



The City Of Kenmore

P. O. Box 82607 · Kenmore, Washington 98028-0607

By E-mail and First Class Mail

December 31, 2009

Jack McCullough
McCullough Hill, PS
701 Fifth Avenue, Suite 7220
Seattle, WA 98104

Re: LakePointe Project--Commercial Site Development Permit Extension

Dear Mr. McCullough:

Thank you for the recent discussions on the above subject. By letter dated October 27, 2008, you requested the City of Kenmore to extend the LakePointe Commercial Site Development Permit ("CSDP") to December 31, 2012. By letter dated December 18, 2008, the City approved a one-year extension of the CSDP to December 31, 2009, to allow you time to hire a traffic consultant and to provide the City with additional traffic data.

On September 14, 2009, you sent to the City an e-mail with an attached Transpo Group memo dated June 22, 2009. The City Engineer reviewed the June 22, 2009 memo and traffic volume information prepared by the Transpo Group. On December 1, 2009, Debbie Bent, the Community Development Director, sent to you an e-mail with an attached City Engineer memo dated November 30, 2009. The City Engineer's memo agreed with the information provided by the Transpo Group.

By letter dated December 2, 2009, you renewed the previous request for an extension of the CSDP to December 31, 2012. In our conference call yesterday, you and Gary Sergeant provided additional information in support of the extension request.

Due to the substantial period of time that has passed since the CSDP was approved in 1998, and to the inability of Mr. Sergeant to move forward with the LakePointe project, I am asking all of us to further review and analyze the CSDP and the other project approvals, including the Master Plan, to determine whether our mutual best interests would be served by amending the project approvals.

Therefore, based upon your December 2, 2009 letter and the information you and Mr. Sergeant provided yesterday, the City will approve a temporary extension of the CSDP

to February 19, 2010. During the temporary extension, we hope to agree upon a six-month process for considering amendments to the project approvals. During this 45 day temporary extension period, we would expect you would not file any permit applications. If a process is agreed upon before the 45 day expiration of the temporary extension, the City will agree to extend the CSDP for six months for consideration of amendments to the project previous approvals. If the process is not agreed upon before expiration of the temporary extension, the City reserves the right to approve or deny your request for an extension to December 31, 2012, or to any other date you request prior to February 19, 2010.

If you have any questions, please feel free to call me at 425-398-8900.

Sincerely,

A handwritten signature in blue ink that reads "Frederick C. Stouder". The signature is fluid and cursive, with the first name being the most prominent.

Frederick C. Stouder
City Manager

cc: Mr. Gary Sergeant, Pioneer Towing Company
Mayor and Members of the City Council
Debbie Bent, Community Development Director
Rod Kaseguma, City Attorney
Lakepointe file

MCCULLOUGH HILL, PS

December 2, 2009

VIA ELECTRONIC MAIL

Ms. Debbie Bent, Director
Department of Community Development
6700 N.E. 181st Street
P.O. Box 82607
Kenmore, WA 98028-0607

Re: LakePointe Project, File No. L010022
Request for CSDP Extension

Dear Ms. Bent:

We are writing on behalf of LakePointe, Inc. and Pioneer Towing Company ("LakePointe") to renew our previous request for an extension of the above-referenced Commercial Site Development Permit (the "CSDP") pursuant to KCC Sec. 21A.41.100 (as amended). By letter dated October 27, 2008, we previously requested an extension of the CSDP to December 31, 2012. You responded by letter dated December 18, 2008, indicating that a one-year extension would be granted (to December 31, 2009) and that the further requested extension would be considered based on the results of additional transportation analysis to be performed by LakePointe.

Specifically, you asked us to engage the services of a transportation engineer to reevaluate current background traffic conditions on SR522, in order to determine if the assumptions for background traffic contained in the environmental impact statement ("EIS") for the project remained accurate. LakePointe engaged the services of The Transpo Group (the same transportation engineers who have conducted transportation analysis for the project in the past). Transpo worked with the City in 2009 to develop an appropriate scope of their evaluation, and presented the results of its work in a memorandum dated June 22, 2009. The Transpo memorandum indicates that traffic volumes in the SR522 corridor have generally decreased to levels below the 1997 existing traffic counts (on which the EIS was based). Based on this analysis, Transpo concluded that the evaluation of transportation impacts for the project contained in the EIS remains valid.

