

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: October 13, 2010

PLAT/PROJECT NAME: **HIGHBRIDGE ESTATES**

APPLICANT/
LANDOWNER: Craig Sears
Highbridge Road, LLC
15 Lake Bellevue, SPC 102
Bellevue, WA 98005

FILE NO.: 05-122348 SD

TYPE OF REQUEST: Rural Cluster Subdivision (RCS)

DECISION (SUMMARY): **APPROVED WITH CONDITIONS**

BASIC INFORMATION

LOCATION: Located on both sides of High Bridge Road, ½ mile east of its intersection with Ricci Road, and approximately 2 miles southwest of the City of Monroe, in Section 22, Township 27 North, Range 6 East, W.M., Snohomish County, Washington.

ACREAGE: 84.7 acres

NUMBER OF LOTS: 35

AVERAGE LOT SIZE: 42,179 square feet

MINIMUM LOT SIZE: 32,873 square feet

GROSS DENSITY: 0.41 du/ac (gross)

COMPREHNSIVE PLAN DESIGNATION: Rural Residential-5 (1 du per 5 acres, Basic)

ZONING: R-5

UTILITIES:
Water: Cross Valley Water District
Sewer: On-site individual septic

SCHOOL DISTRICT: Monroe School District No. 103

FIRE DISTRICT: Snohomish County Fire District No. 3

PDS STAFF RECOMMENDATION: Approve with conditions.

NOTE: For a complete record, an electronic recording of the hearing in this case is available in the Office of the Hearing Examiner.

THIS MATTER having come before the Hearing Examiner on September 14th, 15th, and 23rd, 2010, the witnesses having been duly sworn, the testimony of witnesses having been heard, and all exhibits admitted into evidence having been considered, the Examiner enters the following Findings of Fact, Conclusions of Law and Decision based on a preponderance of the evidence:

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

Based on all the evidence in the record, the following Findings of Fact are entered:

A. Introduction and Procedural History

1. The Highbridge Estates application was originally submitted to Planning and Development Services (PDS) on April 12, 2006, and was determined by PDS to be complete on May 9, 2006. The project is vested to the County Codes that were in effect on the date of a complete application, which was April 12, 2006.
2. A Determination of Nonsignificance (DNS) was issued on August 21, 2007 (Exhibit 22), and the notice for the DNS and for the public hearing was published on August 29, 2007 (Exhibit 24).
3. The Public Hearing was scheduled for October 23, 2007. At the hearing, Deputy Hearing Examiner Ed Good determined that the mailed notice was deficient and cancelled the public hearing. The Deputy Examiner issued an order on October 30, 2007 (Exhibit 67) and remanded the project to PDS to re-notice for a new public hearing. The new Notice was published on November 21, 2007, and included both SEPA appeal language and the new hearing date of January 10, 2008. A SEPA appeal was filed timely on December 5, 2007.
4. The public hearing was held over a three-day period on January 10, 15, and 25, 2008. Examiner Good issued a decision on March 14, 2008, wherein the application was denied without prejudice for failure to make adequate provisions for potable water. In addition, Examiner Good granted the SEPA appeal vacated the DNS, ordering PDS to issue a new determination after an application was re-submitted making adequate provision for potable water. The decision was appealed to County Council on April 17, 2008 (Exhibit 246). On June

25, 2008, in Motion 08-432 (Exhibit 254), Council remanded the matter back to the Hearing Examiner, with instruction to render a decision with appropriate Findings of Fact and Conclusions of Law.

5. On remand from the Council, the matter was considered by former Hearing Examiner Barbara Dykes, as Deputy Examiner Good was no longer working for the County. On December 4, 2008, Examiner Dykes issued an Order granting the SEPA appeal in part, and remanding the application back to PDS for further environmental review, instructing PDS to issue a new SEPA threshold determination. The Hearing Examiner deferred substantive review of the rural cluster subdivision application until the new SEPA review was complete. (Exhibit 256)
6. In response, the Applicant filed a petition for reconsideration with the Hearing Examiner on December 15, 2008. On January 7, 2009, Kathleen Gamble et al., also filed a petition for reconsideration, which the Examiner ruled was timely based on a procedural error in the Order (failing to specify the reconsideration process and time period). The Applicant also filed several motions to dismiss the Gamble petition for reconsideration, which were denied by the Examiner. On February 4, 2009, Examiner Dykes issued an Order on Reconsideration wherein the petitions for reconsideration were denied in part and granted in part. (Exhibit 271) At the same time, the Examiner issued an "Order Revised on Reconsideration" (hereinafter "Revised Order"), in which the SEPA appeal was granted in part and the application was remanded back to PDS for further SEPA review and issuance of a new threshold determination. (Exhibit 272)
7. On February 18, 2009, the Examiner's Revised Order was appealed to County Council. (Exhibit 274) The County Council dismissed the appeal on April 13, 2009, noting that the Hearing Examiner's decision remanding the application back to PDS is not yet a Final Decision and Order for which an appeal may be filed with the Council. (See, Snohomish County Council Motion 09-165 (Exhibit 283)).
8. As noted in the Council's Motion 09-165, any substantive findings and conclusions found in Examiner Dykes Revised Order relating to the merits of the rural cluster subdivision were not final, but were merely non-binding dicta, and have no effect on the undersigned Hearing Examiner's review of the application.
9. The applicant re-submitted materials to PDS on July 24, 2009. The project was revised to include the addition of a new lot, reconfiguration of the lots, and reconfiguration of the internal road system. PDS determined that the changes were sufficient for additional review and re-started the 120-day clock. The 120-day clock started on August 21, 2009. PDS and the applicant exchanged revised documents and submittals during the next several months. The last re-submittal was made by the Applicant on May 10, 2010. On June 17, PDS determined that the project was approvable, and a public hearing was scheduled for September 14, 2010.
10. PDS concurrently gave proper public notice of the open record hearing, SEPA threshold determination, and Traffic Concurrency and Impact Fee Determinations as required by the County Code. (Exhibits 314, 315, 316)
11. A public hearing was held on September 14th, 15th, and 23rd, 2010 before the undersigned Hearing Examiner, Millie Judge, as Examiner Dykes is no longer working for the County. The parties were sworn and testimony and evidence was offered. In addition to Exhibits 1 through 284 which became part of the record in this case in prior proceedings, Exhibits 285 through 373 were admitted into evidence and considered by the Hearing Examiner in reaching this decision.

12. At the public hearing, Attorney Patrick Mullaney of Foster Pepper, PLLC, appeared on behalf of the applicant, along with various witnesses who participated in the review and preparation of the rural cluster subdivision application and the associated plans and studies found in the record. Ed Caine and Ken Crossman appeared on behalf of PDS. Ms. Hartman appeared and stated that she would be participating as the citizen representative of herself and numerous other citizens, who are parties of record and would be calling one expert witness.

B. Pre-Hearing Motions and Appeals

13. Request for Concurrency Review. On August 18, 2010, Ms. Hartman filed a document entitled Concurrency Request for Review w/Objection on behalf of herself and various other named parties (hereinafter "Ms. Hartman"). (Exhibit 321) In the document, Ms. Hartman states her continuing objection to PDS's review of the rural cluster subdivision based on her theory that a grading violation exists on the site. The request for concurrency review is based on SCC 30.66B.180(2)(b), but the grounds stated provide that Ms. Hartman is seeking Hearing Examiner review of "...the concurrency determination *that would allow deviation of road frontage of road frontage* standards under EDDS and modification of the code for Rural Cluster Subdivision criteria for the Highbridge Estates project." The entirety of the 8-page memo in support of the request for concurrency review relates solely to the issue of frontage improvements. (Exhibit 321)

According to SCC 30.66B.180, any aggrieved party may request the hearing examiner to review a concurrency determination made pursuant to SCC 30.66B.135, that is associated with an underlying Type 2 application at the open record hearing for the Type 2 application, except as provided in SCC 30.66B.175(9). A "concurrency determination" is a transportation term of art, and has nothing to do with the establishment of frontage improvements. It is a transportation engineering analysis based on an evaluation of road system impacts for a proposed development within the boundaries of the development's transportation service area (TSA). The evaluation identifies the development's impact on any arterial units in arrears or any arterial unit designated at ultimate capacity. (SCC 30.66B.130). Concurrency determinations made by the department create a rebuttable presumption of validity. (SCC 30.66B.185) The Hearing Examiner may vacate a concurrency determination only upon a showing that the determination is clearly erroneous. The Department of Public Works' (DPW) professional judgment is entitled to substantial weight. (SCC 30.66B.185) Concurrency determinations are made according to the provisions of Ch. 30.66B SCC and DPW Rule 4225.

Here, as the challenger, Ms. Hartman, have the burden of proof to show that the concurrency determination is clearly erroneous. No such proof was provided. Ms. Hartman provided no analysis to support a contrary evaluation of road system impacts for a proposed development within the boundaries of TSA "E." Ms. Hartman has not challenged DPW's evaluation of the development's impact on any arterial units in arrears or any arterial unit designated at ultimate capacity. Instead, Ms. Hartman attempts to use the concurrency determination review process to challenge the applicant's proposal to eliminate a portion of the required frontage improvements. Frontage improvements are irrelevant to the issue of traffic concurrency.

Ms. Hartman offers no authority to support a challenge to frontage improvements through SCC 30.66B.180. Frontage improvements are required pursuant to SCC 30.66B.410 and DPW Rule 4222. The Hearing Examiner finds that there is no evidence to suggest that the concurrency determination is clearly erroneous, and that frontage improvements cannot be challenged

through the concurrency review process. The challenge to the concurrency determination should be dismissed and the determination should be affirmed.

14. Appeal of Revised DNS and Preliminary Subdivision. On August 25, 2010, Ms. Hartman and Susan Sparks filed a combined SEPA appeal and appeal of the preliminary plat of Highbridge Estates, which also included shoreline permit issues. The appeal was filed on behalf of themselves and 35 additional named parties. On September 1, 2010, the Hearing Examiner issued an order dismissing the SEPA appeal on jurisdictional grounds based upon SCC 30.61.300(8), which bars further SEPA appeals after remand from an appeal under that chapter. The order also dismissed Ms. Hartman and Sparks appeal of the preliminary plat on ripeness grounds, because no final decision and order had been issued for which an appeal could be filed. Finally, the order dismissed any appeal claims seeking to challenge the shoreline substantial development permit that may be issued by PDS. These claims were dismissed because the Examiner has no jurisdictional over the issuance of such permit in this case or appeals, which must be presented to the Shoreline Hearings Board. (Exhibit 325)
15. Motion to Stay the Proceedings Based on an Alleged Grading Violation. Ms. Hartman asked the Hearing Examiner to rule on their request to stay the proceedings based on the alleged grading violation pursuant to *former* SCC 30.41C.210(4), and citing former Examiner Dykes' Revised Order wherein she states that, "PDS itself violated the code by processing this application and not requiring the Applicant to first correct the violation." (Exhibit 256) However, in that decision, the former Hearing Examiner remanded the application back to PDS for further environmental processing, and deferred substantive review of the rural cluster subdivision application until the new SEPA review was complete. *Id.* As noted by the County Council, any statements in the decision relating to the project review are not final. See, Snohomish County Council Motion 09-165 (Exhibit 283). Former Examiner Dyke's comments about PDS's decision not to file a code enforcement action are dicta and not dispositive on the issue; they have no bearing on the Examiner's decision.

At the public hearing on September 14, 2010, Ed Caine testified in response to Ms. Hartman's motion that PDS did not file a code enforcement action against the applicant or its sanitary sewer design professional, who dug test pits across the subject property. Upon questioning from the Hearing Examiner, Mr. Caine testified that the investigation performed for the sanitary sewer system is exempt from the requirements of a grading permit according to SCC 30.63B.020(1)(d), which allows site investigative work for land use applications submittals, such as surveys, soil borings and test pits, percolation tests and other related activities, provided the land-disturbing activity is no greater than necessary to accomplish the work.

Mr. Caine provided information to the Examiner that an investigation of the activity was performed by PDS on January 19, 2006. (Exhibit 322) PDS closed the investigation file in March, 2000, and no enforcement action was ever taken against the applicant. *Id.* However, the applicant was required by PDS to apply for a grading permit, which was reviewed and will be issued upon construction approval for the plat. *Id.* PDS has taken the position that any violation that may have existed has been abated. Mr. Caine explained the issue during his testimony on September 14, 2010. He stated that the activity in question was the digging of series of trenches for test pits by the sanitary engineer, Steven Greso. One trench did encroach slightly

into an area later determined to be the perimeter buffer that would be imposed around Wetland D under the County's critical areas regulations. He testified that Wetland D was a man-made agricultural pond, which had become a natural wetland over the years, and is now considered a critical area. Mr. Caine testified that the applicant has volunteered to mitigate the impacts of the encroachment into the buffer area, which is proposed as part of the application.

In ruling on the motion, the Hearing Examiner considered the provisions of SCC 30.85.050, which vests the authority to initiate code enforcement actions in the PDS Director. The Hearing Examiner has no independent authority to determine that an enforcement case should be initiated. Additionally, the County's regulations are permissive in nature and state that the director "...*may* initiate any of the following enforcement actions against a party responsible for the violation: . . ." (Emphasis added) (SCC 30.85.050). Accordingly, the Examiner concluded that the Director has the discretion to decide whether to initiate an enforcement action. Without the initiation of enforcement, the provisions of SCC 30.41C.210(4) are not triggered.¹ The Examiner denied Ms. Hartman's motion to stay the proceedings because at the time of the application, the site was not subject to a pending enforcement action and had not been determined to be in violation of federal, state or county regulations.

16. Completeness Determination and Vesting. Throughout these proceedings, Ms. Hartman has raised objection to PDS's determination of completeness and the resulting vesting date of April 12, 2006. The objections arise out of the issues discussed in Finding of Fact No. 15, above. Ms. Hartman argues that the alleged grading violation barred PDS from accepting a complete application. She argues that PDS's determination of completeness and the subsequent recognition of a vesting date of April 12, 2006 were in error. The County Code expressly delegates the authority to make a completeness determination in the PDS Director. If the Director does not act within the time prescribed in the Code, then completeness is deemed to occur automatically. (See, SCC 30.70.030 and 30.70.040) There is no administrative appeal mechanism for a completeness determination and the issue is not subject to review by the Hearing Examiner. Regardless, the Examiner found (as described in Finding of Fact No. 15, above) that no grading violation existed at the time of the submittal of the application that would have barred PDS's accepting the proposed rural cluster subdivision. Ms. Hartman's objection as to the determination of completeness and vesting is denied.

C. Project Background Information

¹ To find otherwise would be to subject to the applicant to violations and penalties for which they have never been legally charged. Such a result could implicate the Due Process Clause of the Fifth and Fourteen Amendments and the Sixth Amendment's confrontation requirements. The Examiner will not construe the County Code in such a way as to create a potential constitutional violation. Instead, a more reasonable interpretation of the Code is that the Director must initiate an enforcement action according to Chapter 30.85 SCC, with its attendant due process protections (such as the right to appeal or contest the violation), before a violation can be said to exist.

