the environment designation of these parcels to Natural.

Expansion of Nonconforming Uses and Structures

- e. KSMP proposed language in 16.75.050 D would allow expansion of a nonconforming dock by up to 25%. While there are requirements to reduce the impacts to critical fish habitat and not cause adverse impacts on adjacent shoreline uses, this provision would allow a pre-existing dock that exceeds the new standards in the SMP to further expand. The regulation language 16.75.050 D together with the policy language of LU-23.2.8 and LU-24.1.6 would make a non-conforming dock larger than the standards for a new or conforming dock. That is a current non-conforming dock could expand an additional 25%. A new or conforming dock would not be able to expand 25%. The current cumulative impact analysis does not address expansion of non-conforming docks by 25%.

Please do not adopt section 16.75.050D allowing 25% expansion of non-conforming docks or associated policy sections.

City Response: The allowance for increased size was intended as an incentive to improve habitat quality. The expansion could be allowed by the director when the applicant demonstrates that the expanded dock would reduce the impacts of the existing dock on critical fish habitat. If the applicant chooses not to meet this standard, expansion would only be allowed through a conditional use permit.

Ecology Conclusion: Ecology is requiring a change that modifies this standard. While an incentive to improve the ecological performance of existing piers is appropriate, the allowance for expansion and lack of specific criteria has been a concern.

Public Access

- f. The concept of rough proportionality is not explained or defined in the KSMP. If this is a requirement for public access, then the terms should be defined and referenced so that the public and the applicant understands how the public access requirement will be implemented.

City Response: “Rough proportionality” is an evolving legal concept established through court cases and is itself an interpretation of the U.S. Constitution. It refers to the fact that the City must consider whether the burden

placed on the particular owner is roughly proportional to the impact of that owner's proposed development. The City is required under the U. S. Constitution to consider this principal in making its decisions, and will always need to be aware of the evolving legal precedents related to this concept.

Ecology Conclusion: Ecology concurs with the City response.

Accessory Uses Associated with Mixed Use Development.

- g. Shoreline Use Criteria Footnote to Shoreline Use Table KMC 16.50.030.A. Section B.2.a. Development that is part of a mixed use project is required to include a water dependent use in which at least fifty percent of the land area (including uses accessory to the water dependent use). An accessory use is defined to include outdoor storage, offices, and parking incidental to the principal use. Parking can be over-water if the lot is constricted. The amount of site use incidental to the principal use is not specified and could vary from 1% to 49% of the "mixed-use". To ensure that mixed use development in the Waterfront Environment is committed to 50% water dependent uses, the regulation as written should be denied. Please require KSMP to rewrite the criteria footnote of Shoreline Use Table KMC 16.50.030.A. Section B 2.a. to assure that the intent of the SMA to give preference to water dependent uses is followed so that 50% water dependency of the mixed use does not allow incidental accessory uses to be counted towards this requirement.

City Response: Including uses accessory to water-dependent uses in the calculation supports the inclusion of water-dependent uses—which may not be able to efficiently operate without those accessory uses. If the restrictions on water-dependent uses are too great, an applicant might simply provide public access or restoration instead, thus defeating the purpose of encouraging water-dependent uses in already developed shoreline areas.

Ecology Conclusion: A required change limits uses accessory to a water-dependent use so that which is fully incidental and subordinate to the water-dependent use.

Critical Areas

- h. Mitigation in the Kenmore Sensitive Areas Ordinance (KSAO) is for creation or restoration that is in-kind, on-site, the same class. It does not include ratios for unauthorized alterations, and use of wetland mitigation banks.

The KSAO ratios are 3:1 for Class I, 2:1 for class 2, and 1:1 for Class 3 and do not compare favorably with Ecology and Corps of Engineers Classification system or the acreage replacement ratios. The Ecology recommended ratios used in the

recommended table are dependent on the hydrogeomorphic setting of the site not being altered and use a four tier category system. Category IV for establishment or creation is 1.5:1 and rehabilitation is 3:1, enhancement only is 6:1. Category III creation is 2:1, rehabilitation 4:1 and enhancement only 8:1. Category II is higher if forested 6:1 (all others 3:1) rehabilitation 12:1 and 8:1 and enhancement only is 12:1. In addition, Ecology and the Corps Use a 4 tier rating system and a functional analysis rating system.

The standards referenced in the cumulative impact analysis table Attachment 1 in the KSMP utilize general references to KSAO to conclude that there will be no net loss of shoreline ecological functions to those wetlands associated with shoreline jurisdiction. An example is found in the cumulative impact analysis in reference to the Lakepointe Development in reach Lake-WA.-03. The functions of these associated wetlands (significant areas which are in floodplain) include hydrological hyporheic, and water quality functions as well as vegetation and habitat. These additional functions are not addressed in I6.65.020 which address only vegetation and habitat.

Because the rating systems are different and ratios for creation (and indeed enhancement) significantly different, it is not possible to determine whether the KSAO that is adopted by reference into the KSMP is adequate to provide no-net-loss of ecological functions.

I request that Ecology not adopt the KSAO as regulations for the KSMP and that they require the City of Kenmore to provide critical area regulations for the KSMP that are adequate to evaluate for no-net-loss of ecological functions.

City Response: The adopted wetland classes and mitigation ratios are from the City's existing critical areas ordinance. The Department of Ecology has approved use of the City's 3-tier wetland classification system as it is based on the jurisdiction's best available science.

Ecology Conclusion: The City has adequately demonstrated that the 3-tier wetland classification system in the critical area ordinance adequately protects wetlands. Ecology is requiring a change to the mitigation ratios to ensure adequate mitigation. The mitigation ratios will still reflect the city's 3-tier wetland system, but requires additional mitigation to be similar to Ecology's wetland mitigation ratio guidance.

Special Height Standards for Lakepointe H-1 and H-2

- i. The September 2, 1998 Shoreline Permit (SDP) issued to Pioneer Towing Co. addressed the necessary shoreline conditions for development at Lakepointe.

Page 13 of the SDP (which has expired) gives the heights of the structures within the Lake Washington jurisdiction, a 100' vegetated buffer with public access and view points. The 100-200' area allowed 45'. Near the Sammamish River no higher than 35'.

The Lake Washington shoreline is a Shoreline of Statewide Significance. Therefore, the statewide interest over local interest is the first use priority. The CSDP and Master Plan are the same as that proposed in the SDP in 1998, (and covered in the EIS) there can be no justification now reducing the shoreline setback to 50' and allowing the height to be 45' within the first 100' and 75' within the 100-200'. The required re-establishment of the vegetation and riparian habitat for mitigation is the same as required in 1998. I request that Ecology require a minimum 100' setback along the Lake Washington Waterfront in the City of Kenmore, and within the 100-200' jurisdiction the height be limited to 45' in order that there be no-net-loss of ecological functions.

City Response: The approved Lakepointe plans provide for a 35' height limit along the Sammamish River. The adopted SMP contains the same limitation. The buffer against the river is 150', plus a 15' building setback.

New shoreline regulations along the west end of the site and along the inner harbor have been crafted to match the approved CSDP and Master Plan to a large degree, although the height limits have actually been reduced from the height proposed by the applicant in one portion of the site, and there is added emphasis on water-dependent uses, public access, and restoration on the site. The buffers from Lake Washington have not been reduced. Current standards are 0' buffers for water-dependent uses and 20' buffers for water-related uses that can be reduced to 10' if public access is provided. Non-water-dependent uses have a 50' buffer that can be reduced to 20' if public access is provided. The standards adopted by the City Council require 20' buffers for water-dependent and water-related uses and 50' buffers for non-water-dependent and non-water-related commercial development. This buffer can go to 0' for water-dependent uses if impacts are mitigated such that there is no net loss of shoreline ecological processes or functions. For non-water-dependent uses, the buffer can only be reduced if a public access promenade is provided and if impacts are mitigated.

Ecology Conclusion: The question that needs to be addressed as part of the SMP review is what buffers are necessary at LakePointe to achieve no net loss of ecological function. The characterization noted that there is extensive shoreline armoring and historic and existing industrial uses. Given the existing ecological condition of the site, the proposed buffers and restoration will likely achieved no net loss of ecological function within the reach.

Area H-3 Waterfront and Suburban Residential

- j. The Kenmore SMP area H-3 allow buildings to exceed the 35 height limit to 45' (50-100') and 65' (100-200'). The area outlined is the same as the Citizen task force recommended TOD Transportation Oriented Development overlay which would give incentives to increase density over the planned density.

Flood plain is shown on the map for both Plywood Supply and the neighboring S.R. property. The designation of this property as H-3 allowing 65' height within 100' of the current structural setback line, and 45' within 50'-100' is not adequately addressed in the cumulative impact analysis. The current SDP for the light industrial development required a 100' and a vegetated shoreline buffer.

It is difficult to justify a reduction in the setback to 50', and increased height from 0-45' and from 100-200' a 65' (30' increase in height) —all with significantly increased density and impacts from the current SDP requirements.

I request that Ecology deny the height standards proposed in H-3 Waterfront and instead implement 35' height limit throughout the 200' Sammamish Shoreline jurisdictional area with a 100' setback as is currently implemented in the Plywood Supply existing SDP for low impact storage –industrial use. This will protect the ecological functions.

City Response: The SMP establishes critical area buffers of 150' plus 15' building setbacks from the Sammamish River and associated wetlands and would allow a height limit of up to 65' only in areas outside of these buffers and building setbacks on the upland portions of these properties, consistent with existing zoning and if structures would not obstruct the view of a substantial number of residences.

Ecology Conclusion: A required change is to modify the H-3 SBHA. Much of this area is within a floodway and is not suitable for residential development for floodway encroachments.

The Shoreline Residential portion of the H-3 overlay is addressed in the KSMP policies LU-17.2.1, LU-17.2.2 and 2.3.

- k. Shoreline Residential policies apply to single-family or multi-family properties planned and platted for residential development. The height of 45' within 50'-100' and the 65' height within 100-200' is not consistent with these policies. LU-17.2.1 states that Density and minimum frontage width, setbacks lot coverage, buffers, critical areas protection and water quality shall be set considering the environmental limitations and sensitivity of the shoreline area and the level of infrastructure and services available. LU-17.2.2 Multi-family and multi-lot residential and recreational development should provide public access and community recreational facilities. LU-17.2.3 Access, utilities, and public services should be available and adequate to serve existing needs and planned future development. The height limits of H-3 discussed in the revised

cumulative impact analysis do not adequately address their policy criteria and will result in a net- loss of ecological functions.

City Response: The SMP establishes critical area buffers of 150' plus 15' building setbacks from the Sammamish River and associated wetlands and would allow a height limit of up to 65' only in areas outside of these buffers and building setbacks on the upland portions of these properties, consistent with existing zoning. The residential portion of H-3 is an existing mobile home park which extends all the way to the shoreline of the river.

Ecology Conclusion: A required change is to modify the H-3 SBHA. Much of this area is within a floodway and is not suitable for residential development for floodway encroachments.

- l. Aagaard concurs with Eric Adman's comments regarding Swamp Creek.

City Response: See responses to Mr. Adman's comments, p. 13.

Ecology Conclusion: A required change will only allow the H-4 height to be increased at least 112.5 feet from the OHWM of Swamp Creek. The change will make this provision consistent with the critical area protections.

- m. Aagaard believes that Urban Conservancy should not include commercial development. Including commercial development is inconsistent with the Department of Ecology guidelines for Urban Conservancy.

Attachment 1 of the Cumulative Impact Analysis states that public access and habitat restoration could be provided with the mixed-use commercial area of H-4. This does not address "no-net-loss" particularly the loss of wetlands should they be impacted by future commercially zoned development.

Please require that the current Urban Conservancy be redefined to eliminate commercial development and require that the H-4 designation height overlay be removed from the Urban Conservancy Swamp Creek area.

City Response: The Urban Conservancy designation allows commercial development only where it is allowed in the underlying zone which is in only one area, immediately north of Bothell Way on Swamp Creek. No net loss is ensured as this area is already degraded and additional development is permitted only when ecological restoration and public access enhancement is provided.

Ecology Conclusion: For uses allowed in Swamp Creek Urban Conservancy Area - the commercial portion of this area is developed with a shopping center.

The shopping center portion of the site may be better suited with a greater intensity environment. However, protection of Swamp Cree and its associated wetlands is necessary. The H-4 SHBA has been significantly modified to ensure no conflict with Swamp Creek or its associated wetlands.

16. Janet Hayes, testimony at the public hearing on March 31, 2011 and comment letter received April 15, 2011.

Hayes expresses concern that neither the City of Ecology has adequately addressed clearing on the Lakepointe site. Hayes believes that a weak SMP will be poorly implemented. Hayes wants the SMP to have every T crossed and every I dotted. Ecology needs to ensure that the SMP accomplishes no net loss of ecological function.

City Response: Comment noted.

Ecology Conclusion: As a historic industrial site, the LakePointe site has a minimal amount of vegetation that will be outside of areas that are wetland or shoreline buffers. Because a toxics clean-up is required prior to development, clearing and grading on the site are likely. No net loss of ecological function is a project level requirement of the LakePointe project.

17. Patrick O'Brien, testimony at the public hearing on March 31, 2011.

- a. Kenmore has a large flyway corridor with many species of birds utilizing the Sammamish Slough. Ecology should consider what the increased building heights will do to these birds.

City Response: Comment noted.

Ecology Conclusion: Ecology concurs with the comment.

- b. Kenmore Air has been in the same location for many years. The FAA code enforces maximum building heights in landing corridors. The planes make every effort to land within the key, which is designated area H1.

City Response: The height restrictions associated with Kenmore Air are unaffected by adoption of the SMP.

Ecology Conclusion: A change is included that requires projects consider ecological impacts of increased building heights.

- c. We have seen what liquefaction will do. This should be a consideration in areas H1 and H2.

City Response: The city's critical area standards for seismic hazard areas have been adopted into the SMP and apply within the shoreline jurisdiction.

Ecology Conclusion: Ecology concurs with the City response.

- d. Previous excavations have found a considerable amount of gas from the old landfill.

City Response: Comment noted.

Ecology Conclusion: The Site is under a legal agreement called a Consent Decree signed in 2001 to conduct the proposed site cleanup combined with a proposed development called the Lakepointe Development Proposal.

To prepare a Consent Decree and Cleanup Plan, there needs to be a remedial investigation completed at the site. The remedial investigation is to identify and characterize the extent of contamination in soil, groundwater, air, and surface water at the site. For the KIP Site the remedial investigation was conducted in steps.

The final Remedial Investigation (RI) was completed by AMEC Earth and Environmental Inc and dated June 22, 2001. The RI includes a section on Air and Landfill Gas (section 5.0) and states "Landfill gas exists in the subsurface due to on-going decomposition of the underlying peat soils and demolition debris." The report goes on to say that AMEC has no knowledge that landfill gas accumulations have been reported." See page 12 in attachment from AMEC Earth & Environmental Inc., 2001, Remedial Investigation/Feasibility Study – Kenmore Industrial Park. Also attached are the AMEC conclusions and they do not list anything about landfill issues nor landfill gases.

An earlier remedial investigation report by AGRA Earth & Environmental Inc in July 1998 mentioned that landfill records listed that wood, stumps and demolition debris and restaurant wastes were deposited at the site as an unlicensed landfill.

The review of the KIP Site files and extensive soil and groundwater sampling results, has not noted any indication of landfill gases or landfill related substances in the soil and groundwater sampling results at this site.

This site does include peat underlying the surface soils as shown in geologic borings. Peat is common in the subsurface at Mercer Slough, Marymoor Park, the KIP site, and other areas associated with lake and river confluences, and as the peat compacts it may give off gases –a natural process.

- e. Tannins from leaf fall can be a concern for fish. This can be addressed by carefully choosing the trees being planted. O'Brien supports planting evergreens. O'Brien believes that this would reduce tannins entering shoreline waters.

City Response: While it is acknowledged that some trees produce tannins, and that evergreen trees have been removed from Kenmore shorelines in greater extent than deciduous trees, it is also true that deciduous trees are native to shoreline areas and can be compatible. Consideration of appropriate trees for shoreline areas can be accomplished on a project specific basis, and consideration of excessive tannin inputs to the shoreline can be considered in developing and approving landscape plans.

Ecology Conclusion: Ecology concurs with the City response.

- f. The building heights that would be allowed in the H1 and H2 areas are a concern. While O'Brien wants the area to develop successfully, he is concerned about buildings with heights above 35 feet. O'Brien would like to see fertilizers and pesticides restricted near shorelines. O'Brien would like to look at the height limits in Woodinville and Redmond.

City Response: Comments noted. The general shoreline development regulations include standards to prevent contamination of land or water.

Ecology Conclusion: A required change is being added to emphasize that new projects must not impair shoreline ecological functions.

- g. O'Brien is comfortable with single family development in the SR designation.

City Response: Comment noted.

Ecology Conclusion: Ecology concurs with the City response.

- h. O'Brien expressed concern about the stability of the dam structure at the outlet of Lake Sammamish if there is a major earthquake. O'Brien expressed concern regarding the possible debris created by water released from Lake Sammamish if the outlet structure were to fail.

City Response: Comment noted.

Ecology Conclusion: There is a weir at the outlet of Lake Sammamish. It is not what is commonly understood to be a dam. The weir structure is of minimal

height. The Sammamish River has a mapped floodplain and floodway below Lake Sammamish.

18. Macy Ratliff, Email received April 15, 2011

The citizens of Kenmore need more public access to the lakeshore . The wetlands and the shoreline needs to have wider buffers, less impervious surfaces and careful protection of the wildlife that calls our area home. The current shoreline master plans needs to be revised in order to do what is best for the wetland ecology and wildlife habitat while providing greater public access to the shoreline.

City Response: The SMP buffers mirror those in the City's existing critical areas ordinance. Public access is required for all multifamily and commercial developments, and subdivisions of more than four lots, if not precluded by public safety concerns.

Ecology Conclusion: Ecology concurs with the City response.



City Of Kenmore, Washington

August 9, 2011

WA State Department of Ecology
Attention: Director's Office
P.O. Box 47600
Olympia, WA 98504-6700

RE: Kenmore's Shoreline Master Program - Request for Revised Findings & Conclusions

Dear Mr. Sturdevant:

On July 28, 2011, the City received your July 25, 2011 letter addressed to Mayor Baker regarding the Department of Ecology's (Ecology) approval of Kenmore's Shoreline Master Program Update (SMP) subject to the City's written notice of agreement to the required changes. The City Council is currently on summer hiatus and therefore will not be considering or providing a written response to Ecology's required and recommended changes to Kenmore's SMP until September.

Before Council considers Ecology's proposal, City staff has noted that there appears to be a technical oversight with respect to required change #9 regarding the City's wetland mitigation ratios as outlined in your July 25, 2011 letter, which must be revised. Attached to this letter are the Findings and Conclusions for proposed amendments to Kenmore's SMP prepared by David Radabaugh, Ecology Shoreline Planner, (Findings). The Findings conclude that for those designated critical areas with buffers that extend beyond shoreline jurisdiction, the City has chosen per RCW 36.70A.480(6) to continue to regulate the critical areas and associated buffers under the City's critical area ordinance, codified at Chapter 18.55 Kenmore Municipal Code (see highlighted text). However, Ecology's required Change #9 regarding revised wetland mitigation ratios has been placed in Title 18 of the Kenmore Municipal Code which addresses mitigation ratios throughout the City, and thus extends beyond shoreline jurisdiction.

We believe this is an oversight, as we clearly stated during our staff-level conversations and in a follow-up e-mail to Mr. Radabaugh that the change to mitigation ratios should be placed in Title 16, the Shoreline Management Code, so that the revised ratios would apply only within the shoreline jurisdiction.

Based on this understanding, and pursuant to 173-26-120(7)(b)(ii), we are suggesting the following clarifying language to Ecology's required change #9 regarding wetland mitigation ratios. We would

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City Of Kenmore, Washington

like your agreement to present this language to Council in September as part of Ecology's required changes.

Amend 16.65.010.C as follows:

C. For development in critical areas and critical area buffers, the applicable provisions of ~~Title~~ Chapter 18.55 KMC apply unless a specific exception is provided in the shoreline code.

1. Because Lake Washington, the Sammamish River, and Swamp Creek are all fish and wildlife habitats of importance, a habitat management plan is required for any in-water or overwater development or activity, per KMC 18.55.520.

2. Within the shoreline jurisdiction, the required acreage replacement ratios for wetlands shall be as follows:

Wetland Mitigation Ratios:

<u>Category and Type of Wetland</u>	<u>Creation or Reestablishment (C/R)</u>	<u>Creation (C) or Reestablishment (R) plus Enhancement (E)</u>	<u>Enhancement (E) Only</u>
Class 1	3:1	1:1 C/R plus 6:1 E	Not Allowed
Class 1 (Mature Forested)	6:1	1:1 C/R plus 20:1 E	Not Allowed
Class 2	2:1	1:1 C/R plus 4:1 E	Not Allowed
Class 3	1.5:1	1:1 C/R plus 2:1 E	6:1

Amend Section 18.55.330.G.1 to provide cross-referencing as follows:

G. Mitigation Ratios.

1. Acreage Replacement Ratios. The following ratios shall apply to creation or restoration that is in-kind, on-site, the same class timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply on a case-by-case basis. These ratios do not apply to the use of credits from a state-certified wetland mitigation bank. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetland altered.

Class 1	3 to 1
Class 2	2 to 1
Class 3	1 to 1

Required acreage replacement ratios for wetlands within the jurisdiction of the Shoreline Master Program differ from these standards. See KMC 16.65.010.C for wetland mitigation ratios in the shoreline.

Please confirm that the proposed language to address this technical matter meets with Ecology's approval. If it does, please issue revised Findings and Conclusions and Required Changes which include the proposed language so that City staff may submit the revised findings to the City Council for its consideration in September.

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City Of Kenmore, Washington

We would also like to clarify that the City Council may have additional alternative proposals after their consideration of the changes next month.

If you have any questions, please do not hesitate to give me a call or you may contact Lauri Anderson, Senior Planner, at 425-398-8900.

Sincerely,



Debbie Bent, AICP
Director of Planning and Community Development
dbent@kenmorewa.gov

Attachment

cc: David Radabaugh
Shoreline Planner
WA State Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

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**ATTACHMENT A
FINDINGS AND CONCLUSIONS
FOR PROPOSED AMENDMENTS TO THE CITY OF KENMORE
SHORELINE MASTER PROGRAM**

SMP Submitted November 8, 2010, and Complete on February 14, 2011, Ordinance Numbers
10-312 and 10-313

Prepared by David Radabaugh, on June 23, 2011

Brief Description of Proposed Amendments:

The City of Kenmore is proposing a comprehensive update to their Shoreline Master Program (SMP). The City has requested that the Department of Ecology approve the following:

- Shoreline Policies,
- Shoreline Regulations (including incorporated ordinances), and
- Shoreline Restoration Plan.

The updated SMP will reside as a chapter in the Kenmore Comprehensive Plan, a chapter in the Kenmore Municipal Code with many provisions of the Kenmore Critical Areas Ordinance incorporated by reference.

FINDINGS OF FACT

Need for Amendment: The proposed amendments are needed to comply with the statutory deadline for comprehensive update of the local Shoreline Master Program pursuant to RCW 90.58.100.

Amendment History, Review Process: The record indicates the proposed SMP amendments originated from a local planning process that began in 2007. The City started its shoreline planning process in 2007 with a grant from the Department of Ecology (Grant No. G0800032). The City established a Technical Advisory Committee (TAC) in January, 2008. The TAC met with the Planning Commission until April 29, 2009. The Kenmore Planning Commission considered the SMP between December, 2007 and February 3, 2010. The Planning Commission held a public hearing on the SMP on September 21, 2009.

The Kenmore City Council considered the SMP from February 25, 2010 to September 13, 2010. The City Council opened a public hearing on the SMP on March 29, 2010. The public hearing was held open for public comment until September 13, 2010.

During the development of its SMP, the City received comments from property owners and their representatives, environmental organizations, government agencies, consultants, and various individuals.

The Department of Ecology provided comments on the Draft SMP on September 14, 2009, November 20, 2009, April 26, 2010, June 7, 2010, and July 20, 2010.

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City of Kenmore Shoreline Master Program
Findings and Conclusions
Page 2

The City issued a Determination of Nonsignificance for the SMP on August 25, 2009. With passage of Ordinances 10-312 and 10-313, on September 13, 2010, the City authorized staff to forward the proposed amendments to Ecology for approval.

The proposed SMP amendments were received by Ecology for state review on November 5, 2010. The submittal was found incomplete on January 21, 2011. Submittal of additional information was made on February 2, 2011 and February 11, 2011. The SMP submittal was verified as complete on February 11, 2011. The state comment period began on March 15, 2010 and continued through April 15, 2011. On March 31, 2011, Ecology held a public hearing in Kenmore to seek input on the proposed amendments. Notice of the hearing, including a description of the proposed amendment and the authority under which the action is proposed, the times and locations of the hearing/s and the manner in which interested persons may obtain copies and present their views was provided in the March 10, 2011 edition/s of the Seattle Times, the City official newspaper of record. Notices were mailed to interested parties identified by the City on March 11, 2011. Eighteen individuals or organizations submitted comments on the proposed amendments. Ecology sent all oral and written comments it received to the City on April 25, 2011. On May 3, 2011, the City submitted to Ecology its responses to issues raised during the state comment period. Ecology's own responses to issues raised during the comment period are available as part of the SMP amendment process record.

Consistency with Chapter 90.58 RCW: The proposed amendments have been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3),(4) and (5). The City has also provided evidence (see above) of its compliance with SMA procedural requirements for amending an SMP contained in RCW 90.58.090.

Consistency with "applicable guidelines" (Chapter 173-26 WAC, Part III): The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program guidelines (WAC 173-26-171 through 251 and -020 definitions). This included review of a SMP Submittal Checklist, which was completed by the city.

Ecology reviewed SMP Inventory and Characterization Report, the Restoration Plan, and Cumulative Impacts Analysis for consistency with the Guidelines. Ecology reviewed the SMP goals, policies, regulations, environment designations, maps, administrative provisions, definitions, and legal provisions for consistency with the Guidelines.

The Inventory and Characterization Report and Chapters 4 and 7 of the SMP provide a foundation for the environment and buffer system contained in the SMP. The SMP contains provisions for shoreline environments, archaeological and historic resources, critical areas, flood hazard reduction, public access, shoreline vegetation conservation, shoreline stabilization, piers and docks, fill, and dredging, breakwaters, jetties, groins, and weirs. Shoreline habitat and natural systems enhancement is addressed through the restoration plan, and buffer requirements.

The SMP addresses uses that could be relevant to the Kenmore shoreline including

aquaculture, boating facilities, commercial development, manufacturing, recreational development, residential development, transportation, and utilities. The SMP is also addresses shorelines of statewide significance. The SMP contains procedures for administering the shoreline regulations. Kenmore's Lake Washington and Sammamish River shorelines are shoreline of statewide significance.

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance for the proposed SMP amendments on August 25, 2009. Ecology did not comment on the DNS

Other Studies or Analysis supporting the SMP update: Ecology reviewed the following reports, studies, map portfolios and data prepared for the City/County in support of the SMP amendment:

- Draft Inventory of Data Sources dated November 5, 2007
- Draft Shoreline Inventory and Characterization Report dated July 3, 2008
- Shoreline Inventory and Characterization Report dated April 2008
- Shoreline Restoration Plan dated June 24, 2009
- Shoreline Restoration Plan dated November 2010
- Public Access Memorandum dated June 30, 2009
- Cumulative Impacts Analysis dated February 4, 2010
- Cumulative Impacts Analysis revised November 5, 2010
- SEPA Checklist dated August 2009
- Draft Shoreline Master Program dated June 30, 2009
- Draft Shoreline Master Program dated February 2010
- Shoreline Master Program dated September 13, 2010
- Shoreline master program Checklist dated November 5, 2010

Summary of Issues Raised During The Public Review Process: There was on-going public interest expressed during the City's SMP amendment drafting/public review process. Ecology conducted a formal public comment period and public hearing during its review of the SMP. Issues raised during the Ecology comment period have been addressed in a responsiveness summary. Considerable debate centered on the following topics:

Pier and Dock Standards

One individual advocated for less strict pier and dock standards. The standards adopted by the City substantially follow the standards articulated in the United States Army Corps of Engineers, Seattle District, Regional General Permit 3. This is an appropriate method to achieve no net loss of ecological function in this subject area.

Environment Designation of Log Boom Park

One individual advocated for designating Log Boom Park as a Natural environment. Given the level of development at the park, including a pier, parking and walkways, the Urban Conservancy designation adopted by the City seems appropriate.

