DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: May 3, 2012

PLAT/PROJECT NAME: NORTH CREEK PRESERVE (formerly Gracie’s Place 2)

APPLICANT/LANDOWNER: U.S. Land Development
                         P.O. Box 82278
                         Kenmore, Washington 98208

FILE NO.: 06-126179

TYPE OF REQUEST: Preliminary Subdivision Approval
                 SEPA Appeal

DECISION (SUMMARY): SEPA Appeal is DENIED; Concurrency Appeal is DENIED;
Preliminary Subdivision Approval is GRANTED, Subject to Preconditions and Conditions

BASIC INFORMATION

LOCATION: Approximately 500 feet east of Baldwin Road near its intersection with Pippin Road in Section 18, Township 27 North, Range 5 East, W.M.; Snohomish County, Washington.

ACREAGE: 13.45

NUMBER OF LOTS: 41

AVERAGE LOT SIZE: 5,757 square feet
MINIMUM LOT SIZE: 3,034 square feet
GROSS DENSITY: 3.01 du/acre (8.16 du/acre net)

GMACP DESIGNATION: Urban Low Density Residential (4-6 du/acre)

ZONING: R-9600

UTILITIES:
Water: Alderwood Water and Wastewater District
Sewer: Alderwood Water and Wastewater District
Electricity: Snohomish County PUD No. 1

SCHOOL DISTRICT: Edmonds School District No. 15
PDS STAFF RECOMMENDATION: Approve Preliminary Subdivision Application, subject to conditions; Deny SEPA appeal.

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

Based on a preponderance of the evidence of record, the following Findings of Fact, Conclusions of Law and Decision are entered.

**FINDINGS OF FACT**

1. **Regulatory Review and Vesting.** A complete application was submitted to Planning and Development Services (PDS) on June 27, 2006 for purposes of regulatory vesting. Between this date and August of 2007, the Applicant was required to resubmit its proposal three separate times before it was deemed adequate for further review. As of the date of the public hearing, 164 days of the 120-day review period had elapsed.

2. **Public Hearing.** A new public hearing was held on Wednesday, March 28, 2012. Appearing for the Applicant was Attorney, Duana Kolouskova along with consultants Edward Koltonowski, Santus Moolayil, Kevin Karlson, and Rick Powell. Additionally, Ed Caine, Mark Brown and Ann Goetz appeared and testified on behalf of PDS. Julie Taylor, Attorney, Becky Johnson and Diana Riley appeared on behalf of the SEPA Appellants, the Gravenstein Neighborhood Group (hereinafter, "GNG"). Numerous concerned citizens appeared at the public hearing and 14 testified, including Sabrina Elliot, Janet Ray, Patrick Riley, Caroline Klein, Jeri Pletica, Paul White, Lori Getts, Walt Leberg, Becky Johnson, Diana Riley, Clyde Schwab, Matt Faber, Lyndsey Wright, and Floyd Krauss.

3. **The Record.** All of the Exhibits shown on the master list of exhibits were entered into the record as evidence, along with the testimony of witnesses presented at the open record hearing and the Tape Log. The entire record (Exhibits 1-170) was considered by the Examiner in reaching this decision.

4. **Public Notice.** The Examiner finds that PDS concurrently gave proper public notice of the open record hearing, SEPA threshold determination, Traffic Concurrency and Impact Fee Determinations as required by the County Code. (Exhibits 26, 27, 28, 29)

**A. Background Information**

5. **Applicant’s Proposal:** The Applicant requests approval of a 41-lot subdivision inside the Urban Growth Area (UGA) on 8.2 acres of land zoned R-9600. The Applicant proposes to use lot size averaging. Lots will range in size from 3,014 square feet to 10,974 square feet. Lots in the project will take access off of a newly constructed public road extension serving a neighboring subdivision known as “Gracie’s Place.” Water and sewer service will be provided by the Alderwood Water and Wastewater District.

6. **Issues of Concern:**
   
   A. **Agency Comments.** No issues of concern were raised during agency reviews.
B. Citizen Comments. Written comments were received from over 70 citizens on a wide range of topics, including concerns about increased traffic in the area, especially with regard to local streets and 164th Street SW, negative environmental, wildlife and aesthetic impacts on the surrounding area, especially North Creek and its adjacent wetlands, Rhody Ridge Arboretum Park, and a Great Blue Heron rookery, the impact on neighborhood character from additional densities, the capacity of utilities and schools to handle the impacts of the development, concerns about the potential for fire hazards, cumulative impacts, geotechnical and drainage concerns. (See, Exhibits 34-59; 115-173) In addition, numerous citizens attended the public hearing on March 21, 2012, and 14 citizens testified against granting preliminary plat approval and many spoke in support of the issues raised in the SEPA appeal.

B. CONCURRENCY APPEAL

7. The GNG also filed an appeal of the Concurrency Determination on December 17, 2007. (Exhibit 1)

8. The development was found to be concurrent under SCC 30.66B.160(2)(a) on August 15, 2006. (Exhibit 166)

9. In support of its appeal, GNG presented a memorandum from Ross Tilghman, of the Tilghman Group dated November 30, 2007 (Exhibit 1-3), which concludes that cumulative impact of traffic from Berry Place, McDaniel Addition and Normandie would cause LOS F on 174th Place at North Road in the afternoon peak hour. He concludes that similar impacts would occur on other neighborhood streets including Bellflower/North Road due to traffic added by the southern portion of Gracie's Place and the current development's proposal, the North Creek Preserve. He argues that "[c]oncurrency analysis does not provide a substitute for SEPA analysis since it does not address the impact that a project has on non-arterial streets and on individual intersections, and it does not evaluate the delays that may occur on cross-streets." Id.1 In support of this argument, Diana Riley of GNG testified that as a resident, the traffic impacts are significant and adverse to the area. She noted that it is difficult to get out of her neighborhood onto North Road. She stated that even if there are improvements as part of the project, more traffic will have an impact on existing residents.

In response, the Applicant's traffic expert, Edward Koltonowski of Gibson Traffic Consultants, testified that cumulative impacts are considered in making a concurrency determination. He noted that at the time a complete application is received, it considers all other projects that are in the County's permitting application system. He notes that contrary to some of the citizen testimony provided, traffic generated by the new Lynnwood High School was specifically included in the concurrency determination.

C. SEPA APPEAL

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on November 20, 2007. (Exhibit 26) Notice was properly given of the SEPA determination. (Exhibits 27, 28, and 29) The DNS was appealed on December 17, 2007. (Exhibit 1)

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1 Mr. Tilghman was not present at the appeal hearing and his report and conclusions were not subject to subject to cross-examination.
11. Appellants raise several claims in their SEPA appeal which can be summarized as follows:

A. **Cumulative Impacts.** The Responsible Official failed to consider cumulative impacts, especially with regard to traffic and critical areas impacts, and failed to consider the interdependency of other developments (Berry Place, Gracie's Place, Normandie Place, Nichols Short Plat and McDaniel Addition), which collectively will add many additional residential lots and accompanying urban infrastructure in the immediate vicinity of the proposed development.

B. **Traffic Claims.** The Traffic Report is a limited traffic impact analysis, which neglects to analyze the impact of the development on adjacent intersections and to several roads immediately surrounding the development site (cumulative impacts). The Traffic Report does not adequately consider the total adverse environmental impact that will result cumulatively or independently from the proposed development.

C. **Stream Impacts.** An EIS is necessary in light of the project's proximity to streams (North Creek), wetlands and associated buffers of high environmental value. Proposed mitigation buffers are inadequate. There is an unidentified stream that is hydrologically connected to Wetland A that has not been properly considered by the Responsible Official.

D. **Wetland Impacts.** The information provided by the Applicant as to Wetland A, stating that 40% of the project site will be converted to impervious surfaces, and stormwater will be released directly toward Wetland A and North Creek, demonstrate that there will be significant adverse impacts on both resources, requiring the preparation of an EIS. The information provided directly links the project to critical area impacts. The intensity of the impacts is evident from an observation of the site plan, and cumulative intensity of impacts is evident when considering other development proposals in the area. Approval of the project should be deferred pending federal and state review. The 75 foot buffers are woefully inadequate to protect the North Creek Wetlands (Wetland A). Finally, The Jay Group incorrectly asserts that stream and wetland impacts from the sewer installation will be temporary. The impacts will be permanent.

E. **Steep Slopes and Drainage Impacts.** There are steep slopes existing on the site exceeding 33% in grade which will be disturbed. There is a history of soil instability on the site and it is within the floodway fringe. The SEPA Responsible Official did not have adequate information necessary to assess certain probable environmental impacts of the project, specifically, how much of the site is steeply sloped, where the slopes are in relation to the proposed construction activity, and where slopes are in relation to critical areas. The developer proposes to make significant cuts and fills into the hills on-site which exceed the recommendation of the Applicant's own engineers. Given the totality of environmental factors existing on the site, there is a high probability of significant adverse environmental impacts resulting from the proposed development, and an EIS should be required.

F. **Recreational, Wildlife and Aesthetic Impacts.** There has been no assessment of adverse impact to the wildlife by removal of significant amounts of mature forest, clearing or grading or likely hydrologic changes that will result from the project. Significant habitats in the immediate vicinity include the Rhody Ridge Arboretum, North Creek Park, and the Great Blue Heron rookery. Replacement of an open space hillside which provides habitat and a rural aesthetic quality to the neighborhood with a 96-lot
urban development will adversely impact the aesthetics of the area. There are no recreational or play areas proposed as part of the subject development.