17. Applicant's Proposal: The applicant is requesting a 35-lot rural cluster subdivision on an 84.7 acre site consisting of 3 parcels. Access to lots 1-26 will be provided by a new private road off of High Bridge Road, and access to lots 27-35 will be provided by a second new private road off of High Bridge Road. Water will be provided by Cross Valley Water District. Each lot will be served by individual septic systems.
18. Site Description: The site consists of 84.7 acres on both sides of High Bridge Road with the Snoqualmie River forming the northeast boundary. The elevation ranges from approximately 20 feet along the river to about 320 feet along the westerly boundary. The site slopes downward to the east and northeast towards the river. The site is covered mainly by an apple orchard with heavily forested areas at the northwest and southeast corners of the site. Several structures consisting of two single-family dwellings, barns and other outbuildings, exist on site together with a large apple orchard located in the eastern half of the site, and open fields west of High Bridge Road.
19. Adjacent Zoning/Uses: Adjacent zoning is R-5, except for those lots across the eastern side of the Snoqualmie River, which are zoned for Agriculture. Adjacent rural uses are either large lot single-family residences or undeveloped land.
20. Issues of Concern:
 - A. Agency Comments. The application was circulated for review and there are presently no unresolved agency or PDS issues of concern.
 - B. Citizen Comments. There has been extensive citizen involvement in this application, largely in opposition to the proposed development. At the public hearing, Ms. Hartman represented a large group of homeowners and acted as their spokesperson throughout the entirety of the 3-day proceedings, cross-examining PDS and Applicant witnesses, presenting direct testimony, calling an expert witness, and making closing arguments. In addition, citizen comments were received in writing and during public testimony from numerous witnesses. The comments received at the first public hearing are found in Exhibits 28 through 47. Additional public comments were received throughout the proceedings below and are found in Exhibits, 76, 78, 317, 318, 319, 327, 328, 330 (1-11), 331,337, 344, 346, 353, 354, 357, 372, and 373.

Testimony was received from the following citizens during the proceedings before former Examiner Good in 2007: Kathleen Gamble, Keith Berry, and Tom Baunsgard. Additional testimony was received from the following citizens during the proceedings on remand from the Council before former Examiner Dykes in 2008: Llyn Doremus, Laura Hartman, Wendy Davidson, Tom Baunsgard, Earl Senger, Kathleen Gamble and Mark Bunje. Testimony was received from the following citizens during these proceedings on September 14, 15 and 23, 2010: Llyn Doremus, Laura Hartman, Susan Sparks, Barbara Massey, Judy Anderson, Arthur Tuck and Wayne Wollard.

The concerns raised by the citizens relate to several issues, including:
(1) Traffic safety impacts from the additional traffic on High Bridge Road;

- (2) The availability of public water supply;
- (3) A concern about the densities achievable through a rural cluster subdivision where the underlying zoning is R-5;
- (4) Protection of bald eagle habitat;
- (5) The applicant's requested deviations and/or modification from the Engineering Design and Development Standards ("EDDS"), including frontage improvements;
- (6) The lack of a second administrative SEPA appeal;
- (7) Fire protection for lots in the subdivision;
- (8) Whether the stormwater drainage will conform to state water quality standards in discharging to the Snoqualmie River, and whether such discharges cause harm to migrating salmonids;
- (9) The lack of stormwater treatment for portions of the drainage that will bypass the stormwater treatment pond; and
- (10) The location of certain lots along the ridgeline of the plat which may disrupt neighbor views.

Each of these issues will be addressed below in the appropriate Findings of Fact and Conclusions of Laws.

D. Compliance with Codes and Policies.

21. Park and Recreation Impact Mitigation (Chapter 30.66A SCC).

The proposal is within Nakeeta Beach Park Service Area, No. 307, and is subject to Chapter 30.66A SCC, which requires payment of \$1,244.49 per each new single-family residential unit, to be paid prior to building permit issuance for each unit. Such payment is acceptable mitigation for parks and recreation impacts in accordance with county policies and is included as recommended condition of approval.

22. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC).

A. Road System Capacity [SCC 30.66B.310]

According to the Revised Traffic Study, the development will generate impacts upon the future capacity of the Snohomish County road system for which mitigation is required. (Exhibit 294) Mitigation will be made by the applicant in the form of the payment of a road system impact fee. The amount of the impact fee imposed must be reasonably related to the impacts of the development on arterial roads that are located in the same transportation service area as the development. The development's impact fee is equal to the amount of new average daily trips (ADT) times the "per trip amount" defined in the Fee Schedule established for rural residential development in TSA E, shown in SCC 30.66B.330.

The impact fee for this proposal is based on the new average daily trips (ADT) generated by 33 net new lots (2 lots are already in existence), which is 9.57 ADT/lot. This rate comes from the 7th Edition of the ITE Trip Generation Report. The development will generate 315.81 new ADT and has a road system capacity impact fee of \$79,584.12 (\$2,340.71 per new lot), based on \$252.00/ADT. This impact fee must be paid prior to the issuance of each building permit. (See, SCC 30.66B.340(1)). A condition should be included as part of the decision to require payment of the impact fee prior to the issuance of each building permit.

B. Concurrency [SCC 30.66B.120]

The County makes a concurrency determination for each development application to ensure the development will not impact a county arterial unit currently in arrears or cause a county arterial to go in arrears as defined in SCC 30.91A.290. The subject development has been evaluated for concurrency under the provisions of Chapter 30.66B.120 SCC and was deemed to be concurrent as of September 28, 2009. A Traffic Study was completed by the applicant in March, 2006 (Exhibit 8) and updated in the Revised Traffic Study Addendum in October 26, 2009. (Exhibit 294) The study shows that the subject development is located in TSA "E", which as of the date of submittal of the application had no arterial units in arrears. The subject development generates 24.75 AM peak hour trips and 33.33 PM peak hour trips, which does not exceed the threshold of 50 peak-hour trips. See SCC 30.66B.130(4).

The concurrency determination is valid for a period of six years, or until September 27, 2014. The application vested for purposes of making a concurrency determination on July 24, 2009. At that time, the applicant submitted a rural cluster subdivision proposal consisting of 37 lots. A concurrency determination was made for that proposal (DPW Rule 4225.070). The current proposal is for 35 lots, less than the original 37 lots that were evaluated for concurrency. DPW has determined that the original concurrency determination is still valid for the 35 lot configuration. (Exhibits 8, 294)

As noted in Finding of Fact No. 13, above, Ms. Hartman filed a request to review the concurrency determination. Given that Ms. Hartman presented no evidence to support a challenge to the concurrency determination, the Examiner denied the request and affirmed the determination.

C. Inadequate Road Condition (IRC) [SCC 30.66B.210]

In terms of public safety, citizens offered consistent testimony that High Bridge Road is unsafe in its present condition. (See, e.g., Comments from Colleen Tuck (Exhibit 373); Comments from Kim and Johnathan Kobayashi (Exhibit 331); Comments from Donald Perkins (Exhibit 353); Comments from Jeanne Coleman (Exhibit 354). Other comments consistent with these statements were provided in the earlier proceedings below. (See, e.g., Exhibits 28-47) Collectively, they stated that the road is frequently used by cars, motorcycles, and bicycle clubs for recreational travel and that they frequently pull people out of ditches after they fail to negotiate the windy turns or otherwise end up in accidents. Several citizens testified that it is

difficult to move farm vehicles in and around High Bridge Road and it is dangerous to pull a horse trailer or other large loads. (See, e.g., Testimony of Wayne Mullard) Several citizens stated that the traffic data doesn't show the accidents because they pull people out of the ditches themselves and don't call for police or fire rescue. Most citizens expressed concern about increasing traffic on High Bridge Road as a result of the proposed development. However, the applicant is only responsible for mitigating impacts from its development on the road system. The Public Works Department is responsible for maintaining the safety of the public road system.

According to DPW Rule 4223, impacts to locations declared to have inadequate road conditions (IRC) must be mitigated. DPW Rule 4223.040 provides that the determination of whether a specific location is an inadequate road condition is made by DPW using a 3-step process: (A technical evaluation is performed in accordance with FHWA-RD-77-82, "Identification of Hazardous Locations," published by the Federal Highways Administration; a review board evaluation including DPW staff; and finally, approval by the County Engineer). Here, there are no IRC locations that have been identified that will be affected by trips generated from Highbridge Estates. The traffic study revealed that the subject proposal will not impact any identified IRC locations within TSA E with three or more of its p.m. peak hour trips, nor will it create any. (Exhibit 8, 294) Therefore, mitigation cannot be required for inadequate road conditions. No restrictions to building permit issuance or certificate of occupancy/final inspection should be imposed under this section of Chapter 30.66B SCC.

D. Frontage Improvements [SCC 30.66B.410]

All developments are required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement must be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable. Full standard frontage improvements in the rural area shall include base materials, one lane of paved roadway section, one paved shoulder and required storm drainage improvements.

The subject property frontage is located on both sides of High Bridge Road, except the southern area of the property has frontage on the west side only. High Bridge Road is designated as a minor collector arterial road on the County's Arterial Circulation Map. The Revised Traffic Study shows that traffic counts on High Bridge Road fall within the 400 to 2,000 range. (Exhibit 294) For this type of road, EDDS specifies a design of 19 feet of total pavement, from the centerline of the road right-of-way to include an 11-foot travel lane and an 8-foot paved shoulder. (EDDS Section 3-030B)

The applicant is seeking to eliminate a section of the required frontage improvements on High Bridge Road due to the site's topography and location of wetlands, streams, and steep slopes. The applicant submitted an EDDS deviation request for this purpose. (Exhibit 220, 289) However, since that time, it was clarified that the elimination of required road improvements, such as frontage improvements, must be accomplished through a design standard modification

as specified in former SCC 30.41A.215.² The applicant also submitted a modification request, which is found in Exhibit 290. PDS has analyzed the modification and is recommending approval of the request to eliminate a section of the frontage improvements. (Exhibit 332)

Ms. Hartman argued that the applicant's failure to submit the road modification request concurrently with the rural cluster subdivision application rendered the application defective and ineligible for vesting and further processing. (Testimony of Ms. Hartman on September 15, 2010) Ms. Hartman cites to no legal authority to support her position. The Examiner takes official notice of the PDS submittal requirements for rural cluster subdivision applications available to the public on its website. There, the "Rural Cluster Subdivision (RCS) Supplemental Submittal Checklist," provides guidance as to what must be submitted for a complete application. No road deviation or modification requests are required. What is required by the provisions of former SCC 30.41A.215 is that the Examiner consider the modification concurrently with the preliminary subdivision application. That requirement is being met here. Additionally, as noted elsewhere in this decision, completeness determinations are the province of the Director of PDS, and the Examiner has no legal authority to review such determinations. (SCC 30.70.040).

An applicant may seek modification of the road design standards set forth in SCC 30.41A.210 where it appears that there exist extraordinary conditions of topography, access, location, shape, size, drainage, or other physical features of the site or other adjacent development. (SCC 30.41A.215(1)) Modifications must be approved by the Hearing Examiner concurrent with the consideration of the preliminary subdivision. (SCC 30.41A.215(3))

In order to approve the modification request, the Examiner must find that all of the following conditions are met:

- (a) There are exceptional or extraordinary circumstances or conditions which apply to the land referred to in the application which does not apply generally to lands in the vicinity. These include, but are not limited to, size, shape, topography, location, or surroundings;
- (b) The granting of the modification is necessary for the preservation and enjoyment of substantial property rights of the applicant; and
- (c) The granting of the modification will not, under the circumstances of the particular case, affect adversely the health or safety of persons residing or working in the neighborhood of the property referred to in the application and will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood or adversely affect the comprehensive plan.

² The applicant is vested to the requirements of SCC 30.41A.215, despite the fact that it was later repealed by Ordinance No. 08-101 in 2009.

The Examiner considers each of the three criteria in turn.

The applicant proposed construction standard rural frontage improvements (an 11 foot travel lane and an 8 foot paved shoulder) between the south property boundary (Station 101+50) to approximately Station 112+00, a distance of approximately 1,050 feet. Between Stations 108+00 and 112+00 the property fronts High Bridge Road on both sides and full road standard improvements will be required. Between Stations 112+00 and 129+72.48, the north boundary of the development (approximately 1,772 feet) installation of full frontage improvements would cause significant detrimental impacts to environmentally sensitive areas. In addition, a significant portion of High Bridge Road pavement is outside of the existing 40-foot right-of-way, which DPW believes was a function of the critical areas present in the area at the time of the original construction of High Bridge Road.

(a) Exceptional or extraordinary circumstances. The applicant requests the modification between Stations 112+00 and 129+72.48, the north boundary of the development (approximately 1,772 feet) due to the presence of critical areas at that location. Critical areas are not present along the frontage of the remaining lands owned by the applicant, and no modification is requested for those areas. To construct frontage improvements along the 1,772 linear feet would require significant cuts and fills along the steep slope on the east side of High Bridge Road and the construction of retention walls to prevent erosion. The widening of High Bridge Road in this area would impact streams, wetlands and steep slopes which are all critical areas. (Exhibit 290) The County's critical areas regulations call for the avoidance of impacts to critical areas whenever possible. (See, former SCC 30.62.365) The Examiner finds that there are exceptional conditions which apply to the land located along the 1,772 linear feet of High Bridge Road which are not present along the remaining area of the frontage of the project.

(b) The granting of the modification is necessary for the preservation and enjoyment of substantial property rights of the applicant. The applicant's engineers testified that the impacts to the critical areas on the site would be substantial, and the cost of making such frontage improvements along the 1,772 linear feet would be prevent them from completing the project. (Testimony of Jeff Schramm; Testimony of Kevin O'Brien) Mr. O'Brien testified that the project has over 2,800 lineal feet of frontage. They are paying \$90,000 in transportation impact fees and will spend in excess of \$300,000 for improvements to High Bridge Road. Adding the 1,772 lineal feet renders the project economically infeasible. The Examiner finds that the applicant has shown that the modification is necessary for the preservation and enjoyment of the applicant's substantial property rights.

(c) The granting of the modification will not, under the circumstances of the particular case, affect adversely the health or safety of persons residing or working in the neighborhood of the property referred to in the application and will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood or adversely affect the comprehensive plan.

Public Works recommends approval of the proposed road improvement design, including the modification. The proposed road design for High Bridge Road will reduce the severity of the curves in the southwest section of the development. The section includes the intersections of both internal development roads with High Bridge Road. High Bridge Road in the northwest, where improvements will not occur, already has the standard width of 20 feet, which meets the minimum standards for existing County road widths and is consistent with the design standard to which High Bridge Road was constructed.

