

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: March 25, 2010

PLAT/PROJECT NAME: ***TRAFTON ELEMENTARY SCHOOL***

APPLICANT/
LANDOWNER: Arlington School District

FILE NO.: 07 106671 LU

TYPE OF REQUEST: Conditional Use Permit and Landscape Modification

DECISION (SUMMARY): APPROVAL SUBJECT TO PRECONDITION AND
CONDITIONS

BASIC INFORMATION

GENERAL LOCATION: 12626 Jim Creek Road, Arlington, Washington 98223

ACREAGE: 6.3 acres

ZONING: R-5

COMPREHENSIVE PLAN DESIGNATION: General Policy Plan Designation:
Rural Residential (1 du/5 Acres Basic)

School District: Arlington School District No. 16

Fire District: No. 21

Water Source: Individual Well Sewer Service: On-site septic/drainfield

PLANNING AND DEVELOPMENT SERVICES STAFF RECOMMENDATION:
Approve with precondition and conditions

INTRODUCTION

The applicant filed an application for a conditional use permit on June 5, 2007. The application was determined by the Department of Planning and Development Services (PDS) to be complete as of the date of submittal for regulatory purposes on July 3, 2007. (Exhibit H)

PDS gave proper public notice of the open record hearing as required by the county code. Exhibit F1 (Affidavit of Mailing); Exhibit F2 (Affidavit of Notification by Publication); Exhibit F3 (Posting Verification). Posting was spot checked by the Hearing Examiner on a site visit as authorized by code on Tuesday, March 9, 2010.

A Determination of Nonsignificance was made by the Arlington School District ("District") on January 20, 2010. (Exhibit E2)

The Examiner held an open record hearing on March 10, 2010. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

NOTE: The oral transcript is hereby made a part of the record in this matter. For a full and complete record, a verbatim recording of the hearing is available in the Office of the Hearing Examiner.

FINDINGS OF FACT

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

A. Background

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.
2. Summary of Proposal:

The District is requesting a conditional use permit (CUP) and a landscape modification for the Trafton Elementary School. The existing main school building opened in 1912, and the school itself has been operating since 1889. The existing building obviously predated the requirements for obtaining a CUP, so at present it has no permit. The charming two story wood frame structure is on the National Register of Historic Places and the Washington Heritage Register. The old school building will not be altered by the project and the District does not expect to increase the capacity of the school through the CUP. The District plans to obtain a CUP for the entire site, remove all portable classrooms and building, build a gymnasium, build a multi-purpose building, and improve the playfield areas and teacher and visitor parking areas. Access will be

from the existing access locations on Jim Creek Road. The facility will use the existing well for water. Sewage disposal is by an on-site septic system. The landscape modification will provide relief from the landscape buffer requirements due to sight distance restraints in the improved area and due to the fact that the other areas are either playfield areas or Native Growth Protection Areas (NGPAs).

3. Site Description

The site is developed as an elementary school with a school building, parking areas, portable units, and a playfield. With the exception of the southeastern corner of the site, the area outside of the buildings and parking areas are maintained with grass. A stream runs through the site with large trees on either side. The current school building was constructed in 1912, which predated the requirements for a CUP.

4. Adjacent Zoning/Uses

The adjacent zoning is R-5. Adjacent uses are a mixture of residential, agricultural, and undeveloped.

B. Public Comment/Issues of Concern.

Neither agency nor technical reviews have identified any concerns for the CUP.

No written comments were received from the public regarding the CUP.

At the public hearing, one person testified in support of the CUP.

C. Compliance with Performance Standards.

5. Parks Mitigation

The proposal is not subject to Chapter 30.66A SCC since the proposal will not have any documented impacts upon the capacity of the county parks system.

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

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

A development must mitigate its impact upon the future capacity of the road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development. A development's road system impact fee will be equal to the development's new average daily traffic (ADT), based on the latest edition of the *ITE Trip Generation Report* published by the Institute of

Transportation Engineers, times the per trip amount for the specific transportation service area identified in SCC 30.66B.330. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance.