In support of their SEPA claims, the Appellants submitted the testimony of Becky Johnson and Diana Riley, along with their legal brief (Exhibit 122), and numerous documents into the record including Exhibits 1, 3, 4, 123, 124, 125, 126, and 127. Additionally, the record contains letters from over 70 citizens, many of whom are part of the Appellants' group adding their comments and concerns about the SEPA threshold determination (See, Exhibits 34a through 55; 58, 115, 117, 118, 119, 130 through 140, 152 through 165, 167, 168, 169 and 170). Finally, the Appellants also rely on the remaining documents in the record relating to the preliminary plat application.

C. PRELIMINARY SUBDIVISION APPROVAL
Compliance with Codes and Policies

12. Park and Recreation Impact Mitigation (Chapter 30.66A SCC) The proposal is within Park District 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. The Examiner finds that such payment or contribution of in-kind mitigation is acceptable as mitigation for parks and recreation impacts in accordance with County policies.

13. Traffic Mitigation and Road Design Standards (Title 13 SCC, & Chapters 30.24 and 30.66B SCC) The Hearing Examiner has considered the impacts of the development in light of the requirements under Title 13 SCC and Chapters 30.24 and 30.66B SCC and finds that the development proposal, as conditioned based on the information in the record, and in the PDS Staff Recommendation, meets the County's traffic mitigation and road design standards.

A. Road System Impacts, Concurrency and Inadequate Road Conditions (IRC).

i. Road System Capacity Impacts (SCC 30.66B.330) There was significant testimony and public comment about the capacity of the roads in and around the development to handle the proposed new trips generated by the development, and those of Gracie's Place, an adjacent development. Concerns were stated that the roads will not be safe for pedestrians; roads will be overcrowded; that improvements are needed at intersections, and that speeds are too high in the area already. (See, for example, Exhibit 179, Letter from Kimberly Frost)

In terms of addressing the capacity issues raised by citizens, according to SCC 30.66B.330(1), a development shall 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, with a few exceptions.

The impact fee for the subject development is based on the new ADTs generated by single-family residences, which is 9.57. The development will generate 392.37 new ADT and has a road system capacity impact fee of $104,762.37 ($2,555.18/lot) based on
$267.00/ADT. Payment of such impact fees as mitigation for impacts to county roads demonstrates compliance with SCC 30.66B.330.

ii. Concurrency (SCC 30.66B.120) Since this development will not impact any arterial unit in arrears, nor will it cause any arterial unit to fall into arrears, and does not impact any designated ultimate capacity arterial units, it was deemed concurrent as of August 15, 2006. The subject development is located in TSA "D" which, as of the date of submittal, had the following Arterial Units in arrears: 202 and 204. Based on peak-hour trip distributions, the subject development did NOT add three (3) or more peak-hour trips to any of the arterial units in arrears. Pursuant to SCC 30.66B.160 (2) (a), the development is determined concurrent. The development generates 30.75 a.m. peak-hour trips and 41.41 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. It was noted that as of March 19, 2012, Arterial Units 202 and 204 are no longer in arrears. (Exhibit 166)

iii. Inadequate Road Conditions (SCC 30.66B.210) An inadequate road condition (IRC) means “any road condition, whether existing on the road system or created by a new development's access or impact on the road system, which jeopardizes the safety of road users, including non-automotive users, as determined by the county engineer.” (SCC 30.911.020) Regardless of the existing level of service, 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 it. (To eliminate an IRC means to make sufficient changes to the road system to allow the County engineer to determine that the location no longer constitutes an IRC). (SCC 30.66B.210(1))

The County Engineer determines whether or not a location constitutes an IRC in accordance with the Department of Public Works' adopted Administrative Rule 4223, using a 3-step process. First a technical evaluation of hazards is done in accordance with the 1997 Federal Highway Administration, Department of Transportation's Report No. FHWA-RD-77-82, "Identification of Hazardous Locations." Second, a 3-person review board, consisting of DPW senior level transportation professionals, meets to confer as to whether the location constitutes an IRC. Third, the County Engineer makes a final evaluation and signs off on the IRC determination. (DPW Rule 4223) The County Engineer’s determination that a location constitutes an IRC is final and is not subject to review or appeal pursuant to SCC 30.66B.820, but the effect of an IRC location determination on a development may be appealed in accordance with SCC 30.66B.820.

Here, citizens raised safety concerns about the amount of new traffic generated by the development, both as to the traveling public and as to pedestrians who enjoy walking in the area. However, PDS transportation staff determined that there are no designated IRC locations found within TSA “D” that will be impacted by three or more PM peak hour trips generated by the proposed development. Additionally, it was determined that the proposed development would not create any IRC conditions. Accordingly, no additional mitigation is required pursuant to SCC 30.66B.210.
B. **Frontage Improvements** (SCC 30.66B.410) The subject property currently has no frontage along a public or private road, accordingly, no frontage improvements are required.

C. **Access and Circulation** (SCC 30.66B.420 and Chapter 30.24 SCC) PDS staff considered the application in light of its proposed access and road circulation, the extent of existing facilities and right-of-way, sight-distances and any needed improvements to any of these items. Their analysis is shown in Exhibit 166, which is incorporated herein by this reference as if set forth in full. Access is proposed from Baldwin Road through two new public roads (Road A and Pippin Road) which will be constructed through the proposed plat of Gracie's Place, PFN 05 117888. Both developments end in cul-de-sacs and have no provisions for future road connections, and only one constructed access into the development is proposed. According to EDDS 3-01(B)(4), two locations are required because the proposed ADT will exceed 250 ADTs. An EDDS Deviation request was submitted based on the need to protect steep slopes and the wetlands and streams on-site. The EDDS Deviation to remove a second access was approved because information was provided showing that no other constructed road connections are feasible at this time due to the location of steep slopes, wetlands and streams. However, the EDDS Deviation to construct a road with a grade of 12.79% instead of 12.0% was denied due to access and safety concerns for future residents during icy conditions, as this will be their sole access point. (Exhibits 60, 61) Accordingly staff has determined that, with the imposition of the conditions set forth in Exhibit 91, the proposed development meets the requirements of SCC 30.66B.420 and Chapter 30.24 SCC.

D. In determining the extent of required improvements, the Director of DPW considers, among other relevant factors, the criteria set forth in SCC 30.66B.430(a) through (p). The Hearing Examiner has reviewed those factors and finds that the recommended extent of improvements are consistent with SCC 30.66B.430 and the facts set forth in the entire record.

E. **Road Classification and Right-of-Way Requirements** (SCC 30.66B.510 and 30.66B.520)

The extent of right-of-way and improvements required from a developer is based on an analysis of various factors including the road classification(s) serving the development (both internally and externally), access and circulation requirements, sight distance, and the factors described below in SCC 30.66B.430.

In the present case, PDS extensively analyzed the right-of-way condition of roads serving the development including: Baldwin Road, Bellflower Road, South Bellflower Road and North Road. Using DPW data, site visits and the Applicant’s traffic study (Exhibit 10), PDS determined that the Applicant would be required to make certain improvements, but that other planned public improvements were also underway that did not require additional contribution by the Applicant. The information can be summarized as follows:
<table>
<thead>
<tr>
<th>Road Name</th>
<th>EDDS Road Classification</th>
<th>Design Speed</th>
<th>Typical Capacity</th>
<th>Current ADT</th>
<th>Post-Development ADT/ New Total ADT</th>
<th>Construction of Road Improvements Required?</th>
</tr>
</thead>
</table>
| Baldwin Road (east of Bellflower Road) | Non-arterial, public urban residential road | 25 mph       | Up to 1,000 ADT | 330 ADT     | + 392 ADT = 722 ADT               | Yes. Applicant shall bring road up to standard (EDDS 3-065) along 480 feet of frontage:  
  - A 28-foot width of pavement must be achieved south of the development (includes two 10-foot travel lanes, 8-foot parking strip, curb, 5-foot planters, 5-foot sidewalk).  
  - A 7-foot width paved shoulder walkway on one side (for safe walking conditions for children) must be constructed.  
  - A 1-foot width gravel shoulder on the other side from South Bellflower Road. |
| Bellflower Road (east of North Road) | Non-arterial public, urban residential road         | 25 mph       | Up to 1,000 ADT | 343 ADT     | + 129 ADT = 472 ADT               | No. Off-site; 20 feet of pavement already exists. The Applicant will also pay impact fees under SCC 30.66B.310 in the amount of $297 per ADT (total of $104,762.79 for entire project). |
| South Bellflower Road (NE of North Road) | Non-arterial public, urban residential road       | 25 mph       | Up to 1,000 ADT | 656 ADT     | + 259 ADT = 915 ADT               | No. Off-site; 20 feet of pavement already exists. The Applicant will also pay impact fees under SCC 30.66B.310 in the amount of $297 per ADT (total of $104,762.79 for entire project). |
| North Road (between SR 524 and 184th St. SW) | No information provided (NIP)                  | NIP          | NIP             | NIP          | NIP                                | No. Improvements are already programmed and under design by DFW as part of the County’s 2012 Transportation Improvement Program. It will be widened to a 3-lane urban section. Construction is scheduled for 2014. |

F. **Impacts to State Highways (SCC 30.66B.710)**

This development 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 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. Here, a copy of a voluntary offer to the State, signed by the Applicant was included with the application for $0.00 based on the Gibson Traffic analysis dated June 26, 2006 showing that no trips from the proposed development would impact a state road project. Comments dated July 7, 2006 were received from WSDOT indicating agreement with the traffic study, and they did not request any traffic mitigation. (Exhibit 67)
G. **Impacts to City Streets and Roads (SCC 30.66B.720)**

The DPW will recommend mitigation measures of the development's direct traffic impact on the city, town or other county roads to the approving authority and the approving authority will impose such measures as a condition of approval of the development in conformance with the terms of the ILA referred to in SCC 30.61.230 between the County and the other agency. An ILA has been executed between the County and the City of Mill Creek for traffic mitigation for impacts on the City's road system.