Restoration Plan

Concern was raised that the Restoration Plan was not detailed enough and did not adequately identify priorities and funding. It is a suggested change that additional information regarding restoration priorities and funding be added.

Industrial Activities in Shoreline Areas

One individual raised concerns regarding the operation for water-dependent industrial uses. The City noted that water-dependent uses can be located on the shoreline, including within buffers, so long as the use achieves no net loss of ecological function.

Height Limits- H-3 and H-4 Areas

Late in the City adoption process, building height limits were somewhat relaxed in two areas where redevelopment is anticipated or advocated. These were identified as the H-3 and H-4 areas. Building heights could be up to 45 feet if the building is at least 50 feet from the Ordinary High water mark and 65 feet if the building is at least 100 feet from the Ordinary High Water Mark.

Most of Area H-3 is in a floodway. Within a floodway, commercial buildings cannot cause any rise in the flood elevation and residences are prohibited. The increased height limits are inconsistent with other provisions for this area and inconsistent with recognizing the statewide interest of limiting development in floodways. This provision does not protect a statewide interest as discussed in WAC 173-26-181. A proposal is being made to reduce the area of the floodway in this area. A change to the SMP is required to ensure that increased building heights are not located in floodways or critical area buffers.

Most of Area H-4 is in a floodway, floodplain or critical area. The standard buffer for a Class 1 stream (as the Sammamish River is classified) is 150 feet. The necessary critical area buffers largely render the provision for increased height limits meaningless. As drafted, this provision is inconsistent with critical area provisions for this area as articulated in WAC 173-26-221. A change is required to ensure that increased building heights are not located in floodways or buffers.

Accessory uses counted as part of a water-dependent use

While accessory uses may be necessary for certain water-dependent uses to function, a focus on accessory uses should not be allowed to minimize the water-dependent uses in shoreline jurisdiction. Concern was raised that nonwater-dependent uses could be counted as water-dependent uses in this portion of the SMP. A change is required to ensure that a nonwater-dependent accessory uses are associated with a water-dependent use and are the minimum necessary to support the water-dependent use. This change provides a limit for how much an accessory use can encumber a site dedicated to a water -dependent use consistent with WAC 173-26-201(2)(d).

Shoreline Designations

During the review of the Draft SMP, we noted that:

The southern portion of Reach Lake WA – 2 is designated Urban Conservancy in the SMP. This area appears to have much in common with Reach Lake WA – 1, which is designated Natural. Why is this area designated Urban Conservancy rather than Natural?

The Planning Commission did not believe that private property should be placed in a Natural designation. After reviewing this rationale, Ecology believes that private property can be designated Natural if it meets that designation criteria for doing so. The designation of the property immediately north of St. Edwards Park on Lake Washington should be based on the designation criteria at WAC 173-26-211(5)(a) and (e) and the Natural and Urban Conservancy designation criteria in the SMP. This change is consistent with WAC 173-26-211(5)(a)(iii).

Alternative Pier Design

Concern was expressed regarding the SMP's allowance for piers serving commercial or industrial uses. While the SMP allows for alternative pier design so long as the pier achieves no net loss of ecological function, it is not a well defined provision. The required changes make it clear that commercial piers can be proposed that are the documented minimum necessary to accomplish the water dependent for which they are designed and that the meets or exceeds the specific ecological protective measures in the remainder of the pier and dock section. This change provides consistency with WAC 173-26-231(3)(b) and WAC 173-26-201(2)(c).

Commercial Uses in Urban Conservancy Environment Designation

Concern was expressed regarding commercial uses in the Urban Conservancy environment. While the Kenmore SMP does allow for commercial uses in the Urban Conservancy environment, it is required that any such project demonstrate ecological enhancement. Given that the standard buffer from Lake Washington for commercial uses is a minimum of 115 feet. The standard buffers on the Sammamish River and Swamp Creek are 150 feet in the Urban

Conservancy environment, the environment designation is consistent with the Urban Conservancy management policies found at WAC 173-26-211(5)(e).

Summary of Issues Identified by Ecology as Relevant To It's Decision:

Channel Migration Zone on Swamp Creek

In order to meet the requirements of WAC 173-26-221(3)(c) provision for a channel migration zone on Swamp Creek has been added as a required change. As adopted by the City Council, the Kenmore SMP relies on a future administrative policy will regulate channel migration zones. This is insufficient to be compliant with the Shoreline Guidelines. In order to be consistent with WAC 173-26-221(3)(c), a required change identifies the channel migration area for Swamp Creek and provides regulations to be minimally compliant with the Guideline requirements.

Expansion of Nonconforming Piers and Docks

The SMP has a strong set of design standards for new piers and docks that include a requirement for 3 foot wide ramps, 4 foot wide piers, deck grating, size limits on the first set of piles near shore, and a 150 foot overall limitation. The adopted SMP allows for an expansion of a legally existing dock of 25 percent of the existing size so long as there is a demonstration that the proposal would reduce the impacts to critical fish habitat and cause no harm to adjacent uses of the shoreline. The required change incorporates many of the design standards for new piers and docks and requires that expanded docks be no larger than the minimum necessary to accomplish their water dependent use. This change is necessary to address public comments while still providing an incentive to improve the environmental performance of docks consistent with WAC 173-26-231(3)(b).

Definition of Critical Areas

Rather than simply make a reference to another section of the Kenmore Municipal Code the definition of "critical areas" should be within, or incorporated into, the SMP. The definition of critical areas is being added to the SMP.

Wetland Definition

The definition of wetland is being changed to ensure that wetland definition is current.

Wetland Mitigation Ratios

The SMP incorporates the following wetland mitigation ratios:

Table 1
Adopted Mitigation Ratios

<u>Wetland Class</u>	<u>Mitigation Ratio</u>
Class 1	3 to 1
Class 2	2 to 1
Class 3	1 to 1

Current Department of Ecology guidance calls for the following mitigation ratios:

Table 2
Ecology Recommended Mitigation Ratios

<u>Category and Type of Wetland</u>	<u>Creation or Re-establishment</u>	<u>Rehabilitation</u>	<u>Enhancement</u>	<u>Preservation</u>
Category I: <u>Bog,</u> <u>Natural</u> <u>Heritage</u> <u>site</u>	<u>Not considered possible</u>	<u>6:1</u>	<u>Case by case</u>	<u>10:1</u>
Category I: <u>Mature</u> <u>Forested</u>	<u>6:1</u>	<u>12:1</u>	<u>24:1</u>	<u>24:1</u>
Category I: <u>Based on</u> <u>functions</u>	<u>4:1</u>	<u>8:1</u>	<u>16:1</u>	<u>20:1</u>
Category II	<u>3:1</u>	<u>6:1</u>	<u>12:1</u>	<u>20:1</u>
Category III	<u>2:1</u>	<u>4:1</u>	<u>8:1</u>	<u>15:1</u>

The mitigation ratios found in the adopted KMC 18.55.330(G) compare unfavorably with Table 8C-11 from *Wetlands in Washington State, Volume 2 – Protecting and Managing Wetlands, April 2005 – Ecology Publication #05-06-008*. The city has not demonstrated that the inclusion of the standards for mitigation ratios in KMC 18.55.330(G) meets current BAS and will not result in a net loss of functions within the shoreline jurisdiction. The submittal of a single page (Page 10 of “Draft BAS Technical Memorandum” – Section 2.6.2 Mitigation Ratios) does not demonstrate that the proposed mitigation replacement ratios would assure no net loss of shoreline ecological functions necessary to sustain shoreline natural resources. The proposed ratios are not consistent with BAS which Ecology utilized in the creation of Table 8C-11 from *Wetlands in Washington State, Volume 2 – Protecting and Managing Wetlands, April 2005 – Ecology Publication #05-06-008*.

After additional discussion, the City and Ecology agreed to the following mitigation ratios:

Table 3
Ecology/City of Kenmore Agreed Mitigation Ratios

<u>Category and Type of Wetland</u>	<u>Creation or Reestablishment (C/R)</u>	<u>Creation (C) or Reestablishment (R) plus Enhancement (E)</u>	<u>Enhancement (E) Only</u>
Class 1	3:1	1:1 C/R plus 6:1 E	Not Allowed
Class 1 (Mature Forested)	6:1	1:1 C/R plus 20:1 E	Not Allowed
Class 2	2:1	1:1 C/R plus 4:1 E	Not Allowed
Class 3	1.5:1	1:1 C/R plus 2:1 E	6:1

The City provided supplemental analysis on June 21, 2011 supporting the revised mitigation ratios. The analysis noted that:

This proposed mitigation ratios are similar to Ecology's recommended ratios, except with regard to the creation-plus-enhancement ratio recommended by Ecology for Category II. The slightly smaller enhancement component (6:1 proposed versus 8:1 in the Ecology system) still more than mitigates for wetland impacts in the City's shoreline, and provides sufficient disincentive to prevent most wetland impacts. The mitigation sequencing and prohibition on impacts to Class 1 wetlands, which represents the majority of wetlands in Kenmore's shoreline, has proven effective in the five years since the Kenmore CAO was adopted.

Ecology has concluded that the memo adequately explains the City of Kenmore's proposed wetland mitigation ratios for the city's 3-tier wetland rating system relative to Ecology's

recommended ratios based on a 4-tier system and Ecology's wetland functional rating system. Ecology is prepared to accept the alternative proposal for the City of Kenmore's SMP update for wetland mitigation ratios as presented in Table 3.

Ecology has noted its strong preference to see the city adopt Ecology's 4-tier wetland ratings system and the corresponding mitigation ratios. Ecology has also noted that any proposed impacts to wetlands within shoreline jurisdiction that require state or federal authorization will also require the use of Ecology's 4-tier wetland rating system and corresponding mitigation ratios.

Measurement of Wetland Buffers

A change within the incorporated critical area ordinance is necessary to ensure that wetlands are delineated correctly and that wetland buffers are measured correctly. Wetland buffers shall be measured from the wetland edge as delineated and marked in the field using the Washington State Wetland Delineation Manual (1997) or as may be revised in WAC 173-22-035 and WAC 173-22-080.

This minor change will allow the SMP to stay current with state law.

Mitigation Standards

Change is necessary to ensure that wetland standards are current. This section in the adopted SMP references outdated mitigation guidelines for developing freshwater wetland mitigation plans. While it does say "as revised" it is not clear whether this means that applicants should be using the most current Ecology guidance on developing wetland mitigation plans. Adopting the current language found in KMC 18.55.330(A) within the SMP update would not be consistent with BAS. This section of code should be amended

Mitigation Sequencing

A change is necessary to make the mitigation sequencing requirements in the SMP consistent with the mitigation sequencing requirements in the Guidelines. The required change clarifies that mitigation sequencing is a requirement for all projects consistent with WAC 173-26-201(2)(e)(i). The incorporated mitigation sequencing section was missing the requirement to monitor the impact of compensation projects and take appropriate corrective action, if necessary.

Buffers for the Urban Conservancy Environment

The shoreline density and dimensions table at KMC 16.65.020 does not have buffer dimensions for commercial development in the Urban conservancy environment. This was an oversight. The intended buffers are 115 feet for water-dependent related commercial development and 150 feet for nonwater-dependent and nonwater-related commercial development.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City's SMP proposal, subject to and including Ecology's required changes (itemized in Attachment B), is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that the proposed SMP, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new master program amendments (WAC 173-26-201(2)(c)).

Ecology also concludes that a separate set of recommended changes to the submittal (identified during the review process and itemized in Attachment C) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required, but can, if accepted by the City, be included in Ecology's approved SMP amendments.

Ecology concludes that those SMP segments relating to shorelines of statewide significance provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP amendment process.

Ecology concludes that the City has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City's SMP amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3)(a) and (h) requiring a SMP Submittal Checklist.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in WAC 173-26-120.

Ecology concludes that the City has chosen not to exercise its option pursuant to RCW 90.58.030(2)(f)(ii) to increase shoreline jurisdiction to include buffer areas of all critical areas within shorelines of the state. Therefore, as required by RCW 36.70A.480(6), for those

designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the City's critical areas ordinance. In such cases, the updated SMP shall also continue to apply to the designated critical area, but not the portion of the buffer area that lies outside of SMA jurisdiction. All remaining designated critical areas (with buffers NOT extending beyond SMA jurisdiction) and their buffer areas shall be regulated solely by the SMP.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments are consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules, once required changes set forth in Attachment B are approved by the City. Ecology approval of the proposed amendments with required changes, is effective on the date at which Ecology receives written notice that the City has agreed to the required changes.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit an alternative to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action on the amendment.

Lauri Anderson

From: Radabaugh, David (ECY) [DRAD461@ECY.WA.GOV]
Sent: Friday, August 19, 2011 3:31 PM
To: Debbie Bent; Lauri Anderson; Dawn Findlay Reitan
Cc: Skowlund, Peter (ECY); Tallent, Geoff (ECY)
Subject: Kenmore SMP, Required Change No. 9

Dear Ms. Bent,

We are in receipt of your correspondence dated August 9, 2011 expressing concern that the required change to the wetland mitigation ratios was proposed as an alteration of chapter 18.55 of the Kenmore Municipal Code rather than Title 16. Our intent was only to address mitigation ratios as they apply to shoreline jurisdiction – not to alter the critical area ordinance as it applies to all portions of the City. Therefore, the clarification that you propose, restated here in its entirety, is appropriate and reflects the intent of required change No. 9:

Amend Kenmore Municipal Code, Section 16.65.010.C, as follows:

*C. For development in critical areas and critical area buffers, the applicable provisions of **TitleChapter** 18.55 **KMC** apply unless a specific exception is provided in the shoreline code.*

1. Because Lake Washington, the Sammamish River, and Swamp Creek are all fish and wildlife habitats of importance, a habitat management plan is required for any in-water or overwater development or activity, per KMC 18.55.520.

2. Within the shoreline jurisdiction, the required acreage replacement ratios for wetlands shall be as follows:

Wetland Mitigation Ratios:

<u><i>Category and Type of Wetland</i></u>	<u><i>Creation or Reestablishment (C/R)</i></u>	<u><i>Creation (C) or Reestablishment (R) plus Enhancement (E)</i></u>	<u><i>Enhancement (E) Only</i></u>
<i>Class 1</i>	<i>3:1</i>	<i>1:1 C/R plus 6:1 E</i>	<i>Not Allowed</i>
<i>Class 1 (Mature Forested)</i>	<i>6:1</i>	<i>1:1 C/R plus 20:1 E</i>	<i>Not Allowed</i>
<i>Class 2</i>	<i>2:1</i>	<i>1:1 C/R plus 4:1 E</i>	<i>Not Allowed</i>
<i>Class 3</i>	<i>1.5:1</i>	<i>1:1 C/R plus 2:1 E</i>	<i>6:1</i>

Amend Kenmore Municipal Code, Section 18.55.330.G.1 to provide cross-referencing , as follows:

18.55.330 Performance standards – Mitigation requirements.

G. Mitigation Ratios.

1. Acreage Replacement Ratios. The following ratios shall apply to creation or restoration that is in-kind, on-site, the same class, timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply on a case-by-case basis. These ratios do not apply to the use of credits from a state-certified wetland mitigation bank. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

<i>Class 1</i>	<i>3 to 1</i>
<i>Class 2</i>	<i>2 to 1</i>
<i>Class 3</i>	<i>1 to 1</i>

The required acreage replacement ratios for wetlands within the jurisdiction of the Kenmore Shoreline Master Program are different from these standards. See KMC 16.65.010.C for required wetland mitigation ratios in the shoreline jurisdiction.

If you have any questions or comments, please contact me.

David Radabaugh, AICP, CFM
 Environmental Planner
 Department of Ecology
 Northwest Regional Office
 3190 - 160th Avenue SE
 Bellevue, WA 98008-5452
 (425) 649-4260
david.radabaugh@ecy.wa.gov



City Of Kenmore, Washington

September 26, 2011

David Radabaugh
Shoreline Planner
Washington State Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

DRAFT

RE: City of Kenmore's Shoreline Master Program Update

Dear Mr. Radabaugh:

At the City Council meeting on September 26, 2011, the Council preliminarily endorsed all of Ecology's required changes to our Shoreline Master Program (SMP) and most of the suggested changes.

Before taking final action on an ordinance, and pursuant to RCW 90.58.090(2)(e)(ii), however, we would like to present the following two "alternative proposals" for your consideration:

1. **Alternative Proposal 1 – Alternative to Suggested Change No. 10.** The City has reviewed Ecology's Suggested Change #10, and requests the following alternative text highlighted in yellow:
 - C. Expansion of a nonconforming use or structure may be approved through the provisions of KMC 16.75.040 when the applicant demonstrates the following.
 1. The project would substantially reduce the impacts of the existing use or structure on shoreline ecological functions, and
 2. The proposed expansion would not cause adverse impacts on adjacent shoreline uses.
 3. A nonconforming structure shall not be expanded closer to the shoreline. For a nonconforming structure located on land, any waterward expansion of the structure into the required setback would be offset by removal of another nonconforming structure of equal or greater footprint area in the shoreline setback, and the shoreline setback area would be restored with native riparian vegetation.

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City Of Kenmore, Washington

2. **Alternative Proposal 2 – Alternative to KMC 18.55.530.A.1 as adopted into the Shoreline Master Program.** In September 2010, the City Council adopted Ordinance No. 10-0313 which adopted the SMP Update, and forwarded it to Ecology for review. In July 2011, the Council adopted a minor change to KMC 18.55.530. In conversation with staff, you had indicated that this change should be brought forward as an alternative proposal since 18.55.530 is adopted into the SMP by reference. The revised language clarifies that development could occur within a fish and wildlife habitat of importance or buffer through procedures outlined in Chapter 18.55, such as a variance or reasonable use exception. The text continues to make a distinction for lands regulated under the SMP. The City requests the following change as shown in yellow highlight (not underlined text):

18.55.530 Performance standards — Specific habitats.

A. Endangered, Threatened, and Sensitive Species.

1. No development shall be allowed within a fish and wildlife habitat of importance or buffer with which state or federally endangered, threatened, or sensitive species have a primary association except as otherwise approved through this chapter, except that, for fish habitat of importance on lands regulated under the Kenmore Shoreline Master Program, development that meets the use and development requirements of the Kenmore Shoreline Master Program may be allowed.

The City appreciates Ecology's review of the submitted Alternative Proposals. Please feel free to contact Debbie Bent, Director of Planning and Community Development, at 425-398-8900 if you have any questions regarding the content of this letter.

Sincerely,

David Baker
Mayor

cc: City Council Members
Frederick Stouder, City Manager
Debbie Bent, Director of Planning and Community Development

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CITY OF KENMORE
WASHINGTON
ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KENMORE, WASHINGTON; REPEALING CHAPTERS 16.05, 16.10, 16.20, 16.25, 16.30, **AND 16.35** **AND CHAPTER 19.15** OF THE KENMORE MUNICIPAL CODE RELATING TO SHORELINE MANAGEMENT; ADOPTING A COMPREHENSIVE SHORELINE MASTER PROGRAM UPDATE CONSISTENT WITH THE SHORELINE MANAGEMENT ACT AND STATE GUIDELINES; ADOPTING THE SHORELINE ENVIRONMENT DESIGNATIONS MAP; RENUMBERING AND REVISING CHAPTER 16.40 OF THE KENMORE MUNICIPAL CODE RELATING TO FLOOD DAMAGE PREVENTION; AMENDING 18.55.030, 18.55.040, 18.55.120, 18.55.160, 18.55.170, 18.55.180, **18.55.210, 18.55.320, 18.55.330**, 18.55.530, **19.15.040**, 19.25.020 **AND 19.30.070** OF THE KENMORE MUNICIPAL CODE TO BE CONSISTENT WITH THE COMPREHENSIVE SHORELINE MASTER PROGRAM UPDATE; **AMENDING EXHIBIT 2 OF ORDINANCE NO. 10-0312 TO DESIGNATE TAX PARCELS 1426049013 AND 1426049014 AS NATURAL**; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in 1972, the public adopted the Shoreline Management Act, codified at Chapter 90.58 RCW (SMA), by way of referendum to "prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines"; and

WHEREAS, RCW 90.58.080 requires local governments to develop or amend master programs for the regulation and uses of the shorelines of the state consistent with the guidelines adopted by the Washington State Department of Ecology (Ecology); and

WHEREAS, RCW 90.58.020 directs local governments developing shoreline master programs to give preference to uses in the shorelines 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 shorelines; 5) increase public access to publicly-owned areas of the shorelines; 6) increase recreational opportunities for the public in the shoreline; and 7) provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary; and

WHEREAS, in 2003, Ecology adopted new rules, pursuant to RCW 90.58.200, which gave procedural and substantive direction to local jurisdictions for updating shoreline uses and regulations, which became effective January 17, 2004; and

WHEREAS, when it incorporated in 1998, the City of Kenmore (City) adopted King County's original 1978 Shoreline Master Program (SMP). Pursuant to RCW 90.58.080, the City is required to adopt a comprehensive master program update consistent with the criteria set forth in Ecology's guidelines (SMP Update); and

WHEREAS, three bodies of water within the City are regulated under the City's SMP, including Lake Washington, Sammamish River and Swamp Creek. Lake Washington is the only shoreline designated as a "shoreline of statewide significance" under the SMA as it is a lake with a surface acreage over 1,000 acres; and

WHEREAS, in the fall of 2007, the City began its SMP Update with the assistance of grant funding from Ecology; and

WHEREAS, the City conducted a comprehensive inventory of the ecological functions and conditions within its shoreline jurisdiction to provide a scientific foundation for application of the shoreline environment criteria and assignment of the appropriate shoreline designations; and

WHEREAS, the results of this comprehensive inventory are contained in the document entitled, Kenmore Shoreline Master Program Update Inventory and Analysis, dated February 2010 (Inventory); and

WHEREAS, consistent with the requirements of WAC 173-26-186(8)(d), the City conducted an analysis of potential cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions fostered by the policy goals of the SMA. The cumulative impact analysis is contained in the memorandum entitled, City of Kenmore, Shoreline Master Program Update - Cumulative Impacts, dated February 4, 2010 (Cumulative Impact Analysis); and

WHEREAS, consistent with the requirements of WAC 173-26-224(4)(c), the City conducted a public access analysis, as set forth in a January 6, 2009 Memorandum entitled, "Shoreline Public Access - Demand, Opportunities and Priorities ("Public Access Planning Memo"), which plans for an integrated shoreline public access system that identifies public needs and opportunities to provide public access; and

WHEREAS, consistent with the requirements of WAC 173-26-186(8)(c) and 173-26-201(2)(f), a document entitled City of Kenmore Shoreline Master Program Update, Restoration Plan, dated February 3, 2010 ("Restoration Plan") has been formulated so that the City's master program includes goals, policies and actions for restoration of impaired shoreline ecological functions; and

WHEREAS, the City has utilized the scientific information from the Inventory and the Cumulative Impact Analysis to draft the proposed SMP Update; and

WHEREAS, over the past two years, the City's Planning Commission has reviewed and revised a number of documents, including: the Inventory; the Shoreline Sub-Element of the Comprehensive Plan; proposed revisions to shoreline regulations; the Restoration Plan; the Public Access Planning Memo; the Cumulative Impacts Memorandum; and a matrix of responses to public comments; and

WHEREAS, throughout the SMP Update process, the City has made a concerted effort to generate public involvement, including holding two public open houses; creating a citizen advisory committee to work with the Planning Commission; creating a comprehensive and regularly-updated web page devoted to the SMP Update; sending mailings to all shoreline property owners soliciting comments on the SMP Update and maintaining a large mailing list in order to keep interested parties informed; and

WHEREAS, on July 22, 2009, the Planning Commission presented their preliminary recommendations for the proposed SMP Update to the City Council, and

WHEREAS, the Planning Commission held a public hearing on the SMP Update and fifteen interested parties testified and a number of comments were received, including from the Muckleshoot Tribe, Friends of St. Edwards State Park, Waterfront Construction, the Lakepointe development, Futurewise and a number of private individuals; and

WHEREAS, on August 25, 2009 the City's Responsible Official under the State Environmental Policy Act issued a determination of non-significance for the proposed SMP Update; and

WHEREAS, on August 25, 2009 the City provided notice to the Washington State Department of Commerce regarding the proposed amendments to the shoreline regulations and SMP Update pursuant to RCW 36.70A.106; and

WHEREAS, Ecology completed its initial review of the proposed SMP Update and submitted comments to the City. The Planning Commission and City Staff have spent several months considering the recommendations and comments received from Ecology as demonstrated in the Public Comment Matrix; and

WHEREAS, on January 20, 2010, the Planning Commission made their final recommendation to the City Council for approval of the SMP Update; and

WHEREAS, on March 29, 2010, the City Council held a public hearing on the proposed SMP Update, which was continued for additional public comment on May 27, 2010 and September 13, 2010; and

WHEREAS, on September 13, 2010, the City Council adopted Ordinance No. 10-0312 (shoreline policies) and Ordinance No. 10-0313 (shoreline regulations), which adopted the SMP Update and authorized City Staff to forward the proposed SMP Update to Ecology for approval; and

WHEREAS, Ecology reviewed the City's SMP Update and issued Findings and Conclusions for Proposed Amendments to the City of Kenmore Shoreline Master Program, dated July 25, 2011 ("Findings & Conclusions") which conditioned approval of the City's SMP Update upon the adoption of certain "required" revisions, and which also included "recommended" changes to the City's SMP Update; and

WHEREAS, the City Council has considered public testimony and comments, City staff and consultant input, and certain documents and information, including: 1) Overview of Draft Shoreline Master Program, Feb. 4, 2010 (ESA Adolfson); 2) the Inventory; 3) the Cumulative Impacts Memorandum; 4) the Shoreline Sub-Element of the Comprehensive Plan; 5) City of Kenmore Shoreline Master Program, Comprehensive Plan Policies, Shoreline Sub-Element; 6) City of Kenmore Shoreline Master Program Update, Draft Shoreline Regulations; 7) the Restoration Plan; 8) the Public Access Planning Memo; 9) Public Comment Matrix; 10) Ecology Shoreline Master Program Submittal Checklist; 11) SEPA Determination of Nonsignificance; 12) Docket Criteria Analysis; 13) Appendices to Shoreline Master Program Update; and 14) City Staff Memoranda, dated March 10, 2010, May 7, 2010, June 21, 2010 and July 20, 2010, September 9, 2011, with attachments and Ecology's Findings & Conclusions; and

WHEREAS, the City Council has considered Ecology's Findings & Conclusions and the required changes and desires to incorporate them into the City's SMP Update by adopting this ordinance, and by repealing Ordinance Nos. 10-0313 (shoreline regulations) to avoid duplication and confusion; and

WHEREAS, the City Council has considered the Findings & Conclusions and Ecology's required changes and desires to amend Exhibit 2 of Ordinance No. 10-0312, the Shoreline Environment Designation Map, to designate Tax Parcels 1426049013 and 1426049014 as "Natural"; and

WHEREAS, the City Council finds that the SMP Update includes the necessary master program elements required by WAC 173-26-191(b), the master program basic requirements set forth in WAC 173-26-191(2) and the general master program provisions set forth in WAC 173-26-221; and

WHEREAS, RCW 36.70A.480 provides that the goals and policies contained in a local shoreline master program shall be considered an element of the City's comprehensive plan adopted under the Growth Management Act, codified at Chapter 36.70A RCW. All other portions of the City's shoreline master program, including shoreline use regulations, are considered a part of the City's development regulations; and

WHEREAS, the City Council desires to repeal Chapters 16.05, 16.10, 16.15., 16.20, 16.25, 16.30, and 16.35 and 19.15 of the KMC; and

WHEREAS, the City Council desires to renumber and revise Chapter 16.40 KMC, relating to Flood Damage Prevention as Chapter 16.90 KMC; and

WHEREAS, the City Council desire to amend KMC 18.55.030, 18.55.040, 18.55.120, 18.55.160, 18.55.170, 18.55.180, 18.55.210, 18.55.320, 18.55.330, 18.55.530, 19.15.040 and 19.25.020, and 19.30.070 in order to make those sections consistent with the City's SMP Update; and

WHEREAS, the City Council finds that the proposed SMP Update complies with the policies and mandates of the SMA and the guidelines adopted by Ecology under Chapter 173-26 WAC, and desires to adopt the proposed SMP Update; now therefore,

THE CITY COUNCIL OF THE CITY OF KENMORE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Findings. The City Council adopts the foregoing recitals as findings for this Ordinance, which are incorporated by reference as if set forth in full.

Section 2. Repealer. The City Council repeals Chapters 16.05, 16.10, 16.15, 16.20, 16.25, 16.30, 16.35 and 19.15 of the Kenmore Municipal Code (KMC). The City Council also repeals Ordinance No. 10-0313, as adopted on September 13, 2010.