The estimates of trip generation for the development are based on the 7th edition of the Institute of ITE Trip Generation Report as follows:

ITE Land Use Category: Elementary School

ITE Land Use Code: 520

Applicable Measurement Unit (ITE Independent Variable): students.

Number of applicable measurement units for this development: 50

Trip Generation Calculations Based on Average Rates:

Type of trip	Calculation	Trips
New average daily trips	$(50 \times 1.29) - 9.57$	54.93
New AM peak-hour trips	$(50 \times 0.42) - 0.75$	20.25
New PM peak-hour trips	$(50 \times 0.28 \times 0.55) - 0.37$ (0.37 are exiting SFR trips)	7.33

Since elementary schools typically close before the adjacent peak hour traffic and the 7th Edition of the *ITE Trip Generation Report* does not contain trip generation information for the PM adjacent peak hour traffic, the traffic study used the exiting trips of the PM PHTs of the “Generator” as a conservative measure to determine the applicant’s PM peak hour impacts to the County road system. This is acceptable to the County.

Road System Impact Fee Calculation	Amounts
1. ADT per student	1.29
2. Number of students	50
3. Total ADT generated by the development (Line 1 X Line 2):	64.50
4. Less credit for existing ADT:	9.57
5. The developments “new” average ADT (Line 3 – Line 4):	54.93
6. TSA A mitigation rate per ADT for commercial developments outside the UGA:	\$227.00
7. Road system impact fee for this development (Line 5 X Line 6):	\$12,469.11

The Examiner has included a precondition to require a record of developer's Chapter 30.66B SCC mitigation obligations to be recorded with the County Auditor. The Examiner has also included a condition to require the traffic mitigation payments.

B. Concurrency [SCC 30.66B.120]

Concurrency, as defined by the Washington Growth Management Act, is the requirement that adequate transportation capacity be available to support development. A proposed development may not proceed if it would lower the Level of Service (LOS) of a transportation facility below the adopted standard or impact an arterial unit that is already below standard (in arrears). Transportation improvements that would bring the LOS back to the adopted standard must be reasonably funded and scheduled for completion within six years.

Concurrency helps balance the timing and sequencing of development in relation to transportation improvements, such as new streets and traffic signals. The two main parts of a concurrency program are an ordinance, which defines how concurrency is administered, and the Comprehensive Plan, which establishes transportation LOS standards.

"Level-of-service" means a qualitative measure describing operational conditions within a traffic stream, and the perception thereof by road users. LOS standards may be evaluated in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety. The *Highway Capacity Manual* defines six levels of service for each type of facility for which analysis procedures are available. They are given letter designations, from A to F, with LOS A representing the best operating condition and LOS F the worst.

The County makes a concurrency determination for each development application to ensure that the development will not impact a county arterial unit in arrears. The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and has been deemed concurrent as of March 31, 2009. The concurrency determination approval will expire on March 30, 2015, six years from the date concurrency was given. Consistent with the Department of Public Works' (DPW) Rule 4225.070 January 15, 2009, is the point in time for which the concurrency analysis is based (i.e. the concurrency vesting date).

The subject development is located in TSA A which, as of the date of submittal of the application, had no arterial units in arrears. The subject development generates 20.25 a.m. peak-hour trips and 7.33 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips in which case the development would also have to be evaluated under SCC 30.66B.035.

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

Regardless of the existing LOS, any development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing IRC at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development must eliminate the IRC.

The subject development proposal will not impact any IRC locations identified within TSA A with three or more of its p.m. peak hour trips, nor will it create any. Therefore, it is anticipated that mitigation will not be required with respect to IRCs and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

D. Frontage Improvements [SCC 30.66B.410]

All developments will be required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable. As per DPW Rule 4222.020(1) full rural frontage improvements are required along the subject parcel's frontage on Jim Creek Road. They will consist of asphalt concrete pavement consisting of 11 feet in width from roadway centerline with an eight foot paved shoulder.

Frontage improvements must be provided along the project's entire frontage along Jim Creek Road. The site plan received by PDS on January 15, 2009, has been corrected to show frontage improvements on Jim Creek Road along the entire parcel's frontage.