In terms of public safety, citizens offered consistent testimony that High Bridge Road is unsafe in its present condition. (See, e.g., Comments from Colleen Tuck (Exhibit 373); Comments from Kim and Johnathan Kobayashi (Exhibit 331); Comments from Donald Perkins (Exhibit 353); Comments from Jeanne Coleman (Exhibit 354) and (Testimony of Wayne Mullard). Other comments consistent with these statements were provided in the earlier proceedings below. (See, e.g., Exhibits 28-47) Several citizens stated that the traffic data doesn't show the accidents because they pull people out of the ditches themselves and don't call for police or fire rescue. Most citizens expressed concern about increasing traffic on High Bridge Road as a result of the proposed development. However, no citizen directly addressed the 1,772 linear feet of High Bridge Road where the applicant proposes not to build additional shoulder area as frontage improvements. The comments were more general in nature and where they were specific as to locations, the most frequent comments related to High Bridge Road from Welch Road or the area north of 205th Street SE. Ms. Hartman offers arguments in Exhibit 321 and 218.C to demonstrate that the requested modification should be denied. The photographs in Exhibit 218.C show a large truck-trailer having difficulty negotiating sharp curves within the right-of-way. Although the photos appear to be staged, they do show larger truck combinations having difficulty with the windy turns. This appears to be a function of the trailer, not the road width, as the truck itself does not appear to be too large to negotiate the turns within the right-of-way. The truck cannot stay within the existing roadway. The road width will remain the same, even with frontage improvements. The Examiner looks to the data in the record for more information.

The reported accident history for that section of High Bridge Road where the frontage improvements will not occur was evaluated for a 3-year period (January 1, 2007 to December 31, 2009). No accident problems were identified for that section of High Bridge Road. (Exhibits 294 and 320) As such, the County Traffic Engineer determined that elimination of frontage improvements in that section of High Bridge Road would not adversely affect safety or operations of the road.

The Hearing Examiner does not doubt the citizens who testified that they have assisted motorists and cyclists who got into accidents along High Bridge Road. However, without having police or fire reports of those accidents, we have no record of where those accidents occurred and whether they were anywhere near the 1,772 linear feet of frontage of Highbridge Estates. The County's records show no accident problems for the area in question. Accordingly, the Examiner must find that the preponderance of evidence in the record reveals no specific safety problem along the 1,772 feet of High Bridge Road where the road modification has been

requested. The road already meets the County's standard width required for the travel portion of the roadway.

PDS found that the approval of the modification would not affect the County's ability to maintain the road or increase costs to the County. They also found that it would not adversely affect the aesthetic appearance of the road or the surrounding properties. The 1,772 linear feet of roadway will remain in its current condition and the critical areas adjacent to it will not be impacted. (Exhibit 332, 290, 320) Based on the foregoing, the Hearing Examiner finds that approval of the modification will not affect adversely the health or safety of persons residing or working in the neighborhood of the property referred to in the application and will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood or adversely affect the comprehensive plan.

The Examiner finds that the applicant's request for a modification from the road standards requiring full frontage improvements along the northern 1,772 feet of the project's frontage along High Bridge Road to avoid impacts to critical areas on the subject property should be approved.

E. Access and Circulation [SCC 30.66B.420]

Chapter 30.66B.420 SCC requires:

(1) All developments will be required to: (a) Provide for access and transportation circulation in accordance with the comprehensive plan and with applicable sections of Chapter 30.66B; (b) Design and construct access in accordance with the EDDS; and (c) Improve existing roads that provide access to the development in compliance with the adopted design standards of Chapter 30.66B.430 SCC.

(2) Access to state highways and city streets shall be in accordance with the applicable state or city standards and requirements.

(3) All developments that propose to take access by an existing public or private road will be required to improve the access roads to comply with the EDDS standards when the director of public works determines that such improvements are necessary to provide for safety and the operational efficiency of the road. The extent of improvements will be established by the director of public works in accordance with Chapter 30.66B.430 SCC.

Internal Roads. Access to the subdivision is proposed by two new private roads, identified as Easement 802 and Easement 803/804, intersecting off both sides of High Bridge Road, and separated by approximately 750 feet. Easement 802, located on the east side of High Bridge Road will serve 9 lots. Easement 802 is classified as a non-arterial private rural low volume access road serving less than 90 average daily trips (ADT). Easement 802 will serve 86.13 ADT. The design speed for the road is 25 mph (EDDS Table 3-2) with two 10-foot travel lanes, for a total width of 20 feet of travel surfacing. The cross section detail of the Easement 802 (Exhibit 293.e) indicates a paved road, which is acceptable. A 40-foot radius cul-de-sac is

shown on Exhibits 293.a and 293.b, as required by EDDS 3-10 (plate 3-150). The road is designed to slope to one side at 2%, with no road crown. DPW found that the profile of the road, shown in Exhibit 293.e, meets EDDS requirements for vertical alignment.

Easements 803 and 804, the private road on the west side of the development, will serve 26 lots and generate 248.82 ADT. The design standard for this road is a private rural subcollector road (EDDS 3-090), with a design speed of 30 mph. The pavement width is required to be 30 feet with two 10-foot travel lanes, a 7-foot paved shoulder on one side, and a 3-foot paved shoulder on the other side. A 40-foot radius paved shoulder cul-de-sac is required at the end of Easement 804. The development has less than 250 ADT on each private road, so a second constructed road connection is not required (EDDS 3-01 (B.4)).

Road Design and Deviation Requests

EDDS 1-05 specifies that situations will arise where alternatives to the Standards may better accommodate existing conditions, overcome adverse topography or allow for more cost-effective solutions without adversely affecting safety, operations, maintenance or aesthetics. Here, the applicant has proposed six (6) deviations from road standards as follows:

(1) A non-standard right-of-way width dedication along High Bridge Road under SCC 30.66B.520(1) and EDDS 3-03(A)(2), to accommodate the fact that the current road alignment is improperly sited off of the public right-of-way and on private property. The deviation will allow the applicant to move the road back to its proper alignment within the right-of-way and fix the existing sight distance deficiency from a horizontal roadway curve in this area. The deviation was approved by DPW on October 17, 2006. The Examiner concurs that the request is appropriately considered a road deviation instead of a road modification subject to review and approval by the Examiner pursuant to SCC 30.41A.215. (Exhibit 289)

(2)(3) Two deviations to the design features of the intersections of Road 802 and Road 803 required under SCC 30.66B.420(1)(b) and EDDS 3-080, to allow the construction of boulevards, with street lights, for the purpose of accommodating requested bus pullouts by the Monroe School District. (Exhibit 52; 289) The deviation was approved by DPW on October 17, 2006. (Exhibit 93) The Examiner concurs that the request is appropriately considered a road deviation instead of a road modification subject to review and approval by the Examiner pursuant to SCC 30.41A.215.

(4) A deviation from certain frontage improvements. The Examiner finds that the elimination of a section of frontage improvements requires a road modification request. The road modification is addressed in Finding of Fact No. 22(D), above.

(5) A deviation to exceed the required standard by providing a paved Private Low Volume Rural Access Road instead of a gravel road as provided by SCC 30.41.210(4) and EDDS 3-080. The deviation was approved by DPW on October 17, 2006. (Exhibit 93) The Examiner concurs that a request to exceed a road standard is appropriately considered a road deviation instead of a

road modification subject to review and approval by the Examiner pursuant to SCC 30.41A.215. (Exhibit 289)

(6) A deviation to the maximum length of rural private roads 803 and 804 required by SCC 30.41A.210(4) and EDDS 3-01(b)(2), to avoid impacts to critical areas and steep slopes. EDDS 3-01 (B.4) also specifies that road systems shall be designed with intersecting roads so that the maximum distance between intersection (measured from centerline to centerline), or between an intersection and a road end, does not exceed 1,320 feet in rural areas. An EDDS deviation (Exhibit 108) was submitted to request that the length of the private roads be approved as designed. The Fire Marshall's Office approved the road design. As the requirement is primarily considered to be a design element for emergency vehicle accessibility, the deviation was approved by the County Engineer. The deviation was approved by DPW on April 16, 2007. (Exhibit 108) The Examiner concurs that a request to exceed a road standard is appropriately considered a road deviation instead of a road modification subject to review and approval by the Examiner pursuant to SCC 30.41A.215.

(7) A deviation to the private subcollector road design for Roads 803 and 804 as required by SCC 30.41A.210(4) and EDDS 3-090, to allow for stormwater runoff from non-pollution-generating sources to be collected separately from road runoff. The deviation was approved by DPW on April 16, 2007. (Exhibit 111) The Examiner concurs that a request is appropriately considered a road deviation instead of a road modification subject to review and approval by the Examiner pursuant to SCC 30.41A.215.

The "T" intersection at Lots 5, 19, 20 and 22 requires a 20-foot inside and 40-foot outside minimum turning radii for emergency vehicles. The Hearing Examiner has included a condition to require the designated road configuration.

DPW reviewed the horizontal curves within the plat and found that the horizontal curve of the road within Easement 802 meets the requirement of EDDS Table 3-4, by including a 90 degree "elbow" intersection to be constructed in accordance with Standard Drawing 3-105.

All of the proposed vertical curves meet the minimum requirements of EDDS 3-07 (Standard Drawings 3-110 and 3-120) for a road with a 30 mph design speed (Easements 803 and 804) and for a road with a 25 mph design speed (Easement 802) (Exhibits 293.e and 293.f).

Sight Distance: The stopping and intersection sight distance required by EDDS 3-08 was a concern at both proposed access points due to the curves in High Bridge Road. As noted above, numerous citizens have complained that the curves and site distance render High Bridge Road unsafe in its present configuration. DPW found that the applicant did submit an acceptable plan and profile showing stopping and intersection sight distance at both locations. The plans showed that the required stopping sight distance and the required intersection sight distance will be achieved at the two access points with additional right-of-way dedication for intersection line of sight from Easement 802 (on the east side of High Bridge Road) looking south on High Bridge Road. The additional right-of-way will provide DPW Road Maintenance

the ability to maintain the area in the future. The Examiner has included a condition requiring that the sight distance triangles be cleared of brush or obstacles prior to recording the subdivision has been included. Dedication of additional right-of-way to establish and maintain the intersection sight distance line of sight from Easement 802, needs to be shown on the construction plans.

External Road Classification

High Bridge Road is designated as a minor collector arterial road on the County's Arterial Circulation Map. Exhibit 294 indicates that 50% of the development trips will travel on High Bridge Road to and from the west and that 50% of the development trips will travel on High Bridge Road to and from the east. A traffic count was done on High Bridge Road by DPW on August 5th – 9th, 2009. The count was made southeast of the intersection with 161st Avenue SE, approximately 1.8 mile southwest of the access locations for the development. An average count of 1,008 ADT was obtained. A traffic count was done on the same dates on High Bridge northwest of the intersection with Old High Bridge Road, which is several miles northwest of the development. That count averaged 1,066 ADT.

There is no design speed for arterial roads in EDDS, but EDDS 3-06 (B) specifies that: operating speed shall be used on existing roads to determine stopping and intersection sight distance. Operating speed is defined by EDDS as the observed speed of vehicles during free-flow conditions. Operating speed may be determined by adding the appropriate modifier from Table 3-3 to the posted speed to approximate the 85th percentile speed. High Bridge Road has a posted speed of 35 mph, and EDDS indicates the modifier is +8 mph, resulting in an operating speed of 43 mph. The traffic counts done by DPW included a speed study that computed the actual 85th percentile speed on the road in the two locations. The measured operating speed was 34.0 mph for both directions southeast of the intersection with 161st Avenue SE and 45.6 mph in both directions northwest of the intersection with Old High Bridge Road.

Few additional ADT to High Bridge Road are anticipated from development of the surrounding area because of recent change in the rural cluster subdivision regulations. Most properties along High Bridge Road are zoned as R-5 and consist of 5 acre to 10 acre parcels. There is minimal potential to subdivide land in the immediate vicinity of the subject property. The classification of the roads within and adjacent to the proposed development have been made based on: (a) The professional engineering judgment under the authority of the County Engineer; (b) The requirements in EDDS; (c) The fact that the proposed development generates 315.81 ADT; and (d) The fact that High Bridge Road currently has an existing 1,008 ADT southeast of the development and 1,066 ADT northwest of the development.

Private Roads: There are two private roads associated with this project; Easement 802 serving 9 lots on the east side of High Bridge Road and Easements 803/804, serving 26 lots on the west side. DPW found that there is no reason for Easement 802 to be public because the properties on that side of High Bridge Road border the Snoqualmie River on one side and High Bridge Road on the other side. There is no possibility that the road system would be extended to the

north and east across the river for a future connection. That road system will remain isolated to the development property due to the location of the river, and critical areas and steep slopes to the west and southeast. (Exhibit 320) The Hearing Examiner concurs and finds that the use of the private road (Easement 802) as shown on the preliminary plat for the subject development should be approved according to SCC 30.41C.200(3), because a road connection to an adjacent property is not feasible due to critical areas and steep slopes.

DPW also determined that there is no compelling reason for Easements 803/804 to be public because the road serves less than 250 ADT. As such, a second constructed road connection is not required by EDDS 3-01 (B). (Exhibit 320) They reasoned that the surrounding properties are served by separate private roads off of High Bridge Road, and are almost all 10 acres in size. If any of those have potential to develop, it would be perhaps a two-lot short plat at most. Those could be accessed by the existing private roads already serving the properties. Id. The Hearing Examiner concurs and finds that the use of the private road as shown on the preliminary plat for the subject development should be approved according to SCC 30.41C.200(3), because a road connection to an adjacent property is not deemed to be necessary for access and circulation in the area.

F. Extent of Improvements [SCC 30.66B.430]

In determining the extent of improvements required, the Director of the DPW considers, among other relevant factors, the criteria set forth in SCC 30.66B.430(a) through (p). DPW reported that the current condition of High Bridge Road differs from the standards required by EDDS Plates 3-010-030A and 3-010-030B for a rural minor collector arterial road. High Bridge Road has narrower pavement width and there are probable inadequacies in the horizontal and vertical alignment at some locations. The typical current condition of High Bridge Road is two 11-foot travel lanes with varying shoulder widths of gravel and grass. EDDS specifies a design of 11-foot wide travel lanes plus 8-foot wide paved shoulders for newly constructed rural minor collector arterial roads. (Exhibit 320)

The applicant will construct rural standard frontage improvements along the south 1,050 feet of the frontage. As discussed above, DPW is proposing to eliminate frontage improvements in the north 1,772 feet of frontage through the road modification process, which the Examiner finds should be approved. DPW has determined that the existing offsite pavement width of High Bridge Road is sufficient for the current conditions plus the addition of 315.81 ADT from the proposed development.

The Hearing Examiner has reviewed those factors as set forth in the Staff Recommendation (Exhibit 320), which is adopted herein by this reference, and finds that the recommended extent of improvements are consistent with the Department's analysis of the factors required in SCC 30.66B.430 and the facts set forth in the entire record.

G. Dedication of Right-of-Way [SCC 30.66B.510 and 30.66B.520]

High Bridge Road is designated as a minor collector arterial on the County's Arterial Circulation Map, which requires a right-of-way width of 35 feet on each side of the right-of-way centerline. Right-of-way width currently is 20 feet from the centerline. Therefore, 15 feet of additional right-of-way is required between the centerline of High Bridge Road and any frontage by the subject property. This would result in a right-of-way width of 35 feet from centerline when frontage was on one side only, and a right-of-way width of 70 feet when frontage was on both sides of the road.