Section 3. Adoption of Comprehensive Shoreline Master Program Update - Development Regulations. The City Council adopts the City of Kenmore Shoreline Master Program Update, Shoreline Regulations, as set forth in Exhibit 1, attached hereto and incorporated by reference.

Section 4. Map Adopted. The City Council adopts Map 1, Shoreline Environment Designations Map, attached hereto as Exhibit 2, and incorporated by reference.

Section 5. Renumber & Amendment. The City Council hereby rennumbers Chapter 16.40 KMC, Flood Damage Prevention, as Chapter 16.90 KMC, Flood Damage Prevention and amends the chapter as set forth in Exhibit 3, attached hereto and incorporated by reference.

Section 6. Map Amended. Exhibit 2 to Ordinance No. 10-0312, the Shoreline Environment Designations Map, is hereby amended as set forth in Exhibit 4 to this ordinance, attached hereto and incorporated by reference, to designate Tax Parcels 1426049013 and 1426049014 as Natural.

Section 7. Amendment. KMC 18.55.030 is amended to read as follows:

18.55.030 Relationship to other regulations.

A. These critical areas regulations shall be in addition to zoning and other regulations adopted by the city. Compliance with other regulations does not exempt the applicant from critical areas regulations.

B. The critical area regulations set forth in KMC 16.05.060.B shall apply to all critical areas located within the jurisdiction of the Kenmore Shoreline Master Program.

C. These critical areas regulations shall apply concurrently with review conducted under the State Environmental Policy Act (SEPA) (Chapter 19.35 KMC).

D. Any individual critical area adjoined by another type of critical area shall have the buffer and meet the requirements that provide the most protection to the critical areas involved. When any provision of this chapter or any existing regulation, easement, covenant, or deed restriction conflicts with this chapter, that which provides more protection to the critical areas shall apply.

E. Compliance with the provisions of this chapter does not constitute compliance with other federal, state, and local regulations and permit requirements that may be required (for example, shoreline substantial development or conditional use permits, shoreline variances, the Washington State Department of Fish and Wildlife hydraulic project approval (HPA), Army Corps of Engineers Section 404 permits, and National Pollution Discharge Elimination System (NPDES) permits). The applicant is responsible for complying with these requirements, apart from the process established in this chapter.

Section 8. Amendment. KMC 18.55.040 is amended to read as follows:

18.55.040 Administrative Procedures.

The administrative procedures followed during the critical area review process shall conform to the standards and requirements of the city development regulations, except that, where critical areas are located within the jurisdiction of the Kenmore Shoreline Master Program, administrative procedures shall conform to the standards and requirements of KMC 16.75. This shall include, but not be limited to, timing, permits, variances, exemptions, exceptions, appeals, and fees associated with applications covered by this chapter.

Section 9. Amendment. KMC 18.55.120.B is amended to read as follows:

18.55.120 Applicability.

B. The city shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer, without first assuring compliance with the requirements of this chapter. For development on lands regulated under the Kenmore Shoreline Master Program, compliance with this chapter includes compliance with the requirements of the shoreline master program as well as with the requirements of this chapter.

Section 10. Amendment. KMC 18.55.160.A is amended to read as follows:

18.55.160 Exception — Public agency and utility.

A. If the application of this chapter would prohibit a development proposal by a public agency or public utility, the agency or utility may apply for an exception pursuant to this section, unless the project is located on lands regulated under the Kenmore Shoreline Master Program. Projects on lands regulated under the Kenmore Shoreline Master Program are regulated under the procedures of Chapter 16.75 KMC.

Section 11. Amendment. KMC 18.55.170.A is amended to read as follows:

18.55.170 Variances.

A. Variances from the buffer width and building setback standards of this chapter may be authorized by the city in accordance with the procedures set forth in the city's zoning code, unless the project is located on lands regulated under the Kenmore Shoreline Master Program. Projects on lands regulated under the Kenmore Shoreline Master Program are regulated under the procedures of Chapter 16.75 KMC.

Section 12. Amendment. KMC 18.55.180.A of the Kenmore Municipal Code is amended to read as follows:

18.55.180 Exception — Reasonable use.

A. If the application of this chapter pertaining to critical areas will prevent the applicant from making any reasonable use of the subject property, the applicant may apply for an exception pursuant to this section unless the project is located on lands regulated under the Kenmore Shoreline Master Program. Projects on lands regulated under the Kenmore Shoreline Master Program are regulated under the procedures of Chapter 16.75 KMC. An application for a reasonable use exception must accompany a development permit application through the city's review and decision process.

Section 13. Amendment. KMC 18.55.210 is amended to read as follows:

18.55.210 Mitigation sequencing.

Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to critical areas. When an alteration to a critical area is proposed, such alteration shall be avoided, minimized, or compensated for as outlined by WAC 197-11-768, in the following order of preference:

- A. Avoiding the impact altogether by not taking a certain action or parts of actions;
- B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
- C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- D. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and/or

E. Compensating for the impact by replacing or providing substitute resources or environments; and/or

F. Monitoring the impact and the compensation projects and taking appropriate corrective measures.

Mitigation for individual actions may include a combination of the above measures.

Section 14. Amendment. Section KMC 18.55.320.F.2 is amended as follows:

18.55.320 Performance standards – General requirements.

F. Wetland Buffers.

2. Measurement of Wetland Buffers. Wetland buffers shall be measured from the wetland edge as delineated and marked in the field using the ~~1997~~1987 U.S. Army Corps of Engineers Wetland Delineation Manual and current Regional Supplements ~~Washington State Wetland Identification and Delineation Manual (Ecology)~~ or as may be revised in WAC 173-22-035 and WAC 173-22-080 or the most recent approved federal manual and regional supplements.

Section 15. Amendment. KMC 18.55.330.A is amended to read as follows:

18.55.330 Performance standards – Mitigation requirements.

A. Mitigation Shall Achieve Equivalent or Greater Ecological Functions. Mitigation for alterations to wetlands and buffers shall achieve equivalent or greater ecologic functions than exist in the impacted wetland and buffer. Mitigation plans shall be generally consistent with the Department of Ecology Guidelines ~~found in Wetland Mitigation in Washington State – Part 1, Version 1, March 2006, Publication #060-011a and Wetland Mitigation in Washington State – Part 2, Version 1, March 2006, Publication #06-060-011b for Developing Freshwater Wetlands Mitigation Plans and Proposals, 1994, as revised.~~

Section 16. Amendment. KMC 18.55.330.G.1 is amended to read as follows:

18.55.330 Performance standards – Mitigation requirements.

G. Mitigation Ratios.

1. Acreage Replacement Ratios. The following ratios shall apply to creation or restoration that is in-kind, on-site, the same class, timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from unauthorized alterations; greater ratios shall apply on a case-by-case basis. These ratios do not apply to the use of credits from a state-certified wetland mitigation bank. The first number specifies the acreage of replacement wetlands and the second specifies the acreage of wetlands altered.

Class 1	3 to 1
Class 2	2 to 1
Class 3	1 to 1

The required acreage replacement ratios for wetlands within the jurisdiction of the Kenmore Shoreline Master Program are different from these standards. See KMC 16.65.010.C for required wetland mitigation ratios in the shoreline jurisdiction.

Section 17. Amendment. KMC 18.55.530.A.1 is amended to read as follows:

18.55.530 Performance standards — Specific habitats.

A. Endangered, Threatened, and Sensitive Species.

1. No development shall be allowed within a fish and wildlife habitat of importance or buffer with which state or federally endangered, threatened, or sensitive species have a primary association except as otherwise approved through this chapter, except that, for fish habitat of importance on lands regulated under the Kenmore Shoreline Master Program, development that meets the use and development requirements of the Kenmore Shoreline Master Program may be allowed.

Section 18. Amendment. KMC 19.25.020.B and Exhibit A are amended to read as follows:

19.25.020 Classifications of land use decision processes

B. Except as provided in KMC 19.35.160 and ~~16.35.060~~16.75.060 or unless otherwise agreed to by the applicant, all Type 2, 3 and 4 decisions included in consolidated permit applications that would require more than one type of land use decision process may be processed and decided together, including any administrative appeals, using the highest-numbered land use decision type applicable to the project application.

Exhibit A LAND USE DECISION TYPES		
TYPE 1 ²	Decision by city manager; no administrative appeal	Building; demolition; moving; engineering; clearing and grading; sign; change of use and/or classification under KMC Title 15; accessory dwelling unit; home occupation; boundary line adjustment; right-of-way; street standards variance; adjustment under Chapter 13.35 KMC; shoreline exemption; temporary use; binding site plan; preliminary subdivision or short subdivision revision if not a substantial change; short plat alteration if not a substantial change.
TYPE 2	Decision by city manager; appealable to hearing examiner; no further administrative appeal ^{1,3}	Home industry; short subdivision; preliminary short subdivision revision; short plat alteration; zoning variance; conditional use permit; shoreline substantial development permit; <u>shoreline variance; shoreline conditional use permit</u> ; site plan review for uses allowed by zone; communication facilities permit under KMC Chapter 18.60; approval of residential density incentives or transfer of development

		credits; reuse of public schools; reasonable use exceptions under KMC 18.55.180; public agency and utility exceptions under KMC 18.55.160; other critical areas exceptions, variances and decisions to require studies or to approve, condition or deny a development proposal based on Chapter 18.55 KMC.
TYPE 3	Recommendation by <u>director</u> <u>city manager</u> ; hearing and decision by hearing examiner; appealable directly to King County superior court, pursuant to Chapter 36.70C RCW, the Land Use Petition Act, on the record	Preliminary subdivision; plat alteration; preliminary subdivision revision; special use.
TYPE 4	Recommendation by <u>director</u> <u>city manager</u> ; hearing and recommendation by hearing examiner; decision by city council on the record	Zone reclassification not related to a site-specific comprehensive plan land use map amendment ³ ; shoreline environment redesignation; plat vacation; short plat vacation; site plan review for uses not allowed by zone pursuant to Chapter 18.105 KMC; master plans other than those required in order to obtain a comprehensive plan amendment or related zoning map or text amendment.
TYPE 5	Hearing and recommendation by planning commission or other city council-appointed advisory body; ⁴ decision by city council on the record. Appealable to Growth Management Hearings Board pursuant to Chapter 36.70A RCW.	Comprehensive plan amendment; development regulation amendment; zoning map amendment related to a site-specific comprehensive plan land use map amendment; master plans required in order to obtain a comprehensive plan amendment or related zoning map or text amendment pursuant to Chapter 18.120 KMC.

¹ All shoreline permits, including shoreline variances and conditional uses, are appealable to the State Shorelines Hearings Board and not to the hearing examiner.

² Type 1 land use decisions that are not categorically exempt from environmental review under RCW 43.21C (State Environmental Policy Act) shall provide a notice of application per KMC 19.25.060 and a notice of decision per KMC 19.25.090. The notice of decision may be a copy of the permit.

³ Approvals that are consistent with the comprehensive plan may be considered by the city council at any time. Zone reclassifications that are not consistent with the comprehensive plan land use map require a site-specific comprehensive plan land use map amendment and the city council's hearing, and consideration shall be considered a Type 5 land use decision and scheduled with the amendment to the comprehensive plan under Chapter 19.20 KMC.

⁴ If the proposal is being considered as part of the annual docket work program as described in KMC Chapter 19.20. If the proposal is not part of the annual docket, the city council conducts the public participation process and makes the decision on the record.

⁵ Decisions on shoreline variance and shoreline conditional use permits require approval by the Department of Ecology.

Section 19. Amendment. KMC 19.30.070.A.11 is amended to read as follows:

19.30.070 Appeals.

11. Appeals of flood hazard area boundaries under KMC ~~16.40.140~~16.90.140;

Section 20. Effective Date. This Ordinance shall be published in the official newspaper of the City, and pursuant to RCW 90.58.090(7) shall take effect and be in full force fourteen days from the date of Ecology's written notice of final action to the City approving the Kenmore Shoreline Master Program.

PASSED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE
____ TH DAY OF _____, 2011.

CITY OF KENMORE

David Baker, Mayor

ATTEST/AUTHENTICATED:

Lynn Batchelor, City Clerk

Approved as to form:

Rod P. Kaseguma, City Attorney

Filed with the City Clerk:

Passed by the City Council:
Ordinance No.:
Date of Publication:

SHORELINE MANAGEMENT CODE – PURPOSE AND SCOPE

16.05.010 Purpose.

A. The purpose of this title is to implement the Shoreline Management Act of 1971 and to provide for the regulation of development which impacts those areas of the city of Kenmore under the jurisdiction of the Shoreline Management Act consistent with Chapter 173-26 WAC and the goals and policies of the City of Kenmore Comprehensive Plan Shoreline Sub-Element.

B. This title contains the regulations of the City of Kenmore Shoreline Master Program and the procedures to implement those regulations. These regulations and procedures are consistent with and implement the goals and policies of the City of Kenmore Comprehensive Plan Shoreline Sub-Element.

16.05.020 Citation.

This title shall be known as “the shoreline management code”.

16.05.030 Scope.

A. No development shall be undertaken by any person on the shorelines of the state unless such development is consistent with the provisions of this title and the goals and policies of the City of Kenmore Comprehensive Plan Shoreline Sub-Element.

B. Development prohibited by this title but otherwise permitted by the city of Kenmore land use controls is prohibited only within the shorelines of the state.

C. Development proposed on property adjacent to water bodies or wetlands under the jurisdiction of the Shoreline Management Act shall be evaluated in terms of the goals, and policies of the City of Kenmore Comprehensive Plan Shoreline Sub-Element.

16.05.050 Liberal construction. This title is exempted from the rule of strict construction and shall be liberally construed to give full effect to the purposes for which it was enacted.

16.05.060 Relationship to Other Kenmore Programs.

A. Kenmore shall issue no permit prior to approval pursuant to this title and shall take no action contrary to the goals, policies, and regulations of the City of Kenmore Shoreline Master Program when property under the jurisdiction of the Shoreline Management Act is involved in a request for a decision in any of the following programs:

1. Building permit;
2. Right-of-way construction permit;
3. Short subdivision approval;
4. Grading permit;
5. Site plan approval;
6. Access permit;

7. Trail permit;
8. State flood control zone permit;
9. Zoning variance;
10. Conditional use permit;
11. Comprehensive plan amendment or addition;
12. Zone reclassification;
13. Special use permit;
- ~~14. Urban planned development approval;~~
14. Subdivision approval;
15. Mobile home park permit;
16. Mobile home permit;
17. Recreational vehicle park permit; and
18. ~~Commercial site development~~ Site Plan Review permit. ~~{Ord. 98-0028 §§ 1, 2 (KCC 25.04.050).}~~

B. The following sections of the Kenmore Municipal Code in effect as of the effective date of this ordinance are adopted and incorporated by reference as part of the Shoreline Master Program:

1. 1.20 KMC – Code enforcement
2. 18.55.090 KMC – Jurisdiction – Critical areas (as adopted in Ordinance 06-0244)
3. 18.55.130 KMC – Mapping (as adopted in Ordinance 06-0244)
4. 18.55.140 KMC – Signs and fencing of critical areas (as adopted in Ordinance 06-0244)
5. 18.55.150 KMC – Exemptions (as adopted in Ordinance 06-0244)
6. 18.55.190 KMC – Critical areas reports – Requirements (as adopted in Ordinance 06-0244)
7. 18.55.200 KMC – Mitigation requirements (as adopted in Ordinance 06-0244)
8. 18.55.210 KMC – Mitigation sequencing (as adopted in Ordinance SMP ordinance number)
9. 18.55.220 KMC – Mitigation plan requirements (as adopted in Ordinance 06-0244)
10. 18.55.230 KMC – Unauthorized alterations and enforcement (as adopted in Ordinance 06-0244)
11. 18.55.250 KMC – Notice on title (as adopted in Ordinance 06-0244)
12. 18.55.260 KMC – Critical area tracts (as adopted in Ordinance 06-0244)
13. 18.55.270 KMC – Building setbacks (as adopted in Ordinance 06-0244)
14. 18.55.280 KMC – Bonds to ensure mitigation, maintenance, and monitoring (as adopted in Ordinance 06-0244)
15. 18.55.290 KMC – Critical area inspections (as adopted in Ordinance 06-0244)
16. 18.55.300 KMC – Designation and rating of wetlands (as adopted in Ordinance 06-0244)
17. 18.55.320 KMC – Wetland performance standards – general requirements (as adopted in Ordinance 06-0244 and amended through Ordinance SMP ordinance number)

18. 18.55.330 KMC – Wetland performance standards – mitigation requirements (as adopted in Ordinance 06-0244 and amended through Ordinance SMP ordinance number)
19. 18.55.400 KMC – Designation and rating of streams (as adopted in Ordinance 06-0244)
20. 18.55.420 KMC – Streams performance standards – general requirements (as adopted in Ordinance 06-0244)
21. 18.55.430 KMC – Streams performance standards – mitigation requirements (as adopted in Ordinance 06-0244)
22. 18.55.500 KMC – Designation of fish and wildlife habitats of importance (as adopted in Ordinance 06-0244)
23. 18.55.520 KMC – Fish and wildlife habitat performance standards – general (as adopted in Ordinance 06-0244)
24. 18.55.530 KMC – Fish and wildlife habitat performance standards – mitigation requirements (as adopted in Ordinance 06-0244 and amended through Ordinance SMP ordinance number)
25. 18.55.600 KMC – Geologically hazardous areas – Purpose (as adopted in Ordinance 06-0244)
26. 18.55.610 KMC – Designation of geologically hazardous areas (as adopted in Ordinance 06-0244)
27. 18.55.620 KMC – Designation of specific hazard areas (as adopted in Ordinance 06-0244)
28. 18.55.640 KMC – Geologically hazardous areas performance standards – General requirements (as adopted in Ordinance 06-0244)
29. 18.55.650 KMC – Geologically hazardous areas performance standards – Specific areas (as adopted in Ordinance 06-0244)
30. 18.55.700 KMC – Flood hazard areas (as adopted in Ordinance 06-0244)
31. 18.55.710 KMC – Flood fringe – Development standards and permitted alterations (as adopted in Ordinance 06-0244)
32. 18.55.720 KMC – Zero-rise floodway – Development standards and permitted alterations (as adopted in Ordinance 06-0244)
33. 18.55.730 KMC – FEMA floodway – Development standards and permitted alterations (as adopted in Ordinance 06-0244)
34. 18.55.740 KMC – Flood hazard areas – Certification by engineer or surveyor (as adopted in Ordinance 06-0244)
35. 18.55.750 KMC – Channel relocation and stream meander areas requirements (as adopted in Ordinance 06-0244)

Other sections of the Kenmore Municipal Code cross-referenced in this chapter are provided for reference purposes. Unless specifically stated, the Shoreline Master Program does not eliminate or reduce the requirements of any other portion of the Kenmore Municipal Code.

16.05.070 Severability.

If any provision of this title or the master program regulations and procedures hereby adopted or its application to any person or circumstance is declared unconstitutional or invalid for any

reason, such decision shall not affect the validity of the remaining portions of this title or the master program.

Chapter 16.10 DEFINITIONS

16.10.010 Applicability of RCW and WAC definitions.

The definitions contained in this Chapter, KMC Title 18 (Zoning Code), Chapter 90.58 RCW and Chapter 173-26 WAC shall apply within the shoreline jurisdiction. The definitions in chapter 90.58 RCW and chapter 173-26 WAC shall apply in shorelines if there is a conflict with the definitions contained in the KMC Titles 16 and 18.

16.10.020 Applicant.

“Applicant” means a property owner or a public agency or public or private utility which owns a right-of-way or other easement or has been adjudicated the right to such an easement pursuant to RCW 8.12.090, or any person or entity designated or named in writing by the property or easement owner to be the applicant, in an application for a development proposal, permit or approval.

16.10.030 Access, Public.

“Public access” means the ability of the general public to reach, touch, and enjoy the water’s edge, to travel on waters of the state, and to view the water and the shoreline from adjacent locations.

16.10.032 Accessory structure.

"Accessory structure" means a structure that is incidental to the principal structure.

16.10.035 Accessory Use.

"Accessory use" means a use that is incidental to a principal use.

16.10.040 Aquaculture.

“Aquaculture” means the culture or farming of fin fish, shellfish, algae or other plants or animals in fresh or marine waters. Excluded from the definition of aquatic resource practices are related commercial or industrial uses such as wholesale or retail sales, or final processing, packing, or freezing.

16.10.050 Associated Wetlands.

"Associated wetlands" means wetlands that are in proximity to tidal waters, lakes, rivers or streams that are subject to the Shoreline Management Act and either influence or are influenced by such waters. Factors used to determine proximity and influence include, but are

not limited to: location contiguous to a shoreline waterbody, formation by tidally influenced geo-hydraulic processes, presence of a surface connection, including through a culvert or tide gate, location in part or whole within the floodplain of a shoreline, periodic inundation, and/or hydraulic continuity.

16.10.070 Backfill.

“Backfill” means the placement of earth material behind a retaining wall or structure.

16.10.080 Berm.

“Berm” means one or several linear mounds of sand and gravel at or landward of the ordinary high water mark which are normally stable because of material size or vegetation.

16.10.090 Breakwater.

“Breakwater” means an off-shore structure, either floating or not, which may or may not be connected to the shore, such structure being designated to absorb and/or reflect back into the water body the energy of the waves.

16.10.100 Bulkhead.

“Bulkhead” means a solid or open pile wall of rock, concrete, steel or timber or other materials or a combination of these materials erected generally parallel to and near the ordinary high water mark for the purpose of protecting adjacent wetlands and uplands from waves or currents.

16.10.105 Channel migration zone.

“Channel migration zone” means the area within which a river channel is likely to move over a period of time, and are therefore subject to risk due to stream bank destabilization, rapid stream incision, stream bank erosion, and shifts in the location of stream channels. Channel relocation and stream meander areas as defined at KMC 18.55.750 are channel migration zones.

16.10.107 Commercial Development.

“Commercial Development” includes general services, business services, and retail, defined as follows:

- A. General Services includes general personal services, funeral home/crematory, cemetery/columbarium/mausoleum, day care facilities, veterinary clinic, automotive repair, automotive services, vessel construction and outfitting, miscellaneous repair, churches/synagogues/temples, social services, stable, kennel/cattery, theatrical production services, artist studios, interim recycling facility, office/outpatient clinic, nursing and personal care facilities, hospital, medical/dental lab, miscellaneous health, and school district support facility.
- B. Business services includes construction and trade, individual transportation and taxi, trucking and courier service, self-service storage, dry boat storage, commercial moorage, transportation

service, freight or cargo service, passenger transportation service, communication offices, telegraph and other communications facilities, general business service, professional office, outdoor advertising service, miscellaneous equipment rental, automotive rental and leasing, professional sport teams/promoters, research development and testing, and commercial/industrial accessory uses.

C. Retail includes building/hardware/garden materials, forest products sales, department and variety stores, food stores, agricultural product sales, motor vehicle boat dealers, auto supply stores, gasoline service stations, apparel and accessory stores, furniture and home furnishings stores, eating and drinking places, drug stores, liquor stores, used goods shops, sporting goods and related stores, book/stationery/video/art supply stores, jewelry stores, monuments/tombstones/gravestones, hobby/toy/game shops, photographic and electronic shops, fabric shops, fuel dealers, florist shops, personal medical supply stores, pet shops, bulk retail, auction houses, livestock sales, and food vendors.

16.10.110 Critical areas.

The definitions for "critical areas in KMC 18.20 shall apply in shorelines. "Critical areas" means any of the following areas or ecosystems: aquifer recharge areas, fish and wildlife habitat areas of importance, frequently flooded areas, geologically hazardous areas, streams, and wetlands, as defined in Chapter 36.70A RCW and this chapter.

16.10.115 Critical Freshwater Habitat.

Critical Freshwater Habitat shall refer to shorelines meeting the definition of "fish and wildlife habitat of importance" in KMC 18.55.520.

16.10.120 Department.

"Department" means the department of community development.

16.10.130 Development.

"Development" is defined in Chapter 90.58 RCW as now or hereafter amended.

16.10.140 Director.

"Director" means the director of the department of community development or an authorized designee.

16.10.150 Dock.

"Dock" means all platform structures or anchored devices in or floating upon water bodies to provide moorage for pleasure craft or landing for water-dependent recreation including, but not limited to floats, swim floats, float plane moorages, and water ski jumps. Excluded are launch ramps.

16.10.160 Dredging.

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

16.10.170 Ecological functions.

“Ecological functions” or shoreline functions means the work performed or role played by the physical, chemical and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline’s natural ecosystem.

16.10.180 Fill.

“Fill” means the addition of soil, sand, rock, gravel, sediment, earth retaining structure or other material to an area waterward of the ordinary high water mark, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

16.10.185 Fish and wildlife habitat area of importance.

“Fish and wildlife habitat area of importance” means those habitat areas that meet any of the following criteria:

- A. Documented presence of species listed by the federal government or the state of Washington as endangered or threatened; or
- B. Heron rookeries or active nesting trees; or
- C. Class 1 wetlands as defined in KMC 18.55.300; or
- D. Type 1 streams as defined in KMC 18.55.400, or
- E. Bald eagle habitat protected pursuant to the Washington State Bald Eagle Protection Rules (WAC 232-12-292).

Swamp Creek, the Sammamish River, and Lake Washington are all fish and wildlife habitat areas of importance.

16.10.190 Float.

“Float” means a structure or device which is not a breakwater and which is moored, anchored, or otherwise secured in the waters of the city of Kenmore and which is not connected to the shoreline.

16.10.200 Floating home.

“Floating home” means a houseboat, boat or building constructed on a float, used in whole or in part for human habitation as a dwelling unit, and which is moored, anchored, or otherwise secured in waters within the city of Kenmore.

16.10.210 Floodplain.

“Floodplain” is synonymous with one hundred (100) -year floodplain and means the land area that may be inundated by the base flood of a river or stream.

16.10.220 Floodway.

“Floodway” means those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually; said floodway being identified, under normal conditions, by changes in surface soil conditions or changes in types or quality of vegetation ground cover condition. The floodway shall not include lands that can reasonably be expected to be protected from floodwaters by flood control devices maintained by or maintained under license from the Federal government, the State, or the County.

16.10.230 Grading.

“Grading” means the addition, excavation, movement, or redistribution of soil, sand, rock, gravel, sediment or other material on a site in a manner that alters the natural contour of the land.

16.10.235 Government Services.

“Government Services” means a public agency or utility office, public agency or utility yard, public agency archives, court, police facility, fire facility, caretaker residence/accessory, city government offices, elementary school, middle/junior high school, secondary/high school, specialized instruction school, K-12 educational institutions (public or private), and colleges/universities.

16.10.240 Groin.

“Groin” means a barrier-type structure extending from the backshore into the water across the beach. The purpose of a groin is to interrupt sediment movement along the shore.

16.10.250 Hatchery.

“Hatchery” means a facility for the rearing and/or holding of fish, the design of which is compatible with the natural environment and contains minimal development necessary for fish propagation.

16.10.260 Height.

“Height” shall be measured from the average finished grade to the highest point of the roof. The average finished grade shall be determined by first delineating the smallest square or rectangle which can enclose the building and then averaging the elevations taken at the midpoint of each side of the square or rectangle; provided, that the measured elevations do not include berms.

16.10.270 Jetty.

“Jetty” means an artificial barrier used to change the natural littoral drift to protect inlet entrances from clogging by excess sediment.

16.10.275 Live-aboard.

“Live-aboard” means a licensed vessel that is used as a primary residence.

16.10.280 Marina.

“Marina” means a marine retail sales and service use, in which a system of piers, buoys, or floats is used to provide moorage, primarily for pleasure craft, for sale or rent, usually on a monthly or yearly basis.

16.10.285 Manufacturing Uses.

“Manufacturing uses” means production of food and kindred products, winery/brewery, apparel and other textile products, wood products, furniture and fixtures, leather and leather goods, stone/clay/glass/concrete products, computer and office equipment, electronic and other electric equipment, measuring and controlling instruments, printing and publishing, miscellaneous light manufacturing, tire retreading, movie production and distribution, and commercial barge loading and unloading facility.

16.10.290 Nonconforming structure.

“Nonconforming structure” means a structure that was lawfully constructed prior to the effective date of these regulations, but which no longer conforms to the applicable regulations of the master program.

16.10.300 Nonconforming use.

“Nonconforming use” means a use that was lawfully established prior to the effective date of these regulations, but which no longer conforms to the applicable regulations of the master program.

16.10.310 No net loss.

Per WAC 173-26- 201(2)(c), the concept of “no net loss” of shoreline ecological functions means that the Kenmore Shoreline Master Program provisions shall, to the greatest extent feasible, protect existing shoreline ecological processes and functions and avoid new adverse impacts to ecological processes and functions. The term “net” as used herein, recognizes that any development has potential for short-term or long-term impacts and that through application of appropriate development standards, avoidance of impacts and use of mitigation measures, those impacts will not diminish the shoreline resources and values as they currently exist.