This project falls within the ILA area designated by the City of Mill Creek for traffic mitigation. The traffic study dated June 26, 2006 prepared by Gibson Traffic Consultants indicates that the project will owe Mill Creek $10,956.00 based on the trip distribution and the City's mitigation rate. The City has concurred with this amount. (Exhibit 68) Payment of that amount will be a recommended condition of approval unless revised comments are received from the City changing the requested amount.

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

H. **Transportation Demand Management (TDM) (SCC 30.66B.630)**

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. Sufficient TDM shall be provided to indicate the potential for removing a minimum of five percent of a development's p.m. PHT from the road system. This requirement shall be met by site design requirements provided under SCC 30.66B.630 or SCC 30.66B.630, as applicable, except where the development proposes construction or purchase of specific off-site TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.645. [SCC 30.66B.650].

PDS asserts that the cost of removing one peak hour trip from the road system is approximately $1,500.00. This amount is based on the average cost of one stall in a park and ride lot and the average cost of one “seat” in a 15-passenger van. For a development required to provide TDM, the development’s TDM obligation will equal $1,500.00 times the required trip reduction percentage times, the development’s peak hour trip generation.

The trip reduction percentage for this development is five percent. The TDM obligation for this development is therefore equivalent to 5% of the 41.41 new PM peak hour trips x $1,500.00, which equals $31,057.75. The Applicant has offered in writing to pay this amount.

14. **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 dated July 28, 2006 have been received from the Everett School District stating that the bus stop location for all public school grade levels would be at the intersection of Pippin Road and Road "E". The development will have sidewalks along the interior public roads, so there will be safe walking conditions in place to the bus stop location for children walking to the bus stop. (Exhibit 66)
A condition has been included for construction of the pedestrian facilities. The Examiner finds that existing and proposed facilities are consistent with the County Code and EDDS, that no school children will be required to walk to school from the site, but will be required to walk to bus stops for which adequate facilities will be provided, and that the facilities will provide for the general public health, safety and welfare.

15. **Mitigation for Impacts to Schools** (Chapter 30.66C SCC)

Chapter 30.66C SCC provides for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Everett School District at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. (Exhibits 66) Credit is to be given for one existing lot. Payment of school impact fees has been included as a condition of approval of the development.

16. **Drainage and Land Disturbing Activities (Clearing and Grading)** (Chapters 30.63A and 30.63B SCC)

Stormwater drainage runoff from the plat road system will be directed to one of two underground stormwater detention vaults and then released to the wetland system on the east side of the subject property. Water quality will be addressed by filter cartridges within the vault. Uncontaminated stormwater drainage from individual lots will be directed to the wetland on the east side of the subject property.

Grading quantities are anticipated to be approximately 50,000 cubic yards of cut and 50,000 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

PDS Engineering has reviewed the concept offered and recommended approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC.

17. **Critical Areas Regulations** (Chapter 30.62 SCC)

Keith Westlund, Biologist for Snohomish County PDS visited the subject property on June 8, 2006 and found a Category 1 riparian wetland associated with North Creek, and a Type 1 ESA Chinook bearing stream on the site. In addition, staff located several Type 5 streams that form from multiple seeps within the Category 1 wetland and flow northerly along the western edge of the existing driveway access and enter North Creek at the north end of the bridge on the west side of North Creek. The western edge of the Category 1 wetland was properly flagged in the field and verified for accuracy by PDS staff. Much of the upland forested area was logged in 1996, and is now covered with a young forest stand composed principally of red alder. Patrick McGraner, Sr. Environmental Planner for PDS, visited the site on two occasions on October 9, 2007 and more recently on February 11, 2008, and verified the same critical area boundaries and site conditions as recorded by Mr. Westlund. The seeps and small streams that lie near the bridge crossing at North Creek on Newton Road all lay within the identified boundary of the Category 1 wetland. (emphasis added)
The Applicant is proposing a 41 lot subdivision with access taken from Baldwin Road to the west of the subject property. The lots are designed on a slope above the large forested riparian Category 1 wetland and corresponding buffer associated with North Creek, a salmon bearing stream containing federally listed Chinook salmon and Steelhead trout. The stormwater drainage tract is to be located in the southeast corner of the site in Tract 998 and will discharge down slope within the wetland buffer. Sanitary sewer service will be provided in a manner that is intended to minimize the impacts to the on-site and off-site critical areas. No development is being proposed within 800 ft. of the heron rookery located off-site to the northeast adjacent to North Creek.

PDS biological staff visited the subject property three times to determine the accuracy of the critical area locations and to meet with field representatives from two state agencies, The Washington State Department of Fish & Wildlife (WDFW) and the Washington State Department of Ecology (WSDOE) as well as the Applicants and the Applicants' biological consultants to discuss and address concerns that have been raised by the agencies as well as neighbors and citizens. The Applicant has located the critical areas in the field as required and has applied the appropriate buffers per SCC 30.62.300 and .310. The critical areas and buffers are proposed to be permanently protected as Native Growth Protection Areas (NGPA) per SCC 30.62.320.

A Habitat Management Plan was submitted, reviewed and approved and found to be consistent with the requirements of SCC 30.62.100 and .110 and per the Snohomish County Salmonid Habitat Management Plan Administrative Rule. The Applicant contacted WDFW and received guidance with regards to the location of the heron rookery near the proposed development. A timing restriction will be applied as a condition of approval in compliance with SCC 30.62.340(d) and SCC 30.62.345(2)(c).

The Applicant anticipated impacts to critical areas from its need to construct a sewer line extension to the subject property from off-site. (Exhibits 22a and 239) The Applicant supplied a Critical Area Study and Conceptual Mitigation Plan (Exhibits 21 and 110), as well as a Habitat Management Plan (Exhibits 20 and 111) to address the proposed impacts primarily from the installation of the stormwater outfall spreader trench and the sanitary sewer line.

In the field meeting with staff, the Applicants, the Applicants' biological consultants and WSDOE on February 11, 2008, the Applicant notified staff of its intent to further reduce impacts to the critical areas and buffers through the design of an alternate route for the sanitary sewer.

A further reduction and/or avoidance of impact is allowed under the County Code. However, it should be noted that the original Critical Areas Report and Conceptual Mitigation Plan and Habitat Management Plan for Gracie's Place 2 dated March 7-8, 2007 prepared by The Jay Group, Inc. demonstrated that the proposed development complies with the avoidance and minimization of impacts set forth in SCC 30.62.365, as well as the restoration requirements per SCC 30.62.345(1)(a). The fact that the applicant is now planning to further reduce the impacts as required per SCC 30.62.365 and thereby reducing the amount of corresponding restoration required per SCC 30.62.345(1)(a) has led PDS staff to support the application for approval.

Staff noted that one of the most contentious issues with WSDOE and the citizens was that of the "temporary" impacts to the critical areas and buffers for installation of the sewer line. PDS staff explained in the field to WSDOE staff how SCC 30.62.345(1)(a) reads: "...when streams, wetlands and/or buffers are temporarily affected by construction or any other phase of a project" restoration is required.

An evaluation of the information submitted in the revised application, coupled with several on-site investigations have resulted in a determination that the application is complete and in conformance with Chapter 30.62 UDC (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.

18. Utilities

A. Sewer. Sewer will be supplied by the Alderwood Water and Wastewater District. An updated Certificate of Sewer Availability was issued on May 7, 2007. (Exhibit 69). The Snohomish Health District recommended approval of the preliminary plat on July 10, 2006. (Exhibit 63)

B. Electricity. The Snohomish County PUD No. 1 notified the County on July 11, 2006, that they can provide electrical service to the development. (Exhibit 65)

C. Water. Potable water will be supplied by the Alderwood Water and Wastewater District. The District has indicated that adequate water supply is available to serve the development. (Exhibits 69)

D. Fire. Snohomish County Fire District No. 1 provided comments on July 10, 2006, noting that the site plan did not provide the location of fire hydrants for the project in accordance with the County’s regulations. Hydrants shall be equipped with four inch Storz adapters at the engine port and reflective blue street markers. All weather road surface and hydrants must be in service prior to any combustible construction. Street signage must be in place prior to any occupancy of the residences. (Exhibit 64)

With the inclusion of the above, which PDS has included as recommended conditions of approval, fire apparatus access as depicted meets the minimum requirements of SCC 30.53A.150.

19. Zoning (Chapter 30.2 SCC)

A. General requirements. This project will meet zoning code requirements for lot size, including lot size averaging provisions, bulk regulations and other zoning code requirements.

B. Lot Size Averaging. The proposal has been evaluated for compliance with the lot size averaging (LSA) provision/s of SCC 30.23.210, which provide that the minimum lot area of the applicable zone is deemed to have been met if the area in lots plus critical areas and their buffers and areas designated as open space or recreational uses, if any, divided by the number of lots proposed, is not less than the minimum lot area requirement. In no case shall the density achieved be greater than the gross site area divided by the underlying zoning. In determining the appropriate calculation, lots may not be less than 3,000 square feet in area, and any lot having an area less than the minimum zoning requirement must provide a minimum lot width of not less than 40 feet, and right-of-way setbacks of 15 feet, except that garages must be setback 18 feet from the right-of-way (except alleys) and corner lots may reduce one right-of-way setback to no less than 10 feet.

Lot coverage for this proposed subdivision is a maximum of 35%. The LSA calculations were presented in the PDS Staff Recommendation (Exhibit 91). No lot is less than 3,000 square feet, and all lots comply with minimum lot width and setback requirements. Roadways and surface detention/retention facilities are not counted toward the LSA calculations. The Hearing
Examiner finds that the proposal is consistent with the lot size averaging provisions of SCC 30.23.210.