Ron Loewen, the City's transportation engineer, reviewed the Transpo analysis and concurred with this conclusion by memorandum dated November 30, 2009. Mr. Loewen agreed that an extension of the CSDP would be appropriate. A copy of Mr. Loewen's memorandum, as well as copies of the other letters and memorandum noted above, is attached for reference.

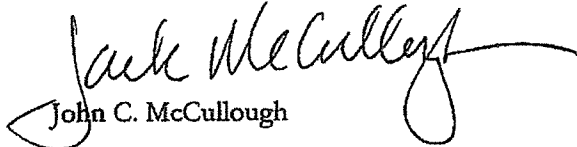
The grounds for extension of the CSDP pursuant to the criteria set forth in KCC Sec. 21A.41.100 (as amended) remain as detailed in our October 27, 2008 letter request, and are hereby incorporated

December 2, 2009
Page 2 of 2

by reference. Indeed, since October 2008, market demand in all product types (office, retail and residential) has deteriorated significantly, and constriction in the lending markets has resulted in a general lack of availability of capital for new development projects. In sum, conditions outside the control of the applicant establish an even more compelling case for granting of the CSDP extension request.

We therefore renew our request for an extension of the period within which the first building permit application for the Project must be submitted to December 31, 2012, pursuant to Section G.1 of the CSDP and KCC Sec. 21A.41.100 (as amended). Please also confirm that the concurrency certificate for the Project will also automatically be extended through this date. Thank you for your attention to this request.

Sincerely;


John C. McCullough

JCM:ldc

cc: LakePointe, Inc.

Debbie Bent

From: Debbie Bent
Sent: Tuesday, December 01, 2009 10:44 AM
To: 'Jack McCullough'
Subject: FW: lakepointe
Attachments: Scan.PDF

Jack - Attached 11/30/09 memo from the City Engineer with response to the additional traffic data provided by Transpo (received via e-mail 9/14/09). I understand that based on the City engineer's response you intend to submit a letter restating the request for an extension of the CSDP to 12/31/12. Thanks - Debbie

Deborah A Bent
Community Development Director
City of Kenmore
7330 NE Bothell Way, Suite 201
PO Box 82607
Kenmore, WA 98028

Phone: 425 398-8900
e-mail: dbent@ci.kenmore.wa.us



The City of Kenmore

P.O. BOX 82607, KENMORE, WA 98028

MEMO

To: Debbie Bent
From: Ron Loewen *RL*
Date: November 30, 2009
Subject: Lakepointe Traffic Volumes

We have reviewed the information provided by Transpo Group, attached, and concur with their analysis. There is no need to revise the original traffic analysis and an extension of the permit would be acceptable.

MEMORANDUM

Date:	June 22, 2009	TG:	09125.00
To:	Gary Sergeant, Pioneer Towing Co.		
From:	James Webb, PE, PTOE Kurt Gahnberg		
cc:	Jack McCullough, McCullough Hill		
Subject:	Lakepointe Traffic Volume Review		

The City of Kenmore issued a Notice of decision in May 2000 for the proposed Lakepointe project, based on analysis of build-out project impacts through 2005. Since August 2004, City of Kenmore staff has granted two extensions for the submittal of a building permit application for the proposed project. The extensions have, in part, been based on a review of traffic volume trends since the completion of the traffic study. The initial extension, based on a review conducted in 2004, showed that traffic levels adjacent to the project site had remained unchanged or declined from those documented in the EIS analysis. The subsequent extension, based on a review conducted in 2006, again showed that traffic levels adjacent to the project site had remained unchanged or declined from those documented in the EIS analysis. Therefore, the analysis of transportation related project impacts documented in the EIS was determined to have remained adequate.

The purpose of this memorandum is to provide an overview of recent traffic volume growth trends adjacent to the proposed Lakepointe project site in support of a further extension to the commercial site development permit (CSDP) issued for the proposed project.