The existing Jim Creek Road centerline is not centered in the existing right-of-way. Where the existing road centerline is south of the right-of-way centerline, frontage improvements must be constructed by widening the road on the north side and restriping such that the road section will include an eight foot paved shoulder on the south (project frontage) side, two 11 foot travel lanes and one foot of pavement beyond the edge line on the north side.

Jim Creek Road, on which the development's frontage improvements are required, is not in the impact fee cost basis (Appendix D of the Transportation Needs Report); therefore credits towards the applicant's impact fee for any frontage improvements that can be used in the ultimate build-out of the road are not applicable.

Construction of frontage improvements is required prior to occupancy. The Hearing Examiner has included a condition to require installation of the frontage improvements prior to final plat approval.

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

In determining the extent of improvements required, the Director of DPW will consider, with other relevant factors, the following:

1. Extent of the development proposed: Replacement of portables with a permanent structure and the construction of a 4,800 sq. ft. gymnasium and a 6,240 sq. ft. multi-purpose building.
2. Priority of improvements to involved county roads in the county's six-year transportation improvement plan: No proposed projects.
3. Condition of existing transportation facilities in comparison to adopted standards: The proposed frontage improvements will bring the frontage of the subject development up to current standards.
4. Existing and projected land uses and development densities: The surrounding land uses are primarily single-family residences on large rural lots.
5. Current and projected levels of service on the affected road system: There are no arterial units in TSA A that are in arrears or on the "critical list". The subject development will not cause any arterial units in TSA A to fall below the code accepted standard.
6. Availability of public transit: The transit agency operating public transit in the service area of the development possesses the ultimate authority to create, eliminate or modify a transit route or transit stop. The two county transit agencies that serve the residents of Snohomish County are Community Transit and Everett Transit. Sound Transit currently has routes that provide express bus service to King County from hubs such as Everett Station, the Ash Way Park & Ride. Everett Transit's boundaries are all within their city limits and Sound Transits routes are in incorporated areas of the UGA. Community Transit is the only transit agency that has routes and stops in both the urban area and the rural area. Although the county has no authority to require any transit authority to service a subject property or development, the county and the developer have an obligation to

contact Community Transit about the possibility of installing a transit stop near the development. The County does have to approve the location of a transit stop along a county right-of-way if the transit authority chooses to install one. According to a National Personal Transportation Survey, conducted by the American Planning Association, the average person is willing to walk about 1,500 feet to a transit stop.

Public transit is available next to the subject development and the closest transit stop is located approximately 200 feet from the development's westerly driveway at the intersection of SR 530/Jim Creek Road.

7. Any traffic study submitted: The traffic study by Gibson Traffic Consultants, dated July 17, 2008 (Exhibit C.1), was used to determine their traffic impacts for the subject development.
8. Availability of a specific improvement program: There are no County improvement programs for Jim Creek Road.
9. The number of dwelling units currently using the road system that must be improved and projected to use the road system after full occupancy of the development. The number of current ADT on Jim Creek Road in the vicinity of the subject development is approximately 1900. Due to the size of the existing lots on Jim Creek Road and the zoning, it is not likely that the traffic on Jim Creek Road will significantly increase.
10. The needs of low-income persons for decent, affordable, low-cost housing: The subject development is not a low income housing project. There are no low income housing measures or design features associated with this development.
11. Transportation system or demand management measures proposed by the developer: The project is outside of the Urban Growth Area (UGA); therefore, the project is exempt from the requirement.
12. The need for pedestrian and bicycle facilities: Jim Creek Road is not on the County's Bicycle Facility Map. The site is configured in such a way that pedestrian sidewalks don't make much sense on the perimeter of the site and may in fact be hazardous on the tight turn. Most people would cut through the center of the site if they were walking down the road.

13. Continuity with existing and proposed improvements: There are no shoulder improvements in the vicinity of the subject development.
14. Development standards of adjacent cities: The City of Arlington has not requested that the frontage improvements be constructed to City standards.
15. The need for safety improvements for school children: The subject development is not subject to RCW 58.17.110 regarding pedestrian facilities for students. The nature of the facility is such that sidewalks are not necessary on the perimeter edge of the site and may in fact be a hazard.
16. The types, sizes and performance of vehicles generated by the development, including but not limited to large trucks: The proposed development is for an increase in size for an elementary school. The majority of the types and sizes of vehicles associated with the school is passenger cars and busses. Other less prevalent types are larger commercial vehicles such as semi trucks, fire trucks, utility trucks and delivery trucks that provide goods and/or services to the users of the school.