16.10.320 Non-water-oriented uses.

“Non-water-oriented uses” means those uses that are not water-dependent, water-related or water-enjoyment.

16.10.330 Normal protective bulkhead common to single-family residences.

“Normal protective bulkhead common to single-family residences” means a bulkhead constructed on a building site zoned to permit one single-family residence and containing one single-family residence.

16.10.340 Open space, required.

“Required open space” means a portion of the area of a building site, which is required by this title, as set forth in different designations contained in this title, to be maintained as open area to be available for use by the persons specified in a development. Open spaces are required to be free and clear of buildings and structures and to remain open and unobstructed from the ground to the sky.

16.10.350 Ordinary high water mark.

“Ordinary high water mark” means the ordinary high water mark as defined in Chapter 90.58 RCW as now or hereafter amended.

16.10.355 Park/Recreation Recreational/Cultural Uses.

“Park/Recreation Recreational/Cultural Uses” means destination resorts, recreational vehicle park, theater, drive-in theater, bowling center, amusement and recreation services, amusement arcades, amusement park, library, museum, conference center, arboretum, cultural facilities, indoor recreational facilities (including sports clubs), open space, outdoor recreational facilities, parks, trails, wildlife shelter, and outdoor performance center.

16.10.360 Pier.

“Pier” means any platform structure, fill, or anchored device in or floating upon water bodies to provide moorage for watercraft engaged in commerce.

16.10.370 Port.

“Port” means public or private facilities for transfer of cargo or passengers from water-born craft to land and vice versa; including, but not limited to: piers, commercial float plane moorages, offshore loading or unloading buoys, ferry terminals, and required dredged waterways, moorage basins, and equipment for transferring cargo or passengers between land and water modes. Excluded from this definition and addressed elsewhere are airports, marinas, boat ramps or docks used primarily for recreation, cargo storage and parking areas not essential for port operations, boat building or repair. The latter group is considered industrial or accessory to other uses.

16.10.380 Recreational development.

“Recreational development” means a private or public development operated and devoted to facilities and equipment for recreational purposes, including but not limited to swimming pools, tennis courts, playgrounds, picnic areas, campgrounds, resorts and other similar uses whether the use of such area is limited to those paying a fee or free to the public. Also see definition for “Park/Recreation Recreational/Cultural Uses”.

16.10.390 Redesignation.

“Redesignation” means a change in the shoreline environment designation by the procedures provided in KMC 16.75

16.10.395 Residential Development.

“Residential Development” includes single family and multiple family dwellings, group residences, temporary lodging, and uses that are accessory to residential development.

- A. “Dwelling, single family” means a detached residence for one family.
- B. “Dwelling, multiple family” means a townhouse, apartment, and mobile home parks.
- C. “Group residences” means community residential facilities, dormitory, and senior assisted housing.
- D. “Temporary lodging” means hotel/motel, bed and breakfast guesthouse, and organization hotel/lodging houses.
- E. “Accessory uses” means residential accessory uses, home occupation, and home industry.

16.10.400 Restoration.

Restoration or ecological restoration means the reestablishment or upgrading of impaired ecological shoreline processes or functions. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

16.10.410 Riprap.

“Riprap” means hard angular quarry rock used for revetments or other bank stabilization projects.

16.10.420 Sediment.

“Sediment” means material settled from suspension in a liquid medium.

16.10.430 Shall.

“Shall” means a mandate; the action must be done.

16.10.440 Should.

“Should” means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of RCW 90.58 and WAC 173-26, against taking the action.

16.10.455 Shoreline buffer.

“Shoreline buffer” means a required vegetation conservation area measured horizontally upland from and perpendicular to the ordinary high water mark, as described in KMC 16.65.020.

16.10.450 Shorelands.

“Shorelands” or “Shoreland Areas” means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams and lakes that are subject to the provisions of RCW 90.58.

16.10.460 Shoreline environment.

“Shoreline environment” or “shoreline environment designation” means the categories of shorelines of the state established by the city of Kenmore shoreline management master program to differentiate between areas whose features imply differing objectives regarding their use and future development.

16.10.470 Shoreline Master Program.

A. “Shoreline Master Program” consists of the following two elements:

1. Shoreline management goals and policies contained in the Shoreline Sub-Element of the Kenmore Comprehensive Plan. The shoreline management goals and policies constitute the official policy of Kenmore regarding areas of the City subject to shoreline management jurisdiction under RCW chapter 90.58;
2. The shoreline regulations specified in this chapter.

B. The following technical and planning information provides a foundation for shoreline policies and regulations, and is intended to aid in implementing and evaluating the Shoreline Master Program:

1. The Shoreline Protection and Restoration Plan;
2. The Cumulative Impacts Analysis, which provides a mechanism for examining the success of meeting the requirement for no net loss of ecological functions;
3. The Shoreline Master Program Checklist and Public Involvement Process, which shows how Kenmore meets the procedural requirements for updating the Shoreline Master Program; and

4. The Shoreline Inventory and Characterization, which includes data and analytic methods used to develop Kenmore's shoreline inventory and shoreline characterization.

16.10.480 Shoreline modifications.

"Shoreline modifications" means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, fill bulkhead, or other shoreline structure. Shoreline modifications can include other actions, such as clearing, grading, or application of chemicals.

16.10.500 Shoreline stabilization.

"Shoreline stabilization" means actions taken to address erosion impacts to property and dwellings, businesses or structures caused by natural processes, such as current, flood, tides, wind or wave action. These actions include installation or expansion of structures, such as bulkheads, jetties, groins or vegetation, and nonstructural methods, such as relocation of the structure to be protected, or groundwater management.

16.10.510 Shorelines.

"Shorelines" means lakes greater than 20 acres and rivers and streams with a minimum of twenty cubic feet per second mean annual flow, including the entire water body waterward from the ordinary high water mark from its centerline or point, all water below the surface and associated shorelands. Kenmore shorelines are shown on the adopted map entitled Kenmore Shoreline Environment Designations. If there is a discrepancy between the map and the criteria established in this section, the criteria shall constitute the official Kenmore shoreline jurisdiction.

16.10.520 Shorelines of statewide significance.

"Shorelines of statewide significance" means those shorelines described in RCW 90.58.030 (2)(e) which are within the city of Kenmore.

16.10.530 Shorelines of the state.

"Shorelines of the state" means the total of all shorelines and shorelines of statewide significance within the city of Kenmore.

16.10.540 Sign.

"Sign" means any letters, figures, design, symbol, light, structure, billboard, trademark or device intended or used to attract attention to any activity, service, place, subject, person, firm, corporation, public performance, article, machine, merchandise or thing. Excluded from definition and regulation by this title are official traffic signs or signals, official public notices, signs required by law, warning signs, the flag of a government or noncommercial institution such as schools and temporary signs worn or carried by people.

16.10.550 Significant vegetation removal.

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

16.10.560 Solid waste.

“Solid waste” means all putrescible and nonputrescible solid and semisolid wastes including but not limited to garbage, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof and discarded commodities.

16.10.570 Substantial development.

“Substantial development” means any development which requires a shoreline management substantial development permit, as defined in RCW 90.58.030(3)(e) as now or hereafter amended.

16.10.580 Utilities and Utility Facilities.

“Utilities” means all lines and facilities related to the distribution, collection, transmission or disposal of water, storm and sanitary sewage, oil, gas, power or refuse. Utility facilities include telephone exchanges, water pumping or treatment stations or distribution systems, electrical substations, water storage reservoirs or tanks, municipal groundwater well-fields, natural gas gate stations and limiting stations, propane/compressed natural gas/liquefied natural gas storage tanks serving multiple lots or uses from which fuel is distributed directly to individual users, electrical wires and associated structural supports, private and public stormwater management facilities, non-regional stormwater management facility, and vector waste receiving facility.

16.10.590 Water-dependent use.

“Water-dependent use” or “water-dependent development” means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

16.10.600 Water-related use.

“Water-related use” or “water-related development” means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent on a waterfront location because:

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

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

16.10.610 Water-enjoyment use.

"Water-enjoyment use" means a recreation use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. The use must be open to the general public.

16.10.620 Water-oriented use.

"Water-oriented use" means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

16.10.630 Water transmission pipeline.

"Water transmission pipeline" means a facility having as its primary purpose the transmission of water by a municipal purveyor for sale for domestic, commercial, and industrial use.

16.10.640 Wetlands.

"Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands. For identifying and delineating a wetland, local government shall use the Washington State Wetland Identification and Delineation Manual (1997)

Chapter 16.15 SHORELINE ENVIRONMENT DESIGNATIONS

16.15.010 Purpose.

A. The purpose of shoreline environment designations is to differentiate between areas whose geographical, hydrological, topographical or other features imply differing objectives regarding the use and future development of the shorelines of the state.

B. Each shoreline environment designation represents a particular emphasis in the type of uses, type of modifications, and the density and dimensions of development which should occur within it. The environment designation system is designed to encourage uses in each environment which enhance or are compatible with the character of the environment while at the same time requiring reasonable standards and restrictions on development so that the character of the environment is not adversely impacted.

16.15.020 Names of shoreline environment designations.

In order to accomplish the goals, policies, and regulations of the Kenmore Shoreline Master Program, the following shoreline environment designations have been established:

- A. Downtown Waterfront Environment
- B. Shoreline Residential Environment
- C. Urban Conservancy Environment
- D. Natural Environment
- E. Aquatic Environment

16.15.030 Limits of shoreline environment designations.

The shoreline environment designations are included on Map 1 entitled Shoreline Environment Designations Map. If there is a discrepancy between Map 1 and the criteria established in the Kenmore Comprehensive Plan for shoreline environment designations, the criteria shall constitute the official Kenmore shoreline environment designation. Any parcel of land included within the shoreline jurisdiction without a shoreline environment designation shall be considered Urban Conservancy environment.

Chapter 16.20 DOWNTOWN WATERFRONT ENVIRONMENT

16.20.010 Purpose.

The purpose of the Downtown Waterfront Environment is to provide for mixed urban water-oriented uses, public access and recreation while protecting existing ecological functions.

16.20.020 Designation criteria.

The shoreline along the contiguous downtown waterfront that is zoned Regional Business in KMC Title 18 and does not meet the requirement for Urban Conservancy or Shoreline Residential designation is to be assigned the Downtown Waterfront Environment designation.

Chapter 16.25 SHORELINE RESIDENTIAL ENVIRONMENT

16.25.010 Purpose.

The purpose of the Shoreline Residential Environment is to accommodate residential development and appurtenant structures. An additional purpose is to provide appropriate public access and recreational uses within new multifamily developments or on public property.

16.25.020 Designation criteria.

The Shoreline Residential Environment designation should be assigned to shoreline areas if they are predominantly developed for single-family or multifamily residential uses or are planned and platted for residential development, and the shoreline areas do not meet the criteria for other designations.

Chapter 16.30 URBAN CONSERVANCY ENVIRONMENT

16.30.010 Purpose.

The purpose of the Urban Conservancy Environment is to protect and restore ecological functions of open space, streams, wetlands, and floodplains, including areas below the ordinary high water mark in Swamp Creek, while allowing a variety of compatible uses.

16.30.020 Designation criteria.

An Urban Conservancy Environment designation is assigned to shoreline areas planned for development that is compatible with maintaining or restoring ecological functions and areas that are not generally suitable for water-dependent uses, if any of the following characteristics apply:

- A. The shoreline includes wetlands or exceptional riparian corridor that should not be more intensively developed;
- B. The shoreline is in public ownership and has been altered or in public ownership that is small in size and not adjacent to other publicly owned properties;
- C. The shoreline has been altered but retains important ecological functions;
- D. The shoreline has potential for ecological restoration or is a restoration priority; or
- E. The shoreline has potential for development that is compatible with ecological restoration.

Chapter 16.35 NATURAL ENVIRONMENT

16.35.010 Purpose.

The purpose of the Natural Environment is to protect public shoreline areas that include ecologically intact or minimally altered shorelines. Only low intensity uses are to be allowed in this environment to maintain existing ecological processes and functions.

16.35.020 Designation criteria.

A Natural Environment designation is assigned to shoreline areas if any of the following characteristics apply:

- A. A relatively large, contiguous area of the shoreline is in public ownership and ecologically intact or minimally altered;
- B. The shoreline represents ecological processes or functions that provide educational or scientific opportunities; or
- C. The shoreline is unable to support active uses or development without significant adverse impacts to ecological functions.

Chapter 16.40 AQUATIC ENVIRONMENT

16.40.010 Purpose.

The purpose of the Aquatic Environment is to protect, restore, and manage the unique characteristics and resources of navigable areas waterward of the ordinary high-water mark on the Sammamish River and Lake Washington.

16.40.020 Designation criteria.

Lake Washington and the Sammamish River below the ordinary high water mark are to be designated as Aquatic Environment. In Lake Washington, the Aquatic Environment extends to the centerline of the lake.

Chapter 16.45 GENERAL SHORELINE DEVELOPMENT STANDARDS

16.45.010 General Shoreline Development Requirements.

- A. Kenmore shall ensure that uses and modifications within the shoreline jurisdiction do not cause a net loss of shoreline ecological functions and processes. Mitigation for impacts resulting in uses and modifications shall follow the mitigation sequencing requirements of KMC 18.55.210 and consider the priorities specified in the Shoreline Protection and Restoration Plan.
- B. All shoreline uses and developments shall be subject to the following general development standards:
1. The location, design, construction and management of all shoreline developments and uses shall protect the quality and quantity of surface and ground water on and adjacent to the lot and shall adhere to the guidelines, policies, standards and regulations of applicable water quality management programs and regulatory agencies. Best management practices such as fugitive dust controls and other good housekeeping measures to prevent contamination of land or water shall be required.
 2. Solid and liquid wastes and untreated effluents shall not enter any bodies of water or be discharged onto the land.
 3. Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum products shall be provided at recreational marinas, commercial moorage, and vessel repair facilities.
 4. The release of oil, chemicals or other hazardous materials onto or into the water shall be prohibited. Equipment for the transportation, storage, handling or application of such materials shall be maintained in a safe and leak proof condition. If there is evidence of leakage, the further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected. The use of chemicals to control invasive aquatic weeds is prohibited, except that milfoil may be removed using chemicals, provided that the chemicals are applied by a licensed pesticide applicator and approved for aquatic use.
 5. All shoreline developments and uses shall manage increases in surface runoff, and control, treat and release surface water runoff so that receiving water quality and shoreline properties and features are not adversely affected. Control measures may include, but are not limited to, permeable surfacing, dikes, catch basins, settling ponds, interceptor drains and planted buffers.
 6. All shoreline developments and uses shall control erosion during project construction and operation.
 7. All shoreline developments and uses shall be located, designed, constructed and managed to avoid disturbance of, or minimize adverse impacts to protect fish and wildlife habitat

conservation areas, including, but not limited to, spawning, nesting, rearing and habitat areas, and migratory routes. Where avoidance of adverse impacts is not practicable, the director may require that mitigation measures to protect species and habitat functions be developed in consultation with state resource management agencies and federally recognized tribes.

8. All shoreline developments and uses shall be located, designed, constructed and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, erosion and accretion.
9. All shoreline developments and uses shall be located, designed, constructed and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area.
10. Land clearing, grading, filling and alteration of natural drainage features and landforms shall be limited to the minimum necessary for development. Surfaces cleared of vegetation and not to be developed shall be replanted. Surface drainage systems or substantial earth modifications shall be professionally designed to prevent maintenance problems or adverse impacts on shoreline features.
11. All shoreline development shall be located, constructed and operated so as to protect public health, safety and welfare.
12. All development activities shall be located and designed to minimize or prevent the need for shoreline defense and stabilization measures and flood protection works such as bulkheads, other bank stabilization, landfills, levees, dikes, groins, jetties or substantial site regrades. All development in the floodplain shall also include an assessment of potential effects the project would have on channel migration, and incorporate measures to mitigate any adverse impacts on channel migration.
13. All debris, overburden and other waste materials from construction shall be disposed of in such a way as to prevent their entry by erosion from drainage, high water or other means into any water body.
14. Navigation channels shall be kept free of hazardous or obstructing development or uses.
15. Historic properties, including historic buildings, sites, objects, districts and landscapes, prehistoric and historic archaeological resources, and traditional cultural places, shall be protected within shoreline environments as follows:
 - a. Known historic properties:
 - i. Known historic properties inventoried by King County and Washington Department of archaeology and Historic Preservation are subject to the procedures delineated in KMC 2.20 Disturbance of known archaeological sites is also subject to state regulations, including chapter 27.44 RCW, chapter 27.53 RCW, and chapter 68.80 RCW;

- ii. If a known archaeological site or traditional cultural place is affected by a development proposal, the director shall require a site inspection or evaluation by a professional archaeologist and inform and consult with the Washington State Department of Archaeology and Historic Preservation and any concerned Native American tribes. To the extent feasible, the director shall coordinate county and state required permitting and compliance procedures and requirements to avoid substantial duplication of effort by permit applicants; and
 - iii. In considering shoreline permits or shoreline exemptions, the department may attach conditions to provide sufficient time for the director to consult with the Washington State Department of Archaeology and Historic Preservation and any concerned Native American tribes, and to ensure that historic properties are properly protected, or for appropriate agencies to contact property owners regarding purchase or other long-term stewardship and protection arrangements. Provision for the protection and preservation of historic properties shall be incorporated in permits and exemptions to the maximum extent practical.
- b. Inadvertent Discovery:
 - i. Consistent with the definitions and requirements contained in chapter 27.44 RCW, chapter 27.53 RCW, and chapter 68.80 RCW, whenever potentially significant historic properties, or archaeological artifacts, are discovered in the process of development on shorelines, work on that portion of the development site shall be stopped immediately and the find reported as soon as possible to the director; and if an archaeological site or artifacts have been discovered, the Washington State Department of Archaeology and Historic Preservation, any concerned Native American tribes and other appropriate agencies;
 - ii. The director shall require that a historic property assessment be conducted immediately by a professional archaeologist, ethnographer or historic preservation professional, as applicable, in consultation with state and tribal officials as appropriate, to determine the significance of the discovery and the extent of damage that may have occurred to the resource. The historic property assessment shall be provided to the director, and, if an archaeological site, archaeological artifacts or a traditional cultural place have been discovered, the Washington State Department of Archaeology and Historic Preservation, and any concerned Native American tribes to determine the significance of the discovery in accordance with 27.53 RCW and WAC 25-48; and

- iii. Upon receipt of a positive determination of a property's significance, or if available information suggests that a negative determination is erroneous, the director may require that a historic property management plan be prepared by a qualified professional archaeologist or other appropriate professional if such action is reasonable and necessary to implement related program objectives.

c. **Public Access to Historic Properties:**

- i. If a private or publicly owned historic property is identified, public access shall be encouraged as appropriate for purposes of public education, provided that:
 - a) the type or level of public access is consistent with the long term protection of both historic resource values and shoreline ecological functions; and
 - b) an access management plan is developed in accordance with development site- and resource-specific conditions to address physical protection of the resource, hours of operation, interpretive or directional signage, lighting, pedestrian access, traffic, and parking, as appropriate, in consultation with the director and, if an archaeological site, archaeological artifacts or a traditional cultural place have been discovered, the Washington State Department of Archaeology and Historic Preservation, any concerned Native American tribes, or other agencies, as appropriate; and
- ii. For archaeological sites and traditional cultural places, approval of proposed access measures by the Washington State Department of Archaeology and Historic Preservation, any concerned Native tribes or other agencies, as appropriate, shall be required prior to provision of public access to a site.

16. All projects within the shoreline jurisdiction that are either publicly funded or on public land, shall include improvements to shoreline public access.

17. Heating and cooling equipment may not be placed in waters of the state.

Chapter 16.50 SHORELINE USES.

16.50.010 General shoreline uses.

A. All uses in the shoreline jurisdiction must comply with all City code provisions and with the Kenmore Shoreline Master Program. For a use to be permitted in the shoreline, it must be a permitted use in the underlying zone, and must be listed as a permitted or conditional use in

section 16.60.030. This section may not authorize a land use that is not allowed by the underlying zoning, but may add restrictions or conditions or prohibit specific land uses within the shoreline jurisdiction.

B. Uses not specifically addressed in this table may be permitted as conditional uses in the shoreline jurisdiction, provided the use meets the criteria for a shoreline conditional use permit.

C. When there is a conflict between permitted land uses, preference for shoreline uses shall first be given to water-dependent uses, then to water-related uses, then to water-enjoyment uses, and finally to non water-oriented uses.

D. Uses existing as of the effective date of this ordinance that do not conform to these regulations may be continued subject to the provisions of this chapter.

16.50.020 Interpretation of shoreline use table.

A. The shoreline use table in KMC 16.50.030 indicates whether a specific use is allowed within each of the shoreline environments and whether it is permitted outright or allowed only as a shoreline conditional use. The process through which a use or development may be permitted is defined under procedures in KMC 16.75.

B. In the table, shoreline environments are listed at the top of each column and the specific uses are listed along the left-hand side of each horizontal row. The cell at the intersection of a column and a row indicates whether a use may be allowed in a specific shoreline environment and whether additional use criteria apply. The table should be interpreted as follows:

1. If the letter "P" appears in the box at the intersection of the column and the row, the use may be permitted within the shoreline environment if the underlying zoning also allows the use.
2. If the letter "C" appears in the box at the intersection of the column and the row, the use may be allowed within the shoreline environment subject to the shoreline conditional use review procedures specified in KMC 16.75, and only if the underlying zoning allows the use.
3. If the letter "X" appears in the box at the intersection of the column and the row, the use is prohibited in that shoreline environment.
4. If a number appears after the letter P or C in the box at the intersection of the column and the row, additional use criteria apply. The use may be permitted subject to the appropriate review process in this section only if the specific use criteria indicated with the corresponding number immediately following the table are satisfied, and only if the underlying zoning allows the use. If more than one number appears at the intersection of the column and row, both numbers apply.

5. If more than one letter-number combination appears in the box at the intersection of the column and the row, the use is allowed within that shoreline environment subject to different sets of limitations or criteria depending on the review process indicated by the letter, the specific development criteria indicated in the development condition with the corresponding number immediately following the table, and only if KMC Title 18 allows the use.

16.50.030 Shoreline use table and conditions.

A. Shoreline use table.

KEY P – Permitted Use C – Shoreline Conditional Use					
	DOWNTOWN WATERFRONT	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
Aquaculture					
Aquaculture uses	X	X	X	X	C1
Commercial Development					
General services	P2, X2	X	P2,3, X2	X	C2
Business services	P2, X2	X	P2,3, X2	X	C2
Retail	P2, X2	X	P2,3, X2	X	C2
Mining	X	X	X	X	X
Principal use parking	X	X	X	X	X
Government Services					
Government services	P4	P4	P4	P4	C4
Manufacturing					
Manufacturing uses	P2	X	X	X	X
Park/Recreation					
Recreational/cultural	P5	P6	P6	P7	C5
Marinas (recreational boat moorage)	P8	X	P	X	P
Public boat launch	P	X	P, C9	X	P
Golf course	X	X	C	X	X

Residential Development

Dwelling units, single detached	X	P	P	C	P10
Dwelling, multiple family	P2	P	P2	X	X
Mobile home park	X	C	X	X	X
Group residences	P2	P	P	C	X
Accessory uses	P	P	P	C	X
Temporary lodging	P2	X	X	X	X

Regional Land Uses

Airport/heliport or helistop	C, X17	X	X	X	C, X17
Ferry Terminal	C	X	X	X	C
Highway and street, except for in-water uses	C11	C11	C11	C11	C11
Commuter parking	C17	X	X	X	X
Wastewater treatment facility and municipal water production, except for in-water uses	C8, 12	C8, 12	X	X	X
Regional stormwater management facilities	P13	P13	P13	P13	X

Utilities

Utility facility, except for in-water uses	P13	P13	P13	P13	X
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In-Water Structural Uses

In-water wastewater treatment facility, in-water municipal water production facility	X	C 12	C 12	C 12	C 12
In-water utility facilities	X	C13	C13	C13	C13
In-water and over water highway and street facilities	X	C11, 14	C11, 14	C11, 14	C11, 14
In-water fish and wildlife management, except aquaculture	X	C	C	C	C

Signs

B. Shoreline Use Criteria(Footnotes to Shoreline Use Table KMC 16.50.030.A)

1. Aquaculture may be allowed only in Lake Washington and only under the following conditions:
 - a. Aquaculture operations are located at least 500 feet from the Shoreline Residential and Downtown Waterfront environments.
 - b. Aquaculture operations waterward of the Natural Environment and Urban Conservancy Environment are limited to activities that do not require structures, facilities or mechanized harvest practices.
2. Water-dependent and water-related commercial and manufacturing uses shall be permitted. Public access improvements consistent with this chapter are required for all commercial and manufacturing uses, unless precluded by public safety considerations. Non-water dependent and non-water related residential, commercial, and manufacturing uses shall be permitted only if the use meets the standards of sections a, b, c and d below:
 - a. The development is:
 - i. Part of a mixed-use development that includes a water-dependent use and in which at least fifty percent of the land area within the shoreline jurisdiction on the project site is in a water-dependent use or water-related use (including uses accessory to a water dependent use that are fully incidental and subordinate to the water-dependent use), dedicated public access, or substantial shoreline habitat enhancement consistent with KMC 16.60.010; or
 - ii. A new or expanding development in a commercial zone along the Swamp Creek shoreline north of Northeast Bothell Way, where the existing development does not conform with current stream buffer provisions of the Kenmore SMP and where the proposed development would substantially increase the width and enhance the habitat quality of the buffer along Swamp Creek;
 - b. The non-water oriented uses are located on land; and
 - c. The development provides a significant public benefit to help achieve any of the following shoreline element goals:
 - i. economic development for uses that are water-dependent;
 - ii. public access;

- iii. water-oriented recreation;
 - iv. multimodal, water-dependent transportation circulation;
 - v. conservation or restoration of critical areas, scenic vistas, or fish and wildlife habitat; or
 - vi. preservation of historic properties.
- d. The development does not include the following uses, which are prohibited in the shoreline: funeral home/crematory; veterinary clinic; cemetery/columbarium/mausoleum; automotive repair; automotive services; stable/kennel/cattery; hospital; outdoor advertising service; miscellaneous equipment rental; automotive rental and leasing; gasoline service stations; fuel dealers; auction houses; livestock sales; amusement park; drive-in theater; public agency or utility yard; and propane/compressed natural gas/liquefied natural gas storage tanks serving multiple lots or uses from which fuel is distributed directly to individual users.
3. New commercial uses may be permitted only if allowed in the underlying zoning, and if public access is provided and the project includes ecological enhancement consistent with KMC 16.60.010. Existing non-water-dependent commercial uses may be expanded provided the expansion complies with all development standards and the project includes ecological enhancement consistent with KMC 16.60.010.
 4. Only the water-dependent portion of the use shall be allowed in the shoreline environment, except as provided in this section for utility uses.
 5. In Downtown Waterfront and Aquatic environments, water-oriented recreational uses including parks and public access trails and facilities may be allowed, provided that in the Downtown Waterfront minor non-water-oriented accessory uses such as children's play equipment, picnic tables, or outdoor exercise course equipment may also be allowed if they meet the other requirements of this chapter. All other recreational uses shall be prohibited.
 6. In Urban Conservancy and Shoreline Residential environments, parks and trails shall be allowed. All other recreational uses shall be prohibited.
 7. In the Natural environment, water-oriented passive and low-impact recreational uses shall be allowed. All other recreational uses shall be prohibited.
 8. Wastewater treatment facilities, and municipal water production uses, except for in-water uses, shall be allowed only on Lake Washington shorelines. The listed wastewater treatment facilities, municipal water production facilities, and marinas are prohibited on shorelines of the Sammamish River and Swamp Creek.