Since June 2007, and anticipated to continue through the end of 2009, SR 522 through the City of Kenmore (between approximately 65th Avenue NE and 83rd Place NE) has been under construction. Based on conversations with City of Kenmore staff, traffic volumes along the corridor are believed to be lower than normal due to the ongoing construction activity. With this in mind, it was not possible to utilize recent traffic counts in the immediate vicinity of the Lakepointe project site, or collect new count data. Therefore, traffic volumes trends outside the construction zone were evaluated to identify recent traffic volume trends.

Historical count data published by WSDOT were reviewed to establish recent trends in traffic volumes along the SR 522 corridor. The traffic volumes are summarized in Attachment 1. The previous Lakepointe Master Plan analysis assumed that existing 1997 traffic volumes would grow at a rate of 2.0 percent per year to establish 2005 without-project traffic volume forecasts.

Comparing the volumes shown in Attachment 1 for the period around 1997 to those for around 2005 shows that volumes typically remained unchanged or have decreased. This is consistent with the findings of the previous traffic volume analyses. Comparing volumes from around 2005 to the most current volumes, again shows that volumes have typically remained unchanged or decreased.

Therefore, traffic counts collected since the 1997 data used as the basis for the Master Plan show that traffic volumes have decreased to levels below the 1997 existing counts. The results of this analysis are consistent with the analyses conducted in 2004 and 2006 for the City in support of the previous extensions: that traffic volumes would have had to have grown at an unattainable rate to exceed the 2005 forecasts documented in the EIS.

Therefore, based on a review of traffic volumes, we believe that the City would be justified in granting a further extension of the CSDP without requiring further analysis or mitigation measures.

M:\09\09125 Lakepointe 2009\Documents\Memos\Draft volume memo.doc

Debbie Bent

From: Jack McCullough [Jack@mhseattle.com]
Sent: Monday, September 14, 2009 3:30 PM
To: Debbie Bent
Subject: Lakepointe Memo
Attachments: Lakepointe 2009 Volume Memo.pdf

Here is the memo. I'll give you a call next week some time.

MEMORANDUM

Date:	June 22, 2009	TG:	09125.00
To:	Gary Sergeant, Pioneer Towing Co.		
From:	James Webb, PE, PTOE Kurt Gahnberg		
cc:	Jack McCullough, McCullough Hill		
Subject:	Lakepointe Traffic Volume Review		