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

All developments are required to provide for access and transportation circulation in accordance with the comprehensive plan and SCC 30.66B.420, design and construct such access in accordance with the EDDS, and improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430.

EDDS Section 2-02 B allows one two-way or two one-way access points per 500 feet of project frontage. The site plan shows two one way access points into the main parking lot and one full access point to the teacher parking area. All access points must meet the requirements of EDDS for commercial access. The number of access points shown is acceptable.

The applicant has provided a speed study and a traffic study that discusses sight distance. The applicant's site plan shows additional right-of-way to be provided for sight distance purposes. DPW has determined that with the additional right-of-way, the stopping sight distance (SSD) requirements are met.

Intersection sight distance (ISD) looking right from the center driveway and looking left from the easterly driveway do not meet the ISD requirements. A deviation request has been submitted and approved to use the SSD distance measurement for ISD (Exhibit I.1). An additional area is shown on Exhibit B.1 for dedication to accommodate ISD needs. More than what is shown may be necessary. This additional area needs to be either deeded right-of-way or a sight distance easement. A field review revealed that vegetation is blocking the SSD and the ISD deficiencies noted above. The Hearing Examiner has included a condition of approval to remove vegetation that blocks sight distance as required by the DPW.

G. Right-of-Way Requirements [SCC 30.66B.510, SCC 30.66B.520]

A development shall be required to dedicate, establish, or deed right-of-way to the county for road purposes as a condition of approval of the development, when to do so is reasonably necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development.

The road serving this development, Jim Creek Road, is designated as a collector arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 35 feet on each side of the right-of-way centerline. Currently, 30 feet (plus a small amount in the curve of the road) of right-of-way exists on the development's side of the right-of-way. Therefore, the development is required to deed five feet of additional right-of-way. This is adequately shown on the site plan. The Examiner will include as a condition of approval a requirement for the deeding of the right-of-way.

Either adequate right-of-way will need to be deeded to the County so that all required lines of sight for sight distance are within the public right-of-way, or, if the deeded right-of-way is inadequate to provide the necessary sight distance, an easement to the County shall also be required so that all required lines of sight for sight distance are provided. The Hearing Examiner has included the recommended condition for a sight distance easement.

Jim Creek Road is not in the impact fee cost basis (Appendix D of the Transportation Needs Report); therefore credit towards the applicant's impact fee for the right-of-way deeded that is more than 30 feet from centerline is not applicable.

H. State Highway Impacts [SCC 30.66B.710]

When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent

with the terms of the interlocal agreement (ILA) between the County and the Washington State Department of Transportation (WSDOT). This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

This development is subject to SEPA and thus is subject to an ILA with the WSDOT/County effective December 21, 1997, and as amended.

Pursuant to SCC 30.66B.055, a written traffic mitigation offer dated June 7, 2007, of \$3,166.56 has been submitted by the applicant. In an e-mail dated June 11, 2007, WSDOT has accepted the mitigation offer of the applicant (Exhibit G3). A revised traffic study dated July 17, 2008, was submitted that revised the applicant's obligation to the State (Exhibit C1). The revised amount is \$1,977.48 (\$36.00/ADT x 54.93 ADT). The State accepted this offer in an e-mail dated October 8, 2009 (Exhibit G3). The Hearing Examiner has included a condition of approval to require the revised traffic mitigation fees.

I. Other Streets and Roads [SCC 30.66B.720]

Mitigation requirements for impacts on streets inside cities and roads in other counties will be established consistent with the terms of ILAs between the County and the other jurisdictions. The proposed development is subject to SEPA and thus is subject to ILAs for impacts on city streets and is effected by the ILA with the City of Arlington.