9. A boat launch that accommodates motorized vehicles for launching vessels is a conditional use in the Urban Conservancy environment. Facilities for hand launching of non-motorized vessels may be allowed as permitted uses.
10. New over-water residences are prohibited except for live-aboards. They may be allowed provided that:
 - a. They are for single-family use only;
 - b. They are located in a marina that provides shower and toilet facilities on land and there are no sewage discharges to the water;
 - c. Live-aboards do not exceed 10 percent of the total slips in the marina;
 - d. They are owner-occupied vessels; and
 - e. There are on-shore support services in proximity to the live-aboards.
11. New highway and street construction is allowed only if:
 - a. There is no feasible alternate location;
 - b. Pedestrian, bicycle and public transport needs are addressed; and
 - c. When located in the Natural environment, the use is low-intensity transportation infrastructure; parking facilities are prohibited in the Natural environment unless supporting a water-dependent use.
12. The water-dependent and in-water portions of wastewater treatment and municipal water production facilities may be allowed as a conditional use.
13. Utility facilities may be located within the shoreline jurisdiction if there is no feasible alternate location, the alternative would result in unreasonable and disproportionate cost, or the facility is necessary to serve adjacent shoreline uses.
14. Highway and street infrastructure that must be located in water or over water, such as bridges and bridge supports, may be permitted provided that the priorities of the Kenmore Shoreline Restoration Plan are considered in designing mitigation for impacts from the project.
15. Signs may be permitted subject to the provisions of the underlying zoning and provided:
 - a. Signs shall not be erected nor painted on trees, rocks or other natural features.
 - b. Glare from artificial lighting of signs shall be shielded or directed away from adjacent properties and the water.

- c. Signs waterward of the ordinary high water mark adjacent to the Downtown Waterfront environment shall be permitted only to the extent necessary for the operation of a permitted water-dependent use provided no such sign shall be larger than 5 square feet.
 - d. In the Shoreline Residential, Urban Conservancy and Natural environments, signs are not allowed except for signs of not more than 5 square feet within public parks or trails.
 - e. Signs to protect public safety or prevent trespass may be allowed and should be limited in size and number to the maximum extent practical.
16. Commuter parking may only be allowed if it is designed to serve a passenger ferry system.
17. Helistops and heliports are prohibited in all environments.

C. Accessory uses.

- 1. Any principal use permitted in a specific shoreline environment either outright, or as a special use or conditional use shall also be permitted as an accessory use outright or as a conditional use.
- 2. Uses prohibited as principal uses but customarily incidental to a use permitted in a shoreline environment may be permitted as accessory uses only if clearly incidental and necessary for the operation of a permitted principal use unless expressly permitted or prohibited as accessory uses. Examples of accessory uses include parking, offices, and outdoor storage areas. For purposes of this section, landfill, water-based airports, heliports and helistops shall not be considered to be accessory to a principal use and shall only be permitted as provided in the applicable shoreline environment.
- 3. Unless specifically stated otherwise in the regulations for the applicable environment, accessory uses that are non-water-dependent and non-water-related, even if accessory to water-dependent or water-related uses, shall be permitted over water according to subsection A above only if either:
 - a. The over-water location is necessary for the operation of the water-dependent or water-related use; or
 - b. The lot has a depth of less than fifty (50) feet of dry land.
- 4. Parking shall not be permitted over water unless it is accessory to a water-dependent or water-related use located on a lot with a depth of less than fifty (50) feet of dry land and the Director determines that adequate on-site or off-site dry land parking within eight hundred (800) feet is not reasonably available.

5. Piers, floats, pilings, breakwaters, drydocks and similar accessory structures for moorage shall be permitted as accessory to permitted uses subject to the development standards unless specifically prohibited in the applicable shoreline environment.
6. Accessory uses shall be located on the same lot as the principal use; provided that when the accessory use is also permitted as a principal use in the shoreline environment applicable to an adjacent lot, the accessory use may be located on that adjacent lot.

16.50.040 Aquaculture.

A. Any structure used for aquaculture that is placed waterward of the ordinary high water mark shall be placed so as not to:

1. Be a significant hazard to navigation;
2. Cause significant damage to neighboring properties;
3. Be a significant hazard to divers and boaters who may frequent the area.

B. Any byproducts of the aquatic resources facility which are discharged into the water shall not degrade the quality of the recipient waterbody.

C. Aquaculture shall be installed with minimum disturbance to banks and channels and shall not cause extensive erosion or accretion along adjacent shorelines.

D. Aquaculture facilities should be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline.

16.50.050 Public boat launching facilities and marinas.

Public boat launching facilities and marinas, including docks serving more than four single family residences, shall meet the following standards:

- A. The facility shall be designed and operated so that there is no net loss of ecological function in the shoreline. Where the facility is developed in conjunction with restoration of like habitat areas, improvements in one area may be applied to mitigate impacts that would result from new facilities;
- B. The streets serving the proposed facility must be adequate to accommodate traffic generated by such a facility safely and conveniently;
- C. The facility shall provide adequate parking in accordance with underlying zoning requirements. Long-term parking areas shall be located away from the water. Short-term loading areas, however, may be located near berthing areas;
- D. The marina shall be sited and designed to protect rights of navigation;

- E. The marina must have provisions available for cleanup of accidental spills of contaminants;
- F. Lavatory facilities connected to a sanitary sewer and adequate to serve the marina shall be provided;
- G. Self-service sewage pumpout facilities or the best available method of disposing of sewage wastes and appropriate disposal facilities for bilge wastes shall be provided at marinas having in excess of three thousand five hundred (3,500) lineal feet of moorage or slips large enough to accommodate boats larger than twenty (20) feet in length, and shall be located so as to be conveniently available to all boats. An appropriate disposal facility for removal of bilge wastes shall be either a vacuum apparatus, or oil-absorbent materials and waste receptacles;
- H. Untreated sewage shall not be discharged into the water at any time. Treated sewage shall not be discharged while boats are moored;
- I. Public access shall be provided in accordance with KMC 16.50.060;
- J. The design shall be compatible with adjacent development; and
- K. Covered moorage may only be permitted for vessel repair facilities;
- L. Extended moorage on waters of the state without a lease or permission is prohibited.

16.50.060 Public Access.

Public access shall be required for public projects and development on public lands (KMC 16.45.010.B.16), commercial and manufacturing uses (KMC 16.50.030.B2), boating facilities and marinas (KMC 16.50.050), multifamily development (KMC16.50.090.A.1), and subdivisions and divisions of more than four lots (KMC16.50.090.A.2). For development on private property, public access shall be required when such development would either generate or increase demand for public access and/or would impair existing legal access opportunities or rights.

A. Where public access is required, it shall:

- 1. Connect to other public and private public access and recreation facilities on adjacent parcels along Lake Washington and the Sammamish River shorelines whenever feasible;
- 2. Be sited to ensure public safety;
- 3. Be open to the general public and accessible directly from a public right-of-way or by an easement granted to the City for public access;
- 4. Enhance access and enjoyment of the shoreline and provide features in scale with the development such as, but not limited to:

- a. View points;
- b. Places to congregate in proportion to the scale of the development;
- c. Benches and picnic tables;
- d. Beach or water access for boats; and
- e. Pathways for pedestrians and bicycles.

B. Where public access is required, the area dedicated and improved for public access shall be roughly proportional to the scale and character of the proposed development and its impacts.

C. Where public access is required, the Director shall prepare written findings demonstrating that the conditions imposed are consistent with the principles of nexus and rough proportionality, the Act and all relevant constitutional and other legal limits on regulation of private property.

D. Public access improvements shall be designed to be compatible with the purpose and intent of the shoreline environment in which they are constructed.

E. Trails and other public access improvements are subject to the standards for recreational uses in section KMC 16.65.020 and the vegetation management standards in KMC 16.60.020.B.

F. The provisions of this section do not apply to the following:

- 1. Short plats of four or fewer lots;
- 2. Where public access is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment; or
- 3. Where constitutional or other legal limitations apply.

16.50.070 Recreation.

A. Recreational development in all environments must meet the following standards:

- 1. The construction of swimming facilities, docks, piers, moorages, buoys, floats, and launching facilities waterward of the ordinary high water mark shall be governed by the regulations relating to docks, piers, moorage, buoys, floats, or launching facility construction in KMC 16.55.050.
- 2. Swimming areas shall be separated from boat launch areas and marinas, to the maximum extent practical.

3. New or expanded swimming facilities shall only be permitted if there is an ongoing water quality testing program guided by a monitoring plan approved by the director to ensure public safety.
4. Public access trails within the shoreline shall be regulated by the provisions of KMC 16.50.060.

B. In the Natural environment, recreational uses shall meet the following standards:

1. Vehicular access, parking and restrooms should be located outside the shoreline jurisdiction; if infeasible to locate outside of the shoreline jurisdiction, such facilities shall be located as far from the shoreline as is feasible;
2. Trails should be designed primarily for pedestrian access, including access by wheelchair where appropriate, and should be no larger than is necessary to accommodate expected pedestrian traffic;
3. Removal of vegetation for recreational uses shall be the minimum necessary to provide pedestrian access and limited visual access to the shoreline;
4. Public contact with unique and fragile areas shall be permitted where possible without destroying the natural character of the area; and
5. Viewing, studying, and recording water and nature may be accommodated by platforms, benches or shelters, consistent with public safety and security.

16.50.080 Utility facilities. The following standards apply to utility uses within the shoreline environment:

A. Stormwater and sewage outfalls may be permitted in shoreline environments if upland treatment and infiltration to groundwater, streams or wetlands is not feasible per WAC 173-26-020 and there is no impact on salmon migratory habitat;

B. Water intakes shall not be permitted near fish spawning, migratory, or rearing areas.

C. Water intakes shall comply with Washington Department Fish and Wildlife fish screening criteria, and to the maximum extent practical, intakes shall be placed at least thirty (30) feet waterward of the ordinary high water mark;

D. Cable crossings for telecommunications and power lines, and pipelines for oil, gas, water and other utilities shall:

1. Use the best available technology to protect health, safety, and the environment;
2. Be routed through sites that are already free of vegetation, such as existing roadways, or attached to existing bridges, to the greatest extent feasible;

3. Avoid critical aquatic habitat to the greatest extent feasible;
4. If crossing beneath a streambed, utilities shall be designed to avoid streambed mobilization and adverse impacts on groundwater flow; be placed in a sleeve or conduit that allows replacement without need for additional excavation, and return grades to existing or better condition that provides for normal floodwater flow; and
5. Provide mitigation for impacts to shoreline ecological functions.

16.50.085 Transportation Uses

- A. Non-water-dependent transportation uses shall be located as far landward as possible.
- B. Bridges, when necessary, should span open water and floodways.
- C. Roadways and bridges should be designed to avoid placement of fill or structures that would restrict floodplain capacity or limit channel migration. If transportation facilities are anticipated to impact floodplains or channel migration zones; mitigation sequencing as specified in KMC 18.55 shall be employed to avoid and mitigate for impacts.
- D. Construction of private bridges should be minimized, and shared access should be required whenever feasible, including when subdivision would create new lots requiring access by bridge.
- E. Transportation uses shall employ mitigation sequencing specified in KMC 18.55 to avoid and mitigate for impacts to critical areas.
- F. Lighting from parking areas shall be screened from illuminating fish and wildlife habitat areas and their buffers, provided that lighting necessary for safe operation of a permitted water-dependent use may be allowed, but should be screened to the extent possible from illuminating fish and wildlife habitat areas and their buffers.

16.50.090 Residential Uses

- A. Public access to the shoreline shall be required for the following residential developments:
 1. Multiple family dwelling unit developments, including mixed used developments that contain multiple family dwelling units; and
 2. New subdivisions of more than four lots.
- B. Residential accessory uses must meet the following standards:
 1. Non-water-dependent accessory structures other than below-grade swimming pools shall be limited to a one-hundred fifty square foot footprint;
 2. Below-grade swimming pools shall be sited and designed so that they do not adversely affect the flow of groundwater or endanger unstable slopes.

3. Accessory structures shall be sited to preserve visual access to the shoreline from adjacent properties and public rights-of-way to the maximum extent practical;
4. Non-water-dependent accessory structures and facilities such as sheds, gazebos, swimming pools, and driveways shall not be located in vegetation conservation areas described in KMC 16.60.
5. Foot ramps, stairs, and paths to a dock or beach may be allowed in the vegetation conservation areas described in KMC 16.60, but shall be limited to the minimum necessary to provide pedestrian access.
6. Private boat ramps serving a single residence shall not be located in vegetation conservation areas described in KMC 16.60.

16.50.100 Channel Migration Zone on Swamp Creek

A. The Channel Migration Zone shall include:

- 1. The 500-year floodplain of Swamp Creek within shoreline jurisdiction, and**
- 2. All area within 112.5 feet of Swamp Creek.**

B. Within the Channel Migration Zone:

- 1. There shall be no subdivision of land within the channel migration zone except for the purpose of creating permanent, non-buildable open space tracts.**
- 2. Fill shall not be allowed that impairs channel migration within the channel migration zone.**
- 3. No new development is allowed where future stabilization, including bank stabilization as well as structural flood hazard reduction would be necessary.**
- 4. Existing structures can be protected but must use natural stabilization unless proven by a scientifically and technically valid study that the natural stabilization measures will not work.**
- 5. Existing legal uses in the Swamp Creek floodplain can be repaired and maintained, provided that such actions do not cause significant ecological impacts, increase flood hazards to other uses, and is consistent with other relevant laws.**
- 6. Before new structural flood hazard reduction measures in shoreline jurisdiction can be approved, it must be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development, that nonstructural measures are not feasible, that impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss of ecological function, and that appropriate vegetation conservation actions are undertaken.**

C. A project proponent may have a channel migration zone study completed by a qualified professional hydrogeologist to be reviewed by the City. If the study demonstrates that the entirety of the development property is outside of the channel migration zone, then this section will not further apply to the project.

Chapter 16.55 SHORELINE MODIFICATIONS.

16.55.010 General shoreline modifications.

The shoreline modifications section shall not be used to authorize a shoreline modification that is not allowed by the underlying zoning, but may add additional restrictions or conditions or prohibit specific modifications within the shoreline jurisdiction. All shoreline modifications in the shoreline jurisdiction must comply with all relevant City code provisions and with the Kenmore Shoreline Master Program.

16.55.020 Interpretation of shoreline modifications table.

The shoreline modification table in KMC 16.55.030 determines whether a specific shoreline modification is allowed within each of the shoreline environments. The shoreline environment is located on the vertical column and the specific use is located on the horizontal row of the table. The specific modifications are grouped by the shoreline modification categories in WAC 173-26-231. The table should be interpreted as follows:

- A. If the letter "P" appears in the box at the intersection of the column and the row, the modification may be allowed within the shoreline environment only if the underlying zoning allows the modification.
- B. If the letter "C" appears in the box at the intersection of the column and the row, the modification may be allowed within the shoreline environment subject to the shoreline conditional use review procedures specified in KMC 16.75, and only if the underlying zoning allows the modification.
- C. If a number appears in the box at the intersection of the column and the row, the modification may be allowed subject to the appropriate review process indicated in this section, the specific development conditions indicated with the corresponding number immediately following the table, and only if the underlying zoning allows the modification. If more than one number appears at the intersection of the column and row, both numbers apply.
- D. If more than one letter-number combination appears in the box at the intersection of the column and the row, the modification is allowed within that shoreline environment subject to different sets of limitations or conditions depending on the review process indicated by the letter, the specific development conditions indicated in the development condition with the corresponding number in KMC 16.55.030.B, and only if the underlying zoning allows the modification.

16.55.030 Shoreline modifications table and conditions.

A. Shoreline modifications table.

KEY P - Permitted Modification C – Shoreline Conditional Use Required Shoreline modifications are allowed only if the underlying zoning allows the modification.	DOWNTOWN WATERFRONT	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
Shoreline stabilization					
Shoreline stabilization, not including flood protection facilities	P1	P1	C1	C1	C1, P1
Repair or maintenance of shoreline stabilization facilities	P2	P2	P2	P2	P2
Flood protection facilities	P3	P3	P3	C3	P3
Piers and docks					
Docks, piers, moorage, buoys, floats or launching facilities	P4	P4	C4	C4	C4, P4
Fill					
Filling	P5, C5	P5, C5	P5, C5	C5	C5
Breakwaters, jetties, groins, and weirs					
Breakwaters, jetties, groins and weirs	C6	C6	C6	C6	C6
Grading and dredging					
Grading, dredging, dredge material disposal	P5, C5	P5, C5	P5, C5	C5	C5
Shoreline habitat and natural systems enhancement projects					

KEY P - Permitted Modification C – Shoreline Conditional Use Required Shoreline modifications are allowed only if the underlying zoning allows the modification.	DOWNTOWN WATERFRONT	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
Habitat and natural systems enhancement projects	P7	P7	P7	P7	P7

B. Development conditions (Footnotes for the Shoreline Modifications Table at KMC 16.55.030.A).

1. Shoreline stabilization, including bulkheads, shall be permitted only when it has been demonstrated that stabilization is necessary to protect existing legally established primary structures, public improvements, proposed or existing water-dependent development, or projects for the restoration of ecological functions or hazardous substance remediation, and must meet the standards in KMC 16.55.040 of this ordinance. In the Aquatic environment, stabilization requires conditional use approval, unless located adjacent to a Downtown Waterfront or Shoreline Residential environment.
2. An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents, tidal action, or waves. Normal maintenance and repair is allowed provided that all work is conducted in a manner that does not cause a net loss of ecological functions.
3. Flood protection facilities must be consistent with the standards in KMC 16.90 Flood Damage Prevention, KMC 18.55, and the Integrated Stream Protection Guidelines (Washington departments of Fish and Wildlife, Ecology, and Transportation, 2003).
4. Docks, piers, moorage, buoys, floats or launching facilities shall meet the standards in KMC 16.55.050 and are allowed only for:
 - a. Water dependent uses
 - b. Public access
 - c. Single detached residential units
 - d. Joint use facilities for multiple family dwelling unit developments, or

- e. Water-related or water-enjoyment uses only as part of a mixed-use development and only if auxiliary to and in support of a water-dependent use.

In the Aquatic environment, docks, piers, moorage, buoys, floats and/or launching facilities require conditional use approval, unless located adjacent to a Downtown Waterfront or Shoreline Residential environment.

- 5. Excavation, dredging and filling must meet the standards in KMC 16.55.060 of this ordinance. Fill placed waterward of the ordinary high water mark for any use except ecological restoration or for the maintenance and repair of flood protection facilities requires a conditional use permit. Disposal of dredged material within shorelands or wetlands within the shoreline jurisdiction requires a conditional use permit.
- 6. Breakwaters, jetties, groins and weirs are only allowed where necessary to support water dependent uses, public access, approved shoreline stabilization, or other public uses, as determined by the director. Groins are only allowed as part of a restoration project sponsored or cosponsored by a public agency that has natural resource management as a primary function.
- 7. Shoreline habitat and natural systems enhancement projects may include shoreline modifications of vegetation, removal of non-native or invasive plants, and shoreline stabilization, including the installation of large woody debris, dredging and filling, provided the primary purpose is clearly restoration of the natural character and ecological functions of the shoreline. Mitigation actions identified through biological assessments required by the NOAA Fisheries Service and applied to flood hazard mitigation projects may include shoreline modifications of vegetation, removal of non-native or invasive plants, and shoreline stabilization, including the installation of large woody debris, dredging and filling.

16.55.040 Shoreline stabilization.

Shoreline stabilization may be permitted subject to the standards in this chapter, provided:

A. The applicant has demonstrated the following in order to construct new shoreline stabilization:

- 1. A geotechnical analysis demonstrates that erosion from waves or currents is imminently threatening and that damage is expected to occur within three years if the shoreline stabilization is not constructed;
- 2. The erosion rate exceeds that which would normally occur in a natural condition;
- 3. The erosion is not caused by upland conditions on the project site;
- 4. The proposed shoreline stabilization is the least hardened solution that is feasible to protect the structures or improvements, including consideration of non-structural

alternatives such as slope drainage systems, vegetative growth stabilization, and gravel berms;

5. The proposal is the minimum necessary to protect existing legally established primary structures, new non-water-dependent development, existing water-dependent development or projects for the restoration of ecological functions or hazardous substance remediation;
6. The proposed shoreline stabilization does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions; and
7. Adequate mitigation measures that maintain existing shoreline processes and critical fish and wildlife habitat will be provided that ensure no net loss or function of riparian habitat.

B. Shoreline stabilization to replace existing shoreline stabilization shall be placed landward of any existing shoreline stabilization, except that it may be placed waterward directly abutting the old structure only in cases where the existing bulkhead was installed prior to January 1, 1992 and removal of the old structure would result in greater impact on ecological functions.

C. The maximum height of the proposed shoreline stabilization shall be no more than four feet in height on Lake Washington.

D. Shoreline stabilization shall minimize the adverse impact on the property of others to the maximum extent practical.

E. Shoreline stabilization shall not be used to create new lands.

F. Shoreline stabilization shall not interfere with surface or subsurface drainage into the water body.

G. Automobile bodies or other junk or waste material which may release hazardous substances shall not be used for shoreline stabilization.

H. Shoreline stabilization shall be designed so as not to constitute a hazard to navigation and shall not substantially interfere with visual access to the water.

I. Shoreline stabilization shall be designed so as not to create a need for shoreline stabilization elsewhere.

J. Shoreline stabilization shall comply with the Integrated Stream Protection Guidelines (Washington departments of Fish and Wildlife, Ecology, and Transportation, 2003) and shall be designed to allow for appropriate public access to the shoreline.

16.55.050 Docks, piers, moorage, buoys, floats or launching facilities.

A. Any dock, pier, moorage, buoy, float or launching facility authorized by this chapter shall not interfere with navigation, and

B. Any dock, pier, moorage, buoy, float or launching facility authorized by this chapter shall be subject to the following requirements; or must demonstrate that the project provides an equal or greater degree of protection of ecological functions and anadromous species habitat. For the purposes of meeting this requirement, the director will review the required habitat management plan to determine whether the project is adequately protective.

1. Docks, piers, moorage, buoys, floats or launching facilities shall not exceed the minimum size necessary to serve the use for which they are designed (see 16.55.030.B.4).
2. Docks, piers, moorage, buoys, floats or launching facilities serving more than four single family residences must also meet the standards in KMC 16.50.050.
3. Only joint use boat lift, dock, pier, moorage, buoys, float or launching facilities may be permitted for multiple family dwelling unit development proposals.
4. Only one boat lift, dock, pier, moorage, buoy, float and launching facility may be permitted for each parcel developed with a single detached residential unit and only if the applicant demonstrates there is no other feasible option for shared use facilities. However, installation or retention of additional watercraft lifts beyond one, without a canopy, at a single residential use waterfront structure is allowed. A maximum of three lifts are allowed at a single residential use overwater structure. However, only two lifts can be ground-based, all other lift(s) must be floating or suspended lift(s).
5. Only joint use docks or piers are allowed on lots with less than 50 feet of waterfront except when lots abutting both sides of the subject lot already have a dock or pier.
6. The only structures permitted in the first 30 feet waterward of the ordinary high water mark are piers and ramps. All floats and ells must be at least 30 feet waterward of the ordinary high water mark.
7. No skirting is allowed on any structure.
8. Surface coverage (includes all overwater portions of the floats, ramps, and ells) shall be limited as follows:
 - a. Moorage facilities serving only one residential waterfront lot shall not exceed 480 square feet;
 - b. Moorage facilities serving two residential waterfront lots shall not exceed 700 feet; and
 - c. Moorage facilities serving three or more residential waterfront lots shall not exceed 1,000 square feet.

9. To protect anadromous salmon habitat, the following shall apply:
 - a. Docks with configurations that do not include any or all of the following elements shall be subject to the overall length and square footage limitations of this section and no portion of the dock shall exceed four feet in width, unless allowed in this subsection;
 - b. Piers shall not exceed four feet wide and shall be fully grated;
 - c. Ramps shall not exceed three feet wide and shall be fully grated;
 - d. Ells are allowed only over water with depths of nine feet or greater at the landward end of the ell; ells may be up to 6 feet wide by 20 feet long with a 2-foot-wide strip of grating down the center; or ells may be up to 6 feet wide by 26 feet long with grating over the entire ell;
 - e. Floats are allowed only over water with depths of 10 feet or greater at the landward end of the float; and floats may be up to 6 feet wide by 20 feet long with a 2-foot-wide strip of grating down the center;
 - f. In no case may any moorage facility extend more than 150 feet waterward of the ordinary high water mark;
 - g. The first (nearest shore) piling shall be steel, 4-inch piling and at least 18 feet waterward of the ordinary high water mark. Piling sets beyond the first are not required to be steel, shall be spaced at least 18 feet apart and shall not be greater than 12 inches in diameter;
 - h. Piles shall not be treated with pentachlorophenol, creosote, chromated copper arsenate or comparably toxic compounds. If ammoniacal copper zinc arsenate pilings are proposed, the applicant will meet all of the Best Management Practices, including a post-treatment procedure, as outlined in the amended Best Management Practices of the Western Wood Preservers; and
 - i. When steel piles are installed, approved sound attenuation measures must be used.
10. Existing habitat features (e.g., large and small woody debris, substrate material, etc.) shall be retained and new or expanded moorage facilities placed to avoid disturbance of such features.
11. Invasive aquatic weeds may be removed with nonchemical means only, except that milfoil may be removed using chemicals provided that the chemicals are applied by a licensed applicator and approved for aquatic use.
12. In order to mitigate the impacts of new or expanded commercial moorage facilities, the applicant shall plant emergent vegetation (if site-appropriate) and a buffer of vegetation a minimum of ten feet wide along the entire length of the lot immediately

landward of the ordinary high water mark. Planting shall consist of native shrubs and trees and, when possible, emergent vegetation. At least five native trees will be included in a planting plan containing one or more evergreen trees and two or more trees that like wet roots (e.g., willow species), per every 100 lineal feet of shoreline. Such planting shall be monitored for a period of five years according to an approved monitoring plan. This subsection is not intended to prevent reasonable access through the shoreline critical area buffer to the shoreline, or to prevent recreational use of the shoreline critical area. This requirement may be waived or reduced for water-dependent transportation uses where it is demonstrated that vegetation could result in safety or navigation hazards.

13. No private moorage or other structure waterward of the ordinary high water mark, including structures attached thereto, shall be closer than twelve feet to any adjacent property line except when there is a mutual agreement of adjoining property owners. Excepted from the requirements of this section are boat lifts or portions of boat lifts that do not exceed thirty inches in height measured from ordinary high water mark.
14. Proposals to repair existing legally established moorage facilities where the nature of the repair is not described in KMC 16.55.030 of this section shall be considered minor repairs and are permitted, consistent with any applicable standards of this Title, Title 18 and any other applicable codes or regulations.
15. No covered boat lift, dock, pier, covered moorage, covered float, or other covered structure is permitted waterward of the ordinary high water mark, except as provided below:
 - a. Submerged, free-standing mechanical boat lifts associated with single detached residential docks or piers and recreational watercraft may be covered with a canopy, provided:
 - i. No canopy shall be more than twenty-five feet in length or wider than fifteen feet;
 - ii. No portion of the canopy shall exceed a height of twelve feet above the ordinary high water mark;
 - iii. The canopy shall at no time have any side partly or wholly enclosed;
 - iv. The highest portion of the canopy shall be located below the lowest grade point on the waterward side of the existing homes on surrounding properties;
 - v. Canopies shall be made out of canvas or other such non-toxic materials;
 - vi. Canopies shall be of a translucent material to allow light transmission;

- vii. The total overwater coverage of the piers, floats, ramps, ell, and canopy for a single family residence with a single-use moorage shall not exceed 600 square feet; and
 - viii. Only one boat lift canopy per single detached residence shall be allowed.
 - b. Covered moorage may be provided for commercial boat repair facilities.
16. No dwelling unit may be constructed on a dock or pier.
17. Buoys shall meet the following conditions:
- a. Buoys shall not impede navigation;
 - b. The use of buoys for moorage of recreational and commercial vessels is preferred over pilings or float structures;
 - c. Buoys shall be located and managed in a manner that minimizes impacts to aquatic habitat;
 - d. No more than four buoys per acre are allowed.

C. Proposals that do not meet the requirements of subsections B.6, 8, 9 or 15 of this section and that are designed to support a commercial water-dependent use, or to provide public access, or to serve residential uses, may be considered by the director. For any alternative proposal, the applicant must demonstrate that the proposed deviation is the minimum necessary to meet the needs of the specific use proposed, and provides an equal or greater degree of protection of ecological functions and anadromous species habitat than would strict adherence to the standards. For purposes of meeting this requirement, the director will review the required habitat management plan to determine whether the project is adequately protective.

16.55.060. Grading, dredging, dredge material disposal and filling

Grading, dredging, dredge material disposal and filling must be consistent with KMC 16.90 and may be permitted in shorelines only as follows:

- A. Fill may be permitted below the ordinary high water mark only:
- 1. When necessary to support a water dependent use;
 - 2. To provide for public access;
 - 3. When necessary to mitigate conditions that endanger public safety, including flood risk reduction projects;
 - 4. To allow for cleanup and disposal of contaminated sediments as part of an interagency environmental cleanup plan;

5. To allow for the disposal of dredged material considered suitable under, and conducted in accordance with, the dredged material management program of the Washington Department of Natural Resources;
6. For expansion or alteration of transportation or utility facilities currently located on the shoreline and then only upon demonstration that alternatives to fill are not feasible; or
7. As part of mitigation actions, environmental restoration projects and habitat enhancement projects.