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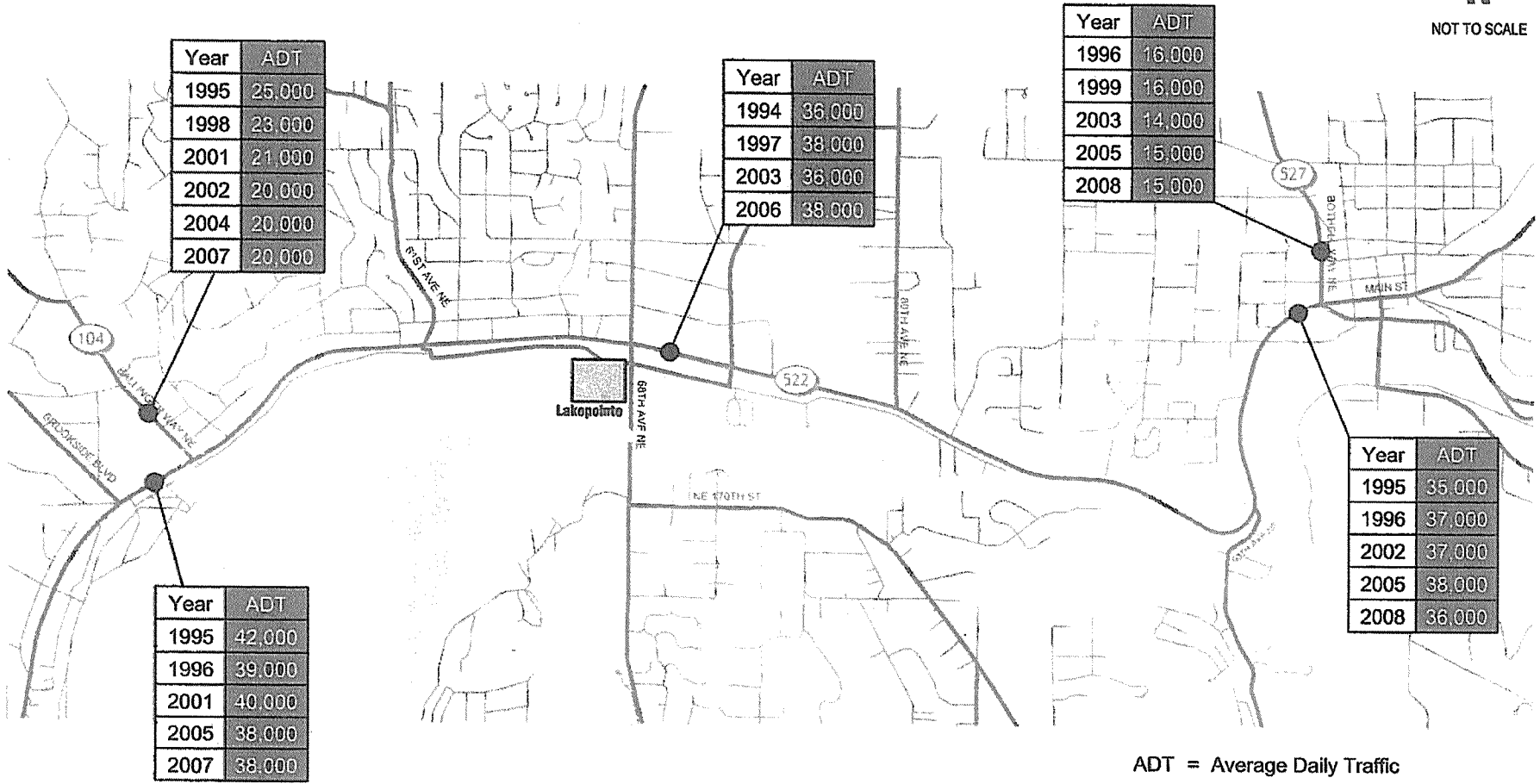
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Therefore, based on a review of traffic volumes, we believe that the City would be justified in granting a further extension of the CSDP without requiring further analysis or mitigation measures.

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NOT TO SCALE



Historical Traffic Volume Comparison

Lakepointe 2009

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ATTACHMENT



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The City Of Kenmore

P.O. Box 82607 • Kenmore, Washington 98028-0607

December 18, 2008

Mr. Jack McCullough
McCullough Hill, PS
701 Fifth Avenue, Suite 7220
Seattle, WA 98104

Re: LakePointe Project Commercial Site Development Permit Extension

Dear Mr. McCullough:

The City of Kenmore has considered your letter dated October 27, 2008 requesting a four year extension to December 31, 2012 of the LakePointe Commercial Site Development Permit (CSDP) for submittal of a building permit application for some portion of Phase I of the LakePointe project.

The City's December 4, 2006 letter previously granted an extension to December 31, 2008. The City stated in this letter that in connection with consideration of further permit extensions additional AM and PM peak hour turning movement traffic counts must be taken at the intersections of 68th Avenue NE and SR522, NE 170th Street and Juanita Drive NE and 61st Ave NE and SR522. In addition a three day 24 hour roadway count must be taken on SR522 west of 61st Avenue NE and west of 68th Avenue NE south of NE 175th Street NE. The counts must be taken between March and October.

City staff met with you and Mr. Gary Sargeant November 20, 2008. At that meeting you and Mr. Sargeant agreed to contract for services with The Transpo Group or other traffic consultant to provide the additional traffic data for City review. In order to obtain the traffic counts and allow time to review the information, the City hereby provides a one year extension of the CSDP to December 31, 2009. For the purposes of this limited one-year extension, the City finds that the extension meets the criteria for extension set forth in KMC 18.90.070, as described in your letter dated October 27, 2008. However, your requested extension beyond this date cannot be evaluated until the requested traffic information is submitted. If you submit the traffic information as requested, the City will then consider your request for extension to December 31, 2012 in accordance with KMC 18.90.070 which governs extensions of commercial site development permit applications.