The applicant requested a deviation to EDDS 3-03 (Exhibit 93), seeking a non-uniform width of right-of-way dedication across the parcel, with a tapered width in some areas because some of the existing road is constructed outside of the existing right-of-way. The applicant also is proposing to add pavement to the existing road surface only on one side of the road in two places, which will straighten the horizontal curves at those locations. The areas where pavement is added only to one side of the existing road will require additional right-of-way on one side of the road to which the pavement is added. The deviation was approved by DPW with the condition that, where the property fronts High Bridge Road on both sides, a minimum right-of-way width of 70 feet will be provided, and where the property fronts the road on one side, a minimum width of 35 feet will be provided. DPW approved the deviation because the proposed design is a safety improvement to the road. The Examiner concurs and finds that applicant has proposed to dedicate an appropriate amount of right-of-way to the County.

Additional right-of-way is also required for the intersection sight distance line of sight from Easement 802, as identified in the sight distance analysis (Exhibit 392.c). The Examiner has included a condition to require the additional dedication of right-of-way.

H. Impacts to State Highways [SCC 30.66B.710]

Highbridge Estates is subject to the Washington State Department of Transportation (WSDOT)/County Interlocal Agreement (ILA) which became effective on applications determined complete on or after December 21, 1997. The impact mitigation measures under the ILA, Section IV (4.1)(b), may be accomplished through a) voluntary negotiated construction of improvements, b) voluntary negotiated payment in lieu of construction, c) transfer of land from the developer to the State, or d) a voluntary payment in the amount of \$36.00 per ADT. The applicant has opted for the voluntary payment method to mitigate their impact to the state highway system, the adjusted payment amount (for 33 net new lots) is calculated at 315.81 ADT x \$36.00/ADT = \$11,369.16 (\$334.39 per lot).

WSDOT sent comments to DPW on April 5, 2007 accepting the traffic mitigation offer of \$11,024.64 for the proposed 32 net new lots. (Exhibit 311) The current proposal is for 35 lots, 33 of which are new lots. DPW has adjusted the required mitigation to correspond with the 35-lot proposal. PDS stated in its staff report that the ILA with WSDOT allows DPW make such an adjustment. Therefore it is not necessary to obtain a new acceptance from WSDOT. (Exhibit 320)

I. Impacts to City Streets and Roads [SCC 30.66B.720]

There are no jurisdictions that have an interlocal agreement with the county that will be significantly impacted by the subject development.

J. Transportation Demand Management (TDM) [SCC 30.66B.630]

This proposal lies outside of the Urban Growth Area (UGA). Therefore, the provisions of SCC 30.66B.630 do not apply.

23. Pedestrian Facilities [RCW 58.17.110]

The county is required to make findings regarding safe walking conditions for school children that may reside in the subject development. Comments were received from the Monroe School District on April 20, 2006, indicating that all grade levels of public school students would have bus service to school, and the bus stop locations would be on High Bridge Road and at each of the two access points to the development. (Exhibit 52) The District has also requested a safe bus pull off and student waiting area at each of the two stops. The size of the bus pull offs requested are 12 feet by 60 feet. DPW/PDS Transportation considers a safe or appropriate waiting area for school children at a bus stop to be a hard surfaced (paved walkway or sidewalk) location outside of the roadway travel lanes. (See, EDDS at Chapters 2 and 4) Protection from the weather, such as requiring a bus shelter, is not called for in the County's development regulations or EDDS, and will not be required. The bus pull-offs will be accomplished with the boulevard design of the private roads at each of the two access points on High Bridge Road. The 7-foot wide paved shoulder walkway along Easement 803/804 is included in the applicant's plans (Exhibit 293.e). PDS and DPW have recommended that standard rural frontage improvements be required as a condition of approval along that section of High Bridge Road for the development. With the provision of those design features, the Examiner finds that safe walking and waiting conditions will be provided for school children from the development that walk to the bus stop.

24. Mitigation for Impacts to Schools. [Chapter 30.66C SCC]

The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended Chapter 30.66C SCC. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Monroe School District No. 103, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the 3 existing lots. The Examiner has included a condition of approval for inclusion within the project decision to comply with the requirements of Chapter 30.66C SCC.

25. Drainage and Grading.

The applicant proposes 35 lots accessed by private roads on either side of High Bridge Road. Single-family residences are proposed on the lots. Total proposed grading is 31,500 cubic yards of cut and 20,200 cubic yards of fill. The applicant has applied for a grading permit which will be issued at the time of construction.

Storm drainage from the pollution generating roadways will be routed to a proposed 2-cell water quality wet pond which discharges to the Snoqualmie River via a tight line and an armored discharge. The proposed pond was modeled by Terracon Geotechs for impacts to the stability of adjacent critical slopes (Exhibit 297) and found not to have an adverse impact on slopes to the north of the pond by the engineer. A waterproof liner has been proposed for the water quality pond, consistent with 1992 DOE Stormwater Manual III-3.7 requirements. Revisions to the pond outfall to address erosion by the applicant's engineer have been proposed by extending the outfall tight line to an existing channel preceding the Ordinary High Water Mark (OHWM) and by proposing armoring of that channel with an energy dissipater that extends down to the OHWM. Velocity calculations of stormwater in the proposed roadside ditches were requested and, as a result, the applicant's engineer proposes rip rap lining portions of the conveyance ditches to address potential erosion. The other portions of the roadside ditches will be designed with grass vegetation. PDS has evaluated the proposal and concurs with the design.

Water quality mitigation for the cleared areas on the lots will be addressed with either by biofiltration swales on the lower sides of lots or by dispersion of runoff through native vegetation in accordance with the 2005 DOE Stormwater Manual Best Management Practice (BMP) T5.30 (Cleared Area).³ Either option is acceptable as a BMP. The final designs will be determined during construction plan review. The final designs will be implemented concurrent with single family building construction.

Roof drains are proposed to be routed to dry wells. In areas where adequate soils do not exist for infiltration, splash blocks will be necessary.

The Snoqualmie River is subject to Snohomish County's Salmonid Habitat Management Plan Administrative Rule which requires *no effective impervious surfaces* within 300 feet of the ordinary high water mark. A portion of lots 29, 30, 31, 35, and 35 include impervious surfaces within this area, and the water quality pond is considered to be impervious surface within the 300 foot zone. According to the Salmonid HMP Administrative Rule, the runoff from this impervious surface is required to be infiltrated or dispersed. The roof runoff on these lots will be

³ The applicant is vested to the requirements of the 1992 DOE Stormwater Manual; however, they have voluntarily agreed to use water quality treatment BMPs from the newer 2005 DOE Stormwater Manual.

directed to splash blocks to be dispersed due to the presence of poor soils for infiltration at these locations. (See, Exhibits 297 at p. 7; 303, 122, 118)

Stormwater that equals the stormwater runoff generated by the water quality pond will be collected upstream of the pond and dispersed. In addition, roof drains will be routed to drywells or individual infiltration trenches in the other areas of the development where infiltration is feasible. These drainage concepts will be finalized on the construction plans prior to site disturbance and will be made a condition of the subsequent building permits.

PDS found that the applicant is exempt from quantity controls after determining that conditions SCC 30.63A.210(iii)(A) through (D) were met. Their analysis is found in Staff Report. (Exhibit 320)

Treatment of Conventional Pollutants Prior to Discharge into the Snoqualmie River.

The water quality treatment “wet” pond is sized for treatment of the 10-year, 24-hour storm event. A 6-month 24-hour design storm is the requirement in the 1992 DOE Stormwater Manual, which is the adopted drainage manual for Snohomish County to which the applicant is vested.⁴ The applicant’s engineer provided a comparison between the wet pond water quality treatment requirements required under the 1992 DOE Stormwater Management Manual and the 2005 DOE Stormwater Management Manual (Exhibit 299), concluding that the proposed 10-year, 24-hour storm event water quality pond also exceeds the 2005 DOE Manual for basic treatment volume (Exhibit 298). According to the 2005 DOE Western Washington Stormwater Management Manual (“DOE Stormwater Manual”) at Volume V (3.5), basic treatment is required for all project sites discharging directly to river segments listed in Appendix V-A, which includes the Snoqualmie River. Basic treatment is being met for road runoff through the wet pond shown in Tract 998. (It should be noted that although the wet pond is designed for the purpose of treating conventional pollutants, it does provide some amount of stormwater detention while stormwater resides in the pond).

Here, the wet pond will be sized to hold and treat 46,609 cubic feet of water (or 1.07 acre feet), which is well-above the minimum volume of the 6-month 24-hour design storm event. (Exhibit 297) In reality, the pond is sized to treat the 10-year, 24-hour design storm event. Id. (The Plans state that the pond volume is actually even greater, 59,000 c.f. of volume). (Exhibit 293b) According to the 1992 DOE Stormwater Manual, the pond will treat *in excess of 98 percent* of the mean annual rainfall. (Exhibit 297; See *also*, 1992 DOE Stormwater Manual at Volume III-

⁴The County’s new NPDES-based drainage requirements became effective in September 2010, but the applicant is not required to achieve those standards because the vesting date of the application is in 2006. However, the applicant has volunteered to meet a higher standard and the calculations show that the proposal in fact exceeds the 1992 DOE Stormwater Manual requirements.

4.3.2) The 1992 DOE Stormwater Manual also requires the applicant to design a pond overflow system that includes controlled discharge of the 100-year, 24-hour design storm event for developed site conditions without overtopping any part of the pond embankment or exceeding the capacity of the emergency spillway. The emergency overflow spillway is known as “secondary overflow.” (1992 DOE Stormwater Manual at Volume III-4.4.1 (BMP RD.05 Wet Pond (Conventional Pollutants))

Stormwater runoff from treated, cleared areas and any roof runoff not being routed to drywells will be bypassed around the water quality wet pond and then directly discharged into the Snoqualmie River. This stormwater is considered “clean” because it does not originate from a pollution-generating source. (A “pollution generating source” is a phrase defined in the DOE Stormwater Manual). (Testimony of Jeremy Febus, P.E.) Stormwater runoff from the private road, which is a pollution-generating source, will be kept separate from the bypassed stormwater and will be routed to the water quality pond for treatment. Id. (See also, Exhibit 297)

There may be a case where a severe storm causes Wetland D or the water quality treatment wet pond to overflow. Wetland D has been recognized as a natural critical area. Accordingly, no water quality treatment is required under the County’s drainage regulations for water that overflows from a natural wetland. In its current state, however, the wetland overflows at the top of the slope and water flows downhill along the banks of the River in an unrestricted manner, causing erosion and sedimentation. (Exhibit 297) The applicant is proposing to re-route the overflows from Wetland D through the treatment pond’s bypass system to allow high flows to discharge at the toe of the slope (the lower portion of Tract 997). This will eliminate the erosion and sedimentation hazard posed by the existing outfall. Id.

In designing the water quality treatment pond, the 1992 DOE Stormwater Manual requires the applicant to include an emergency overflow system (known as “secondary overflow”) to protect the integrity of the wet pond and the surrounding property. (1992 DOE Stormwater Manual at Volume III-4.4 (BMP RD.05 Wet Pond (Conventional Pollutants)) In the record, the parties refer to overflow conditions as “high flows.” (Exhibit 297, 320)

In those rare instances when high flows exceed the capacity of the wet pond, stormwater will be discharged through the emergency overflow system, which combines with the development’s stormwater bypass system, resulting in direct discharge into the Snoqualmie River. (Exhibit 297)

Secondary overflow requires the use of additional best management practices (“BMPs”) to provide further water quality treatment prior to the discharge to the Snoqualmie River. (1992 DOE Stormwater Manual at Volume III-4.4 (BMP RD.05 Wet Pond (Conventional Pollutants)) According to the DOE Stormwater Manual, there are several accepted methods of removing pollutants entering emergency spillways, including road design features. Id.

Here, the Final Salmonid HMP states that high flows exceeding the 2-year, 24-hour event will flow through a high density polyethylene (HDPE) pipe to an 800 square foot spreader trench

which will defuse and infiltrate those flows at the Ordinary High Water Mark (OHWM). (Exhibit 303) Ed Caine testified that emergency high flows will be combined with “clean” stormwater bypassed from other areas of the development, (such as driveway and lawn areas, which have received water quality treatment prior to leaving individual lots). The combination of these waters will provide some dilution of pollutants that may exist in the untreated emergency overflows. In addition, a portion of the roads will have grass-lined ditches for stormwater conveyance, which will provide additional water quality treatment prior to discharge into the Snoqualmie River. (Exhibit 320) The Department of Ecology has recognized that secondary treatment BMPs are effective in removing any conventional pollutants that may be found in such bypass stormwater. (See, 1992 DOE Stormwater Manual at Volume III-4.4 (BMP RD.05 Wet Pond (Conventional Pollutants))). The final design of those drainage facilities and secondary overflow BMPs will be further analyzed by PDS and/or DPW during the construction permitting phase of the preliminary plat.

In the earlier proceeding, Ms. Hartman claimed, and former Examiner Dykes stated in her Revised Order, that no amount of untreated stormwater originating from pollution-generating sources can be directly discharged to the Snoqualmie River without having an *adverse impact*. (Exhibit 272) In response, PDS takes the position that the Applicant cannot be required to meet such a standard because they are vested to the 2006 drainage regulations. (Exhibit 320 at p. 18) The Hearing Examiner finds that the 1992 DOE Stormwater Manual, to which the applicant is vested, contemplates the removal of pollutants from stormwater entering the bypass system as a result of emergency overflows. (1992 DOE Stormwater Manual at Volume III-4.4 (BMP RD.05 Wet Pond (Conventional Pollutants))) The technique(s) that may be used to remove such pollutants is a design issue that can and will be dealt with during the construction review phase. All that is required for preliminary plat approval is a Targeted Drainage Plan. (SCC 30.63A.150) The Examiner finds that there is ample evidence in the record demonstrating that the wet pond shown in Tract 998 exceeds the required standard for water quality treatment, and the limited amount of high flows entering the bypass system under emergency flow conditions can and will receive secondary overflow treatment prior to discharge into the Snoqualmie River. A condition of approval has been included to ensure that this issue is addressed during the construction phase. Accordingly, the Examiner finds that the direct discharge meets the requirements of SCC 30.63A.210(1)(b)(iii)(D) and no adverse impacts to the Snoqualmie River will be caused by conventional pollutants leaving the wet pond under high flow conditions.

Temperature Impacts to the Snoqualmie River.

The remaining question is whether the direct discharge from all bypass sources will discharge water at temperatures in excess of Washington State Water Quality Standards (WQS), thereby adversely impacting listed salmonids. If a thermal impact does occur, it would (a) require

additional mitigation under the Salmonid HMP Administrative Rule, and (b) violate SCC 30.63A.210(1)(b)(iii)(D), requiring stormwater detention.⁵

Ms. Hartman has challenged this conclusion, arguing that the development's discharge of stormwater to the Snoqualmie River will violate State Water Quality Standards (WAC 173-201A) and, therefore, is inconsistent with the requirements of avoiding thermal impacts to salmonids, a requirement of the "Option A" Standards found in the Salmonid Habitat Management Plan Administrative Rule. This issue was one of the reasons cited by former Hearing Examiner Dykes in remanding the project back to PDS for additional environmental review under SEPA. (Exhibit 272) We examine the information in the record from the prior proceedings, as well as the new information provided by the applicant and PDS and the additional testimony and evidence presented by Ms. Hartman after remand.