B. Grading, dredging, and filling shall be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration, and mitigation shall employ the mitigation sequence in KMC 18.55.210.

C. Dredging and dredged material disposal below the ordinary high water mark shall be permitted only:

1. When necessary for the operation of a water dependent use;
2. When necessary to mitigate conditions that endanger public safety or fisheries resources;
3. For establishing, maintaining, expanding, relocating or reconfiguring navigation channels and basins when necessary to ensure safe and efficient accommodation of existing navigation uses when:
 - a. Significant ecological impacts are minimized;
 - b. Mitigation is provided, employing the mitigation sequence in KMC 18.55.210; and
 - c. Dredging is maintained to the existing authorized location, depth and width.
4. For restoration projects associated with implementation of the Model Toxics Control Act or the Comprehensive Environmental Response, Compensation, and Liability Act; or any enhancement or restoration project.
5. For flood risk reduction projects conducted in accordance with KMC 16.90.

D. Dredging is not allowed waterward of the ordinary high water mark for the primary purpose of obtaining fill material.

E. Disposal of dredged material shall be done only in approved upland disposal sites and is not allowed within critical areas or their buffers.

F. Stockpiling of dredged material in or under water is prohibited.

G. In order to ensure that operations involving dredged material disposal and maintenance dredging are consistent with the Shoreline Master Program as required by RCW 90.58.140(1), no

dredging may commence in any shoreline environment without the responsible person having first obtained either a substantial development permit or a statement of exemption. A statement of exemption or shoreline permit is not required prior to emergency dredging needed to protect property from imminent damage by the elements if statement of exemption or substantial development permit is subsequently obtained following the procedures in KMC 16.75.

H. The removal of gravel for flood management is allowed only after a biological and geomorphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of ecological functions, and is part of a comprehensive flood management solution.

16.60 Vegetation conservation.

16.60.010 Vegetation conservation areas.

A. Shoreline buffers shall be considered vegetation conservation areas in which existing native vegetation is retained, unless removal is specifically allowed in this chapter or it can be demonstrated that another management approach would provide equal or better protection for shoreline ecological processes and functions. Non-native vegetation may be retained unless otherwise required to be replaced as part of an enhancement associated with development or expansion of development on the property.

B. Native and non-native trees determined by the city to be hazardous or diseased may be removed. Selective pruning for safety and view protection is allowed provided pruning is conducted in a manner that minimizes harm to the health of the trees being pruned.

C. Non-native vegetation may be removed as part of a restoration or enhancement project if replacement plantings will provide greater benefit to shoreline ecological processes than would be provided by strict application of this chapter.

D. Landscaping plans for shoreline buffers associated with shoreline development regulated under the Shoreline Code must be prepared by a landscape architect or certified professional wetland scientist. Landscaping plans are not required for normal maintenance, including maintenance of existing nonconforming landscaping that complies with KMC 16.75.050.

E. Landscaping plans for shoreline buffers should avoid adverse impacts on existing public views of the shoreline.

F. Vegetation management in shorelines shall be consistent with the requirements for grading permits under KMC 15.25. If there is a conflict between this chapter and KMC 15.25, the more restrictive standards shall apply.

G. When considering compensatory habitat enhancement as mitigation for impacts from new structures, such as when a reduced buffer or a non-water dependent use is requested, the enhancement should be proportional to the degree of impact of the new structure on shoreline ecological functions, and take into account the degree to which the existing buffer has already been

compromised. Enhancement should focus on restoring ecological functions that are most critical and that have been most diminished in the Kenmore shoreline. In approving any compensatory habitat enhancement plan, the director shall consider the changes in surface water runoff rates and water quality (such as through increased impervious area), habitat structure (such as loss or alteration of vegetation), and habitat quality (such as from lighting, noise, or activities) that the project would cause. Enhancements should generally focus on offsetting these impacts but may focus on restoring other critical ecological functions in the shoreline that have been lost or diminished (such as placement of large woody debris in water or restoring shallow water habitat). The director may determine whether an enhancement that provides a broader benefit may be substituted for one that would offset the impacts of an individual project. The director may deny a request to allow intrusion into a buffer or for development of a non-water dependent use if the enhancement proposed does not fully mitigate the impacts of the project or provide a sufficient broader benefit.

16.60.020 Vegetation management within critical areas.

A. Vegetation management standards established in KMC 18.55.150(A)(5), 18.55.320(F)(5 and 6), 18.55.520(A)(2)(d) and (G), 18.55.530 and 18.55.650(A)(5) for critical areas and their buffers shall apply within all shorelines.

B. Vegetation management standards established in KMC 18.55.420 for streams and their buffers shall apply within Sammamish River and Swamp Creek shorelines. In addition to provisions for recreational uses in KMC 16.65.020 allowing limited modifications to critical area buffers for the purposes of public access improvements, the following standards shall apply in shorelines:

1. In Swamp Creek Park, public access trails may be located within critical areas and required buffers, when planned along with a habitat restoration project and it is demonstrated that the ecological functions of the overall standard stream buffer area would be substantially improved. Trails in Swamp Creek Park roughly paralleling the shoreline of the Sammamish River or Swamp Creek shall generally be located at least 50 feet from the ordinary high water mark, but trails may extend closer to the water if necessary to reduce impacts on critical areas or adjacent properties, or access a pedestrian bridge across Swamp Creek. Spur trails may be extended to the water's edge but such access areas should be limited in order to protect ecological functions of the stream buffer and wetlands.

2. When public access is being provided as a part of mixed use development allowed in the Urban Conservancy environment under KMC 16.50.030.B.2.a.ii, the director may allow public access trail development within the buffer in order to link with adjacent shoreline access, provided any new trail is farther from the shoreline than the waterward extent of existing development on the site and the proposed trail plan is accompanied by a plan demonstrating that the ecological functions of the overall required buffer area on a project site would be substantially improved.

16.60.030 Vegetation management within Lake Washington shoreline buffers.

A. Vegetation removal within lake shoreline buffers is prohibited in the Shoreline Residential, Urban Conservancy, and Natural shoreline environments along Lake Washington unless the activity is part of a shoreline restoration or enhancement project or the vegetation removal is otherwise specifically allowed under KMC 16.50 or 16.55.

B. Vegetation clearing for permitted water-dependent uses is allowed in the Downtown Waterfront environment. Such vegetation clearing must occur only in the minimum shoreline area that is necessary to support the permitted water-dependent use.

16.65 SHORELINE DENSITY AND DIMENSIONS.

16.65.010 Interpretation of shoreline density and dimensions table.

- A. The shoreline density and dimensions table in KMC 16.65.020 establishes the shoreline standards within each of the shoreline environments. The shoreline environment is located on the vertical column and the density and dimensions standard is located on the horizontal row of the table. The table should be interpreted as follows:
1. If the cell is marked with a Z in the box at the intersection of the column and the row, the shoreline does not impose a specific buffer requirement on that use, although the standards for the underlying zoning apply. In some cases, no standard is provided because the use is prohibited under KMC 16.4550.
 2. If the cell has a number in the box at the intersection of the column and the row, that number is the density or dimension standard for that shoreline environment.
 3. If the cell has a parenthetical number in the box at the intersection of the column and the row, that parenthetical number identifies specific conditions listed in KMC 16.65.020.B that are related to the density and dimension standard for that environment.
- B. The density and dimensions enumerated in this section apply to any lot within the shoreline jurisdiction. If there is a conflict between the density and dimension standards in this section and the underlying zoning regulations, the more restrictive standard shall apply.
- C. For development in critical areas and critical area buffers, the applicable provisions of **Section Chapter 18.55 KMC** apply unless a specific exception is provided in the shoreline code.
1. Because Lake Washington, the Sammamish River, and Swamp Creek are all fish and wildlife habitats of importance, a habitat management plan is required for any in-water or overwater development or activity, per KMC 18.55.520.

2. Within the shoreline jurisdiction, the required acreage replacement ratios for wetlands shall be as follows:

Wetland Mitigation Ratios:

Category and Type of Wetland	Creation or Reestablishment (C/R)	Creation (C) or Reestablishment (R) plus Enhancement (E)	Enhancement (E) Only
Class 1	3:1	1:1 C/R plus 6:1 E	Not Allowed
Class 1 (Mature Forested)	6:1	1:1 C/R plus 20:1 E	Not Allowed
Class 2	2:1	1:1 C/R plus 4:1 E	Not Allowed
Class 3	1.5:1	1:1 C/R plus 2:1 E	6:1

16.65.020 Shoreline density and dimensions table and development conditions.

A. Shoreline Density And Dimensions Table

	DOWNTOWN WATERFRONT	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
Standards					
Shoreline Buffers from OHWM on Lake Washington					
Water-dependent commercial development	20 ft (1)	Z	115 ft (1)Z	Z	0
Water-related commercial development	20 (1) ft	Z	115 ft (1)Z	Z	0
Non-water-dependent and non-water-related commercial development	50 ft (1)	Z	150 ft	Z	Z
Government services	20 ft (6)	20 ft (6)	20 ft (6)	20 ft (6)	0
Single family residential development	Z	25 ft (2)	115 ft (2)	150 ft (2)	Z

	DOWNTOWN WATERFRONT	SHORELINE RESIDENTIAL	URBAN CONSERVANCY	NATURAL	AQUATIC
Multifamily residential development	50 ft	75 ft	115 ft	Z	Z
Water-dependent and water-related manufacturing and industrial use	20 ft (1) (3)	Z	115 ft (1) (3) Z	Z	0
Non-water-related manufacturing and industrial use	50 ft	Z	Z	Z	Z
Parks and recreation	50 ft (4)	75 ft (4)	115 ft (4)	115 ft (4)	0
Accessory Surface Parking	100 ft	100 ft	115 ft	150 ft Z	0
Utilities and regional land uses	50 ft (5)	75 ft (5)	115 ft (5)	115 ft (5)	Z
Building Setback from the Shoreline Buffer					
Single Family uses	15 ft	25 ft (2)	15 ft	15 ft	Z
All uses except Single Family uses	15 ft	15 ft	15 ft	15 ft	Z
Building Height					
Base height	35 ft	35 ft	35 ft	30 ft	35 ft
Additional height allowed when permitted in underlying zoning	Yes (7)	Yes (7)	Yes (7)	No	No

B. Development conditions (Footnotes to Shoreline Density And Dimensions Table KMC 16.65.020.A).

1. New water-dependent uses may be allowed within a shoreline buffer only if impacts are mitigated consistent with the requirements in KMC 18.55.190-220, 18.55.330 and 18.55.430 such that there is no net loss of shoreline ecological processes or functions. The director may allow non-water-dependent uses within the shoreline buffer along the inner harbor portion of the Downtown Waterfront area at the northeast end of Lake Washington, only if:
 - a. The uses are developed in conjunction with a public access promenade adjacent to the water; and

- b. The uses do not interfere with public access or preclude the use of the shoreline for water dependent uses; and
 - c. Mitigation is provided consistent with the requirements in KMC 18.55.190-220, 18.55.330 and 18.55.430 such that there is no net loss of shoreline ecological processes or functions.
- 2. Single family residential development shall provide buffers and setbacks as follows:
 - a. On Lake Washington in Shoreline Residential areas:
 - i. A minimum shoreline buffer of 25 feet from the ordinary high water mark shall be provided as a vegetation conservation area.
 - ii. The minimum building setback of 25 feet from the shoreline buffer may be reduced to zero (0) five (5) feet if vegetation in the required buffer is reestablished or enhanced, according to the standards in KMC 16.60.010.G.
 - b. On Lake Washington in Urban Conservancy areas:
 - i. A minimum buffer of 115 feet from the ordinary high water mark shall be provided as a vegetation conservation area.
 - ii. A minimum building setback of 15 feet from the shoreline buffer shall be provided.
 - c. On Lake Washington in Natural areas:
 - i. A minimum buffer of 150 feet from the ordinary high water mark shall be provided as a vegetation conservation area.
 - ii. A minimum building setback of 15 feet from the shoreline buffer shall be provided.
 - d. On all other shorelines, single family development shall provide a buffer as required by the provisions of KMC 18.55. Buffers may be reduced to the specified minimum setbacks in this table only if the reduced buffers are allowed by the provisions of KMC 18.55.
- 3. Outdoor storage for water-dependent manufacturing and industrial uses must be at least 20 feet from the ordinary high water mark in the Downtown Waterfront environment and is prohibited in all other environments.
- 4. New public access improvements shall comply with the requirements of KMC 18.55, provided that new public access improvements may be allowed within critical areas, or shoreline or critical area buffers if impacts are mitigated consistent with the requirements

in KMC 18.55.190-220, 18.55.330 and 18.55.430 such that there is no net loss of shoreline ecological processes or functions, and the public access improvements meet the following standards:

- a. In order to encourage public access improvements and improved shoreline habitat in the Downtown Waterfront shoreline, a public access trail may be located within the stream buffer required in KMC 18.55.420, when accompanied by a plan demonstrating that the ecological functions of the overall required buffer area on a project site would be substantially improved. Trails paralleling the shoreline of the Sammamish River in the Downtown Waterfront environment shall be located at least 50 feet from the ordinary high water mark. Spur trails may be extended to the water's edge but such access areas should be limited in order to protect ecological functions of the buffer.
- b. In order to allow for a waterfront promenade area along the inner harbor area of the Downtown Waterfront environment, public access improvements may extend to the water's edge when accompanied by a plan demonstrating that the ecological functions of the overall required buffer area on a project site would be substantially improved.
- c. In Swamp Creek Park, public access trails may be located within critical areas and required buffers, when planned along with a habitat restoration project and it is demonstrated that the ecological functions of the overall standard stream buffer area would be substantially improved. Trails in Swamp Creek Park roughly paralleling the shoreline of the Sammamish River or Swamp Creek shall generally be located at least 50 feet from the ordinary high water mark, but trails may extend closer to the water if necessary to reduce impacts on critical areas or adjacent properties, or access a pedestrian bridge across Swamp Creek. Spur trails may be extended to the water's edge but such access areas should be limited in order to protect ecological functions of the stream buffer and wetlands.
- d. When public access is being provided as a part of mixed use development allowed in the Urban Conservancy environment under KMC 16.50.030.B.2.a.ii, the director may allow public access trail development within the buffer in order to link with adjacent shoreline access, provided any new trail is farther from the shoreline than the waterward extent of existing development on the site and the proposed trail plan is accompanied by a plan demonstrating that the ecological functions of the overall required buffer area on a project site would be substantially improved.

5. Underground utilities are allowed in the shoreline buffer.
6. Only water-dependent government service uses are allowed and such uses may require development in the buffer. If through mitigation sequencing per KMC 18.55.210, impacts to the buffer are found to be unavoidable, the buffer may be reduced provided there is not net loss of ecological functions.

7. Additional height may be permitted under the following conditions:

- a. The structures would not obstruct the view of a substantial number of residences, and
- b. The structures are located in an area designated on Map 1 (Shoreline Environment Designations) as allowing these additional heights, and
- c. The structure height complies with the allowable height of the underlying zone and the following additional height limits within the shoreline: and
- d. The additional height of the structures would not impair the ecological functions of the stream, lake, wetland, or the required buffer. In particular, the effects of shading and light impacts on the viability of vegetation in the buffer shall be considered when making this determination, and
- e. Be outside of the floodway in effect at the time of permit application, and
- f. Not be within a wetland or wetland buffer as regulated by 18.55 KMC.

Distance from Structure to Ordinary High Water Mark	Maximum Height Allowed Area H-1	Maximum Height Allowed Area H-2	Maximum Height Allowed Areas H-3 and H-4
Less than 50 feet	35 feet	35 feet	35 feet
50 to 100 feet	50 feet	45 feet	45 feet
100 to 112.5 feet	50 feet	75 feet	65 feet
112.5 to 200 feet	50 feet	75 feet	65 feet

The burden to demonstrate that the proposal meets the criteria of this section is on the applicant. The director may require technical studies as necessary to demonstrate compliance. The Director has the authority to require a person seeking additional structure height to submit an analysis performed by a qualified expert which demonstrates compliance with subsection 7.a.

16.70.010 Subdivisions

A. Any legally created, existing lot that does not comply with the density and dimensions standards of KMC 16.65 and 18.30 KMC Title 18 and that is located wholly or partially within the shorelines of the state shall be subject to the following provisions:

1. If the adjoining property is not under the same ownership as such lot, then the lot shall be considered a separate building site; and
2. If the adjoining property is under the same ownership as such lot, then the lot shall not be considered a separate building site until the lot is combined with adjoining property under the same ownership in such a way as to comply with the density and dimensions standards of KMC 16.65 and 18.30 KMC Title 18.

B. Submerged land within the boundaries of any waterfront parcel shall not be used to compute lot area, lot dimensions, yards, recreation space or other similar required conditions of land subdivision or development, except, where specifically authorized by ordinance, such lands may be used in area computations as an incentive to encourage common open space waterfront areas.

C. All newly created lots wholly or partially within the shoreline shall be of uniform size and dimension, whenever possible.

D. Subdivision of more than four lots shall provide an improved and maintained pedestrian easement to the shoreline that is of sufficient width to ensure usable public access. The public access to the shoreline shall be in conformance with the standards in KMC 16.50.060.

E. Subdivisions should be designed to locate structures outside the shoreline jurisdiction whenever feasible. When lots are located within the shoreline jurisdiction, the size and shape of the lots should allow for the construction of residential units that are outside of required buffers and setbacks and that do not require shoreline stabilization.

F. Subdivision of a waterfront lot for the purposes of creating a lot for a non-water-dependent use that would not otherwise be allowed is prohibited.

Chapter 16.75 PROCEDURES

In addition to the requirements of KMC 19.25, the following administrative procedures apply to development in the shoreline jurisdiction.

16.75.010 Substantial development – Permit required – Exemption.

A. No development shall be undertaken by any person within the shoreline jurisdiction unless such development is consistent with the policies of RCW 90.58.020 and the Shoreline Master Program. Development within the shoreline jurisdiction shall conform to the Shoreline Master Program whether or not the development requires a permit from the City of Kenmore.

B. A substantial development permit shall be required for all proposed uses and modifications unless the proposal is specifically exempt from the definition of substantial development in RCW 90.58.030 and WAC 173-27-040 or is exempted by RCW 90.58.140.

C. Any person claiming exception from the permit requirements of this chapter as a result of the exemptions described in Subsection B of this section may be required to submit an application to the director for such an exemption in the manner prescribed by the director. A person requesting an exemption shall provide a written statement of exemption for activities that are exempt from the substantial development permit requirement in subsection B of this section when:

1. WAC 173-27-050 applies; or
2. The activity will occur waterward of the ordinary high water mark.

D. Whether or not a written statement of exemption is required, all permits issued for development activities within the shoreline jurisdiction shall include a record of review indicating compliance with the City of Kenmore Shoreline Master Program.

E. Conditions of approval may be attached to the approval of substantial development permits, statements of exemptions, or exempted developments as necessary to ensure consistency of the project with the City of Kenmore Shoreline Master Program.

16.75.020 Permits – Prerequisite to other permits.

In the case of development subject to the permit requirements of this title, Kenmore shall not issue any other permit for such development until such time as approval has been granted pursuant to this title. Any development subsequently authorized by Kenmore shall be subject to the same terms and conditions which apply to the development authorized pursuant to this title, in addition to any other terms or conditions required for the subsequent authorization.

16.75.025 Permits – Reasonable Accommodation

The Federal Fair Housing Act requires that reasonable accommodations be made in rules, policies, practices, or services, when such accommodations may be necessary to afford handicapped people equal opportunity to use and enjoy a dwelling. The director is therefore authorized to make accommodations in the provisions of this title as applied to dwellings occupied or to be occupied by handicapped persons as defined in the Federal Fair Housing Act, when the director determines that such accommodations reasonably may be necessary in order to comply with such Act.

16.75.030 Permits – Variance.

A. The director is authorized to grant a variance from the performance standards of the City of Kenmore Shoreline Master Program only under the conditions enumerated in WAC 173-27-170 (Review Criteria for Variance Permits). Shoreline variance permits are also subject to review and approval by the WA Department of Ecology (RCW 90.58.140(10)). The purpose of a variance permit is limited to granting relief from development standards set forth in the City of Kenmore Shoreline Master Program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the City of Kenmore Shoreline Master Program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

B. A variance from city zoning code requirements shall not be construed to mean a variance from the City of Kenmore Shoreline Master Program use or development regulations and vice versa.

C. Shoreline variances may not be used to permit a use that is specifically prohibited in KMC 16.50.

D. The burden of proving that a proposed variance meets the requirements of KMC 16.75.030 A through C shall be on the applicant; absence of such proof shall be grounds for denial of the application.

E. The fee which shall accompany an application for a shoreline variance shall be as adopted by ordinance.

16.75.040 Permits – Conditional use.

A. The director is authorized to issue shoreline conditional use permits only under the conditions enumerated in RCW 90.58.140, RCW 90.58.143 and WAC 173-27-160. Conditional use permits are also subject to review and approval by the WA Department of Ecology (RCW 90.58.140(10)).

B. The burden of proving that a proposed shoreline conditional use meets the criteria enumerated in WAC 173-27-160 shall be on the applicant. Absence of such proof shall be grounds for denial of the application; provided, however, that the director is authorized to determine and impose, on a case-by-case basis, those conditions and standards which may be required to enable any proposed shoreline conditional use to satisfy the criteria established in WAC 173-27-160.

16.75.050 Alteration or reconstruction of nonconforming use or development.

A. The review of applications for the modification of a nonconforming use or development shall be subject to the regulations enumerated in KMC ~~18.75.020~~18.100.020 through ~~18.75.060~~18.100.060, and ~~18.75.080~~18.100.080 through ~~18.75.087~~18.100.087, except that a nonconforming bulkhead may be replaced with a new bulkhead provided that:

1. The reconstructed bulkhead does not create new dry land, and
2. At least 40 percent of the bulkhead is replaced with a pocket cove or beach, and
3. The proposed reconstruction would substantially reduce the impacts of the existing structure on shoreline ecological functions, and
4. The project would not cause adverse impacts on adjacent shoreline uses.

B. Existing legal uses as defined under KMC 18.20.965 are considered existing legal uses within the shoreline jurisdiction.

C. Expansion of a nonconforming use or structure may be approved through the provisions of KMC 16.75.040 when the applicant demonstrates the following.

1. The project would substantially reduce the impacts of the existing use or structure on shoreline ecological functions, and
2. The proposed expansion would not cause adverse impacts on adjacent shoreline uses.
3. For a nonconforming structure located on land, any waterward expansion of the structure into the required setback would be offset by removal of another nonconforming structure of equal or greater footprint area in the shoreline setback, and the shoreline setback area would be restored with native riparian vegetation.

D. Expansion of a nonconforming dock may be allowed by the director when the applicant demonstrates the following:

1. The expansion would not increase the existing overwater coverage of the dock by more than 25 percent, and The existing nonconformance results from noncompliance with the standards in KMC 16.55.050 B6, B8, B9 or B15, and
2. The proposed expansion meets all other applicable standards in KMC 16.55.050, and
3. The proposed expansion would not increase the existing overwater coverage of the dock to more than the existing condition or by the limits established in KMC 16.55.050.F, whichever is greater, and
4. The ~~expanded dock project~~ would reduce the impacts of the existing dock on critical fish habitat as demonstrated through the habitat management plan for the development, and
5. The proposed expansion would not cause adverse impacts on adjacent shoreline uses.

16.75.060 Permits – Combined hearing authority.

A. In those cases when proposed development under the jurisdiction of this title also requires a Type 3 or Type 4 decision and a public hearing before the hearing examiner is required, the department shall issue a recommendation on the proposal, and the examiner shall conduct a public hearing to receive evidence relating to the issuance of a substantial development permit or exemption therefrom, a shoreline management conditional use permit and/or a shoreline management variance, if applicable.

B. The examiner shall conduct the hearing in accordance with the provisions of KMC 19.30 and shall exercise the powers therein.

C. The decision of the examiner shall be the decision of the director and shall be the final decision of the City with regard to shoreline management.

16.75.070 Permits – Approval or disapproval – Notification – Additional Conditions - Limitations.

A. In granting or extending a permit, the director may attach thereto conditions, modifications, or restrictions regarding the location, character and other features of the proposed development and related development and activity outside of the shoreline as necessary to make the permit compatible with the criteria set forth in KMC 16.05.030 and 16.75.010. Such conditions may include a requirement to post a performance bond assuring compliance with permit requirements, terms and conditions.

B. Issuance of a substantial development permit does not constitute approval pursuant to any other federal, state or City laws or regulations.

16.75.080 Appeals.

A. Appeals from the final decision of the city with regard to shoreline management shall be governed solely by the provisions of RCW 90.58.180, which shall prevail over any conflicting appeal procedures set forth in KMC 19.25.

B. The effective date of the City's decision shall be the date of receipt with the Department of Ecology as defined in RCW 90.58.140.

C. When a hearing and decision has occurred pursuant to KMC 16.75.060 and the examiner's recommendation with regard to disposition of a proposed development pursuant to KMC Titles 18 and 19 require city council action, the final decision of the city pursuant to this title shall be effective on the date of receipt as defined in RCW 90.58.140 for the purposes of appeal as provided in RCW 90.50.140. However, no development may occur until the city council has taken final action on the examiner's recommendation required by KMC Titles 18 and/or 19.

16.75.090 Rules of director.

The director is authorized to adopt such rules as are necessary and appropriate to implement this chapter. The director may prepare and require the use of such forms as are necessary to its administration.

16.75.100 Enforcement.

A. The director is authorized to enforce the provisions of this title, the ordinances and resolutions codified in it, and any rules and regulations promulgated thereunder pursuant to the enforcement and penalty provisions of KMC 1.20.

B. Any person found to have willfully engaged in activities on the shorelines of the state in violation of this title or the RCW 90.58 or in violation of the Kenmore Shoreline Master Program, rules or regulations adopted pursuant thereto is guilty of a gross misdemeanor, and shall be punished by a fine of not less than \$25 nor more than \$1,000, or by imprisonment for not more than 90 days, or by both fines and imprisonment; provided, that the fine for the third and all subsequent violations in any five-year period shall be not less than \$500 nor more than \$10,000.

C. The director shall bring such injunctive, declaratory, or other actions as are necessary to ensure that no uses are made of the shorelines of the state in conflict with the provisions of this title or RCW 90.58 or in conflict with the Shoreline Master Program, rules or regulations adopted pursuant thereto, and to otherwise enforce the provisions of this chapter and RCW 90.58.

D. Any person subject to the regulatory provisions of this title who violates any provision of this title or the provisions of a permit issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area, within a reasonable time, to its condition prior to such violation. The director shall bring suit for

damages under this subsection on behalf of the city. Private persons shall have the right to bring suit for damages under this subsection on their own behalf and on behalf of all persons similarly situated. The court on its discretion may award attorney's fees and costs of the suit to the prevailing party.

16.75.110 Shoreline environment redesignation.

A. Shoreline environments designated by the Shoreline Master Program may be redesignated by the city council upon finding that such a redesignation will be consistent with the standards in KMC 16.75.160 and the requirements of WAC 173-26-100 and 173-26-110. A shoreline redesignation may be initiated by an applicant or by motion of the council and requires Department of Ecology approval.

B. A redesignation initiated by an applicant shall be made on forms and processed in a manner prescribed in KMC 16.75.120. A redesignation initiated by the council shall follow the process in KMC 16.75.130.

C. The fee which shall accompany an application for a shoreline redesignation shall be as adopted by ordinance.

D. The departmental report and recommendation regarding an application or a site-specific redesignation initiated by council motion shall be forwarded to the hearing examiner for consideration together with all relevant testimony at a public hearing to be held consistent with the procedures for a zone reclassification as provided in KMC 19.30.

16.75.120 Redesignation applications.

A. A redesignation initiated by an applicant, as described in KMC 16.75.110(B), must follow the procedures in Chapters KMC 19.25 and 19.30 for shorelines redesignations and must include the following information in addition to the requirements in Chapter KMC 19.25:

1. Applicant information, including signature, telephone number and address;
2. The applicant's interest in the property, such as owner, buyer or consultant;
3. Property owner concurrence, including signature, telephone number and address;
4. A property description, including parcel number, property street address and nearest cross street;
5. A county assessor's map outlining the subject property;
6. Related or previous permit activity;
7. A description of the proposed shorelines redesignation;

8. A mitigation plan providing for significant enhancement of the first 100 feet adjacent to the shoreline and improved habitat for species declared as endangered or threatened under the Endangered Species Act, to the extent that the impacts of development can be determined at the time of the proposed shoreline redesignation; and
9. A discussion of how the proposed shoreline redesignation meets the criteria in KMC 16.75.160.