For impacts on the City of Arlington, and pursuant to the ILA and SCC 30.66B.055(4) a written traffic mitigation offer of \$38,327.52 dated June 7, 2007, was submitted by the applicant. In comments dated July 3, 2007, the City of Arlington accepted this offer (Exhibit G1). A revised study dated July 17, 2008, was submitted and accepted by the County (Exhibit C1). This revised study showed lesser PHTs than the previous study. The City responded to this revised study in comments dated October 29, 2009 (Exhibit G1). Those comments disagreed with the July study and requested mitigation that is more than two times greater than the original offer. The subject development is vested to the 7th edition of the *ITE Trip Generation Report*. Since the initial submittal of the subject development the 8th Edition of the *ITE Trip Generation Report* was published. The 8th Edition contained information that was lacking in the 7th Edition. The applicant's traffic engineer made educated assumptions for the information that was lacking in the 7th Edition. Those assumptions were confirmed when compared to results when using the 8th Edition.

The trip generation, distribution and mitigation provided in the applicant's traffic study met all of the basic requirements of county code and rules, showed

substantial evidence of attention to detail, complied with sound traffic engineering principles and practices and did not appear to have any fatal flaws. Based on this the County has accepted the mitigation proposed for the County as well as the jurisdictions subject to the ILA. Based on the applicant's July 17, 2008, traffic study the applicant's obligation to the City of Arlington is \$19,673.72 (7.33 PM PHTs x \$3,355.00/PM PHT x 0.80). The Hearing Examiner has included a condition of approval for a traffic mitigation payment to the City of Arlington in the amount of \$19,673.72.

J. Transportation Demand Management [SCC 30.66B.630]

Transportation demand management (TDM) is a strategy for reducing vehicular travel demand, especially by single occupant vehicles during commuter peak hours. TDM offers a means of increasing the ability of transportation facilities and services to accommodate greater travel demand without making expensive capital improvements. The County requires TDM of developments inside the UGA and developments that impact arterial units designated as ultimate capacity.

All new developments in the urban area shall provide TDM measures. Since the development is located outside of the UGA, this section of the code does not apply.

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

The project is not subject to fees associated with Chapter 30.66C SCC.

8. Drainage and grading.

A. Drainage

The development proposes in excess of 5,000 square feet of new impervious surface, a threshold which meets the definition of major development activity per Chapter 30.63A SCC. A full drainage plan and report will be required. The development also meets the re-development criteria as defined in SCC 30.63A.230. Water quality treatment to remove storm water pollutants is therefore required for the entire site.

A subsurface exploration and infiltration testing report by Associated Earth Sciences, Inc., is included in the *Targeted Drainage Report* (Exhibit C.2). Soil logs and infiltration tests were taken in the vicinity of the proposed infiltration system. Exploration test pits confirm a Ragnar soil type with a water table encountered at 13 and 14.5 feet below ground surface on May 8, 2008.

Storm water quantity control is being proposed to be an infiltration system located under the parking lot. The required vertical separation above the maximum seasonal high water table is three feet per the 1992 *Department of Ecology (DOE) Storm Water Management Manual*. The preliminary soils information indicates the proposed system appears feasible.

Water quality treatment is proposed to be filter media treatment cartridges in a vault for all pollution generating surfaces. The treatment system precedes the infiltration system.

No downstream flooding was reported by the *Downstream Drainage Report* in the *Targeted Drainage Report* (Exhibit C.2). Surface Water Management had no comment.

The Examiner has included a condition of approval requiring a full drainage plan prior to site work getting underway.

B. Grading

Proposed grading is approximately 2,000 cubic yards of cut and 2,000 cubic yards of fill. A grading permit and SWPP Plan per SCC 30.63B and Rule 3044 will be required. The Hearing Examiner has included a condition of approval to implement the requirement.

Based on the preliminary findings made by the staff of PDS's Engineering Section relating to drainage and grading, this project will meet the requirements the Chapters 30.63A and 30.63B SCC.