20. **Subdivision Code** (Chapter 30.41A SCC)

The proposed plat also meets Chapter 30.41A SCC requirements. 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. In addition, the subdivision meets all of the County’s transportation and road regulations and design standards. The Examiner finds that all 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) The Fire Marshall has determined that the project will meet the County’s fire regulations subject to the proposed conditions included in the PDS Staff Recommendation. (Exhibit 91) Accordingly, the Hearing Examiner finds that the proposed plat, as conditioned, also meets the general requirements under SCC 30.41A.100 with respect to health, safety and general welfare of the community.

21. **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 pedestrian facilities for students.

The proposed subdivision conforms generally with 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 within the subdivision will be in character with the urban 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 and sewage disposal will be provided by the Alderwood Water and Wastewater District.

22. Any Finding of Fact in this Decision, which should be deemed a Conclusion of Law, is hereby adopted as such.

**CONCLUSIONS OF LAW**

**A. CONCURRENCE APPEAL**

1. According to SCC 30.66B.185, a concurrency determination by the DPW creates a rebuttable presumption of validity. The Hearing Examiner may vacate a concurrency determination upon a showing that the determination is clearly erroneous. The DPW’s professional judgment and expertise shall be entitled to substantial weight. The party challenging the concurrency determination shall have the burden of proof. *Id.*
2. GNG asserts that the County’s concurrency determination is inadequate because it fails to consider the cumulative impact of other proposed development projects in the area on the surrounding road system. (Exhibits 1, 1-3) However, this statement reveals a misunderstanding of the purpose of concurrency determinations, and the methodology and process used to make them. The purpose of a concurrency is to determine for each development that it will not “impact a county arterial unit in arrears.” SCC 30.66B.120.

3. According to the County Code, concurrency determinations do not consider non-arterial roads. Contrary to GNG’s assertion, the Hearing Examiner concludes that DPW does consider the cumulative impact of other projects that are already in the “pipeline” for processing in considering the remaining capacity of arterials in light of the additional trips added by the North Creek Preserve project. (Testimony of Edward Koltonowski) The process used to determine concurrency is described in SCC 30.66B.145. That Section provides, in relevant part:

**SCC 30.66B.145 Concurrency determination-forecasting level-of-service.**

(1) *An inventory of developments that have been determined concurrent, also referred to as “developments in the pipeline,” will be used to estimate future traffic volumes for forecasting future level-of-service conditions.* This inventory will be established and maintained by the department of public works in accordance with the department’s administrative rules. Developments in the pipeline will also include developments given pre-application concurrency approval pursuant to SCC 30.66B.175.

   (a) *The department of public works shall use the inventory of developments in the pipeline when conducting analysis to determine whether an arterial unit is in arrears.* Inventories or estimates shall be in accordance with the department of public works’ administrative rules.

   (b) A developer may be required to provide a forecast of future level-of-service conditions to the department of public works for purposes of making a concurrency determination on a proposed development. When required to provide a forecast, the developer shall use the inventory of developments in the pipeline, as established and maintained by the department of public works, when providing a forecast of future level-of-service conditions to the department. The inventory of developments in the pipeline used for making a concurrency determination on a proposed development shall not include any development that has been deemed concurrent subsequent to the proposed development.

(2) *Estimates of future traffic volumes used for purposes of making level-of-service forecasts for concurrency determinations shall consist of the sum of the following: the current traffic volumes, the additional traffic volume that will be generated by the proposed development, and the additional traffic volume that will be generated by other developments in the pipeline.* . . . (emphasis added)

4. Having presented no further evidence in support of their appeal, the Hearing Examiner concludes that GNG has failed to meet its burden of proof to show that the concurrency determination was clearly erroneous. The concurrency appeal should be dismissed.

**B. SEPA APPEAL**

5. The Examiner has original jurisdiction over subdivision applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
6. The burden of proof is on the Appellants to show by substantial evidence that the SEPA Responsible Official's failed to consider probable, significant adverse environmental impacts. *Indian Trail Property Owner's Assn. v. City of Spokane*, 76 Wn. App. 430 441, 886 P.2d 209 (1994).

7. PDS conducts a threshold process to decide whether an action significantly and adversely affects the quality of the environment. (WAC 197-11-310 through -335). PDS considers mitigation measures the Applicant will implement and any such measures required by regulations, comprehensive plans, or other existing environmental rules or laws. (WAC 197-11-330(1)(c)). *Chuckanut Conservancy v. Dep't of Natural Resources*, 156 Wn. App. 274, 232 P.3d 1154 (2010). If such mitigation would allow it to issue a DNS, and the proposal is clarified, changed or conditions to include those measures, then PDS is required to issue a DNS. (WAC 197-11-350(3)).

8. In the present case, the Hearing Examiner concludes that PDS considered the application and all plans, studies and reports submitted by the Applicant in support of the project, as well as agency comments received after circulation of the SEPA Checklist, on-site investigations by staff, and voluntary offers of mitigation proposed by the Applicant designed "...to reduce the overall level of impact below that which is probable, significant and adverse." (Exhibit 26)

9. On review, the Hearing Examiner must give substantial weight to the threshold determination of PDS. See, SCC 30.61.310(3); RCW 43.21C.090; *King County v. CPSCMHB*, 91 Wn. App 1, 30, 951 P.2d 1151 (1998). Here, the Examiner does not substitute her judgment for that of PDS, but may find the decision clearly erroneous only when she is left with the definite and firm conviction that a mistake has been committed. SCC 30.61.310(1); *Couger Mountain Assocs. v. King County*, 111 Wn.2d 742, 747, 765 P.2d 264 (1988). However, PDS must make a showing that "environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA." *Juanita Bay Valley Cnty. Ass'n v. City of Kirkland*, 9 Wn. App. 59, 73, 510 P.2d 1140 (1973).

10. The Appellants request that the Hearing Examiner reverse the threshold determination of a DNS and require issuance of a DS, thereby requiring the preparation of an Environmental Impact Statement (EIS). In the alternative, the Appellants request that the Examiner utilize SEPA substantive authority to impose mitigating conditions to increase critical area buffers and to provide improved traffic conditions on roads in the vicinity.

11. Bare assertions of environmental impact without corroborating evidence in the SEPA record will not support an exercise of SEPA substantive authority. See, generally, *Levine v. Jefferson County*, 116 Wn.2d 575, 807 P.2d 363 (1991). In support of their claims, GNG submitted the testimony of Becky Johnson and Diana Riley, along with their legal brief (Exhibit 122), and numerous documents into the record including Exhibits 1, 3, 4, 123, 124, 125, 126, and 127. Additionally, the record contains letters from over 70 citizens, many of whom are part of the GNG, adding their comments and concerns about the SEPA threshold determination. (See, Exhibits 34a through 55; 58, 115, 117, 118, 119, 130 through 140, 152 through 165, 167, 168, 169 and 170). Finally, the Appellants also rely on the remaining documents in the record relating to the preliminary plat application.

12. As the Court of Appeals observed in 2001, it is easy to understand how local citizens find it hard to believe that a large subdivision adjacent to North Creek could be declared to have "no significant adverse environmental impact" under SEPA, with no required EIS. But, the law is on the Applicant's side. *Moss v. City of Bellingham*, 109 Wn. App. 6, 21, 31 P.3d 703 (2001).
13. Prior to the 1990s, this appeal might have had a very different result based on the *Norway Hill* decision. In *Norway Hill Pres. & Prot. Ass'n v. King County Council*, 87 Wn.2d 267, 275, 552 P.2d 674 (1976), King County's planning department issued a DNS for a large subdivision consisting of 198 single-family dwellings on a heavily wooded 52-acre site outside the Bothell city limits. *Id.* at 269. King County planners issued a DNS and recommended approval of the project, subject to certain conditions. After public hearings and several appeals to the King County Council resulting in requests for more study, the Council approved the plat. *Id.* at 270. On appeal, the Supreme Court found that the project would transform a heavily wooded area into a large subdivision, and held that an EIS was required because "on its face the Norway Vista project will significantly affect the environment." *Id.* at 278. Although the Court acknowledged that the council had extensively considered the matter and issued its approval without an EIS only after imposing conditions designed to protect the environment, this did not change the result. Nor did the project's consistency with the comprehensive plan. *Moss, supra* at 21.

14. This 1976 decision announced a rule that was upheld for nearly twenty years, until it was overruled by subsequent legislation. During the 1970s, there were few other regulations in place besides SEPA that required protection of the environment. It was a powerful tool. However, in the 1990s, the regulatory framework started to change. Changes to SEPA and the land use development review process were brought forward as part of a set of sweeping recommendations made by the Governor's Task Force on Regulatory Reform. New legislation known as the 1990 Growth Management Act (GMA) (Ch. 36.70A RCW) required the adoption of comprehensive land use policies and plans designating urban, rural and resource lands, adoption of development regulations that are consistent with the policies and plans and, for the first time, a requirement to adopt substantive regulations specifically designed to protect critical areas. Following these new laws, the Legislature enacted the 1995 Integration of Growth Management Planning and Environmental Review Act.⁴

15. As a result, SEPA and GMA-based development permit review are now an integrated, streamlined system, designed to,

...avoid duplicative environmental analysis and substantive mitigation of development projects by assigning SEPA a secondary role to (1) more comprehensive environmental analysis in [GMA Comprehensive] plans and their programmatic environmental impact statements and (2) systematic mitigation of adverse environmental impacts through local development regulations and other local, state, and federal environmental laws.