6700 NE 181st Street

Office: (425) 398-8900

Fax: (425) 481-3236

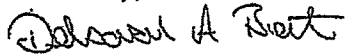
Email: cityhall@ci.kenmore.wa.us

Website: www.cityofkenmore.com

LakePointe Commercial Site Development Permit Extension, Page 2
December 18, 2008

If you have any questions, please feel free to call me at 425-398-8900.

Sincerely,

A handwritten signature in cursive script that reads "Deborah A Bent".

Deborah A Bent, AICP
Community Development Director

Cc: Fred Stouder, City Manager
Lakepointe file

MCCULLOUGH HILL, PS

October 27, 2008

VIA ELECTRONIC MAIL

Ms. Debbie Bent, Director
Department of Community Development
6700 N.E. 181st Street
P.O. Box 82607
Kenmore, WA 98028-0607

Re: LakePointe Project, File No. L010022

Dear Ms. Bent:

We are writing on behalf of LakePointe, Inc. and Pioneer Towing Company to request an extension of the above-referenced Commercial Site Development Permit (the "CSDP") pursuant to KCC Sec. 21A.41.100 (as amended). Under this Code section, an extension for the CSDP should be approved based on satisfaction of the following conditions:

1. If initial building permits have not been submitted or the project has not been completed due to causes beyond the applicant's control, such as litigation, acts of God, unanticipated site conditions or adverse economic market conditions;
2. The applicant has shown a good faith effort to commence or complete the project within the time previously allotted;
3. Conditions identified as part of SEPA or other permit processes remain appropriate to address project impacts. The Director has the authority to establish additional conditions designed to address incremental changes in project impacts arising or occurring as a result of any extensions of time; and
4. The period of the extension granted is reasonable in light of the conditions warranting the extension and the incremental changes, if any, in project impacts.

Status

Section G.1 (page 62) of the CSDP provides that the term of the permit shall be governed by the approved Phasing Plan, which is attached as Exhibit D to the CSDP. Section 3.b(3) of the Phasing Plan provides that the applicant "shall submit a building permit application for some portion of Phase 1 within one year of the date of approval of the Master Plan." The Master Plan was approved, with the CSDP, in August 1998.

Section 3.b(4) of the Phasing Plan, however, provides for tolling of this one-year period:

The time period listed in subsection (3) above shall be tolled during the pendency of an administrative or judicial appeal of the Commercial Site Development Permit or Shoreline Substantial Development Permit, during the pendency of litigation related to the project or to the property comprising the project site, and in the even of force majeure. Force majeure means extraordinary natural elements or conditions, war, riots, King County labor disputes or other causes beyond the reasonable control of the applicant.

In accordance with this section, the City previously determined that the one-year period set forth in subsection (3) for the filing of the first building permit for any portion of Phase 1 was tolled. First, an administrative appeal of the CSDP was filed in 1998, and was not ultimately resolved until August 2000. Second, the applicant was seeking approval of a clean-up action plan from the Department of Ecology ("Ecology") and negotiating the terms and conditions of a settlement of litigation to be filed by Ecology concerning the clean-up of contamination at the project site. This litigation settlement took the form of a consent decree, which was entered on August 14, 2001.

The City determined that the consent decree process overseen by Ecology constituted both "litigation related to the property comprising the project site" and "force majeure" (i.e., a cause of delay beyond the reasonable control of the applicant). Resolution of the consent decree process is an express condition of the CSDP. The proponent did not pursue an independent remedial action, but agreed with Ecology's view that institution of litigation and settlement of issues via a consent decree was the appropriate course for this site. In addition, because the project site has a "number one" ranking on Ecology's priority clean-up list, development of the project was not financeable, absent an approved consent decree. The City determined that this constituted a cause for delay in project development beyond the reasonable control of the proponent. Thus, the one-year period under Section G.1 of the CSDP commenced on August 14, 2001. The City thereafter extended this period to December 31, 2008.