9. Critical Areas Regulations (Chapter 30.62 SCC)

There is an existing pedestrian path through the critical area buffer that crosses the wetland and stream. This path is proposed to be maintained with wood chips and will be used for educational interpretive purposes for the students at Trafton Elementary. No additional impacts to the wetland or stream are proposed. The project proponent seeks approval under the innovative development section of SCC 30.62.370 to accommodate placement of the structures and parking requirements while demonstrating compliance with the criteria for approval as outlined in SCC 30.62.370(2). Mitigation will consist of wetland and buffer enhancement, invasive plant removal/control, additional buffer designation, split-rail NGPA perimeter fencing and NGPA signage. While the buffer will only be 50 feet on the "school" side of the stream and wetland, the enhancements are badly needed and as characterized by the wetland consultant, will provide more function than 50 more feet of bare buffer would. The addition of more buffer on the other side will also increase the likelihood of more function returning to the area.

The application was deemed complete by PDS in June of 2007, thereby being vested under Chapter 30.62 SCC. An evaluation of the information submitted in the revised application coupled with several on-site investigations has resulted in a determination that the application complies 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.

10. 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 UGAs and adopted area-wide rezones within the UGAs 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 Rural Conservation by the county subsequent to the subarea plan adoption. The implementing zones within this designation are the Rural-5 Acres zone and other zones with a minimum lot size requirement larger than five acres. The base density of one dwelling unit per five acres may be increased consistent with Policy LU 6.B.9.

The proposal is for the improvements of an existing elementary school, and the following policies from the GPP are applicable. The proposed CUP complies with each of them.

11. Zoning

This project meets zoning code requirements for lot size, setbacks, required parking stalls, landscaping, bulk regulations and other zoning code requirements.

12. Utilities

- A. Water. Water will be supplied by wells. The State Department of Health recommended approval of the water system on August 15, 2008. (Exhibit G.5)

- B. Sewer. Sewage disposal will be provided by an on-site septic system and drainfield. The Snohomish Health District recommended approval of the proposal on February 24, 2010. (Exhibit G6)
- C. Electricity. The Snohomish County PUD submitted a letter on June 15, 2007 stating that electricity is available. (Exhibit G8)
- D. Fire Code: PDS received no comments from Fire District No. 21. The Office of the Fire Marshal reviewed the project for compliance with SCC 30.53A and has no objection to the approval of the CUP.

13. State Environmental Policy Act Determination (Chapter 30.61 SCC)

The District issued a Determination of Nonsignificance (DNS) for the subject application on January 20, 2010. (Exhibit E2) The DNS was not appealed.

14. Landscape Modification

The approval criteria for landscape modifications are found in Chapter 30.25.040(2) SCC: The decision maker (either PDS or the Hearing Examiner) may approve a request for modification when:

- (a) The proposed landscaping represents an equal or better result than would be achieved by strictly following the requirements of the code; or
- (b) The proposed landscaping fulfills its intended purpose as described in this chapter.

Chapter 30.25.040(5) SCC identifies the favored strategies for approval of a landscape modification: In considering requests for modification of perimeter landscape requirements, the following strategies shall be provided:

- (e) Provision of a unique focal point of interest or better usable open space.

A part of the application of June 5, 2007, was application for a Landscape Modification. (Exhibit A.5) Chapter 30.25.020(2) SCC requires a 20-foot Type A landscape buffer around the perimeter of the property. The landscape modification request is to eliminate the required Type A landscape buffer.

The District raises the historical significance of the existing classroom building as one reason for approving the landscape modification. The proposed improvements to the site will remove the portable buildings and create a site that will highlight and emphasize the historic building. Additionally, the school without the Type A landscaping has been a feature of the site that was existing when nearby residences were built. The District also suggests that the central location

of the buildings on site and the area designated as NGPA on the eastern side of the site reduces the visual impact of the school.

The Hearing Examiner has independently evaluated the landscape modification application. Elimination of the vegetated perimeter buffer requirement will also make the historic building more visible to passing traffic on both SR 530 and Jim Creek Road.

The school building is a historic site and the oldest existing school building in the state of Washington. The Washington Department of Archaeology and Historic Preservation have acknowledged that nothing in the proposed development activities will have a deleterious impact on the historical building (Exhibit G.4). The site should be displayed rather than masked by the landscape buffer.