B. The examiner shall make a recommendation to the council based on the criteria for review in KMC 16.75.160.

16.75.130 Redesignation initiated by motion.

A. A motion initiating a shoreline redesignation, as described in KMC 16.75.110(B) must be accompanied by the following information:

1. A description of the shoreline and a property description, including parcel numbers, property street addresses and nearest cross streets, for all properties that the shoreline runs through or is adjacent to;
2. A county assessor's map outlining the subject property or properties; and
3. A description of the proposed shorelines redesignation.

B. If the motion proposes site-specific redesignation, as "site" is defined in KMC Title 18, the redesignation shall be referred to the hearing examiner for consideration following the procedures of KMC 16.75.120 for consideration of redesignation applications. Any other redesignation proposal initiated by motion shall be referred to the city manager for consideration as part of the process for amendment of comprehensive plan or development regulations as outlined in KMC 19.20.

C. A motion initiating a site-specific redesignation must identify the resources and the work program required to provide the same level of review accorded to an applicant-generated shoreline redesignation. Before adoption of the motion, the city manager shall have the opportunity to provide an analysis of the motion's fiscal impact. If the city manager determines that additional funds are necessary to complete the work program, the city manager may transmit an ordinance requesting the appropriation of supplemental funds. The council may consider the supplemental appropriation ordinance concurrently with the proposed motion referring the shorelines redesignation proposal to the examiner.

D. A site-specific redesignation initiated by motion shall follow the procedures in KMC 19.25 and 19.30 for shorelines redesignations with regard to the information to be provided and the notice and hearing processes, and shall meet the submittal requirements of KMC 16.75.120. The examiner shall make a recommendation to the council based on the criteria for review in KMC 16.75.160.

16.75.140 Frequency of consideration of shoreline redesignations.

A shorelines redesignation may not be initiated unless at least three years have elapsed since the council's prior consideration of the current designation for the property. The city manager or the council may waive this time limit if the proponent establishes that there exists either an obvious technical error or a change in circumstances justifying the need for earlier consideration of the shorelines redesignation.

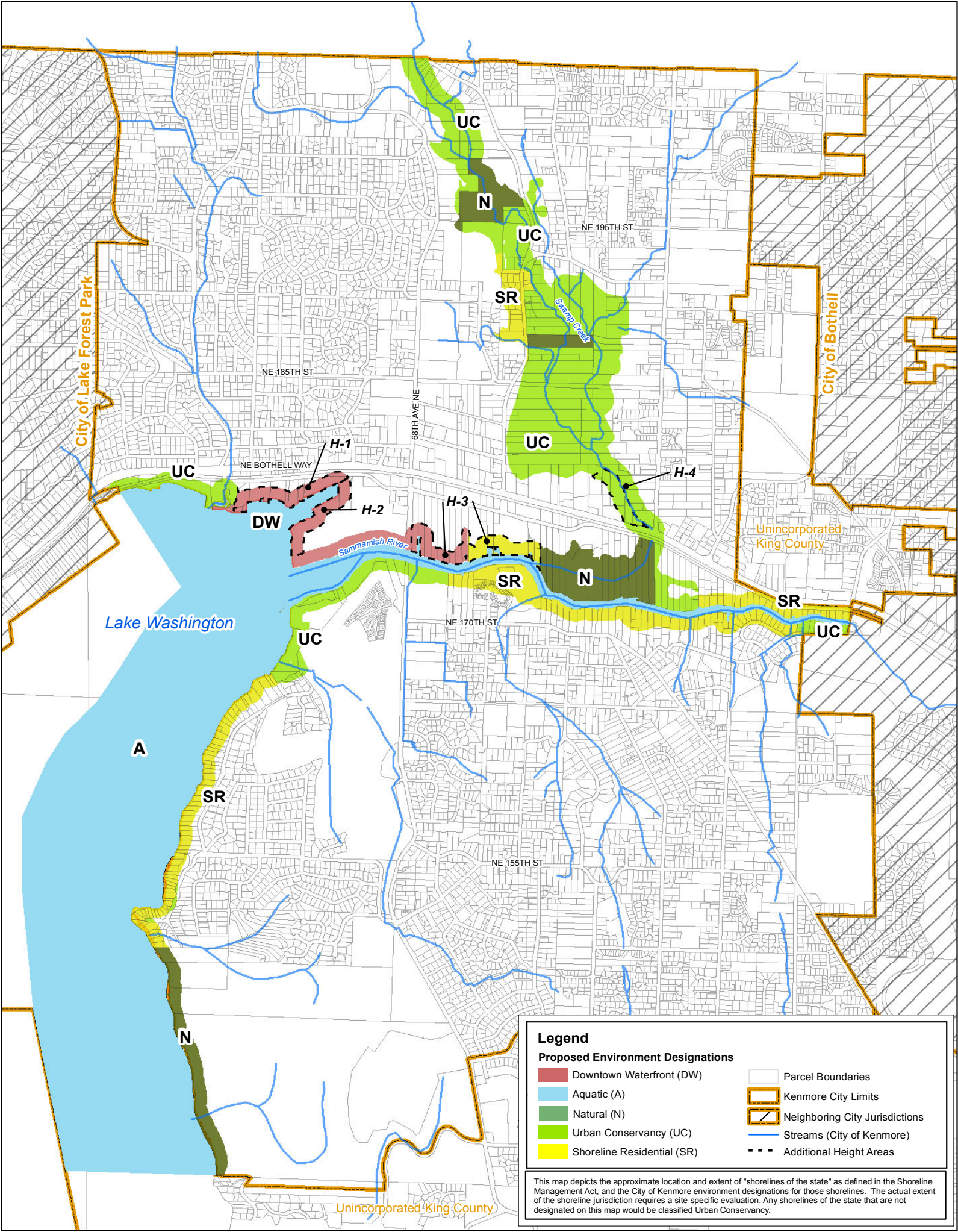
16.75.150 Shoreline redesignation and site-specific land use map amendment or zone reclassification.

A site-specific shorelines redesignation may be accompanied by a related proposal for a site-specific land use map amendment or zone reclassification, or both, in which case city review of the two applications must be consolidated to the extent practical, consistent with this division and KMC 19.25. The council's consideration of a subarea or comprehensive shorelines redesignation is a legislative decision that must be determined before and separate from the council's final consideration of a zone reclassification or site-specific shorelines redesignation, which is a quasi-judicial decision.

16.75.160 Criteria for hearing examiner review.

A shorelines redesignation referred to the hearing examiner for a public hearing shall be reviewed based upon the requirements of comprehensive plan policies and city shorelines management goals and objectives and the following additional standards:

- A. The proposed change implements and supports the goals of the State Shorelines Management Act and City of Kenmore Shoreline Master Program requested;
- B. The impacts of development allowed by the proposed change will not permanently impair any habitat critical to endangered or threatened species; and
- C. The impacts of development allowed by the proposed change are adequately addressed in a mitigation plan providing significant enhancement of the first 100 feet adjacent to the stream and improved habitat for species declared as endangered or threatened under the Endangered Species Act, to the extent those impacts may be determinable at the time of the shorelines redesignation. A full mitigation plan shall accompany each application, as provided in KMC 16.75.120 and 16.75.130.



Shoreline Master Program Update City of Kenmore







Map 1
Shoreline Environment Designations

SOURCE: King County, (2002)2007; City of Kenmore, 2007; ESA Adolfson, 2008

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Chapter 16.4090
FLOOD DAMAGE PREVENTION

16.4090.010 Findings of fact.

A. The flood hazard areas of the city of Kenmore are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

B. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to the flood loss. [~~Ord. 98-0045 § 1.~~]

16.4090.020 Statement of purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- A. Protect human life and health;
- B. Minimize expenditure of public money and costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
- F. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- G. Ensure that potential buyers are notified that property is in an area of special flood hazard; and
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions. [~~Ord. 98-0045 § 2.~~]

16.4090.030 Methods of reducing flood losses.

In order to accomplish its purposes, this chapter includes methods and provisions for:

- A. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
- D. Controlling filling, grading, dredging, and other development which may increase flood damage; and
- E. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or may increase flood hazards in other areas. ~~{Ord. 98-0045 § 3.}~~

16.4090.040 Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

- A. "Appeal" means a request for a review of the interpretation of any provision of this chapter or a request for a variance.
- B. "Area of shallow flooding" means a designated AO, or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.
- C. "Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters "A" or "V".
- D. "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood." Designation on maps always includes the letters "A" or "V".
- E. "Basement" means any area of the building having its floor subgrade (below ground level) on all sides.
- F. "Breakaway wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

G. "Coastal high hazard area" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on the FIRM as Zone VI through V30, VE or V.

H. "Critical facility" means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

I. "Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

J. "Elevated building" means for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

K. "Existing manufactured home park or subdivision" means a manufactured home park subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted floodplain management regulations.

L. "Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

M. "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters; and/or
2. The unusual and rapid accumulation of runoff of surface waters from any source.

N. "Flood insurance rate map (FIRM)" means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

O. "Flood insurance study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

P. "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Q. "Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter found in KMC 16.4090.160(A)(2).

R. "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

S. "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

T. "New construction" means structures for which the "start of construction" commenced on or after the effective date of the ordinance codified in this chapter.

U. "New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the adopted floodplain management regulations.

V. "Recreational vehicle" means a vehicle which is:

1. Built on a single chassis;
2. Four-hundred square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

W. "Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it

include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation of the property or accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

X. "Structure" means a walled and roofed building, including a gas or liquid storage tank that is principally above ground.

Y. "Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Z. "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

1. Before the improvement or repair is started; or
2. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

3. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
4. Any alteration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places.

AA. "Variance" means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

BB. "Water dependent" means a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

| ~~{Ord. 98-0045 § 4.}~~

| **16.4090.050 Lands to which this chapter applies.**

| This chapter shall apply to all areas of special flood hazards within the jurisdiction of the city of Kenmore. ~~{Ord. 98-0045 § 5.}~~

16.4090.060 Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for the City of Kenmore," as amended, with an accompanying Flood Insurance Map (FIRM), as amended, are hereby adopted by reference and declared to be a part of this chapter. The Flood Insurance Study is on file at Kenmore City Hall. The best available information for flood hazard area identification as outlined in KMC 16.4090.130(B) shall be the basis for regulation until a new FIRM is issued which incorporates the data utilized under KMC 16.4090.130(B). ~~{Ord. 98-0045 § 6.}~~

16.4090.070 Penalties for noncompliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violations of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein contained shall prevent the city of Kenmore from taking such other lawful action as is necessary to prevent or remedy any violation. ~~{Ord. 98-0045 § 7.}~~

16.4090.080 Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. ~~{Ord. 98-0045 § 8.}~~

16.4090.090 Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes. ~~{Ord. 98-0045 § 9.}~~

16.4090.100 Warnings and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city of Kenmore, any officer or employee thereof, or the Federal

Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder. [~~Ord. 98-0045 § 10.~~]

16.4090.110 Establishment of development permit.

A. Development Permit Required. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in KMC 16.4090.060. The permit shall be for all structures including manufactured homes, as set forth in KMC 16.4090.040, and for all development including fill and other activities, also as set forth in KMC 16.4090.040.

B. Application for Development Permit. Application for a development permit shall be made on forms furnished by the city of Kenmore and may include but not be limited to plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
2. Elevation in relation to mean sea level to which any structure has been floodproofed;
3. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in KMC 16.4090.160(B); and
4. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development. [~~Ord. 98-0045 § 11.~~]

16.4090.120 Designation of the local administrator.

The director is hereby appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions. [~~Ord. 98-0045 § 12.~~]

16.4090.130 Duties and responsibilities of the local administrator.

Duties of the director shall include, but not be limited to:

A. Permit Review.

1. Review all development permits to determine that the permit requirements of this chapter have been satisfied;
2. Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required; and

3. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of KMC 16.4090.170 (A) are met.

B. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with KMC 16.4090.060, the director shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer KMC 16.4090.160 and 16.4090.170.

C. Information to be Obtained and Maintained.

1. Where base flood elevation data is provided through the Flood Insurance Study or required as in subsection (B) of this section, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

2. For all new or substantially improved floodproofed structures:

a. Verify and record the actual elevation (in relation to mean seal level); and

b. Maintain the floodproofing certifications required in KMC 16.4090.110(B)(3).

3. Maintain for public inspection all records pertaining to the provisions of this chapter.

D. Alteration of Watercourses.

1. Notify adjacent communities and the department of ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

2. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

E. Interpretation of FIRM Boundaries. Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in KMC 16.4090.140. [~~Ord. 98-0045 § 13.~~]

16.4090.140 Variance procedure.

A. Appeal to Hearings Examiner.

1. The hearings examiner shall hear and decide appeals and requests for variances from the requirements of this chapter.
2. The hearings examiner shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the director in the enforcement or administration of this chapter.
3. Those aggrieved by the decision of the hearings examiner may appeal such decision to the superior court, as provided in Chapter 36.70C RCW, the Land Use Petition Act.
4. In passing upon such applications, the hearings examiner shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;
 - f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

- k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
5. Upon consideration of the factors of subsection (A)(4) of this section and the purposes of this chapter, the hearings examiner may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
6. The director shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

B. Conditions for Variances.

1. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing subsections (A)(4)(a) through (A)(4)(k) of this section have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.
2. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.
3. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
4. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
5. Variances shall only be issued upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
6. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated

residential neighborhoods. As such, variances from the flood elevations should be quite rare.

7. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except subsection (B)(1) of this section and otherwise complies with KMC 16.4090.150(A) and (B).

8. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. [Ord. 98-0045 § 14.]

16.4090.150 General standards.

In all areas of special flood hazards, the following standards are required:

A. Anchoring.

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
2. All manufactured homes must likewise be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).

B. Construction Materials and Methods.

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
3. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

C. Utilities.

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.
3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision Proposals.

1. All subdivision proposals shall be consistent with the need to minimize flood damage.
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
4. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or five acres (whichever is less).

E. Review of Building Permits. Where elevation data is not available either through the Flood Insurance Study or from another authoritative source (KMC 16.4090.130(B)), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates. ~~{Ord. 98-0045 § 15.}~~

16.4090.160 Specific standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in KMC 16.4090.060 or 16.4090.130(B), the following provisions are required:

A. Residential Construction.

1. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one foot above the base flood elevation.
2. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

- a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
- b. The bottom of all openings shall be no higher than one foot above grade; and
- c. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of floodwaters.

B. Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated one foot above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

- 1. Be floodproofed so that below one foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
- 2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
- 3. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in KMC 16.4090.130(C)(2);
- 4. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsection (A)(2) of this section;
- 5. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building floodproofed to the base flood level will be rated as one foot below).

C. Manufactured Homes.

- 1. All manufactured homes to be placed or substantially improved within Zones A1 through A30, AH, and AE on the community's FIRM on sites:
 - a. Outside of a manufactured home park or subdivision;
 - b. In a new manufactured home park or subdivision;
 - c. In an expansion to an existing manufactured home park or subdivision; or

d. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood;

shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot above the base flood elevation and shall be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement.

2. Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1 through 30, AH, and AE on the community's FIRM that are not subject to the above manufactured home provisions shall be elevated so that either:

a. The lowest floor of the manufactured home is elevated one foot above the base flood elevation; or

b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and is securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

D. Recreational Vehicles. Recreational vehicles placed on sites within Zones A1 through 30, AH, and AE on the community's FIRM shall either:

1. Be on the site for fewer than 180 consecutive days;

2. Be fully licensed and ready for highway use, on their wheels or jacking systems, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or

3. Meet the requirements of subsection (C) of this section and the elevation and anchoring requirements for manufactured homes. {Ord. 98-0045-§16.}

16.4090.170 Floodways.

Located within areas of special flood hazard established in KMC 16.4090.060 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

A. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

B. Construction or reconstruction of residential structures is prohibited within designated floodways, except for:

1. Repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and
2. Repairs, reconstruction or improvements to a structure, the cost of which does not exceed 50 percent of the market value of the structure either:
 - a. Before the repair, or reconstruction is started, or
 - b. If the structure has been damaged, and is being restored, before the damage occurred.

Work done on structures to comply with existing health, sanitary, or safety codes or to structures identified as historic places shall not be included in the 50 percent.

C. If subsection (A) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of KMC 16.4090.150 through 16.4090.210. [Ord. 98-0045 § 17.]

16.4090.180 Encroachments.

The cumulative effect of any proposed development, where combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one foot at any point. [Ord. 98-0045 § 18.]

16.4090.190 Standards for shallow flooding areas (AO zones).

Shallow flooding areas appear on FIRMs as AO zones with depth designations. The base flood depths in these zones range from one to three feet above ground where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas, the following provisions apply:

- A. New construction and substantial improvements of residential structures and manufactured homes within AO zones shall have the lowest floor (including basement) elevated above the highest grade adjacent to the building, one foot or more above the depth number specified on the FIRM (at least two feet if no depth number is specified).
- B. New construction and substantial improvements of nonresidential structures within AO zones shall either:
 1. Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, one foot or more above the depth number specified on the FIRM (at least two feet if no depth number is specified); or

2. Together with attendant utility and sanitary facilities, be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as in KMC 16.40.060.160(B)(3).

C. Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

D. Recreational vehicles placed on sites within AO zones on the community's FIRM shall either:

1. Be on the site for fewer than 180 consecutive days;
2. Be fully licensed and ready for highway use, on their wheels or jacking systems, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or
3. Meet the other applicable requirements of this chapter, and the elevation and anchoring requirements for manufactured homes. [Ord. 98-0045 § 19.]

~~16.40.200 Coastal high hazard areas.~~

~~Located within areas of special flood hazard established in KMC 16.40.060 are Coastal High Hazard Areas, designated as Zones V1 through V30, VE and/or V. These areas have special flood hazards associated with high velocity waters from surges and, therefore, in addition to meeting all provisions in this chapter, the following provisions shall also apply:~~

~~A. All new construction and substantial improvements in Zones V1 through V30 and VE (V if base flood elevation data is available) shall be elevated on pilings and columns so that:~~

- ~~1. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated one foot or more above the base flood level; and~~
- ~~2. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).~~

~~B. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of subsections (A)(1) and (A)(2) of this section.~~

C. Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures in Zones V1 through V30 and VE, and whether or not such structures contain a basement. The local administrator shall maintain a record of all such information.

D. All new construction shall be located landward of the reach of mean high tide.

E. Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with nonsupporting breakaway walls, open wood lattice work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or state codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

1. Breakaway wall collapse shall result from water load less than that which would occur during the base flood; and

2. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

F. If breakaway walls are utilized, such enclosed space shall be usable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation.

G. Prohibit the use of fill for structural support of buildings.

H. Prohibit manmade alteration of sand dunes which would increase potential flood damage.

I. All manufactured homes to be placed or substantially improved within Zones V1 through V30, V, and VE on the community's FIRM on sites:

1. Outside of a manufactured home park or subdivision;

2. In a new manufactured home park or subdivision;

3. In an expansion to an existing manufactured home park or subdivision; or

4. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood;

_____ shall meet the standards of subsections (A) through (H) of this section, and manufactured homes placed or substantially improved on other sites in an existing manufactured home park or subdivision within Zones V1 through V30, V, and VE on the FIRM shall meet the requirements of KMC 16.40.160(C).

J. _____ Recreational vehicles placed on sites within Zones V1 through V30, V, and VE on the community's FIRM shall either:

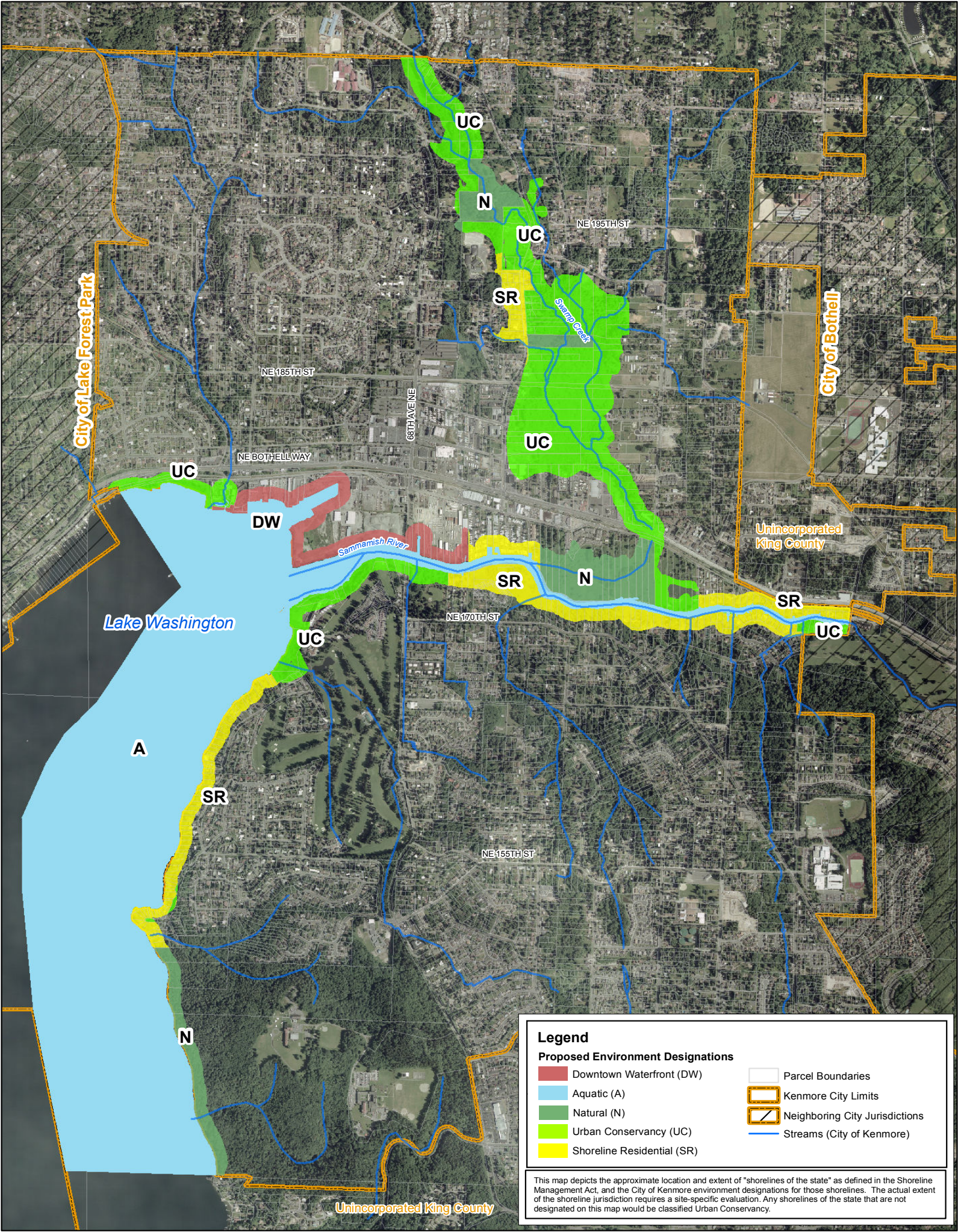
1. _____ Be on the site for fewer than 180 consecutive days;

2. _____ Be fully licensed and ready for highway use, on their wheels or jacking systems, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or

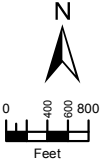
3. _____ Meet the requirements of KMC 16.40.110(A) and subsections (A) through (H) of this section. [Ord. 98-0045 § 20.]

16.40.21090.200 Critical facility.

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet or more above the level of the base flood elevation (100-year) at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible. [Ord. 98-0045 § 21.]

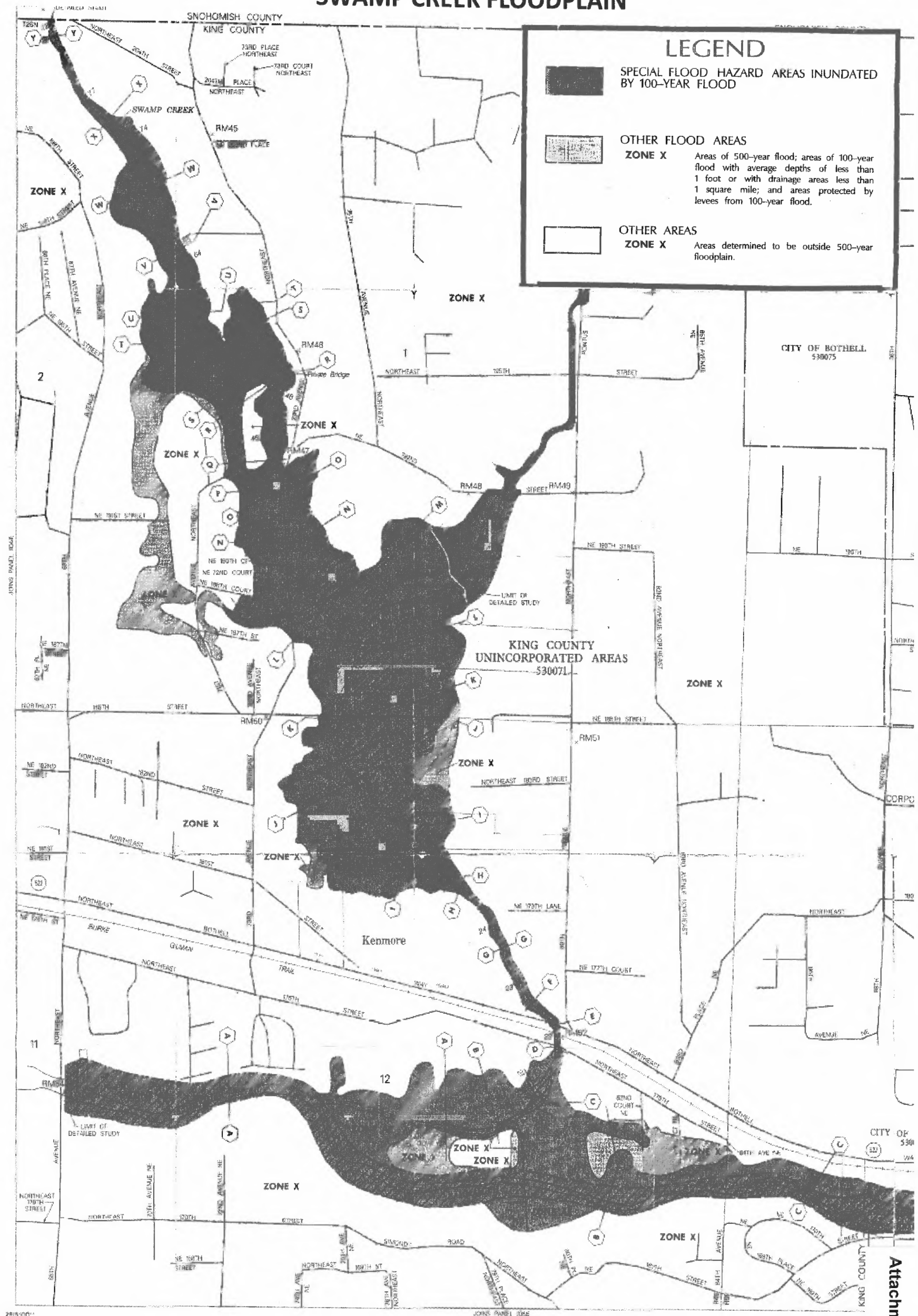


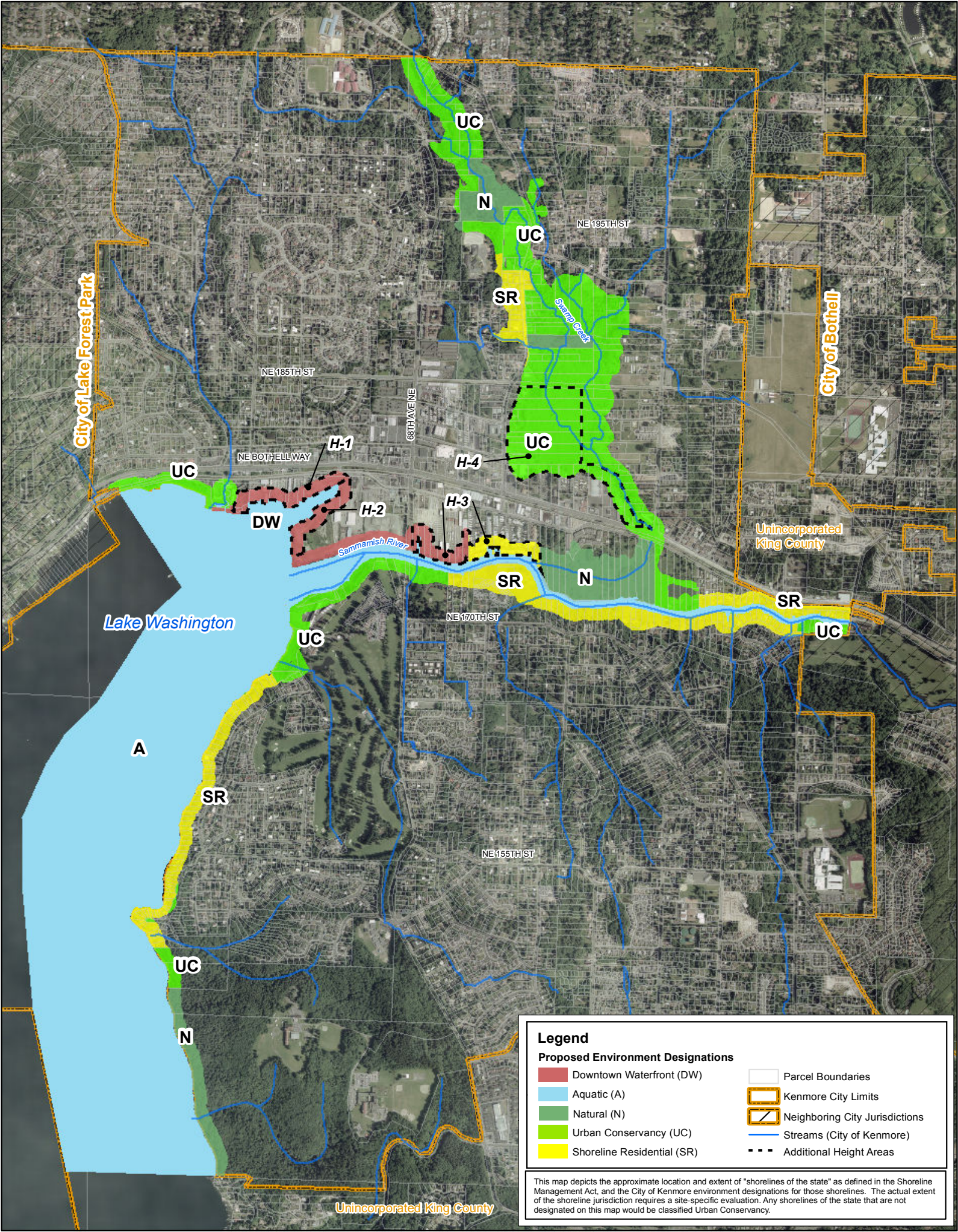
Shoreline Master Program Update City of Kenmore

			Shoreline Environment Designations Map
			SOURCE: King County, (2002)2007; City of Kenmore, 2007; ESA Adolfson, 2008

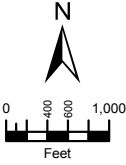
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SWAMP CREEK FLOODPLAIN





Shoreline Master Program Update City of Kenmore

			Map 1 Shoreline Environment Designations SOURCE: King County, (2002)2007; City of Kenmore, 2007; ESA Adolfson, 2008
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XB. Consideration of Amendments to the Shoreline Master Program (SMP) as Required and Suggested by the Department of Ecology- Debbie Bent, Director of Planning and Community



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memorandum

date June 20, 2011

to Lauri Anderson and Deborah Bent, City of Kenmore

from Teresa H Vanderburg, PWS

subject Kenmore SMP - Wetland Mitigation Ratios

Environmental Science Associates, Inc (ESA) is assisting the City of Kenmore in its Shoreline Master Program (SMP) update. As part of that assistance, we have prepared this technical memorandum in response to comments from the Washington State Department of Ecology (Ecology) on the SMP adopted by the City in September 2010. Specifically, this memorandum provides additional background information and scientific analysis from the local level to address questions related to the City's wetland mitigation ratios from the critical areas ordinance, Kenmore Municipal Code(KMC) 18.55. The wetland mitigation ratios, along with other parts of the wetland regulations, have been integrated into the SMP to provide continuing protection of wetlands within the City's shoreline jurisdiction. The information in this memo is based on ESA's professional experience working in the City of Kenmore as the City's on-call environmental consultant between 1998 and 2010. During that time frame, ESA wetlands staff provided peer review for approximately 280 permit applications that contained streams, wetlands, or their buffers. In addition, we assisted the City in its critical areas ordinance update using "best available science", which was approved in 2006. To understand the mitigation ratio first requires understanding the rating system.