16. As a result, the County is now authorized to determine that its development regulations and GMA Comprehensive Plan policies provide adequate analysis of, and mitigation for, some or all

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³ ESHB 1724, enacted as Chapter 347, Laws of Washington (1995); (hereinafter, the "Integration Act").
of the specific adverse environmental impacts of the project for purposes of SEPA compliance. 

Id. (See also, WAC 197-11-158) The County has exercised this authority with regard to many impacts of development. See, for example:

  
  Critical area protective measures required by this chapter shall also constitute adequate mitigation of adverse or significant adverse environmental impacts on critical areas for purposes of [SEPA] chapter 30.61 SCC.

  
  Critical area protective measures required by this chapter shall also constitute adequate mitigation of adverse or significant adverse environmental impacts on wetlands, fish and wildlife habitat conservation areas and their buffers pursuant to chapter 30.61 SCC, to the extent permitted by RCW 43.21C.240 [SEPA].

- SCC 30.63A.060 (Drainage Code):
  
  When the director, upon consideration of the specific probable adverse environmental impacts of a development activity with regard to on-site and off-site changes to storm water volume, release rate, erosion, sedimentation, and water quality, determines that the requirements of this chapter and chapters 30.43C, 30.43D, 30.44, 30.62, 30.62A, 30.62B, 30.62C, 30.63B, 30.64 and 30.65 SCC adequately address those impacts, compliance with those requirements shall constitute adequate analysis of and mitigation for the specific adverse or significant adverse environmental impacts of the development activity with regard to on-site and off-site changes to storm water volumes, release rate, erosion, sedimentation, and water quality, as provided by RCW 43.21C.240. [SEPA]

- SCC 30.63B.060 (Grading/Land Disturbing Activities)
  
  Authority to require more stringent standards and requirements and to impose mitigation.

  (1) Before and after the issuance of a land disturbing activity permit, the director may impose additional or more stringent standards and requirements than those specified in this chapter or impose mitigation requirements to the extent necessary to:
  (a) Protect the public health, safety and welfare; or
  (b) Mitigate any significant adverse impact from the land disturbing activity.

  (2) The director's decision to require additional or more stringent standards and requirements or mitigation requirements under SCC 30.63B.060(1) shall be in writing and shall include findings of fact and conclusions that demonstrate how the decision meets the following criteria:
  (a) The decision eliminates or substantially reduces a specific public health, safety and welfare concern or a significant adverse impact;
  (b) The decision is based on sound engineering practices;
  (c) The decision will not adversely impact off-site properties; and
  (d) The decision is the least possible change from the requirements of this chapter.

- SCC 30.62B.030 (Geologically Hazardous Areas):
Critical area protective measures required by this chapter shall also constitute adequate mitigation of adverse or significant adverse environmental impacts on geologically hazardous areas pursuant to chapter 30.61 SCC, to the extent permitted by RCW 43.21C.240 [SEPA].

- SCC 30.62C.030 (Critical Aquifer Recharge Areas):

Critical aquifer recharge area protective measures required by this chapter shall also constitute adequate mitigation of adverse or significant adverse environmental impacts pursuant to chapter 30.61 SCC, to the extent permitted by RCW 43.21C.240 [SEPA].

- SCC 30.66B.010 (Concurrence and Road Impact Mitigation):

(1) The requirements of this chapter, together with the comprehensive plan, Title 13 SCC, and other development regulations and policies that may be adopted, constitute the basis for review of development and the imposition of mitigation requirements due to the impacts of development on the transportation system.

(2) Mitigation measures required by this chapter shall constitute adequate mitigation of adverse or significant adverse environmental impacts on the road system for the purposes of chapter 30.61 SCC to the extent that the director determines the specific impacts of the development are adequately addressed by this title in accordance with chapter 30.61 SCC.

(3) The provisions of this chapter do not limit the ability of the county to impose mitigation requirements for the direct impacts of development on state highways, city streets, or other another county’s roads pursuant to SCC 30.66B.710 and .720

17. While simplifying the project review process, WAC 197-11-158 maintains SEPA’s function as an environmental full disclosure law by directing decision-makers to decide whether the impacts have fully or partially been addressed or mitigated.⁴ Id. According to WAC 197-11-158(1), when all of a project’s impacts are addressed by other applicable laws, and no conditions will be required under SEPA, the following statement must be placed in the threshold determination:

The lead agency has determined that the requirements for environmental analysis, protection, and mitigation measures have been adequately addressed in the development regulations and comprehensive plan adopted under chapter 36.70A RCW, and in other applicable local, state, or federal laws or rules, as provided by RCW 43.21C.240 and WAC 197-11-158. Our agency will not require any additional mitigation measures under SEPA. WAC 197-11-158(2)(d).

Contrary to the Applicant’s assertion that this provision is new and/or doesn’t apply to their vested permit application, this requirement was adopted by the Department of Ecology on November 10, 1997, well before the vesting date of this application.

18. Here, GNG argues that the Threshold Determination was issued in error because it does not contain the required statement under WAC 197-11-158(1). (Exhibits 26) The Applicant argued

⁴ In addition, under RCW 36.70B.040, local governments must determine a proposed project’s consistency with its development regulations or comprehensive plan during project review by considering the type of land use, level of development, infrastructure, and development characteristics. [Moss, supra, at 18.]
at the public hearing that GNG did not raise this issue in its appeal and, therefore, cannot raise a new appeal issue after the close of the time period for filing of the original appeal. The Hearing Examiner concludes that this issue was not raised in the original appeal statement. (Exhibit 1) According to SCC 30.71.050(6), the issue is time barred and cannot be considered.

19. GNG also argues that PDS erred in failing to make an individualized determination of the probable environmental impacts associated with the Gracie’s Place development, pursuant to SEPA. (Appellant’s Brief at 6). The Hearing Examiner disagrees. First, GNG’s argument that PDS was required to make an individualized SEPA determination ignores the central theme of the legislative findings announced in the adoption of the 1995 Integration Act. (Ch. 347 Section 202(1)-(3), Laws of 1995; RCW 43.21C.240):

GMA local governments clearly are authorized to dispense with both analysis and mitigation of specific adverse environmental impacts of a proposed project under SEPA, if adequate analysis and mitigation of such impacts is provided through GMA plans and development regulations or other applicable local, state or federal environmental laws.” (Emphasis in the original), Richard L. Settle, The Washington State Environmental Policy Act: A Legal and Policy Analysis, App. E, at p. E-12 (2002).

The Legislature created a new “functional equivalence” rule, whereby cities and counties planning under GMA are no longer required to identify each adverse environmental impact and specify and incorporate by reference each regulation they rely upon to mitigate such impacts. As noted above in Conclusion of Law No. 16, Snohomish County has identified regulations that meet the functional equivalence rule, for which no further SEPA individualized determination is required. These include regulations governing development impacts related to critical areas, stormwater drainage, geologically hazardous areas, land disturbing activities, shorelines, flood hazard areas, traffic concurrency and roads, and critical aquifer recharge areas. Where a project meets the analysis and mitigation requirements of each of those regulations, no further SEPA analysis or mitigation is required, and issuance of a DNS is appropriate.

As noted by Settle, “The authorization to use environmental analysis prepared under laws other than SEPA or NEPA without incorporation by reference into a formal SEPA document is a major change under SEPA law.” (Id. at p. E-13.) Accordingly, the Hearing Examiner concludes that PDS did not err in issuing the Threshold Determination without specific identification of impacts and mitigation for those impacts addressed by functionally equivalent regulations set forth in Title 30 SCC.

20. Second, the Hearing Examiner concludes that GNG has failed to meet its burden of proof relative to its substantive claims that the Responsible Official lacked adequate information. (Exhibit 1) The record indicates that the project received a great deal of review and was based upon a significant amount of information. In particular, PDS based its DNS decision on the Environmental Checklist (Exhibit 8), and all of the other regulatory reviews that occurred pursuant to Title 30 SCC applicable to the subdivision. (See, Exhibits 7 through 72) PDS also gathered extensive comments from agencies and the public, required site investigations, met with WSDFW on-site, and imposed additional mitigation measures on the project before finally recommending approval. (Exhibits 34-69) The Hearing Examiner concludes that GNG has not demonstrated that the Responsible Official’s threshold determination was clearly erroneous.

21. As to GNG’s second allegation, raising specific substantive complaints of significant adverse environmental impacts requiring an EIS, they have failed to cite any facts or evidence in the record demonstrating that the project as mitigated, will cause significant environmental impacts warranting an EIS, nor did they call any expert witnesses at the appeal hearing to support their
claim. Instead, they provide specific areas of concern in their SEPA Affidavit and claim that the project is "unmitigated." (See, Exhibit 3; Appellants' Brief at 8) This ignores the plain evidence in the record demonstrating that as designed, the project will avoid, mitigate and/or restore impacts associated with the critical areas on-site. Additionally, the argument fails to recognize the functional equivalency rule established by the 1995 Integration Act, which allows the County Council to establish levels of protection and mitigation which are deemed to suffice for purposes of mitigating significant adverse environmental impacts under SEPA.5

22. Related to its second claim, GNG raised five specific issues warranting analysis. The Examiner addresses them each in turn.

A. Cumulative Impact claims. GNG argues that the Responsible Official failed to consider cumulative impacts and the interdependency of other developments (Berry Place, Gracie's Place, Normandie Place, Nichols Short Plat and McDaniel Addition), which collectively will add numerous additional residential lots and accompanying urban infrastructure in the immediate vicinity of the proposed Gracie's Place 96-lot development. (Exhibits 1, 3, 122) At the time of the threshold determination, these plats were proposed for development. Today, all parties acknowledged that of those developments, only Gracie's Place is moving forward for development approval. However, the Examiner reviews the threshold determination based upon the information available to the Responsible Official on November 20, 2007.