Ms. Hartman submitted numerous exhibits and presented Lynn Doremus as an expert witness in support of their claim. (See, for example, Exhibits 69, 89, 90, 91, 131, 132, 133, 138, 234, 235, 238, 327, 328, 329, 347, 349, 350, 364, 365, 371, 372) On their behalf, Ms. Doremus asserts that (1) the stormwater detention pond is undersized and will overflow, sending untreated pollutants into the River in violation of the County's NPDES permit; (2) the receiving water is already degraded and cannot withstand any further impacts from the development; and (3) that a mixing zone cannot be used to disperse thermal impacts within the receiving water. (Exhibit 132; Testimony of Lynn Doremus on September 14, 2010). Ms. Doremus is a licensed hydrogeologist and has a degree in geotechnical engineering, but is not currently practicing.

First, Ms. Doremus is factually incorrect in asserting that the stormwater pond is undersized. Additionally, the record is clear that no stormwater detention pond is proposed as part of the development. Instead, Highbridge Estates is proposing to directly discharge stormwater into the Snoqualmie River near river mile 2.7, following water quality treatment as defined by SCC 30.63A.210(4). (See, Tract 998 shown on Exhibit 293a).

As noted above, direct discharge is allowed under the County's drainage regulations (eliminating the need to provide detention) where the discharge is directly to the Snoqualmie River, and the applicant can demonstrate that there will be no adverse drainage impacts resulting from direct discharge into the receiving water body. (SCC 30.63A.210) The second part of this phrase, demonstrating "no adverse impacts" is the key issue that needs to be examined. Ms. Doremus and Ms. Hartman alleged in the earlier proceedings that the

⁵Lynn Doremus testified that PDS should have treated the pipe discharge from the site as a non-point source instead of a point source. The Hearing Examiner disagrees. Discharges from the development's stormwater system must be treated as point source discharges.⁵ (Exhibit 365) By contrast, "nonpoint source" means pollution that enters any waters of the state from any dispersed land-based or water-based activities, including but not limited to atmospheric deposition, surface water runoff from agricultural lands, urban areas, or forest lands, subsurface or underground sources, or discharges from boats or marine vessels not otherwise regulated under the National Pollutant Discharge Elimination System program. (WAC 173-201-020) Nonpoint runoff is dealt with through the programs that the County is required to enact pursuant to its Phase I NPDES Permit. (Testimony of Bill Leif)

applicant's stormwater discharge will increase temperature in the Snoqualmie River. Mr. Doremus stated:

“...As the receiving water body for the stormwater discharge and septic effluent from the proposed Highbridge Estates, the Snoqualmie River will be subject to significant stormwater runoff degradation from a stormwater treatment facility that is designed to be inadequate to detain or treat the full range of stormwater flows that will be routed to it.”

(Exhibit 132 at p. 4) With regard to the impacts of effluent from the septic systems, Ms. Doremus testified that the septic designer dug several thousand feet of trenches across the site to change the hydrology of the site, rather than for investigative work. She alleges that the septic designer could not find adequate soils for the septic system and needed to alter the natural drainage to make it work.⁶ She alleges that the trenches accomplish that and capture water that would otherwise flow across the site. (Testimony of Lynn Doremus; September 14, 2010). Ms. Doremus further testified that the applicant's current stormwater design suggests that relatively small amount of water will be captured and treated and that we could see impacts to the salmon habitat as a result. She asserted that wet ponds are not good at eliminating fecal coli form, carbon or other nutrients from stormwater, although she cites to no literature or studies to support this claim.

On cross-examination, Ms. Doremus admitted that she has not prepared any site specific studies to support her conclusions. Instead, she is relying on various well-known publications, including the U.S. Geological Survey Hydrogeology map, DOE's Snoqualmie River Low Flow Study prepared by Joy et al in 1989, the Swamp Creek TMDL, the DNR GM 50 map, the TMDL QUAPP for the Snoqualmie River. She testified that she has spent 2-3 hours on the river near the site on August 22, 2010, plus an additional 100 hours over the past few years working on this project. Ms. Doremus testified that the effects of urban stormwater runoff from development on water bodies are well known. She stated that stormwater impacts are well-defined in the literature. It is commonly known to contribute hydrocarbons, metals, fecal bacteria and increased temperature to streams.

On further cross-examination, Ms. Doremus admitted that she had only designed one septic system (in 2006-2007) for a commercial use and has worked on five or six others, but not as the designer. She acknowledged that she did not perform a soil evaluation for the Highbridge property, nor has she performed any studies on the effect of septic systems. She stated that such studies need to be done here. She acknowledged that she has not done any studies to support her claim that the stormwater dispersion and diffusion facility will cause erosion on the river bank, again stating that such studies need to be done. When asked whether she was just speculating about all of the impacts that she testified to, Ms. Doremus said that her conclusions

⁶The work performed by the Applicant's septic design engineer, Steven Greso, is described in more detail at Finding of Fact No. 32(O).

were based on her best professional judgment and her experience with other sites that have stormwater runoff.

It is undisputed that the Snoqualmie River was listed as an impaired water body for certain pollutants on the State's 303(d) list including temperature, dissolved oxygen, fecal bacteria, and ammonia. (Exhibit 361) It has been studied as an impaired water body since at least 1989. Waters placed on the 303(d) list by the Washington State Department of Ecology (DOE) require the preparation of a plan to improve water quality by limiting pollutant loads, known as a "Total Maximum Daily Loads" (TMDLs). TMDLs are a key tool in the work to clean up polluted waters. (Exhibit 371) These requirements are found in Section 303(d) of the federal Clean Water Act. (Exhibit 327, 361) The Snoqualmie River TMDL Study was completed by Joy et al. in May, 1994.

The Snoqualmie River is listed as impaired for temperature. Bill Leif (an Engineer from the County's Surface Water Management Division and expert in NPDES and stormwater issues), testified that the Phase I NPDES Permit issued to the County by DOE requires it to adopt the regulations found in Chapter 30.63A SCC as one part of complying with the permit. He testified that DOE did not require the County to address thermal impacts within its development regulations. (Testimony of Bill Leif) However, the County's Salmonid HMP Administrative Rule did adopt special requirements to protect ESA-listed salmonids and bull trout from thermal impacts. The rule provides:

5. Thermal Impacts

Salmonids are extremely sensitive to changes in temperature. Thermal barriers have been identified as a cause of disruption and fragmentation of salmonid habitat (Buchanan et al. 1997; EPA 1997; MBTSG 1998). Salmonids require cold clear water for successful reproduction, and spawning. The temperature of stormwater discharged from a project site to a body of water containing a listed salmonid shall not exceed Washington State Water Quality Standards for temperature (WAC 173-201A). Project site is the entire site and not limited to that area within 300 feet of the OHWM.

(Salmonid Habitat Management Plan Administrative Rule). The question that was debated during the public hearings and in the record below is what is the appropriate Water Quality Standard against which thermal discharges should be measured, and what assumptions should be made to calculate the likely changes to temperature.

The Applicant proposes to measure the development's impacts to temperatures in the Snoqualmie River, after applying a mixing zone to its calculation. Mr. Leif testified that mixing zones may be used in certain circumstances according to DOE. DOE considers whether the discharge would result in a measurable change in the physical, chemical, or biological quality of a water body. Measurable changes are determined based on an estimated change in water quality at a point outside the source area, after allowing for mixing consistent with WAC 173-201A-400(7). A "mixing zone" means that portion of a water body adjacent to an effluent outfall where mixing results in the dilution of the effluent with the receiving water. Water quality criteria

may be exceeded in a mixing zone as conditioned and provided for in WAC 173-201A-400. In the context of this regulation, a measurable change includes a temperature increase of 0.3 degrees C or greater, after application of the mixing zone. See, WAC 173-201A-320.

According to the Salmonid HMP Administrative Rule, the WQS applicable to this case is found in WAC 173-201A-200. The Rule identifies both Chinook salmon and bull trout as ESA-listed species for which temperature thresholds cannot be exceeded. Water Quality Standards vary depending upon “use” categories. For use by salmonids, Water Quality Standards relating to temperature are established according to their important life stages (e.g., spawning, rearing and migration). In addition to these regulations, the Department of Ecology has adopted rules for determining how these rules are to be applied to specific situations. DOE has stated:

(1) Existing and designated uses must be maintained and protected. No degradation may be allowed that would interfere with, or become injurious to, existing or designated uses, except as provided for in this chapter.

(2) For waters that do not meet assigned criteria, or protect existing or designated uses, the department will take appropriate and definitive steps to bring the water quality back into compliance with the water quality standards.

(3) Whenever the natural conditions of a water body are of a lower quality than the assigned criteria, the natural conditions constitute the water quality criteria. Where water quality criteria are not met because of natural conditions, human actions are not allowed to further lower the water quality, except where explicitly allowed in this chapter.

(Emphasis added), (WAC 173-201A-310). The natural temperature of any river fluctuates throughout the year in response to weather conditions, groundwater inputs and flow volumes in the river. Man-made inputs into a river can also cause changes to temperature. (Exhibit 361) (Testimony of Lynn Doremus; Testimony of Ed Caine; Testimony of Michael Piechowski)

According to Table 200(1)(c) of the WQS, established water temperatures for bull trout (“char”) at the highest 7-DADMax temperatures range from 9 degrees C to 12 degrees C.⁷ The highest 7-DADMax water temperatures for salmonids range from 13 degrees C to 17.5 degrees C.⁸ These ranges constitute the standard temperature WQS for char and salmonids. However, more specific studies have been done for the Snoqualmie River, showing that natural river temperature variations may exceed 18 degrees C. (See, Exhibit 361, Snoqualmie River Total Maximum Daily Load Study or “TMDL”) In setting the WQS for the Snoqualmie River, the TMDL states:

⁷ 48.2 degrees F to 53.6 degrees F

⁸ 55.4 degrees F to 63.5 degrees F

[Temperature] shall not exceed 18.0 degrees C due to human activities. When natural conditions exceed 18.0 degrees C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3 degrees C. Increases from non-point sources shall not exceed 2.8 degrees C.

(Exhibit 361), (WAC 173-201A-200(i)).

Monitoring data from the Snoqualmie River at the closest gauge near Monroe (Station 07D050) recorded the highest river temperatures (18.5 degrees C) during the month of August. (Exhibit 361 at p. 9; 37) According to the TMDL, when river temperatures are at this level, human activities cannot raise the receiving water temperature by more than 0.3 degrees C. (Exhibit 361); WAC 173-201A-200(i)

During this same period, recorded river flows are at their lowest, at approximately 800 cfs. In addition, rainfall amounts in August are typically the second-lowest recorded amounts for the year. (Exhibit 358) Discharges from the wet pond during this period are expected to be at 0 cfs. Id. High flow conditions, triggering emergency overflows of untreated stormwater are highly unlikely given the historical rainfall and discharge calculations found in the record. (Exhibit 358; 359, 362, 363, 364) This is because the pond will be at its lowest point during the 3-month period of June, July and August. (Exhibits 362, 359)

Peak discharges from the wet pond, where a high flow situation could occur, are expected during the month of January, when the Snoqualmie River is flowing at its highest volume (5,500 cfs) and river temperatures have been consistently recorded at 5 degrees C). (Exhibits 362, 358)

All of the parties presented competing hypothetical situations showing “worst case scenarios,” attempting to show whether bypass discharges could ever, under any circumstances, increase the water temperature more than 0.3 degrees C, when river temperatures are above 18 degrees C. Mr. Caine attempted such calculations in the Staff Report. (Exhibit 320) Ms. Doremus disputes the calculations provided by PDS and the applicant. (Exhibit 132) In her estimation, the County’s assumptions are incorrect. (Exhibits 327 and 336) She believes that PDS should have used only a portion of the River’s flow volume, given the existence of a gravel bar in the River at the project site, which splits the river into two discrete channels for several hundred feet. (Exhibit 336; Testimony of Lynn Doremus) She asserts that the WQS against which the project should be measured is 17.5 degrees C based on WAC 173-20-1A-200(1)(c). Id. According to her calculations, Ms. Doremus asserts that under worst case scenario conditions, the project will cause a 2.35 degree C temperature increase, exceeding the 0.3 degree C standard found in the WQS regulations. Ms. Hartman asserts that such an increase will be lethal to migrating and spawning salmon. (See, Exhibits 133, 365, 307, 347, 348, 336) In response, Ed Caine testified that they all calculated the hypothetical examples incorrectly. Ms. Doremus testified on cross-examination that she was simply trying to do the same calculations as Mr. Caine, to see if they were correct.

The Examiner finds these hypothetical examples to be unpersuasive. None of the hypothetical calculations discussed in Exhibits 320, 328, 329, 347, 132, 327, 335, and 336 relate to the actual facts and data in the record.⁹ In the testimony and exhibits they presented, Ms. Hartman and Ms. Doremus have not disputed the pond discharge calculations, rain data and river temperature information gathered by the applicant from the Western Regional Climate Center, DOE, and other public sources, shown in Exhibits 358, 362, 363, and 364.

The applicant presented the testimony of Michael Piechowski and Dr. Bradford Shea, who each calculated the potential for high flows to cause thermal impacts to the Snoqualmie River, using real-world data. Mr. Piechowski noted that their calculations tend to prove that any water leaving the wet pond may actually be cooler than river water during warm summer months due to shading and the 6-foot depth of the wet pond. In that case, the input from the development would have a positive thermal impact on water quality, rather than an adverse impact. (Exhibit 335) Additionally, Jeremy Febus performed his engineering analysis and found that their further calculations show that during late summer, small storm events more typical for that time of year may not result in any discharge from the wet pond. (Exhibit 358, 359)

All of the expert witnesses presented by the applicant determined that high flow discharges from the Highbridge Estate's stormwater system would not occur during times of the year when Snoqualmie River temperatures would be anywhere near 18 degrees C, and the witnesses concluded that there would be no thermal impacts in violation of WQS. Neither PDS nor the citizens have presented any evidence to the contrary. The Examiner finds that a clear preponderance of the evidence shows that no discharges, let alone peak flows causing an emergency bypass of the wet pond, are likely to occur when the Snoqualmie River is at or above 18 degrees C. The Examiner finds this to be true regardless of whether the applicant applies a mixing zone to its calculations or not. Where a mixing zone is applied, it is likely that any remote thermal impacts will be further removed. Accordingly, the applicant has adequately demonstrated that its bypass discharges will not adversely affect the temperature of the Snoqualmie River. The applicant has met its burden of proving that they have satisfied the Salmonid HMP Administrative Rule, as well as the requirements of SCC 30.63A.210.

Based on the foregoing analysis, this project will meet or exceed the requirements the UDC Chapter 30.63A and 30.63B SCC, and the Salmonid HMP Administrative Rule.

The applicant proposes in excess of 5,000 square feet of new impervious, which meets the definition of major development activity per Chapter 30.63A.120(2) SCC. Therefore, a full drainage plan (construction plans) is required prior to site disturbance. The Examiner has included recommended conditions to require submission and approval of a full drainage plan, obtaining a grading permit, and submission and approval of a Storm Water Pollution Prevention

⁹For example, the latest data from the Department of Ecology from Gauging Station 07D050 (nearest to High Bridge Road) shows that overall water quality "... met or exceeded expectations and is of lowest concern (based on water-year 2009 summary)." (Exhibit 363)

Plan (SWPP) in accordance with Volume II of the DOE Stormwater Manual. Geotechnical recommendations will be incorporated into the final wet pond design and inspection during the construction phase of development. The wet pond secondary overflow system will require the application of appropriate BMPs to address any detected conventional pollutants. Any necessary BMPs will be incorporated into the final wet pond design and will be addressed during the construction phase of the development.