Wetland Rating System

The City of Kenmore uses a three-tiered wetland rating system that has been tailored to the local environment. This system was developed by ESA during the critical areas ordinance update. The Kenmore rating system stratifies wetlands into 3 classes as follows:

Class 1 wetlands are the highest value wetlands in the City and are defined as:

1. Documented habitat for federal or state listed endangered or threatened fish, animal, or plant species; or
2. Wetlands listed as high quality habitats in the Natural Heritage Information System; or
3. Wetlands with irreplaceable ecological functions, including sphagnum bogs and fens or natural forested swamps; or
4. Wetlands of exceptional local significance, specifically those wetlands proximal to and influenced by the main stem of Swamp Creek, the Sammamish River, or Lake Washington.

Class 2 wetlands are:

1. Wetlands that have significant functions that may not be adequately replicated through creation or restoration; or
2. Wetlands associated with Type 2 or 3 streams; or
3. Wetlands greater than one acre in size; or
4. Wetlands equal to or less than one acre having three or more classes of wetland vegetation (as defined in Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979)); or
5. Wetlands containing a forested wetland class.

Class 3 wetlands are the lowest value and are defined as: "...those wetlands not rated as Class 1 or 2 wetlands, but are greater than 1,000 square feet in size."

Based on our experience in Kenmore, I anticipate that the vast majority of the wetlands within the City's shoreline jurisdiction will be rated as Class 1 wetlands using the City's rating system. Wetlands associated with Lake Washington, Swamp Creek and Sammamish River are, by definition, considered Class 1 wetlands. The City's wetland inventory shows that most of the wetland areas along these waterbodies are known and documented as Class 1 according to both the wetland inventory and Shoreline Inventory and Characterization Report (ESA Adolfson 2010). The likelihood that Class 2 or 3 wetlands exist within the shoreline jurisdiction is very low and limited to specific cases where: a) non-shoreline streams enter directly into Lake Washington or Sammamish River and wetlands are associated with those streams, or b) small, isolated wetlands areas of low value exist that have not yet been identified. For example, the two known wetlands at LakePointe (described in the LakePointe EIS) are both adjacent to and associated with Lake Washington and are therefore Class 1. If there are other wetlands on that site, as has been testified to but as yet not confirmed through a wetland report prepared by a wetland biologist, they are likely Class 2 or 3, depending on their specific habitats and size..

The Washington State Wetland Rating System was developed to provide a system that spans the entire range of wetlands in western Washington; however, the entire range of wetlands found in the state does not occur within the City. Wetlands rated as Class 1 wetlands in the City of Kenmore are roughly equivalent to Category II wetlands as determined under the Washington State Wetland Rating System for Western Washington (Ecology, 2004; revised 2006). To verify this assumption, Sara Noland and I rated the largest wetland within the City – Swamp Creek No. 3 – using the state rating system. This rating was done in the office without field investigations but based upon our 12 years of experience working in the City.

Swamp Creek No.3 has been identified by both King County and the City as a significant wetland feature. This wetland is an approximately 92-acre associated wetland lying within the floodplains of Swamp Creek and Little Swamp Creek. According to the point system in the state wetland rating forms, Swamp Creek No. 3 scored a total of 51 points – at the lower end of the Category II. This wetland scored 16 points for Water Quality, 16 points for Hydrology, and 19 points for Habitat. Using the Kenmore wetland rating system, Swamp Creek No. 3 is considered Class 1 due to its association with Swamp Creek, a shoreline of the state.

There are no known wetlands of Special Consideration in the City, such as coastal lagoons, estuarine wetlands, old growth forested swamps, or bogs. However, occurrences of "mature forested" wetland could be present in areas of the City, although I am not aware of any such wetland within the shoreline jurisdiction based on my experience. Should "mature forested" wetlands be present, they would automatically be considered Class 1 wetlands under Kenmore's rating system. Mature forested wetlands would be the only potential Category I wetland in the City according to the state rating system.

Wetland Mitigation Ratios

The wetland mitigation ratios proposed by the City in its SMP have been questioned by Ecology staff. Ecology has requested that the City's ratios be revised to match the ratios outlined in state guidance as documented in the Wetland Mitigation in Washington State – Part 1, Version 1 (Ecology, March 2006). Table 1a in Chapter 6 (Determining Appropriate and Adequate Compensatory Mitigation) provides the guidance on mitigation ratios for western Washington. The following table outlines the state guidance on mitigation ratios for wetlands that could possibly occur within the City of Kenmore.

Table 1. Mitigation Ratios for Western Washington (Ecology, 2008).

Category and Type of Wetland Impact	Creation or Re-establishment	Creation or Re-establishment and Enhancement	Enhancement Only
Category I Forested	6:1	1:1 C/R and 20:1 E	24:1
Category I based on score for functions	4:1	1:1 C/R and 12:1 E	16:1
Category II	3:1	1:1 C/R and 8:1 E	12:1
Category III	2:1	1:1 C/R and 4:1 E	8:1
Category IV	1.5:1	1:1 C/R and 2:1 E	6:1

Based upon my professional experience in Kenmore and training in the state rating system, Kenmore Class 1 wetlands are roughly equivalent to Category II wetlands in the state rating system. Kenmore Class 2 wetlands are equivalent to Category III wetlands using the state system, whereas Kenmore Class 3 wetlands are roughly Category IV state rated wetlands. Mature forested wetlands are the only type of wetland that could potentially occur in the City that would be rated Category I. Table 1 also includes the ratios recommended for wetlands that would be Category I based on functions, as a point of comparison only. As noted above, such wetlands are unlikely to exist in Kenmore, as demonstrated by the rating that would be assigned to Swamp Creek #3.

The Kenmore Critical Areas ordinance is generally designed to deter development within wetlands by requiring mitigation sequencing first (demonstrated avoidance and then minimization, then compensation). Further, work within Class 1 wetlands is prohibited under KMC 18.55.320.C with few exceptions as described in KMC 18.55. Therefore, the majority of the wetlands that are found in the shoreline jurisdiction will fall under this prohibition for fill with exceptions only for the public agency utility exception and shoreline variance processes.

Given comments from Ecology staff, we reviewed the mitigation ratio system and considered Ecology guidelines and recommendations for wetlands in the shoreline jurisdiction. ESA recommends that the current mitigation ratios for wetlands require only minor revision to bring the system into alignment with the state rating system for the type of wetlands that could potentially occur in Kenmore shorelines. This revised mitigation ratio system was developed using best available science and considering local information. This is consistent with the guidance in Wetland Mitigation in Washington State – Part 1 (page 72), which states:

The ratios provided as guidance in this document represent what a permit applicant should expect as requirements for compensation, thereby providing some predictability for applicants. However, regulatory agencies may deviate from the guidance. They must make an individual determination on the mitigation ratios required for specific wetland impacts to ensure that the compensation is proportionate to the proposed loss or degradation of wetland area and/or functions. In other words, the required

compensation represents a roughly proportional exchange for the proposed impacts (Dolan v. City of Tigard...(1994)) to provide and ensure the adequate compensation of wetland area and functions.

The following revised mitigation ratios are proposed for the Kenmore SMP (Table 2). These reflect the specific type and value of wetlands observed within Kenmore shoreline jurisdiction.

Table 2. Proposed Wetland Mitigation Ratios for Kenmore SMP

Category and Type of Wetland Impacts	Creation or Re-establishment (C/R)	Creation (C) or Re-establishment (R) plus Enhancement (E)	Enhancement (E) Only	Notes	Comparison to Ecology Wetland Rating System
Kenmore Class 1	3:1	1:1 C/R plus 6:1 E	Not allowed	KMC 18.55.320.C prohibits all activities and uses in Class 1 wetlands, except as provided through the public agency and utility exception or RUE (now shoreline variance).	Kenmore Class 1 is roughly equivalent to Ecology Category II. No known Category I wetlands in Kenmore. Largest significant wetland is Swamp Creek No. 3 which rates as Ecology Category II.
Kenmore Class 1 (Mature Forested)	6:1	1:1 C/R plus 20:1 E	Not allowed	Not known in City	Not known to occur but if present could be Ecology Category I.
Kenmore Class 2	2:1	1:1 C/R plus 4:1 E	Not allowed	Not likely in the Shoreline jurisdiction.	Kenmore Class 2 is roughly equivalent to Ecology Category III.
Kenmore Class 3	1.5:1	1:1 C/R plus 2:1 E	6:1	Not likely in the Shoreline jurisdiction	Kenmore Class 3 is roughly equivalent to Ecology Category IV.

Based on the requirement to ensure “no net loss” of wetland function, we have required that re-habilitation or creation be provided in all cases for Kenmore Class 1 and 2 wetlands. There is no option to allow for enhancement only for these types of wetlands. Enhancement-only is accepted for lower quality wetlands (Class 3). Therefore, no overall loss of wetland area will occur except with the lowest value wetlands.

We have included a provision for mature forested wetlands should these be located within the City. These would already be classified as Kenmore Class 1 wetlands. Since mature forested wetlands are rated Category I in the state system, we have revised the mitigation ratios for these wetlands to be identical to Ecology guidelines. Applicants with requests for alterations to Class 1 mature forested wetland habitats would need to go through a Shoreline Variance process in order to impact these specific wetland areas.

This proposed mitigation ratios are similar to Ecology’s recommended ratios, except with regard to the creation-plus-enhancement ratio recommended by Ecology for Category II. The slightly smaller enhancement component (6:1 proposed versus 8:1 in the Ecology system) still more than mitigates for wetland impacts in the City’s shoreline, and provides sufficient disincentive to prevent most wetland impacts. The mitigation

sequencing and prohibition on impacts to Class 1 wetlands, which represents the majority of wetlands in Kenmore's shoreline, has proven effective in the five years since the Kenmore CAO was adopted.

Permit History for Kenmore's Critical Areas Regulations

In response to Ecology's request for review, City staff evaluated the permit history for proposals affecting streams, wetlands and buffers under the new critical area regulations in KMC 18.55. City staff prepared a summary of stream, wetland and buffer-related permits issued since the adoption of the new critical area regulations on May 18, 2006 to see how the wetland mitigation provisions have been working across the city. This information is attached for reference.

The summary data indicate that there have been 64 applications for development since adoption of the new critical areas regulations in 2006. The majority of those have been short plat developments. Of the total 64 applications, 15 included a request to alter wetlands, streams, or buffers as part of the proposal. Only one of the 64 applications requested wetland fill, and that request was granted. The fill approved was for 25 square feet in a Class 3 wetland and mitigation through wetland and buffer enhancement was provided, which met the mitigation ratio. Only two of the 64 permits were located within shoreline jurisdiction and each of these were related to impacts to wetland or stream buffers only. Based on this permit data, it appears that the Kenmore critical area regulations, even with existing mitigation ratios, are working to protect wetlands in the City by requiring the demonstration of avoidance and minimization, prior to compensatory mitigation.

SUMMARY OF STREAM/WETLAND/BUFFER-RELATED PERMIT ACTIVITIES SINCE 5/18/06 ADOPTION OF CRITICAL AREA RULES:

Short plats

Total applications:	37
Wetland/stream/buffer alteration requests:	2 (0 in shoreline)
Wetland fill requests:	0

Long plats

Total applications:	9
Wetland/stream/buffer alteration requests:	3 (1 in shoreline)
Wetland fill requests:	1 (not in shoreline)

Description of wetland fill approval:

25 sq.ft. wetland filled (Class 3). Enhanced other wetland (939 sq.ft.) on-site, as well as buffer.

Commercial site development permits

Total applications:	11
Wetland/stream/buffer alteration requests:	3 (2 in shoreline)
Wetland fill requests:	0

Additional variances to wetland/stream buffers

Total applications:	7 (2 in shoreline)
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Reasonable use reduction requests (wetlands/streams)

Total applications:	0
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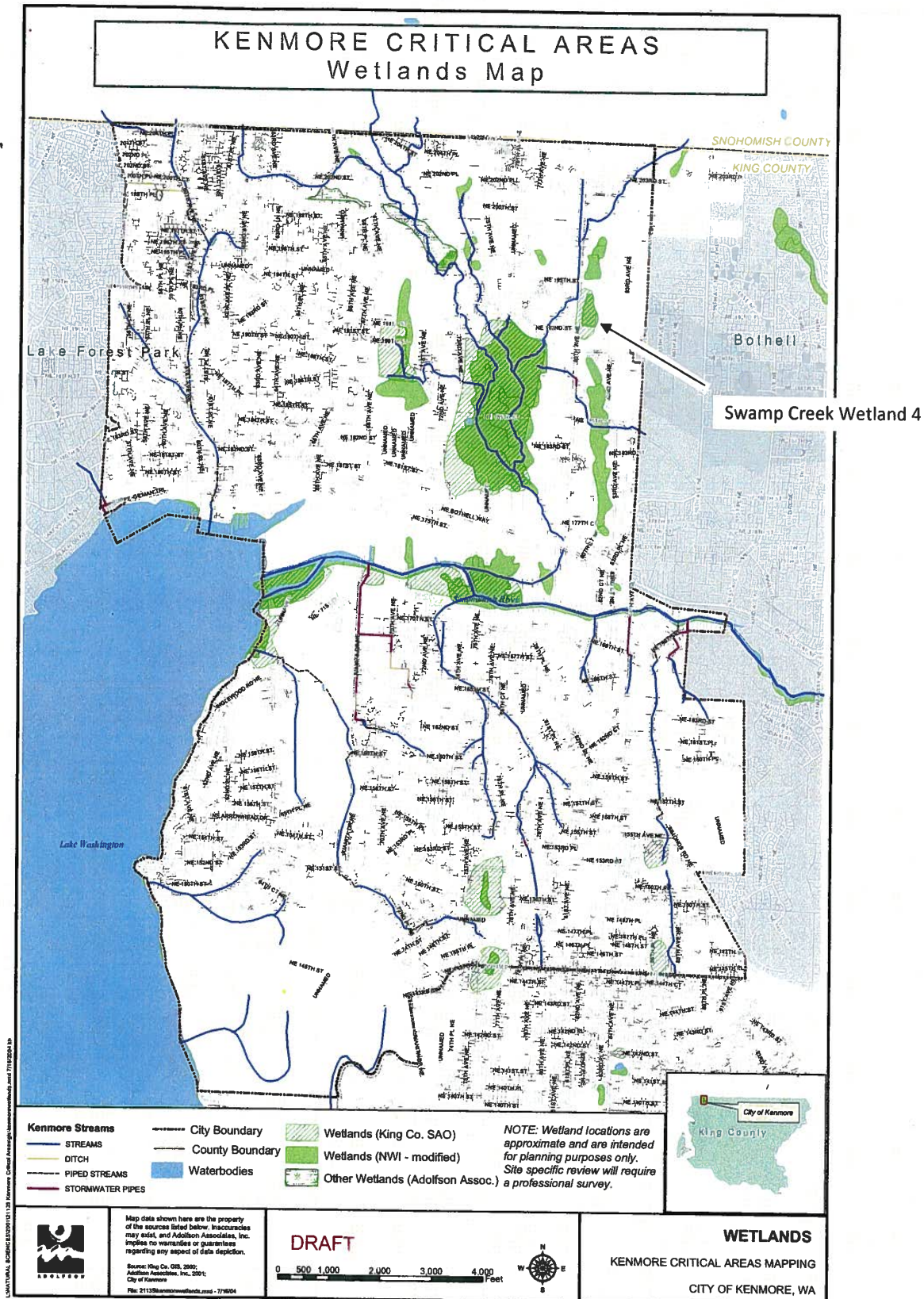
Public agency/utility exceptions (wetlands/streams)

Total applications:	0
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TOTAL APPLICATIONS:	64
TOTAL WETLAND/STREAM/BUFFER ALTERATION REQUESTS:	15 (23%)
TOTAL WETLAND FILL REQUESTS:	1 (1.6%)
WETLAND FILL APPROVALS:	1

Description of wetland fill approval:

25 sq.ft. wetland filled (Class 3). Enhanced other wetland (939 sq.ft.) on-site, as well as buffer.





The City of Kenmore

18120 68TH AVENUE NE PO Box 82607
KENMORE, WASHINGTON 98028

MEMO

TO: Frederick Stouder, City Manager

FROM: Debbie Bent, Director of Planning & Community Development *DB*
Lauri Anderson, Senior Planner *WA*

DATE: September 14, 2011

SUBJECT: Request from CalPortland Regarding Ecology's Required Change #6 to the Shoreline Master Program

On September 12, 2011, representatives of CalPortland met with staff to discuss a proposed amendment to Ecology's Required Change #6 to the Shoreline Master Program. If the Council wishes to pursue this change, it would need to be presented as an "alternative proposal" to Ecology.

Required Change #6 amends Section 16.55.050 addressing docks, piers, moorage, buoys, floats or launching facilities. The amended code section follows, with Ecology's required changes in yellow highlighting and CalPortland's request in gray highlighting.

The purpose of Ecology's required change was to acknowledge that non-residential docks may have different dimensional requirements than would be allowed by the new standards, which were developed primarily for residential uses.

CalPortland requests the change from "commercial" to "non-residential" in subsection C because they are concerned that it is not clear that their loading/off-loading barging facility (related to their manufacturing use) is a "commercial use." Staff supports this amendment and, in preliminary conversations with Dave Radabaugh at Ecology, he also expressed support.

16.55.050 Docks, piers, moorage, buoys, floats or launching facilities.

A. Any dock, pier, moorage, buoy, float or launching facility authorized by this chapter shall not interfere with navigation, **and**

B. Any dock, pier, moorage, buoy, float or launching facility authorized by this chapter shall be subject to the following requirements, or must demonstrate that the project provides an equal or greater degree of protection of ecological functions and anadromous species habitat. For the purposes of meeting this requirement, the director will review the required habitat management plan to determine whether the project is adequately protective.

1. Docks, piers, moorage, buoys, floats or launching facilities shall not exceed the minimum size necessary to serve the use for which they are designed (see 16.55.030.B.4).

2. Docks, piers, moorage, buoys, floats or launching facilities serving more than four single family residences must also meet the standards in KMC 16.50.050.
3. Only joint use boat lift, dock, pier, moorage, buoys, float or launching facilities may be permitted for multiple family dwelling unit development proposals.
4. Only one boat lift, dock, pier, moorage, buoy, float and launching facility may be permitted for each parcel developed with a single detached residential unit and only if the applicant demonstrates there is no other feasible option for shared use facilities. However, installation or retention of additional watercraft lifts beyond one, without a canopy, at a single residential use waterfront structure is allowed. A maximum of three lifts are allowed at a single residential use overwater structure. However, only two lifts can be ground-based, all other lift(s) must be floating or suspended lift(s).
5. Only joint use docks or piers are allowed on lots with less than 50 feet of waterfront except when lots abutting both sides of the subject lot already have a dock or pier.
6. The only structures permitted in the first 30 feet waterward of the ordinary high water mark are piers and ramps. All floats and ells must be at least 30 feet waterward of the ordinary high water mark.
7. No skirting is allowed on any structure.
8. Surface coverage (includes all overwater portions of the floats, ramps, and ells) shall be limited as follows:
 - a. Moorage facilities serving only one residential waterfront lot shall not exceed 480 square feet;
 - b. Moorage facilities serving two residential waterfront lots shall not exceed 700 feet; and
 - c. Moorage facilities serving three or more residential waterfront lots shall not exceed 1,000 square feet.
9. To protect anadromous salmon habitat, the following shall apply:
 - a. Docks with configurations that do not include any or all of the following elements shall be subject to the overall length and square footage limitations of this section and no portion of the dock shall exceed four feet in width, unless allowed in this subsection;
 - b. Piers shall not exceed four feet wide and shall be fully grated;
 - c. Ramps shall not exceed three feet wide and shall be fully grated;
 - d. Ells are allowed only over water with depths of nine feet or greater at the landward end of the ell; ells may be up to 6 feet wide by 20 feet long with a 2-foot-wide strip of grating down the center; or ells may be up to 6 feet wide by 26 feet long with grating over the entire ell;
 - e. Floats are allowed only over water with depths of 10 feet or greater at the landward end of the float; and floats may be up to 6 feet wide by 20 feet long with a 2-foot-wide strip of grating down the center;

- f. In no case may any moorage facility extend more than 150 feet waterward of the ordinary high water mark;
 - g. The first (nearest shore) piling shall be steel, 4-inch piling and at least 18 feet waterward of the ordinary high water mark. Piling sets beyond the first are not required to be steel, shall be spaced at least 18 feet apart and shall not be greater than 12 inches in diameter;
 - h. Piles shall not be treated with pentachlorophenol, creosote, chromated copper arsenate or comparably toxic compounds. If ammoniacal copper zinc arsenate pilings are proposed, the applicant will meet all of the Best Management Practices, including a post-treatment procedure, as outlined in the amended Best Management Practices of the Western Wood Preservers; and
 - i. When steel piles are installed, approved sound attenuation measures must be used.
- 10. Existing habitat features (e.g., large and small woody debris, substrate material, etc.) shall be retained and new or expanded moorage facilities placed to avoid disturbance of such features.
- 11. Invasive aquatic weeds may be removed with nonchemical means only, except that milfoil may be removed using chemicals provided that the chemicals are applied by a licensed applicator and approved for aquatic use.
- 12. In order to mitigate the impacts of new or expanded commercial moorage facilities, the applicant shall plant emergent vegetation (if site-appropriate) and a buffer of vegetation a minimum of ten feet wide along the entire length of the lot immediately landward of the ordinary high water mark. Planting shall consist of native shrubs and trees and, when possible, emergent vegetation. At least five native trees will be included in a planting plan containing one or more evergreen trees and two or more trees that like wet roots (e.g., willow species), per every 100 lineal feet of shoreline. Such planting shall be monitored for a period of five years according to an approved monitoring plan. This subsection is not intended to prevent reasonable access through the shoreline critical area buffer to the shoreline, or to prevent recreational use of the shoreline critical area. This requirement may be waived or reduced for water-dependent transportation uses where it is demonstrated that vegetation could result in safety or navigation hazards.
- 13. No private moorage or other structure waterward of the ordinary high water mark, including structures attached thereto, shall be closer than twelve feet to any adjacent property line except when there is a mutual agreement of adjoining property owners. Excepted from the requirements of this section are boat lifts or portions of boat lifts that do not exceed thirty inches in height measured from ordinary high water mark.
- 14. Proposals to repair existing legally established moorage facilities where the nature of the repair is not described in KMC 16.55.030 of this section shall be considered minor repairs and are permitted, consistent with any applicable standards of this Title, Title 18 and any other applicable codes or regulations.
- 15. No covered boat lift, dock, pier, covered moorage, covered float, or other covered structure is permitted waterward of the ordinary high water mark, except as provided below:
 - a. Submerged, free-standing mechanical boat lifts associated with single detached residential docks or piers and recreational watercraft may be covered with a canopy, provided:
 - i. No canopy shall be more than twenty-five feet in length or wider than fifteen feet;

- ii. No portion of the canopy shall exceed a height of twelve feet above the ordinary high water mark;
 - iii. The canopy shall at no time have any side partly or wholly enclosed;
 - iv. The highest portion of the canopy shall be located below the lowest grade point on the waterward side of the existing homes on surrounding properties;
 - v. Canopies shall be made out of canvas or other such non-toxic materials;
 - vi. Canopies shall be of a translucent material to allow light transmission;
 - vii. The total overwater coverage of the piers, floats, ramps, ells, and canopy for a single family residence with a single-use moorage shall not exceed 600 square feet; and
 - viii. Only one boat lift canopy per single detached residence shall be allowed.
- b. Covered moorage may be provided for commercial boat repair facilities.
16. No dwelling unit may be constructed on a dock or pier.
17. Buoys shall meet the following conditions:
- a. Buoys shall not impede navigation;
 - b. The use of buoys for moorage of recreational and commercial vessels is preferred over pilings or float structures;
 - c. Buoys shall be located and managed in a manner that minimizes impacts to aquatic habitat;
 - d. No more than four buoys per acre are allowed.

C. Proposals that do not meet the requirements of subsections B.6, 8, 9 or 15 of this section and that are designed to support a ~~commercial~~ non-residential water-dependent use, or to provide public access, or to serve residential uses, may be considered by the director. For any alternative proposal, the applicant must demonstrate that the proposed deviation is the minimum necessary to meet the needs of the specific use proposed, and provides an equal or greater degree of protection of ecological functions and anadromous species habitat than would strict adherence to the standards. For purposes of meeting this requirement, the director will review the required habitat management plan to determine whether the project is adequately protective.