The question of whether cumulative impacts must be analyzed in making a threshold determination is a question of law. In making a threshold determination, PDS is required to examine at least two relevant factors: "(1) the extent to which the action will cause adverse environmental effects in excess of those created by existing uses in the area, and (2) the absolute quantitative adverse environmental effects of the action itself, including the cumulative harm that results from its contribution to existing adverse conditions or uses in the affected area." Chuckanut Conservancy v. Dept of Natural Res., 156 Wn. App. 275, 285 (2010), quoting Norway Hill, 87 Wn.2d at 277 (quoting Narrowsview Ass'h v. City of Tacoma, 84 Wn.2d 416, 423, 526 P.2d 897 (1974)). However, cumulative impact analysis is not always required. The Court of Appeals held in Boehm v. City of Vancouver, 111 Wn. App. 711, 720, (2002):

As a general proposition, the nature of cumulative impacts is prospective and not retrospective. A cumulative impact analysis need only occur when there is some evidence that the project under review will facilitate future action that will result in additional impacts. (Emphasis Added); Tucker v. Columbia River Gorge Comm'n, 73 Wn. App. 74, 81-83, 867 P.2d 686 (1994). We also hold that the cumulative impact argument must fail unless [the Appellant] can demonstrate that the project is dependent on subsequent proposed development. In SEAPC v. Cammack II Orchards, 49 Wn. App. 609, 744 P.2d 1101 (1987), the plaintiffs challenged the approval of a subdivision, arguing that "the County erred in refusing to consider the development's future cumulative impact beyond the... subdivision." SEAPC, 49 Wn. App. at 614. Division Three of this court excused the county's refusal to consider future cumulative impacts:

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5 "Critical area protective measures required by this chapter shall also constitute adequate mitigation of adverse or significant adverse environmental impacts on critical areas for purposes of chapter 30.61 SCC." SCC 30.62.030(1)
An EIS need not cover subsequent phases if the initial phase under construction is substantially independent of the subsequent . . . phases, and the project would be constructed without regard to future developments. In the instant case, although future development was not totally ruled out, it cannot be said the . . . subdivision was dependent upon subsequent proposed development. SEAPC, 49 Wn. App. at 614-15 (citation omitted).

(Emphasis added); Boehm at 720.

In the present case, GNG argues that the extension of sewer from the Gracie's Place subdivision to the North Creek Preserve will serve as a catalyst for more development actions in the area. (Appellant's Brief at 10). However, they present no evidence that the sewer extension will have such a catalytic effect other than speculation. PDS responds that it was policy decisions of the County Council in adopting the Comprehensive Plan, designating the land inside the UGA, and adopting urban zoning for the area that facilitates future development, not the extension of sewer. (Supplemental PDS Staff Report at 5-6). The Hearing Examiner agrees. Although the Examiner was deeply moved by the large volume of citizen letters and public testimony presented at the public hearing decrying the loss of the forested habitat on which this project is proposed, the decision as to whether the subject property should have been designated and zoned for something other than urban development (perhaps placed in long-term conservancy or made part of North Creek Park), was a policy decision for the County Council at the time of adoption of its GMA Comprehensive Plan. Those issues are beyond the purview of this administrative appeal.

Additionally, GNG has failed to present sufficient evidence that the North Creek Preserve is dependent upon other developments in the surrounding area, which would trigger the requirement for cumulative impacts analysis. PDS notes that development applications for Berry's Place, Nichols' Short Plat, Normandie Place and McDaniel Addition have all expired. Only the development of Gracie's Place is pending. The record clearly demonstrates that the North Creek Preserve is not dependent on the development of any of the expired projects or Gracie's Place for its approval. Although the extension of sewer and new roads constructed for Gracie's Place will make it more convenient (and likely less expensive) to construct the North Creek Preserve project, GNG has not shown that the Applicant cannot obtain easements or access to its property for road construction and sewer extension to serve its own development. Although the land was at one time owned by a single owner and drawn as a single project, the projects are now separated, and are being pursued independently by different development companies. The denial of one development will not defeat the other. Accordingly, the Hearing Examiner concludes that the two projects are substantially independent; each can stand on its own for purposes of project review and approval. Accordingly, the fact that there were/are other projects adjacent to Gracie's Place does not trigger the requirement for a cumulative impacts analysis. Boehm at 720.

B. Critical Areas Claims. GNG raises claims related to streams, wetlands, steep slopes and drainage impacts associated with the proposed subdivision. These claims include:

i. Streams. With regard to streams, GNG claims that an EIS is necessary in light of the project's proximity to streams (North Creek), wetlands and associated buffers of high environmental value. They argue that the proposed mitigation buffers are inadequate.
ii. **Wetlands.** As to wetlands, GNG argues that the information provided by the Applicant as to Wetland A (which is directly adjacent to North Creek) does not ensure adequate protection to the wetlands. Instead, they argue that the information "directly links the project to critical area impacts." (Exhibit 1) They argue that the intensity of the impacts is evident from an observation of the site plan, and cumulative intensity of impacts is evident when considering Gracie’s Place and other developments in the area. Finally, GNG argues that The Jay Group incorrectly asserts that stream and wetland impacts from the sewer installation will be temporary; they believe the impacts will be permanent, requiring an EIS.

iii. **Steep Slope and Drainage Impact Claims.** GNG also argues that steep slopes exist on the site over 33% in grade and will be disturbed. They assert that the SEPA Responsible Official did not have adequate information necessary to assess certain probable environmental impacts of the project, specifically, how much of the site is steeply sloped, where the slopes are in relation to the proposed construction activity, and where slopes are in relation to critical areas. GNG asserts that the developer proposes to make significant cuts and fills into the hills on site and, considering the totality of the high environmental value of the site, an EIS is required.

As noted above, based on the functional equivalency rule, RCW 43.21C.240 no longer requires an EIS where the impacts to streams are analyzed and mitigated according to the County’s development regulations. Here, SCC 30.62.030(1) clearly states that “[c]ritical area protective measures required by this chapter shall also constitute adequate mitigation of adverse or significant adverse environmental impacts on critical areas for purposes of chapter 30.61 SCC.”

As set forth in Finding of Fact No. 17, above, PDS had a significant amount of information about the status of the critical areas impacted by this development on which to determine whether the Applicant’s proposals to protect, avoid, mitigate and/or restore impacts to specific critical areas was in accordance with Chapter 30.62 SCC. The Applicant performed several site visits and prepared a Critical Areas Report, Conceptual Mitigation Plan for Gracie’s Place II and Habitat Management Plan for Gracie’s Place II ("CAR Plan") (Exhibits 11, 20, 21). The CAR Plan provides substantial evidence as to the habitat conditions in existence on the subject property and in the adjacent critical areas of Wetland A and North Creek, as well as the North Creek Park Blue Heron Colony.

The Plan provides a detailed assessment of the habitat functions and values of these critical areas as they relate to ESA-listed salmonids, other fish species and wildlife, including the Heron colony. The original critical area delineations and habitat assessments were verified by two different consulting firms, and two separate PDS biologists after review of the documents and site visits. The location of the heron colony was confirmed by staff from the WSDFW after a site visit. A follow-up study performed by Habitat Ecology and Design (formerly The Jay Group, Inc.) on August 11, 2008, after the threshold determination, both confirms the original habitat assessments and demonstrates that impacts to the wetlands from the construction of a sewer line have been further reduced and avoided due to a rerouting of the proposed line away from the wetland and into its buffer. (Exhibits 110, 111)

In support of its SEPA appeal, GNG submitted numerous photographs and documents, along with personal testimony of its members, documenting the beauty and extent of the largely undisturbed habitat that is found in the area of the subject property and surrounding areas, including North Creek Park. (See, e.g., Exhibits 3, 53, 53, 54, 55, 123-2, 123-3, 171, 172, 176,
53, and 54) Dr. Sarah Cooke of Cooke Scientific also provided comments relating to the importance of the wildlife habitat in the North Creek system, including beaver populations, the Blue Heron rookery and other wildlife and fish. (Exhibit 121) The information GNG presented is consistent with, and adds richness to, the data collected and documented by the Applicant in its CAR Plan, and relied upon by the Responsible Official. The evidence presented by GNG, however, does not demonstrate that important information about the status of the critical areas was overlooked, omitted or ignored by the Applicant or PDS.

GNG argues that the protection afforded by the County's development regulations is not adequate, requiring an EIS and exercise of SEPA substantive authority to impose more protective conditions. However, the County has no such authority as to critical areas. Based on the Integration Act requirements, SCC 30.61.200 provides that if, during project review the County determines under RCW 43.21C.240 that the County's development regulations provide adequate analysis of, and mitigation for, specific adverse environmental impacts of the project action, the County shall not impose additional mitigation under SEPA. (See, SCC 30.61.200(6)) Here, the Council saw fit to adopt SCC 30.62.030(1) which provides, "[c]ritical area protective measures required by this chapter shall also constitute adequate mitigation of adverse or significant adverse environmental impacts on critical areas for purposes of chapter 30.61 SCC." Accordingly, once compliance with Ch. 30.61 SCC is achieved, no further mitigation can be imposed using SEPA's substantive authority.