26. Critical Areas Regulations.

Critical areas present on and near the site are summarized in Critical Areas Study – High Bridge Road, LLC, prepared by NW Biological Consultants, Inc., and dated June 23, 2009 (Exhibit 301). PDS reviewed the report and accepted the report as an accurate description of the critical areas either on site or adjacent to the site.

The following wetlands and streams are identified:

- a) The Snoqualmie River lies along the north-northeast property line. It is a State Shoreline, classified as a Type 1 with a 150 foot buffer.
- b) Wetlands F/E/C consists of three separate drainage channels located in the northwestern portion of the site, covering 2.6 acres. The channels converge just above High Bridge Road into one main channel. The wetlands are located immediately adjacent to the channels out to approximately 15 feet on either side. The 3 wetlands were classified as Category 3 with 50 foot buffers, and the stream as a Type 5, with a 25 foot buffer.
- c) Wetland/Channel J consists of a drainage channel with numerous wetlands, covering 0.35 acres. It has been classified as a Category 3 with a 50 foot buffer.
- d) Wetlands R/Q are located immediately south of Wetland/Channel J. They are about 5.3 acres in size and have been classified as Category 3 with 50 foot buffers.
- e) Wetland G is approximately 1.06 acres and is located between private road 803 and High Bridge Road. It has been classified as Category 3 with a 50 foot buffer.
- f) Wetland D consists of a small man-made pond with a narrow band of wetland vegetation along the water's edge. The pond and adjacent wetland areas are about 0.29 acres size. The wetland has been classified as Category 3 with a 50 foot buffer.
- g) Wetland/drainage P is located in the northwest area of the site and drains towards the Snohomish River. Numerous seeps and wetlands are located immediately adjacent to the channel out to a distance of approximately 15 feet on either side of the channel. The wetland has been classified as Category 3 with a 50 foot buffer.
- h) Wetland M/K is a relatively large wetland in the southeast area of the property. It consists of steep slopes with a Type stream channel located as the bottom of the relatively deep ravine. The wetland complex 5 acres in size with 2.7 acres located on-site. The wetland has been classified as a Category 3 with a 50 foot buffer. The stream is a Type 5 with a 25 foot buffer.

- i) Wetland B is located off-site within 100 feet of the property. It consists of a small pond with a narrow band of wetland around the edge. The wetland is approximately 7,500 square feet in size. The wetland was not categorized.
- j) Wetland X is located at the southwest corner of the site with most of the wetland located off-site. The wetland is associated with a Type 3 stream which is also located off-site. The portion of the wetland located on-site is approximately 3,700 square feet in size. The Type 3 stream has a 100 foot buffer. The wetland Category is undetermined because access to the offsite wetland was not possible and the area of the wetland was not calculated.

Protection for Critical Areas and Mitigation for Impacts. The proposed development will have some impacts on the critical areas and buffers listed above. Specifically, 500 square feet of the buffer for Wetland D was impacted during septic system site investigation work. In addition, construction of the private roads and frontage improvements will impact 12,358 square feet of buffers associated with Wetlands G, R/Q, M/K and B, and 649 square feet of wetlands G and R/Q. An additional 800 square feet of buffer area will be impacted by the stormwater discharge facility near the river. A total of 13,158 square feet of permanent disturbance to the buffers is proposed. As mitigation for those impacts, Wetland D will be expanded by the creation of 1,000 square feet of shrub scrub wetland to compensate for impacts to Wetlands G and R/Q. The remainder of the buffer impacts will be offset by creation of 17,920 square feet of additional wetland buffers, which will include enhancements to those areas. (Exhibit 302)

The applicant is vested to the former version of the critical areas regulations that were in effect until October 6, 2007. See, *former* Chapter 30.62 SCC. As required by those regulations, all critical areas and buffers will be permanently protected as NGPA/Es or placed in separate tracts for permanent protection as a NGPA. (SCC 30.62.320)

Special Protection for Habitat of ESA Listed Species. At the time of submittal, several species having a “primary association” with the subject property were listed for protection under the Endangered Species Act (ESA). These species included bald eagles, Chinook salmon, bull trout, and steelhead trout were listed as “threatened” under the ESA. Former SCC 30.62.100 requires that a habitat management plan (HMP) be prepared for such species. PDS adopted administrative rules to guide the creation of such HMPs.¹⁰

Bald Eagle HMP Administrative Rule

In its earlier proceedings, PDS required the applicant to prepare a Bald Eagle Habitat Management Plan pursuant to former SCC 30.62.110. However, since that time, the status of Bald Eagles has changed under federal law. The U.S. Fish and Wildlife Service found that the Bald Eagle had recovered within the meaning of the ESA and it was de-listed as a threatened species on August 8, 2007. On February 14, 2008, the State of Washington downgraded the Bald Eagle from “threatened” to “sensitive” on its priority species list. As a result, the Bald Eagle is no longer considered a “critical species” and a habitat management plan is no longer required under the critical areas regulations.

¹⁰ See, PDS Salmonid Habitat Management Plan Administrative Rule, and Bald Eagle Habitat Management Plan Administrative Rule.

Ms. Hartman and others stated that special protections for Bald Eagles and their habitat should be required. (Exhibit 322) Mr. Robert Schmitz asked why an HMP is not required for bald eagles if they are vested to the 2006 regulations. (Exhibit 334) The answer is that the regulations have not changed—HMPs are required for listed species. However, the bald eagle is no longer a listed species, so the HMP requirement is no longer triggered as a matter of law.

The applicant has demonstrated that its site plan places lots 29, 30, 31 and 32 outside of the required 100-foot buffer from the Type 1 stream (which by definition is a fish and wildlife habitat conservation area).¹¹ (SCC 30.62.310(1)) The buffer is appropriately measured from the OHWM of the Snoqualmie River. There are no other regulations relating to wildlife protections found in the former Chapter 30.62 SCC.

An examination of the County's SEPA policies also reveals no specific policy that would form the basis for the exercise of SEPA substantive authority to require additional protections for Bald Eagles under SCC 30.61.230. The County Code lists the GMA Comprehensive Plan as a policy basis for the exercise of substantive authority. The Plan is the most likely place for relevant policies relating to Bald Eagles. The Natural Environment Policies, specifically Goal NE 4, covers the protection of vegetation, fish and wildlife. However, a review of Goal NE 4 and its objectives and policies reveals that there are no relevant protections stated specific to Bald Eagles. The Examiner finds that generic references to "wildlife" within the NE policies of the Comprehensive Plan are insufficient to require the preparation of a specific protection plan for Bald Eagles using SEPA substantive authority. Accordingly, preparation of a Bald Eagle Habitat Management Plan is not mandatory. However, the applicant has submitted a Combined Mitigation Plan (Exhibit 302) in which they propose to voluntarily follow a Bald Eagle Site Management Plan. The Plan proposes to prevent habitat loss to the Cathcart Roost, which is important wintering habitat for bald eagles, through the establishment of a 150-foot management area (riparian buffer). (Exhibit 305)

The Plan also provides significant protection from disturbance to the eagles, as suggested by the Washington State Department of Fish and Wildlife (WDFW). The land within the 150-foot buffer will be placed in a permanent NGPA, which prevents habitat loss. Lots 31-37 will be sold with a requirement that new owners sign an agreement to follow the Bald Eagle Site Plan. (Exhibit 302 at p. 10) The Plan requires the watering and replacement of trees within the buffer area. Mitigation proposed will prevent disturbance to the Roost. No construction may occur during roosting season. The applicant will plant 200 new coniferous trees (Western Red Cedar and Douglas Fir trees) in two staggered rows to provide a visual screen of the houses along Lots 31-37 for the Cathcart Roost. Id. The mitigation proposed will adequately address any concerns of the WDFW and citizen concerns raised in earlier proceedings relating to the protection of bald eagle habitat from loss and disturbance. No additional requirements should be imposed. (SCC 30.61.200(6))

The Examiner finds that the applicant has met and exceeded the requirements of the Critical Areas Regulations.

Salmonid HMP. Three ESA-listed salmonid species (Chinook salmon, Bull trout and Steelhead trout), have been identified that have a primary association with the subject property, triggering the need for an HMP. The HMP must meet the requirements of PDS's Salmonid Habitat

¹¹ Some citizens suggested that the buffer required is 300 feet. The Examiner finds no support for this buffer width in the County Code; the required buffers are found in Table 30.62.310(1) SCC and in rural areas a maximum buffer of 100 feet is required for Type 1 streams.

Management Plan Administrative Rule. The applicant has submitted a Final Salmonid Habitat Management Plan. (Exhibit 303) PDS has determined that the Plan meets the requirements of SCC 30.63.110 and the Department's Salmonid HMP Administrative Rule. The issues here are discussed in detail in Finding of Fact No. 11, above. For the reasons set forth in Finding of Fact No. 11, the Examiner finds that the requirements of the Salmonid HMP Administrative Rule have been met.

Based on an evaluation of the information submitted in the revised application, the Examiner finds that the application is in conformance with Chapter 30.62 SCC (Critical Areas Regulation) and is consistent with the purpose and objectives of the Chapter in regulation of development activities in critical areas to safeguard the public health, safety and welfare. Accordingly, the Hearing Examiner finds that the proposed mitigation plan requiring the protection of critical areas meets the requirements of the County Code and should be imposed as a condition of development approval.

27. Consistency with the GMA Comprehensive Plan.

On December 21, 2005, effective February 1, 2006, the Council adopted Amended Ordinances 05-069 through 05-079, 05-081 through 05-085, 05-090 which amended the map and text of the Snohomish County GMA Comprehensive Plan, added rural lands to Urban Growth Areas and adopted area-wide rezones within the Urban Growth Areas of the county respectively.

The subject property is designated Rural Residential (RR: 1 du/5 acre Basic). This designation includes all lands which are currently designated as Rural or Residential Estates on existing subarea comprehensive plans and most of which were previously zoned to R-20,000; Suburban Agriculture-1 Acre; or Rural Conservation. Also included are lands which have a higher density subarea comprehensive plan designation but were zoned RC by the county subsequent to the subarea plan adoption. The implementing zones within this designation are the Rural-5 Acre zone and other zones with a minimum lot size requirement larger than 5 acres.

Several citizens stated concerns about the proposed development and argued that the applicant should be required to develop according to the base zoning of R-5. (See, e.g., Exhibit 354) However, the Comprehensive Plan states that the base density of 1 dwelling unit per 5 acres may be increased consistent with Policy LU 6.B.9. As an implementing development regulation of the Comprehensive Plan, the rural cluster subdivision ordinance allows density increases when the requirements of those regulations are met. As such, the 35-lot rural cluster subdivision is consistent with the density provisions of Snohomish County's GMA-based zoning regulations under Subtitle 30.2.

28. Utilities.

- A. Sewer. Sewer will be supplied individual septic systems. Snohomish Health District recommended approval of the preliminary plat on October 5, 2009. (Exhibit 308)
- B. Electricity. Snohomish County Public Utility District has indicated that they can provide electrical service to Highbridge Estates on April 28, 2006. (Exhibit 51)

- C. Water. The applicant has revised their earlier plan to provide water to the development through individual wells. This was a major issue of contention in the earlier proceedings before former Examiners Good and Dykes. Today, the applicant proposes to provide water to the development through the Cross Valley Water District, a public water supply system. A preliminary certificate of water availability was provided by Cross Valley Water District on June 28, 2010. (Exhibit 309) It states: "No water available until after the property is annexed into the District and mains are extended and looped per District requirements." The Certificate was signed by Gary Hajek, General Manager of Cross Valley Water District. He wrote a similar letter on December 10, 2007. (Exhibit 120)

Several citizens still challenge the availability of water supply to the development on several grounds. Ms. Hartman claims that the Cross Valley Water District was required to annex the area within which the development is located and the process remains incomplete. (Exhibits 329, 367) Until the annexation process is completed (and they have promised an appeal of the annexation), Ms. Hartman argues that adequate provision of potable water to the development has not been made. Ms. Hartman also argues that the route to extend the water line along Highbridge road is infeasible and that DPW agrees with this determination. (Exhibit 329 and 329-3)

However, DPW did not say that the route was infeasible. Exhibit 329-3 contains a statement in an email from Jeffrey Jones, a DPW employee, in which he states that, "The presence of this structure [a 150-foot long structural earth wall, located in the 15400 block of High Bridge Road], will likely restrict the installation of excavated underground utilities on this side of the right of way." (Exhibit 329-3) In rebuttal, Kevin O'Brien, the applicant, testified that the annexation was approved by the District on September 7, 2010 and that water supply is now available within the meaning of the requirements. (Exhibit 367) The applicant's expert witness, Mike Piechowski, a hydrogeologist, also testified that route that the water line extension is an engineering design decision which will be made at a future time. There is no set route for the waterline; the planned extension could cut across private properties if permission was granted or easements acquired.

A citizen, Arthur Tuck, testified at the hearing on September 23, 2010. He stated that he has lived in the area since 1945. He asked who would pay for the extension of the water line to the development, and expressed concern about being required to hook up to public water in the future and the expense of such construction. Mr. O'Brien responded that the applicant is required to pay for the extension of the water line to the development, and that the District may allow but presently does not require other citizens to hook up to the newly extended water main.

Ms. Hartman also alleges that the Cross Valley Water District has inadequate capacity to serve the development. (Exhibit 366) Other citizens testified and wrote letters noting that the water pressure in the wells in the immediate vicinity of the development has

been poor over the years. (Exhibit 76) In rebuttal, the applicant's expert witness, Mike Piechowski, a hydrogeologist, testified that he has over 20 years of experience working with public water supply systems, and has worked as a consultant to the Cross Valley Water District. He stated that he is very knowledgeable as to their sources of water supply, their backup and alternate intertie sources and the operational issues associated with providing public water supply to residences. Mr. Piechowski testified that the Cross Valley Water District Plan did consider the annexation area in its planning process. (Exhibit 366) He stated that the annexation area (with 30 properties and 275 acres) represents a very small portion of the District's area. He noted that the Cross Valley Water District has interties with other Water Districts such as Everett, Silver Lake and Clearview. They also have additional water rights that may be exercised and more wells can be drilled if needed to provide the quantity of water need for the future. He testified that low water pressure in wells is not a capacity issue as suggested by some citizens, but a phenomenon known as "lost yield." This is a routine operational issue for water districts, and can be repaired easily through reconstruction. Lost yield is a function of well gravity and is also a storage tank issue. On cross-examination by Ms. Hartman, Mr. Piechowski testified that reconstruction (or tank replacement) costs vary, but can cost about \$10,000 on average, for a 3-day job. He said this can be done in about a week.

Based upon a preponderance of the evidence in the record, the Examiner finds that the Cross Valley Water District does have the capacity to serve the Highbridge Estates rural cluster subdivision. Even if it did not, Ms. Hartman has not presented legal precedent or statutory authority that authorizes the Hearing Examiner to review (or disapprove of) the District's own determination of its water supply capacity.