Grounds for Extension

The grounds supporting this request for extension are described below:

1. Delay Beyond Applicant's Control. Since the date of the most recent CSDP extension in 2006, the overall development market in the Puget Sound area peaked and has been gradually declining. The previous improvement in market conditions led to some new development projects in the Seattle and Bellevue CBDs, but did not penetrate throughout the region. In this time, effective leasing rates for office developments in the Kenmore market continued to make the development of new office product in this submarket infeasible, and the financing for new hotel and large-scale retail projects in this submarket remains problematic. Residential condominium projects are simply not financeable at this time. Furthermore, the regional market is only beginning to see a reversal of the previous rental rate erosion in the multifamily market, which has complicated the prospect of financing for that product area. The gradual collapse of credit markets beginning in 2007 has effectively dried up funding sources for development of this site. In summary, each component of the LakePointe mixed-use project has continued to suffer considerably in the past two years at a regional and/or

local market level. These economic hardships have made the LakePointe project infeasible to finance in the current market climate, which has deterred the interest of investors and developers. Additional time is required to allow the local real estate market to improve for each of the use categories projected for this development. In particular, the applicant does not expect the markets to heal sufficiently to make substantial development planning for the site likely for another 18 to 24 months.

Furthermore, as we have noted before, the integrated mixed-use design of the Project reduces the flexibility of the Project to respond to market challenges such as those described above, and therefore increases the vulnerability of the Project to adverse market conditions in any given product area (i.e., office, residential, lodging, retail). In this way, Project design created unanticipated problems for the applicant. To increase the flexibility of the Project to respond to these market conditions, the applicant is evaluating the possibility of modifications to Project design and adjustment to the mix of project uses. Such modifications would seek to reduce the interdependence of internal Project phases, thereby increasing the potential for phased development of the Project. At the same time, the applicant is exploring alternative construction scenarios for the Project, in order to reduce overall Project cost. These market-related construction and design problems were not anticipated by the applicant, and warrant the granting of the requested extension.

The economic conditions of the market and the project resulted in the departure earlier in this decade of First Wellington Crown Corporation, the original joint-venture developer for the Project. Wellington had expended two years and millions of dollars in pursuit of the development of the Project. Wellington's departure necessitated the search for a new joint-venture partner for development of the Project. The applicant has worked with several developers in the last four years. More than one of these prospective developers devoted several months to its investigation of project feasibility, each reaching the conclusion that current local market conditions do not support development of the project at this time. The applicant continues to look for joint venture partners for the Project, though credit market and general economic conditions make such investment unlikely in the next 18 to 24 months.

These economic hardships are significant, are beyond the control of the applicant, and warrant the granting of the requested extension.

2. Good Faith Effort. As you are aware, the CSDP approval for the Project is not a "construction level" approval (i.e., development of more detailed schematic and construction plans are required prior to project development). In the last several years (since initial issuance of the CSDP), the applicant and its original partner (and other prospective developers since) have expended millions of dollars for architectural, engineering, consulting, environmental, and legal services associated with the development of such schematic plans for the Project. In addition, during this period of time significant efforts have been made to secure financing commitments for the Project and tenant commitments for the Project. Unfortunately, as noted above, the

intervention of adverse market conditions, both at the national and regional level, interrupted this process and led to the departure of the applicant's original joint venture partner. Because of these conditions, and the due diligence review currently underway by the applicant's new development partner, it would be imprudent and ineffective to devote further resources to completing construction permit drawings for the Project, since those drawings will need to be generated and approved by such development partners.

Nevertheless, the applicant and its team have made significant good-faith efforts in the last several years (and previous to that) to commence the Project construction permitting within the time allotted in the CSDP. These efforts included the completion in 2004 of the Phase 1 shoreline enhancement work along the Sammamish River shoreline of the project site.

3. Appropriateness of Conditions. As you are aware, the CSDP includes some 20 pages of specific conditions (and several additional appendices setting forth further conditions) generated by the original SEPA and permit review process for the Project.