Even if this were not the case, GNG has not met its burden of proof to show that the County's critical areas regulations are actually inadequate. In the present case, the streams and wetlands are protected by enhanced regulatory buffers and stormwater restrictions due to the presence of ESA-listed salmonids that were adopted using "best available science." Special requirements have been put into place to protect the Heron colony from development activity during sensitive breeding and roosting times. A site-specific Habitat Management Plan is required to be implemented to protect ESA-listed species, requiring enhanced protections. No impacts are proposed within the 150-foot buffer to North Creek or the 300-foot riparian management zone buffer associated with North Creek. Temporary impacts are proposed within the 75-foot buffer for installation of the sewer line, which is an allowed exception to the critical areas regulations, so long as mitigation and/or restoration are provided. Here, full restoration is required. (Exhibit 20) GNG offered no specific evidence demonstrating that such protections are inadequate based on best available science. They simply were not analyzed. Ed Caine, Senior Planner, PDS refuted some of the assertions in Dr. Cooke's letter, stating that jurisdiction by the Army Corps of Engineers was not triggered because there is no proposed wetland filling or direct stream impacts. Furthermore, GNG did not address the Applicant's claims that its vested rights prevent the imposition of regulations that were not in effect on the date it submitted a complete application. (Applicant's Brief at 2-3)

C. Traffic claims. GNG alleges that the Applicant's analysis of traffic impacts was inadequate when considered independently or as part of the cumulative impacts of the other projects proposed in the vicinity. The Hearing Examiner has already addressed the issue of cumulative impacts. GNG presents independent traffic analysis from traffic consultant Ross Tilghman, Tilghman Group, in support of its claim that the traffic report was inadequate. (Exhibit 1-3) However, Mr. Tilghman did not appear at the public hearing and was not available for cross-examination.

As shown in Finding of Fact No. 13, the review of traffic concurrency and road impacts was extensively studied for compliance with Chapter 30.66B SCC. Ann Goetz and Mark Brown, traffic engineers from PDS testified at the public hearing, along with Edward Koltonowski, Senior Traffic Engineer, Gibson Traffic Consultants. They discussed the requirements of Chapter
30.66B SCC as it relates to off-site traffic improvements and the required conditions recommended for imposition on the proposed North Creek Preserve. Additionally, Mr. Koltonowski provided specific detail as to how concurrency analysis works and demonstrated that the subdivision can meet the requirements of the County’s regulations. (See also, Exhibits 166 and 10) Although numerous citizens testified and wrote letters as to their concerns about changes to traffic in the area, the Applicant demonstrated (and PDS staff confirmed) that the traffic impacts have been adequately disclosed and mitigated by the requirements of the County Code.

Mr. Tilghman’s report does not address compliance with Chapter 30.66B SCC; instead he offers the following opinion:

Concurrence analysis does not provide a substitute for SEPA analysis since it does not address the impact that a project has on non-arterial streets and on individual intersections, and it does not evaluate the delays that may occur on cross-streets. The project’s traffic studies do not satisfy SEPA requirements to identify probable adverse impacts to streets and intersections used by project traffic. (Exhibit 172 at 3).

Mr. Tilghman’s conclusion is in stark contrast to the evidence in the record. The facts reveal that the project was reviewed for its impact on sight distance, the type and nature of roads that should serve the development, both internally and externally, the development’s impacts as to traffic counts and speeds on Baldwin Road, Pippin Road, Bellflower and South Bellflower Roads, as well as access and circulation requirements throughout the area, the extent of required improvements, the need for additional right-of-way to widen roads, the provision frontage improvements, and the availability of transit, all based on current and projected conditions. (Exhibits 10, 166; Testimony of Ann Goetz, Mark Brown, Edward Koltonowski) Contrary to Mr. Tilghman’s assertion as to the need for further SEPA analysis, Chapter 30.66B SCC is one of the regulations that have been identified as a functionally equivalent regulation for purposes of SEPA review. (See, Finding of Fact No. 13; SCC 30.66B.010; Exhibit 114) Accordingly, no further SEPA analysis is required.

D. Steep Slope and Drainage Impact Claims.

GNG asserts that steep slopes exist on the site over 33% in grade and will be disturbed. They argue that the SEPA Responsible Official did not have adequate information necessary to assess certain probable environmental impacts of the project, specifically, how much of the site is steeply sloped, where the slopes are in relation to the proposed construction activity, and where slopes are in relation to critical areas. GNG asserts that the developer proposes to make significant cuts and fills into the hills on site and, considering the totality of the high environmental value of the site, an EIS is required. (Exhibit 1)

The Hearing Examiner has examined the site plan (Exhibit 2 dated June 27, 2006, Exhibit 32b) and Geotechnical Report (Exhibit 19) and concludes that there is substantial evidence in the record defining where the slopes are on the subject property in relation to construction activities and critical areas. In particular, the clearing limits are specifically drawn on the site plan, in relation to slopes, critical areas and drainage patterns. id.

6 The Applicant has submitted an updated copy of the site plan for the Open Record Hearing. (Exhibit 103) At the time of the SEPA threshold determination, the Site Plan considered by the SEPA Responsible Official was Exhibit 2. Accordingly, we refer to the earlier document, as the Examiner’s review of the SEPA threshold determination is based on the information that was before the Responsible Official on November 20, 2007. (Exhibit 26)
Additionally, the Hearing Examiner concludes that the Geotechnical Report adequately describes the soil types present on site and the erosion hazard areas based on the Soil Conservation Service’s (SCS) Soil Survey of Snohomish County, Washington. The erosion hazard for Unit 3 is (till "moderate," and for Unit 39 (till and outwash) is "slight." *Id.* at p. 5. In terms of the landslide hazard, the Hearing Examiner concludes that the Geotechnical Report adequately analyzed the slopes on site. The Report states:

The core of the site is inferred to be composed of glacially overridden soils. We consider these soils to be of high strength and considered to be stable with regard to deep-seated slope failures. On the moderate to steep slopes within the site, we observed numerous mature evergreen trees with slight curvature that could indicate past surficial soil creeping. Bending of the trees could also be a result of large wind events when the trees were young. There is a potential that the surficial soils on the steeper sections of the slope could slough over time. We expect that any sloughing events would be surficial. These events are generally affected by surface water and man-made impacts. The risk of sloughing events can be minimized if proper drainage is installed, vegetation on the slope is maintained, and yard waste and other debris are kept off the slopes. Subsurface drains and controlling surface water will be a big benefit to this site. We did not observe any indication of any sloughing or landslides on site, and are not aware of any historic landslides within the site.

(Exhibit 19 at p. 5). The consultant noted that the Applicant’s proposed final inclinations of the ground surface slopes are “appropriate.” They provided temporary and permanent slope recommendations. These issues will be subject to further design review during the construction plan review phase, prior to building permit issuance. *Id.* Accordingly, the Hearing Examiner concludes that GNG has not shown that the SEPA Responsible Official did not have adequate information necessary to assess certain probable environmental impacts of the project relative to steep slopes and erosion issues. (Exhibit 1)

E. **Recreational and Wildlife Claims.** GNG argues that there was no assessment of adverse impacts to the wildlife by the removal of significant amounts of mature forest, clearing or grading or likely hydrologic changes that will result from the project. They identified significant habitats in the area as including the Rhody Ridge Arboretum, North Creek Park, and the Great Blue Heron rookery in the immediate vicinity. Finally, they claim that there are no recreational or play areas proposed as part of the subject development.

The Examiner concludes that adverse impacts to wildlife and habitat were considered as part of the project’s review under the County’s CAR. This issue has been extensively discussed above, and will not be repeated here. Recreational impacts were considered in the SEPA Checklist and impacts were disclosed at Paragraph 12. (Exhibit 8) The Applicant will pay impact fees or provide in-kind mitigation for impacts to parks and recreational opportunities within Park District No. 307 as required by Chapter 30.66A SCC. The Hearing Examiner concludes that GNG failed to demonstrate that the project generates significant adverse environmental impacts as to parks and recreation requiring an EIS.

F. **Aesthetics Claim.** Lastly, GNG argues that replacement of an open space hillside which provides habitat and a rural aesthetic quality to the neighborhood with a 41-lot urban development will adversely impact the aesthetics of the area (and therefore an EIS should have been required). The Applicant disclosed in the SEPA Checklist impacts to
aesthetics from the proposed development at Paragraph 10. (Exhibit 8) PDS determined that these impacts are not significant adverse environmental impacts in issuing its DNS.

The Courts have addressed aesthetic values as an appropriate component of land use in Anderson v. City of Issaquah, 70 Wn. App. 64, 82, 851 P2d 744 (1993), holding that they require clear guidance to the community. Although environmental values are often difficult to quantify, Washington Courts have upheld shoreline master plans that describe preservation of scenic views in general terms. Bellevue Farm Owners Ass’n v. Shorelines Board, 100 Wn. App. 341, 356-357 (2000). In the present case, the County’s development regulations cover certain elements of aesthetic values and provide specific guidance as to noise, air quality, environmental quality, public safety concerns, fire, and flood hazards. However, there are no adopted development standards related to the preservation of scenic views or forested areas for aesthetic purposes.

Similarly, the County’s adopted GMA Comprehensive Plan lacks policies that require the preservation of scenic views. Instead, the Land Use Plan Goal for Urban Areas is to “establish development patterns that use urban lands more efficiently.” (GMACP at Goal LU 2) The objectives used to meet this goal are clear: “Increase residential densities within UGAs by concentrating and intensifying development in appropriate locations, particularly within designated centers and along identified transit emphasis corridors.” (Objective LU 2.A) The GMACP specifically authorizes the use of lot size averaging to maintain densities at 4-6 dwelling units per acre, where critical areas or steep slopes prevent attainment of such densities. (See, GMACP LU Policy 2.A.1)

Although the County has adopted Comprehensive Plan Policies related to the preservation of open space, shorelines and scenic resources, all of those policies are voluntary and aspirational in nature. (See, GMACP Objectives LU 10.A, LU 10.B, and LU 10.C) With regard to development standards, GMACP LU Policy 10.10.B.7 provides that the County “shall consider development of code and site design standards that encourage the preservation of natural and scenic resources.” However, the Hearing Examiner concludes that no such regulations have been adopted. GNG argues that the County should have required an EIS or exercised its substantive authority to preserve scenic views in the area.