15. Conditional Use Permit Criteria

In considering the application, the Examiner must apply SCC 30.42C.100, which outlines the decision criteria for a conditional use permit as follows:

1. The hearing examiner may approve, approve with conditions, or deny a conditional use permit only when all the following criteria are met:
 - (a) The proposal is consistent with the comprehensive plan;
 - (b) The proposal complies with applicable requirements of this title;
 - (c) The proposal will not be materially detrimental to uses or property in the immediate vicinity; and
 - (d) The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.
2. As a condition of approval, the hearing examiner may:
 - (a) Increase requirements in the standards, criteria, or policies established by this title;
 - (b) Stipulate the exact location as a means of minimizing hazards to life, limb, property damage, erosion, landslides, or traffic;
 - (c) Require structural features or equipment essential to serve the same purpose set forth in 30.42C.100 (2) (b);
 - (d) Impose conditions similar to those set forth in items 30.42C.100 (2)(b) and 30.42C.100 (2)(c) as may be deemed necessary to establish parity with uses permitted in the same zone in their

freedom from nuisance generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters. The hearing examiner may not in connection with action on a conditional use permit, reduce the requirements specified by this title as pertaining to any use nor otherwise reduce the requirements of this title in matters for which a variance is the remedy provided;

- (e) Assure that the degree of compatibility with the purpose of this title shall be maintained with respect to the particular use on the particular site and in consideration of other existing and potential uses, within the general area in which the use is proposed to be located;
- (f) Recognize and compensate for variations and degree of technological processes and equipment as related to the factors of noise, smoke, dust, fumes, vibration, odors, and hazard or public need;
- (g) Require the posting of construction and maintenance bonds or other security sufficient to secure to the county the estimated cost of construction and/or installation and maintenance of required improvements; and
- (h) Impose any requirement that will protect the public health, safety, and welfare.

Regarding criteria (1) (a): *The proposal is consistent with the comprehensive plan.*

The proposal is allowing for upgrades of an existing elementary school. There are no specific policies in the comprehensive plan that address this subject, but the objective of the CUP is certainly not inconsistent with the comprehensive plan.

The comprehensive plan generally supports the modernization of public infrastructure and services, even in the rural areas. The site improvements at the Trafton Elementary School, while still maintaining its historical roots, will enable the District to provide upgraded services to the citizens of Snohomish County.

Regarding Criteria (1) (b) of the Conditional Use Permit Criteria.

- (b) *The proposal complies with the applicable requirements of Title 30 SCC:*

The proposal complies with the applicable requirements such as setbacks and height restrictions.

Regarding Criteria (1) (c) of the Conditional Use Permit Criteria.

- *(c) The proposal will not be materially detrimental to uses or property in the immediate vicinity.*

The proposed elementary school site improvements themselves will not adversely affect the existing or potential uses in the general area.

Regarding Criteria (1) (d) of the Conditional Use Permit Criteria.

- *(d) The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.*

The proposal will not be materially detrimental to uses or property in the immediate vicinity and will be compatible with the character, appearance, quality of development and physical characteristics of the site and surrounding area. Trafton Elementary School is an established school in the neighborhood and was originally built long before the requirement for a CUP approval process.

The Hearing Examiner finds that the proposed CUP, with the following precondition and conditions of approval, is consistent with the comprehensive plan and complies with the applicable requirements of this title. The proposed activities will have virtually no detrimental impacts to adjacent properties, and will result in a site and buildings that are more functional for the District and the community.

The proposed activities will be compatible with the existing and intended character, appearance, and quality of surrounding properties. The structure will be larger than found on adjacent properties, but the buildings will be offset by the large playfield, the NGPA, the large heritage tree that stands prominently in the middle of the site, and the remarkable 1912 historic school building that stands prominently at the front of the site. The applicant will be doing site landscaping to make the area attractive and inviting in front of the old school building. The decision criteria of SCC 30.42.100(1) have been met.