Transportation. Transportation-related mitigation for the Project is set forth in the Transportation Mitigation Agreement, which is Attachment E to the CSDP. This Agreement imposes millions of dollars in traffic and transportation-related mitigation obligations on the Project. This analysis and mitigation was based on an assumption that trip generation from proposed uses in the Project would be approximately 13,600 average daily trips. General Condition B. The City has reserved authority to require additional review if trip generation levels from the Project are anticipated to exceed this level. No new or modified uses are proposed for the Project that would be likely to increase such traffic levels.

Additional traffic analysis for the Project was conducted subsequent to the CSDP issuance, during the extensive Hearing Examiner proceedings in 1999 and 2000. This analysis is in the City's Project files. In particular, the May 26, 2000 Notice of Decision from the City includes several of these additional reports. This additional analysis updated Project traffic review for full build-out. In addition, this analysis (and the hearing process with which it was associated) resulted in the adoption by the applicant of several additional mitigation measures, beyond those incorporated in the original CSDP decision.

In 2006, the applicant engaged The Transpo Group to evaluate existing conditions on the SR-522 corridor and to compare those conditions to the then-existing traffic volumes (from 1995) on which the project EIS and mitigation was based. A copy of this report is on file at the City. It indicated that 2006 traffic volumes on the SR-522 corridor were actually lower than the 1995 volumes which formed the basis for EIS and mitigation review for the project. For this reason, the City determined that additional mitigation in the area of transportation was not necessary in connection with the proposed permit extension. In the two years since, there has not been a

significant increase in background traffic volumes. At the same time, the City has undertaken substantial improvements to the SR-522 corridor. The effect of these improvements will be to facilitate traffic operations throughout the corridor. Thus, the City's conclusion that additional mitigation for Project-related traffic impacts is not required remains true today.

Shoreline Enhancement. No modifications to the Project are proposed that would alter the existing Project conditions, nor have background conditions changed significantly since issuance of the CSDP (other than the applicant's implementation of certain shoreline enhancement improvements in 2004). Thus, existing project conditions are appropriate to address Project impacts.

Drainage. The Project review determined that, as mitigated, the Project would not result in adverse impacts in this area. The Project does not propose any new additional impervious surfaces, or any uses that would increase or intensify drainage flows. The City will review final drainage plans for the Project when they are submitted. Thus, existing conditions are appropriate to address Project impacts.

Hazardous Waste. Since the issuance of the CSDP, the applicant has obtained consent decree approval (with Ecology) from the courts. In addition, no new or modified uses are proposed that would alter the scope of impacts addressed in the Project review. Thus, existing conditions are appropriate to address Project impacts.

Sensitive Areas. The Project review included a several-year-long comprehensive study of habitat and sensitive area issues associated with the Project site. All impacts of the Project were thoroughly reviewed and mitigated. No new or modified uses are proposed that would alter the conclusions reached in the Project review. Thus, existing conditions are appropriate to address Project impacts.

Other Issues. The extensive conditions applicable to the Project more than adequately mitigate any anticipated impacts in other areas. Thus, existing conditions are appropriate to address Project impacts.

4. Period of Extension. Given the collapse of credit markets internationally, the conditions warranting the requested extension are likely to require two years to correct itself. Any new developer identified by the applicant will also need a period of time to reevaluate the mix of uses in the Project under new market conditions, and to prepare a schematic design for the Project.

Thus, it is anticipated that market conditions will not adequately improve so that new development planning can occur for approximately two years. On this schedule, the applicant is hopeful that such development planning can occur in year three, with another year devoted to preparation of the complex construction permitting documents the project will require. Thus, initial building permit applications are not likely to be prepared for submittal much before the end of calendar 2012. The applicant therefore

October 27, 2008
Page 6 of 6

requests an extension of the period within which the first building permit application for the Project must be submitted to December 31, 2012. All Project review, including the updated transportation review, is current through this date.

We would therefore appreciate it if the City would grant an extension of the period within which the first building permit application for the Project must be submitted to December 31, 2012, pursuant to Section G.1 of the CSDP and KCC Sec. 21A.41.100 (as amended). Please also confirm that the concurrency certificate for the Project will also automatically be extended through this date. Thank you for your attention to this request.

Sincerely;



John C. McCullough

JCM:ldc

cc: LakePointe, Inc.

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