However, SEPA is essentially a procedural statute to ensure that environmental impacts and alternatives are properly considered by the decision-makers. It was not designed to usurp local decision-making or to dictate a particular substantive result. Save Our Rural Env’t v. Snohomish County, 99 Wn.2d 363, 371, 662 P.2d 816 (1983). Here, there is no policy or regulatory basis upon which the County can impose conditions to preserve scenic views. Although the County could have adopted policies or taken action to preserve the views and aesthetic values associated with North Creek Park, it has not done so. Instead, the subject property is included in the UGA, designed for intensification and densification of land uses for residential development. Without clear guidance in the County Code or adopted SEPA policies related to aesthetics within the UGA, there is no legal basis under the County’s SEPA substantive authority upon which to base such development conditions. (SCC 30.61.230) Accordingly, the Hearing Examiner concludes that this claim must fail.

23. The Hearing Examiner has considered all of the evidence in the record and concludes that the Applicant did submit the full scope of information necessary for the County to make a proper SEPA threshold determination, and that the Responsible Official based the SEPA threshold determination on substantial evidence in the record.
24. Giving substantial weight to the PDS Director's SEPA threshold determination, the Hearing Examiner is not left with the "definite and firm conviction that a mistake has been committed" when reviewed against all of the evidence in the record 'in light of the public policy contained in the legislation authorizing the decision.' "Cougar Mt. Assocs., 311 Wn.2d at 747 (quoting Polygon, 90 Wn.2d at 69). The Hearing Examiner concludes that GNG has failed to show that the threshold determination was clearly erroneous. The appeal should be denied and the threshold determination should be affirmed.

PRELIMINARY PLAT APPLICATION - CONCLUSIONS OF LAW

25. The Examiner has original jurisdiction over subdivision applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.

26. The Examiner must review the proposed subdivision 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 that the Applicant has met its burden in showing the established criteria have been met. The proposal is consistent with the state subdivision statute, the GMACP, GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.

27. 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 subdivision application meets the requirements of Chapter 30.41A SCC.

28. Adequate public services exist to serve this proposal.

29. If approved with the recommended preconditions and conditions, the proposal will make adequate provisions for the public health, safety, and general welfare.

30. Any Conclusion of Law in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner hereby issues the following final decision and order:

1. The SEPA appeal is DENIED.

2. The CONCURRENCY appeal is DENIED.

3. The application for Preliminary Subdivision Approval is GRANTED subject to the following PRECONDITIONS AND CONDITIONS.
PRECONDITIONS

A. The Applicant shall provide a geotechnical assessment demonstrating the feasibility of constructing the plat infrastructure and lot grading without creating a geological and erosion hazard.

B. The Applicant shall provide a grading plan demonstrating that each lot will have a 1,000 square foot area, exclusive of setbacks, that is sufficiently level for house construction.

CONDITIONS

A. The preliminary plat received by PDS on August 6, 2007 (Exhibit 32) shall be the approved plat configuration. Changes to the approved plat are governed by SCC 30.41A.330.

B. Prior to initiation of any further 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 sewer plan shall be submitted for review and approval during the construction review phase of this project.
   iv. The Revised Critical Areas Report and Conceptual Mitigation Plan for Gracie’s Place II, and Revised Habitat Management Plan for Gracie’s Place II dated August 11, 2008, (Exhibits 110 and 111) prepared by The Jay Group, Inc. must be reviewed and approved during the construction review phase of this project, taking into account the final sewer plan.
   v. No logging, clearing, grading or construction of the plat shall occur between February 15 and April 1 of any year based on the recommendations of WSDFW staff in the e-mail to The Jay Group, Inc. dated October 10, 2006 as submitted to PDS on March 20, 2007.
   vi. Construction plans shall provide the location of fire hydrants for the project in accordance with the County’s regulations. Fire hydrants shall be equipped with four inch Storz adapters at the engine port and reflective blue street markers. All weather road surface and hydrants must be in service prior to any combustible construction.

C. The following additional restrictions and/or items shall be indicated on the face of the final plat:
   i. “The lots within this subdivision will be subject to school impact mitigation fees for the Everett School District 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 one existing parcel. Lot 1 shall receive credit.”
ii. SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit:

$2,555.19 per lot for mitigation of impacts on county roads paid to the County,

$75.75 per lot for transportation demand management paid to the County for TSA D,

$364.39 per lot for mitigation of impacts on Mill Creek streets paid to the City,

These payments are due prior to or at the time of each 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. Once building permits have been issued all mitigation payments shall be deemed paid by PDS.

iii. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat:

"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 SCC 30.91N.010 are allowed when approved by the County."

iv. The developer shall pay the County $1,244.49 per new dwelling unit as mitigation for parks and recreation impacts in accordance with Chapter 30.66A SCC; provided, however, the developer may elect to postpone payment of the mitigation requirement until issuance of a building permit for that lot. The election to postpone payment shall be noted by a covenant placed on the face of the recorded plat and included in the deed for each affected lot within the subdivision.

D. Prior to recording of the final plat:

i. The Pippin Road (currently unopened right-of-way), must be designed and constructed in accordance with EDDS 3-050 for a public non-arterial urban collector road from the proposed development to Baldwin Road.

ii. Road “A” through Gracie’s Place 1 (PFN 05 117888) must be designed and constructed in accordance with EDDS 3-050 for a public non-arterial urban collector road from the proposed development to Baldwin Road.

iii. Baldwin Road must be improved to a minimum pavement width of 20 feet between Bellflower Road and the subject development.

iv. 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 platter 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 the Land Use Division for review and approval prior to installation.

v. The final wetland mitigation plan shall be completely implemented.

vi. Street signage must be in place prior to any occupancy of the residences.

E. All development activity shall conform to the requirements of Chapter 30.63A SCC.

Nothing in this permit/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 seven (7) 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 3rd day of May, 2012.

Millie Judge, Hearing Examiner

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**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 within 10 days from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) on or before MAY 14, 2012. 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]
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 within 14 days from the date of this decision. 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 No. 604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before MAY 17, 2012, and shall be accompanied by a filing fee in the amount of five hundred dollars ($500.00) for each appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

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 MAY 3, 2013.

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)
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<td>18415 BALDWIN RD BOTHELL WA 98012</td>
<td>13410 N ECHO LK RD SNOHOMISH WA 98296</td>
<td>316 170TH PL SE BOTHELL WA 98012</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DAVID &amp; LORI GETTS</th>
<th>STILLAGUAMISH TRIBE</th>
<th>ROY GEORGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>7 S BELLFLOWER RD BOTHELL WA 98012</td>
<td>SHAWN YANITY PO BOX 277 ARLINGTON WA 98223-0277</td>
<td>16614 3RD AVENUE SE BOTHELL WA 98012</td>
</tr>
</tbody>
</table>
DIANA & PATRICK RILEY
17417 CLOVER ROAD
BOTHELL WA 98012

MATT & ROSANA RILLING
308 172ND PL SE
BOTHELL WA 98012

CITY OF MILL CREEK
TOM ROGERS
15728 MAIN ST
MILL CREEK WA 98012

CHRIS SAVAGE
18217 BALDWIN RD
BOTHELL WA 98012

MDS PHARMA SERVICES
TINA SEIBEL BAILEY
NO ADDRESS GIVEN

LYNNWOOD SMITH
17323 CLOVER RD
MILL CREEK WA 98012

SHAREN SUMMERS
16429 3RD DR SE
BOTHELL WA 98012

LILY & JOHN SUN
414 170TH PL SE
BOTHELL WA 98012

MICHAEL SUN
308 170TH PL SE
BOTHELL WA 98012

JEFFREY & APRIL TILLET
5 172ND PL SW
BOTHELL WA 98012

NGAN TRAN
17011 4TH AVE SE
BOTHELL WA 98012

BETTILEE WESTERFIELD
17622 CLOVER RD
MILL CREEK WA 98012

DONNA WHITE
18203 BELLFLOWER RD
BOTHELL WA 98012

PAUL & WENDY WHITE
18012 BALDWIN RD
BOTHELL WA 98012

SNO CO PUD NO 1
MARY WICKLUND/DEAN SAKSENA
PO BOX 1107
EVERETT WA 98206-1107

MANFORD & PEGGY WILIAMSON
18201 BELLFLOWER RD
MILL CREEK WA 98012

RICHARD & GUDRIDUR WILSON
NO ADDRESS GIVEN

DOLORES MOOREHEAD
522 166TH PLACE SE
BOTHELL WA 98012

SHELLEY ROGERS
125 173RD PLACE SE
BOTHELL WA 98012

NELSON F DAMO
229 169TH STREET SE
BOTHELL WA 98012

MICHAEL & FAYE MATTIE
18016 BELLFLOWER ROAD
BOTHELL WA 98012

KIMBERLY FROST
21128 8TH PLACE W
LYNNWOOD WA 98036

CAROLINE KLEIN & RICK ROSENKILDE
121 173RD PLACE SE
BOTHELL WA 98012

ROY & JEN PLETICHA
16421 3RD DRIVE SE
BOTHELL WA 98012

CAROL A SIEMS
311 S BELLFLOWER RD
BOTHELL WA 98012

RICHARD PETERSON
18011 BALDWIN RD
BOTHELL WA 98012

SILVIA K BOULGER
17004 4TH AVENUE SE
BOTHELL WA 98012

PATRICIA HALLOCK
17924 BELLFLOWER RD
BOTHELL WA 98012-9140

JOHN KOSSIK
16511 4TH DRIVE SE
MILL CREEK WA 98012

SNO CO DEPT OF PUBLIC WORKS
MARK BROWN
3000 ROCKEFELLER AVENUE
EVERETT WA 98201