As conditioned, the criteria for approval have been met.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over CUP applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. In considering the CUP, application of many of the decision criteria require the exercise of discretion.
3. The proposal is consistent with the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, and the applicable design and development standards.
4. If approved with the following conditions, the proposal will make adequate provisions for the public health, safety and general welfare.
5. The CUP with the precondition and conditions of approval will be consistent with the comprehensive plan and comply with the applicable requirements of Title 30 SCC.
6. The CUP, with the precondition and conditions of approval, will not be materially detrimental to uses or properties in the immediate vicinity.
7. The CUP, with precondition and conditions of approval, will respond to as well as maintain compatibility with surrounding uses and incorporate specific features, conditions, or revisions that ensure it responds appropriately to the character, appearance, quality of development, and physical characteristics of the site and surrounding properties.
8. Any Conclusion in this decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

Based on the Findings of Fact and Conclusions of Law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for a **CONDITONAL USE PERMIT** and **LANDSCAPE MODIFICATION** is hereby **CONDITIONALLY APPROVED**, subject to the following **PRECONDITION** and **CONDITIONS**:

PRECONDITION

- A. A Record of Developer Obligations and Certificate of Concurrency shall have been recorded with the County Auditor against the real property on which the development is proposed.

CONDITIONS

- A. Exhibit B1, date stamped RECEIVED February 26, 2010, shall be the approved site plans. Changes to the approved site plans are governed by Chapter 30.42C.110 SCC.
- B. Prior to building permit issuance by the county:
 - i. A Land Use Permit Binder shall have been completed, signed, and recorded with the county Auditor's Office. (forms are available from PDS)
 - ii. A final grading permit, to include a storm water pollution prevention plan (SWPPP), issued pursuant to the Chapter 30.63.B SCC shall have been obtained for any on-site grading
 - iii. A full drainage plan shall have been submitted and approved pursuant to the Chapter 30.63.A SCC.
 - iv. The project proponent 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.
 - v. A Critical Area Site Plan (CASP) shall be recorded with the Snohomish County Auditor that depicts the wetland, stream and buffer area in a Native Growth Protection Area (NGPA) with the restrictive language as follows;
 - vi. 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.
 - vii. A Final Mitigation Plan shall be submitted for review and approval based on the June 18, 2008 Critical Area Study and Mitigation Plan by Wetland Resources, Inc.
 - viii. The applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area A in the amount of \$12,469.11. This payment may be made proportionately with each building permit.

Credit for certain expenditures may be allowed against said payments to the extent authorized by County code.

- ix. The applicant shall make a payment to Snohomish County for the WSDOT in the amount of \$1,977.48 for mitigation of traffic impacts to State highways. This payment may be made proportionately with each building permit.
 - x. The amount of \$19,673.72 shall be paid to the City of Arlington for traffic impacts to projects within the City. Proof of payment of the above amount shall be provided to the County. This payment may be made proportionately with each building permit.
 - xi. Right-of-way shall have been deeded to the County such that 35 feet exists along the property frontage on Jim Creek Road from the centerline of the right-of-way; or as determined by the county.
 - xii. Any necessary sight distance easement shall be recorded to the satisfaction of the County.
 - xiii. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
- C. Prior to the first approval for occupancy or final inspection:
- i. Rural frontage improvements shall be constructed along the parcel's frontage on Jim Creek Road to the satisfaction of the County.
 - ii. Vegetation that is blocking sight distance shall be removed to the satisfaction of the County.
 - iii. 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.
 - iv. 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 the Land Use Division for review and approval prior to installation.

- v. A 100-foot radius well protection zone covenant is hereby established around the existing well as located on the site. The well protection zones are based on actual constructed wells. All owner(s) of property shown within this protection zone(s) agree to comply with current state and local well site protection measures, which at a minimum, prevent installation of drainfields within the well protection zone. If moved, a 100 foot radius well protection zone shall not extend beyond the boundaries of the subject property without written consent and recorded well protection covenant from the affected property owner(s).
- vi. The Final Mitigation Plan shall have been successfully installed.

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.

Decision issued this 25th day of March, 2010.

Barbara J. Dykes, 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 **APRIL 5, 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 **APRIL 8, 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.

This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than MARCH 25, 2011.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
 - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
 - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant decision is effective as of _____, _____.

Certified by:

(Name)

(Title)