The real question presented is whether the Certificate of Water Availability is sufficiently complete for purposes of preliminary subdivision approval, where it is contingent upon the successful completion of the Cross Valley Water District's annexation efforts. Cross Valley Water District passed Resolution No. 2010-9-3 on September 7, 2010, annexing the subject property so that it may provide potable water to the Highbridge Estates subdivision. (RCW 57.24.180) If a period of forty-five days elapses without the Boundary Review Board's (BRB) jurisdiction having been invoked, the proposed annexation shall be deemed approved under RCW 36.93.100. (See, 57.24.180) The 45-day period expires on October 22, 2010.

PDS found that adequate provisions for potable water have been made and recommend approval of the rural cluster subdivision. (Exhibit 320) The County's attorneys noted in a legal memorandum dated May 29, 2008 that under PDS's current practice, "appropriate provisions" in a proposed subdivision has meant that an applicant either plans to utilize an existing public water system or plans to use groundwater wells. Here, exempt wells cannot be used for all 35 lots. PDS requires a letter from the public water system evidencing intent to supply water to the development. (Exhibit 310) The Prosecuting Attorneys' Office noted that there is a difference between the level of certainty required for the preliminary plat approval stage, which is governed by County

regulations and RCW 58.17.110, and the level of certainty required to obtain a building permit (which requires evidence of a water right according to RCW 19.27.097). In analyzing the meaning of the phrase “appropriate provisions” for potable water supply, the Prosecuting Attorney noted that a court will look to the dictionary or common law for a definition when a term in a statute is undefined. Here, “appropriate” is not defined in RCW 58.17.110. The term “appropriate” is defined as “proper” or “suitable.” See Webster’s New Twentieth Dictionary 91 (1977). (Exhibit 310) “Provision” is defined as “preparatory arrangements.” Id. At 1450. Here, it is clear that preparatory arrangements of public water supply have been made but are not yet final. The Cross Valley Water District has expressed its intent to annex and extend water to the development. The applicant has provided potential extension routes in Exhibits 113 and 115. In the event that the existing annexation petition is disapproved or changed, the applicant has also provided alternative methods of achieving potable water to the site as shown in Exhibit 117. The applicant must provide specific evidence of water availability prior to final plat approval and/or prior to the issuance of a building permit for any lot on the site. Accordingly, the Hearing Examiner finds that for purposes of achieving preliminary plat approval, the applicant has sufficiently demonstrated that preparatory arrangements have been made to provide potable water through a public water supply system.

29. Zoning (Chapter 30.2 SCC)

This project meets zoning code requirements for lot size, including RCS provisions, bulk regulations and other zoning code requirements.

30. State Environmental Policy Act Determination (Chapter 30.61 SCC--SEPA)

The Determination of Nonsignificance (DNS) was issued on August 21, 2007 (Exhibit 22) and published along with the notice of the public hearing on August 29, 2007 (Exhibit 24). An appeal was filed. In a decision dated February 4, 2009, the Hearing Examiner granted the SEPA appeal in part; the threshold determination was “overturned,” and the SEPA determination was remanded back to the Department for further processing consistent with the Examiner’s decision. (Exhibit 272)

A revised environmental checklist (Exhibit 305) was submitted on July 23, 2010. The checklist was revised to specify that the development was for 35 lots, to revise the grading volumes to 31,500 cubic yards of cut and 20,200 cubic yards of fill, and to identify potable water to be supplied by Cross Valley Water District. PDS determined that the revisions required issuance of a SEPA Revision. (Exhibit 306)

PDS further determined that issuance of a SEPA Revision constituted a new SEPA determination, as required by the Examiner’s decision (Exhibit 272) and by Council Motion 09-165. (Exhibit 283) In order to issue an entirely different document for a SEPA determination, the previous SEPA determination must be withdrawn before a separate SEPA determination

can be made. WAC 197-11-335(3)(a) contains the requirements for withdrawal of a DNS, wherein the DNS determination is to be withdrawn if:

- (i) There are substantial changes to the proposal so that the proposal is likely to have significant adverse environmental impacts;
- (ii) There is significant new information indicating a proposal's probable significant adverse environmental impact; or
- (iii) The DNS was procured by misrepresentation or lack of material disclosure

PDS determined that none of those criteria existed in this circumstance. The Environmental Checklist consists of 16 elements. The staff report contains a discussion of each element of the environment, as defined within the context of SEPA, and the conclusion of each element. After remand, PDS states that they have evaluated each element of the checklist in reaching their new SEPA determination and find that based on the information in the record, the proposed project will not have a probable significant adverse environmental impact. (Exhibit 305 and 306) A revised DNS was issued. (Exhibit 306)

The Examiner has no jurisdiction to review the revised DNS. Further review of that decision may only be had in Superior Court in a closed record appeal. Accordingly, the Examiner is required to use the Revised DNS (Exhibit 306) and information in the new SEPA Checklist (Exhibit 305) in issuing this final decision and order.

As noted in Finding of Fact 14, above, Ms. Hartman and Ms. Sparks filed a combined SEPA appeal and appeal of the preliminary plat of Highbridge Estates on August 25, 2010, which also included shoreline permit issues. The appeal was filed on behalf of themselves and 35 additional named parties. On September 1, 2010, the Hearing Examiner issued an order dismissing the SEPA appeal on jurisdictional grounds based upon SCC 30.61.300(8), which bars further SEPA appeals after remand from an appeal under that chapter. (Exhibit 325)

31. Subdivision Code (Chapter 30.41A SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. A complete application for the proposed plat was received by PDS on July 23, 2007. The proposed plat as conditioned also meets the general requirements under Section 30.41A.100 with respect to health, safety and general welfare of the community. As proposed, the subject lots will not be subject to flood, inundation or swamp conditions. The lots as proposed are outside of all regulated flood hazard areas. As conditioned, the plat will meet all SCC 30.41A.210 design standards for roads. The following general subdivision standards have been met:

- A. Roads. The Examiner finds that based on the information provided in the file, the PDS staff report and in the public hearing, the design standards for roads are met. Finding of Fact 22 above, adequately addresses how the Applicant meets County road requirements. See, SCC 30.41A.210.

- B. Flood Hazard. The Examiner finds that the lots as proposed are outside of all regulated flood hazard areas and that none of the lots are proposed in areas that are subject to flood, inundation or swamp conditions. (SCC 30.41A.110).
- C. Fire Code Compliance. (Ch. 30.53A SCC) The Office of the Fire Marshal reviewed the project on July 7, 2010. The review was based upon the preliminary plat plans and the civil plans. (Exhibit 293) The revised plans are for public water to be supplied by Cross Valley Water District. (Exhibit 309) The intersection distance for access roads on to High Bridge Road was evaluated and approved. The conclusions of the review was that the access roads meet the minimum requirements for fire apparatus and emergency vehicle access (SCC 30.53A.150). The Fire Marshall found that the project will meet the requirements of Chapter 30.53A SCC with the following recommended conditions:

(1) Fire hydrants shall be installed and approved at construction review. SCC 30.53A.310(1);

(2) Fire hydrants shall have a maximum lateral spacing of 600 feet with no lot in excess of 300 feet from a fire hydrant. Spacing shall be approved at construction review. SCC 30.53A.320(1)(a); and

(3) The required fire flow for this project is 750 gpm at 20 psi for two hour duration. The fire flow requirements shall be approved at final plat. If the required fire flow cannot be provided the new dwellings shall be provided with NFPA 13-D fire suppression systems (SCC 30.53A.310(1) and SCC 30.53A.310(2)).

The Examiner has included the Fire Marshall's requested conditions as part of the preliminary approval of the subdivision.

32. Rural Cluster Subdivision Code Design Standards (Former Chapter 30.41C SCC)

The subject development application is vested to the former provisions of Chapter 30.41C SCC, which was later amended by Ordinance No. 08-087 in November, 2009, effectively repealing and replacing the earlier regulations with new standards. The standards applicable to the subject development are reviewed below:

A. Rural Cluster Subdivision Lot Yield Calculations

The proposed 35 lots is less than the maximum lot yield calculations of 37 lots. The lot yield is in compliance with Chapter 30.41C.230 SCC. The application complies with the provisions of Chapters 30.41C.230 and 30.41C.240 SCC based on the following analysis:

Basic lot yield: $3,691,591 \text{ square feet} / 100,000 \text{ square feet} = 36.9 \text{ lots}$

Total lot yield allowed (rounded) = 37 lots
Total lots proposed = 35 lots

B. Former SCC 30.41A.200 (1) -- Critical Areas Compliance

This Code provision states that when environmentally sensitive areas such as wetlands, fish and wildlife habitat conservation areas, areas of unique vegetation or wildlife species, steep slopes, and other critical areas are present, and when such areas are identified and protected pursuant to Chapter 30.62 SCC and/or other applicable County ordinances or policies, the areas shall be designated as critical area protection areas.

As described more fully in Finding of Fact No. 26, above, all critical areas are designated as either NGPA/E or as NGPA and located within Tracts 999, 997, and 996. (Exhibit 293) Impacts to critical areas have been avoided or adequately mitigated through compliance with the regulations and HMP rule for ESA-listed species. The NGPAs have been located outside of building lots. The Examiner finds that the project proposal complies with the relevant critical areas codes, rules, and policies.

C. Former SCC 30.41C.200 (2) – Vegetated Sight Obscuring Buffers

This Section states:

(2) *The transition from any proposed residences within the rural cluster subdivision or short subdivision to uses on adjoining property or adjoining public roadways classified as an arterial (any type) or a non-arterial collector, according to the Snohomish County Arterial Plan and the EDDS, shall be provided with a sight obscuring buffer of native vegetation, or where no native vegetation exists, landscape screening comprised of fast growing, low maintenance, native trees and shrubs in accordance with the requirements of SCC Table 30.41C.210(1). Existing wind resistant vegetation providing such a screen shall be preserved. Between proposed residences and any adjoining natural resource lands, a setback shall be established consistent with the setback shown in SCC Table 30.41C.210 (1);*

As noted above, a landscape plan is a required component of the submittal documents for a rural cluster subdivision (Chapter 30.41C.040(8) SCC). The transition from residences and adjoining properties and from specified roads has been provided (Exhibit 293). Existing landscaping provides the intended function of the vegetated sight obscuring buffer in all areas, so supplemental plantings will be required only for areas of disturbance during construction. The Landscape Plan (Exhibits 293.k and 293.l) contains the planting specifications for the sight obscuring buffer. PDS has determined that the vegetated sight obscuring buffer has been appropriately located, the buffer is of the required size, and that the landscaping plan provides adequate requirements for

installation of the plants. PDS has determined that the project meets this requirement. The sight obscuring buffer is proposed to be a minimum of 50 feet in width and located within Tracts 999, 997, and 996.

Two neighbors commented that they are concerned about the vegetated buffer or new houses blocking their views of the surrounding area. However, the buffers are mandatory under the County's regulations and the applicant must provide them. The Examiner has included a recommended condition of approval to implement the landscape plan.

D. Former SCC 30.41C.200 (3)—Internal Roads

This Section states:

- (3) *All roads, whether public or private, shall be provided in accordance with the EDDS. Access to the boundary of a rural cluster subdivision by a private road may be permitted pursuant to SCC 30.41A.210 (1) and (8). Location of public or private roads and access points to the existing public roadway system shall be carefully controlled, with no more than two access points allowed per cluster unless specifically requested by the county engineer;*

Here, internal roads are proposed to be private roads located within easements either on the lots or within the tracts. All roads, either public or private, will be built to EDDS standards, except where modification or deviations have been approved. The Hearing Examiner finds that the project meets this requirement.

E. Former SCC 30.41C.200 (4)—Utilities

This Section states:

- (4) *Electric, telephone, and other utility lines shall be designed, located, and screened so as to minimize their visibility from adjacent properties and the site or shall be located underground;*

All utilities are to be located underground, and PDS has determined that the project complies with this requirement. The Hearing Examiner has included a condition requiring utilities to be located underground.

F. Former SCC 30.41C.200 (5)—Unbuildable land

This Section states:

- (5) *All unbuildable lands shall be designated as native growth protection areas unless designated as natural resource lands within restricted open space;*

“Unbuildable land” is defined as “[s]teep slope areas exceeding 40 percent; designated floodways; and land which is below the mean high water mark of lakes, rivers or year-round ponds and streams under the jurisdiction of Chapter 90.58 RCW.” SCC 30.91U.060.

Here, the applicant has designated approximately 23.19 acres as unbuildable lands (Exhibit 293), which comprises 49.1% of the area that is designated as restricted open space. The applicant has included all NGPA areas, all sight obscuring buffers, the equestrian easement within Tract 999 (located along the southern border of the site) and areas of right-of-way designation within their determination of unbuildable lands. Those specified areas exceed the definition of Unbuildable Lands, which restrict the areas that are designated as unbuildable lands to lands covered by water and slopes greater than 40%. The actual area of unbuildable land, as computed by PDS, is approximately 34.6% of the restricted open space (see Exhibit 293.j). SCC 30.41C.210(1) specifies that unbuildable may constitute no more than 65% of the total restricted open space. By either the area presented by the applicant or the figure determined by PDS, the project complies with the requirements. The areas designated by the applicant as unbuildable lands are located within tracts and are designated as NGPA. The Examiner finds that the project complies with this requirement.

G. Former SCC 30.41C.200 (6)—Buffers for Resource Land

This Section states:

- (6) *When agricultural, forestry or mineral uses are proposed for open space area(s), adequate buffers to minimize conflicts between resource and residential uses shall be provided;*

The Examiner finds that this provision is not applicable to the present development proposal.

H. Former SCC 30.41C.200 (7)—Disclosure Statement Required

This Section states:

- (7) *When agricultural, forestry, or mineral uses are proposed within an open space tract within a rural cluster subdivision or a short subdivision, a disclosure statement, as described in SCC30.41C.200(8), shall be placed on the final plat or final short plat in a location determined by the department. The disclosure statement shall apply to the real property that*

is subject to the final subdivision or final short subdivision as of the date of approval and may not be applicable thereafter if the agricultural, forestry, or mineral uses are discontinued.

The Examiner finds that neither agricultural nor forestry uses are proposed for any of the tracts within the RCS. Therefore, no disclosure statement is required.

I. Former SCC 30.41C.200 (8)—Mineral Resource Land Disclosure Statement

This Section states:

The following notice statements shall constitute the notice required for notice of resource uses within required or optional open space:

...

(b) Notice for mineral uses within required or optional open space:

Lots within a rural cluster or short subdivision, and adjacent to or within 2,000 feet of mineral uses located in a designated open space tract may be subject to inconvenience or discomforts arising from mineral operations, including but not limited to noise, vibration, odors, fumes, dust, smoke, the operation of machinery of any kind, heavy truck traffic, hours of operation, and other mineral related activities.

Here, no mineral resource uses are proposed for any of the open space tracts within the RCS. Therefore, no disclosure statement is required. The Examiner finds that the project complies with this requirement.

J. Former SCC 30.41C.200 (9)—Physical Separation of Clusters

This Section states:

(9) Where practicable, open space tracts within a rural cluster subdivision or short subdivision shall be located contiguous to open space tracts on adjacent properties;

No rural cluster subdivisions are located adjacent to the subject property and there are no designated open space tracts on adjoining properties. The Examiner finds that this project complies with the requirement of SCC 30.41C.200(9).

K. Former SCC 30.41C.200 (10)—Open Space Management Plan

This Section states:

(10) *A management plan which details the required maintenance and management tasks and responsibilities may be required by the department for all restricted open space and other open space areas which require continuing maintenance or management;*

An Open Space Management Plan has been provided by the applicant. (Exhibit 286) The Examiner finds that the project complies with this requirement. A condition has been included requiring compliance with the Open Space Management Plan.

L. Former SCC 30.41C.200 (11)—Physical Separation of Clusters

This Section states:

(11) *Each rural cluster subdivision or short subdivision shall be divided into physically separated clusters with a maximum of 30 residential lots per cluster. The minimum physical separation shall consist of a buffer of wind resistant native vegetation with an average width of 75 feet and a minimum width of 50 feet (see SCC Table 30.41C.210(1));*

The development proposes 35 lots, with 26 lots located to the south and west of High Bridge Road and 9 lots located to the north and east of High Bridge Road. Each cluster of lots has a designated 50-foot Sight Obscuring Buffer located adjacent to High Bridge Road. The Examiner finds that the project complies with this requirement.

M. Former SCC 30.41C.200 (12)—Lots abut open space or buffer

This Section states:

(12) *At least 75 percent of the residential lots within a rural cluster subdivision or short subdivision shall abut a required buffer or open space tract;*

The current application exceeds this requirement. It proposes to place 34 of the 35 lots abutting required buffers and restricted open space tracts. The Examiner finds that the project complies with this requirement.

N. SCC 30.41C.200 (13)—Design fits with natural features and maintains rural character

This Section states:

(13) *The rural cluster subdivision or short subdivision shall be designed, to the greatest extent possible, to configure the residential lots in accordance with the natural features of the site and minimize topographic alteration, to maintain rural character, and to maximize the visibility of the open*

space tracts from adjoining collector roads, arterials, or state and federal highways;

The subject property generally slopes from southwest to northeast, and is steeply sloped in some areas. Adjoining properties will be screened from the proposed new residences in Highbridge Estates by vegetated sight-obscuring buffers. Because of the general slopes found on the site, properties to the south and west may “look down” on the proposed development, and properties to the north and east of the Snoqualmie River may “look up” and observe the proposed development. The visibility is based upon the natural slope of the land, and not through topographic variation that is caused by the development. The location of the residential lots is confined to the areas within the site that have the flattest slopes. The majority of the restricted open space tracts abut with High Bridge Road, thereby maximizing the visibility of the open space tracts from the road. The applicant testified that the lots have been placed along ridgelines only where no other locations are available. (Testimony of Kevin O’Brien) Accordingly, the Examiner finds that the requirements of this Section have been met.

O. SCC 30.41C.200 (14)—Sanitary Sewers

This Section states:

(14) Rural cluster subdivisions or short subdivisions shall not be served by public sanitary sewers unless the Snohomish Health District requires the development to connect to a public sewer system to protect public health;

All lots in the rural cluster subdivision will be served by individual septic systems. Steve Greso testified that he performed site investigation work consisting of digging test pits and trenches within various areas of the subject property to determine appropriate locations of septic systems for the 35 lots. It took him approximately 1 year and three site visits with the Snohomish Health District (SHD) to achieve approval of the septic design for the subdivision. He stated that siting the septic system was complicated by the compacted soils on the site, which he assumes were the result of long-term agricultural operations by the prior owner. The septic design has been approved by the SHD. (Exhibit 308)

P. SCC 30.41C.200 (15)—Location of clusters

This Section states:

(15) Each cluster of lots within the subdivision or short subdivision shall be located near the interior of the site, if feasible, and also located where the cluster and/or the building sites are within existing forested areas of the site; except individual clusters shall be sited as far as possible from adjacent natural resource lands as permitted in chapters - 30.32C SCC.

Individual clusters shall not be located on ridgelines and other prominent topographic features visible to adjacent and vicinity properties when other locations are available;

The site continuously slopes upward from north and east to the southwest corner of the site, from an elevation of approximately 20 feet along the river to an elevation of 360 feet. Consequently, any building site on the subject property will be at a higher elevation than properties to the north. Similarly, High Bridge Road, which is at an elevation ranging between 160 and 220 feet, is located at a lower elevation than any of the proposed building sites located south and west of High Bridge road. Any residential development will be visible from adjoining properties and roads. However, the site does not feature any prominent ridgelines. The lots are located in the flatter areas of the site that afford access and appropriate building sites. The Hearing Examiner finds that SCC 30.41C.200(15) does not preclude residential development on a sloped site, it merely requires the avoidance of ridgelines and other prominent topographic features where feasible.

PDS has determined that the lots are centrally located within the subject property and that the lots are not located on prominent topographic features. PDS has evaluated the potential building sites and has determined that the lots are appropriately located within the development. In the Staff Report, Mr. Caine states that PDS evaluates the potential building sites of a proposed rural cluster development, by identifying all critical areas and their buffers, including slopes in excess of 33%, then the components that are required for the development (including emergency vehicle and EDDS requirements, drainage components, and sight obscuring buffer components). Whatever land is left is considered for residential lots. The rural cluster subdivision regulations also require a minimum of 45% of the total site area be designated as restricted open space, but this component can be configured around the lots. (Exhibit 320) The applicant has shown the land available for lots in Exhibit 291. PDS evaluated the exhibit and accepted the representation as an accurate depiction of the site and encumbrances. Additional analysis is found in Exhibit 320 supporting PDS's determination.

Kevin O'Brien testified on September 15, 2010 that the lots cannot be moved from the highest elevations of the plat without destroying the economic viability of the plat. He stated that they have already invested approximately \$3 million into the project and simply cannot lose any of the 34 lots without a significant impact. Ed Caine also testified that PDS does not require the removal of entire lots to meet the language of SCC 30.41C.200(15). He testified that the requirement only speaks to "feasibility" and the applicant has demonstrated this by providing Exhibit 291. The Examiner finds that the proposal complies with this requirement.

Q. SCC 30.41C.200 (16)—Fire District

This Section states:

(16) *Rural cluster subdivisions or short subdivisions shall be located in a rural fire district;*

The development is located within the service boundaries for Fire Districts No. 3. The Examiner finds that the project complies with this requirement.

R. SCC 30.41.C.200 (17)—Rural Concurrency Standards

This Section states:

(17) *Rural cluster subdivisions or short subdivisions shall meet applicable rural concurrency standards.*

DPW and PDS determined the project is concurrent as of September 28, 2009. The concurrency determination is valid for six years from that date. The Examiner finds that the project complies with this requirement.

33. Rural Cluster Subdivision Standards—General

The subject RCS application has been reviewed for conformance with the RCS standards in Chapter 30.41C SCC. The Applicant has provided the information required on an RCS development plan and preliminary plat (Exhibit 287), and in an Open Space Management Plan (Exhibit 286) that is to be implemented by a homeowner's association. The RCS application meets all of the criteria required for preliminary approval listed in SCC 30.41C.200 as further discussed herein. All utilities shall be located underground. The proposal meets requirements for restricted open space and bulk regulations, lot yield, and bonus residential density.

The proposal complies with the provisions of SCC 30.41C.010 by clustering the lots on the most buildable and least environmentally sensitive portion of the site while retaining 46.32 acres (54.66 %) of the subject property in restricted open space; the proposal is considered preferable to traditional lot-by-lot development through its efficient use of the most buildable portion of the site together with the retention of environmentally sensitive areas in permanent open space tracts; the use of the clustering concept provides greater compatibility with the surrounding development by providing buffers between adjoining properties; the use of the clustering concept has reduced the need for impervious surfaces resulting in the protection of groundwater and potential water pollution from erosion and other drainage related problems; the project complies with critical areas regulations, thereby minimizing the loss of the county's environmentally sensitive areas.

34. Plats – Subdivisions – Dedications (Chapter 58.17 RCW)

The subdivision has been reviewed for conformance with criteria established by RCW 58.17.100, .110, .120, and .195. The criteria require that the plat conform with applicable

zoning ordinances and comprehensive plans, and make appropriate provisions for the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students.

The proposed subdivision conforms to the development regulations of the UDC. There is open space provided within the subdivision in the form of wetland and buffer areas, the single-family homes in the plat will be in character with the existing area. Provisions for adequate drainage have been made in the conceptual plat design which indicates that the final design can conform to Chapter 30.63A SCC and Chapter 30.63C SCC. The plat, as conditioned, will conform to Chapters 30.66A, 30.66B and 30.66C SCC, satisfying county requirements with respect to parks and recreation, traffic, roads and walkway design standards, and school mitigation. Adequate drinking water will be provided by the Cross Valley Water District and sewage disposal will be provided by individual wastewater septic systems.

35. Any Finding of Fact in this Order, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over RCS applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. The Examiner must review the proposed RCS application under RCW 58.17.110, the legal standard for approval of a preliminary subdivision. The Examiner must find that:

The proposed subdivision complies with the established criteria therein and makes the appropriate provisions for public, health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students

RCW 58.17.110. The Examiner concludes the applicant has met its burden in showing the established criteria have been met.

3. Given the information provided in the record and the Findings of Fact made above, the Examiner also concludes that the Applicant has met its burden in showing that the RCS application should be approved as outlined in Chapter 30.41C SCC.

4. The applicant has shown that its stormwater drainage system as designed and conditioned, including bypass stormwater released during high flows, will not adversely affect the Snoqualmie River either through the release of conventional pollutants or through thermal impacts. Stormwater detention is not required.
5. The applicant has made adequate provision for public services, including the provision of potable water, to serve the proposed rural cluster subdivision.
6. The challenge to the concurrency determination should be dismissed and the determination of concurrency should be affirmed.
7. The proposed road modification removing a section of frontage improvements should be approved. The road standard deviations requested by the applicant are not subject to the road modification approval requirements of former SCC 30.41A.215.
8. If approved with the recommended conditions, the proposal will make adequate provisions for the public health, safety, and general welfare.
9. Any Conclusion in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

Pursuant to the Examiner's authority under SCC 30.72.060 and 2.02.155(2), the application for preliminary plat approval of a **RURAL CLUSTER SUBDIVISION** is hereby **GRANTED subject to the following CONDITIONS**, and the proposed **MODIFICATIONS** are **APPROVED** subject to the following CONDITIONS:

CONDITIONS

- A. The preliminary plat received by PDS on July 23, 2010 (Exhibit 293) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.
- B. Prior to initiation of any site work; and/or prior to issuance of any development/construction permits by the county:
 - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
 - ii. The plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the

proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.

- iii. A final mitigation plan based on the "Combined Mitigation Plan" (NW Biological Consultants, Inc., October, 2009) (Exhibit 302) shall be submitted for review and approval during the construction review phase of this project.
- iv. Construction plans shall be submitted for review and approval prior to any ground disturbing activities. Geotechnical recommendations regarding the design and inspection of the wet pond shall be incorporated in the evaluation of the construction plans. A Snohomish County grading permit shall be obtained prior to any ground disturbing activities.
- v. A Stormwater Pollution Prevention Plan shall be submitted for review and approval prior to any ground disturbing activities. Design of the water quality wet pond shall be finalized and shall include provisions for secondary overflow, and use BMPs for the removal of any remaining conventional pollutants found in bypass high flows.
- vi. Fire hydrant location shall be reviewed during the construction review and approval phase of development. Fire hydrants shall be installed with a maximum lateral spacing of 660 feet and with no lot in excess of 300 feet from a fire hydrant.

C. The following additional restrictions and/or items shall be indicated on the face of the final plat:

- i. "The dwelling units within this development are subject to park impact fees in the amount of \$1,244.49 (Nakeeta Beach # 307) per newly approved dwelling unit pursuant to Chapter 30.66A SCC. Payment of these mitigation fees is required prior to building permit issuance; provided that the building permit has been issued within five years after the application is deemed complete. After five years, park impact fees shall be based upon the rate in effect at the time of building permit issuance."

- ii. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for a single-family residence:
\$2,340.71 per lot for mitigation of impacts on county roads paid to the county
\$334.39 per lot for mitigation of impacts on state highways paid to the county

These payments are due prior to or at the time of building permit issuance. Notice of these mitigation payments shall be contained in any deeds involving this subdivision, short subdivision of the lots therein or binding site plan."

- iii. "No lot shall have direct vehicular access to High Bridge Road. All vehicular lot access shall be via the private plat roads."

- iv. A minimum right-of-way width of 70 feet shall be provided where the property fronts High Bridge Road on both sides, and where the property fronts the road on one side, a minimum width of 35 feet shall be dedicated in accordance with the approved modifications.
- v. Additional right-of-way shall be dedicated for the intersection line of sight south of road 802 on the east side of High Bridge Road as depicted by the approved intersection sight distance plan and profile (Exhibit 293).
- vi. "The lots within this subdivision will be subject to school impact mitigation fees for the Monroe School District No. 103 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for 3 existing parcels. Lots 1, 2, and 25 shall receive credit."
- vii. All Critical Areas shall be designated Native Growth Protection Areas (NGPA);

"All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in section 30.91N.010 SCC are allowed when approved by the County."

- viii. "The Open Space Management Plan (Exhibit 286) shall be fully implemented."
- ix. "The Landscape Plan (Exhibits 293.k and 293.l) shall be fully implemented, including maintenance of the sight obscuring buffers."
- x. "The required fire flow for this project is 750 gpm at 20 psi for two hour duration. If the required fire flow cannot be provided the new dwellings shall be provided with NFPA 13-D fire suppression systems."
- xi. "All utilities shall be placed underground."

D. Prior to recording of the final plat:

- i. Construction of frontage improvements conforming to EDDS and to the approved Road Modifications shall have been completed along High Bridge Road to the satisfaction of the county.
- ii. Construction of the private roads conforming to EDDS and to the approved Road Deviations shall have been completed to the satisfaction of the county.
- iii. Installation of a street light at each private road intersection on High Bridge Road, a condition of a modification, is required.

- iv. Road 802 shall have a paved approach as shown on EDDS Plate 3-100.
- v. A 20-foot inside and 40-foot outside minimum turning radii for the “T” intersection at the intersection of roads 803 and 804 is required for emergency vehicles; and shall be shown on the construction plans.
- vi. The sight distance triangle for the intersection sight distance line of sight from road 802 looking south on High Bridge Road as identified in the sight distance analysis (Exhibit 293.c) shall be cleared of brush or obstacles to the satisfaction of the County.
- vii. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g. rebar, pipe, 20 penny nails, etc.). The plattor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors’ cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to PDS for review and approval prior to installation.

- viii. The final mitigation plan shall be completely implemented, including submittal and approval of required performance security.

Nothing in this approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Preliminary plats which are approved by the county are valid for five (5) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300.

Decision issued this 13th day of October, 2010.



Millie Judge, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

Reconsideration

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **OCTOBER 25, 2010**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

Appeal

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration.

Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **OCTOBER 27, 2010** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

Staff Distribution:

Department of Planning and Development Services: Ed Caine

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.