DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER

DATE OF DECISION: November 16, 2012

PLAT/PROJECT NAME: Timber Creek Ranch

APPLICANT/ LANDOWNER: CamWest Development
9720 120th Place, Suite 100
Kirkland WA 98034

FILE NO.: 06-131306 SD

TYPE OF REQUEST: Planned Residential Development Approval (PRD) (Ch. 30.42B SCC)
and Preliminary Subdivision Approval (SCC 30.41A.100 et seq.)

DECISION (SUMMARY): Preliminary Subdivision and PRD Official Site Plan Approval are GRANTED,
Subject to Conditions.

BASIC INFORMATION

LOCATION: 18723 43rd Avenue SE, Bothell, WA

ACREAGE: 93.07 acres total; 41.58 acres for PRD

NUMBER OF lots: 290

AVERAGE LOT SIZE: 3,385 square feet
MINIMUM LOT SIZE: 2,236 square feet
GROSS DENSITY: 6.97 du/acre (8.36 du/acre net)

GMACP DESIGNATION: Urban Low Density Residential (4-6 du/acre) and Rural Residential (5 basic)

ZONING: R-7,200

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

SCHOOL DISTRICT: Northshore School District

FIRE DISTRICT: Snohomish County Fire District No. 7
PDS STAFF RECOMMENDATION: Approve, subject to conditions.

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 October 30, 2006 for purposes of regulatory vesting. Between this date and August 22, 2012, the Applicant submitted multiple revised proposals before the project was deemed adequate. As of the date of the public hearing, 357 days of the 120-day review period had elapsed.

2. Public Hearing. A public hearing was held on October 31, 2012. Appearing for the Applicant was their attorney, Duana Kolouskova and Aaron Hollingbery, project manager and Michael Swenson, traffic consultant. Monica McLaughlin appeared and testified on behalf of PDS. Several citizens appeared and testified including Leslie Foley, Caroline Atwood, David Johnston, attorney for the Storgell family, Paula Townsell of the Northshore School District, Hillary Czarnecki, Nick Czarnecki, Curtis Koger and David Haltene.

3. The Record. All of the Exhibits shown on the master list of exhibits (Exhibits A.1 through K.15) 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 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 E.1, E.2, E.3, F.1, F.2 and F.3)

A. Background Information

5. Applicant’s Proposal. The applicant requests Preliminary Plat and Official Site Plan approval for a 290 lot subdivision/Planned Residential Development (PRD), to be constructed in five separate phases. The project is to be developed using Low Impact Development (LID) design features. One existing single family residence, one guest house and associated outbuildings on the property are to be removed, and the new lots developed with a mix of 2 and 3 story detached single family homes and two-unit zero lot line homes. Access into the development will be via two new public roads intersecting with 43rd Avenue SE. Access to individual homes will be provided by either directly from public roads or from shared access ways, autocroutes or alleys branching off a public road. The property is split zoned Residential-7,200 (R-7,200) and Rural 5 aces (R-5). The PRD and lots will all be located on the R-7,200 zoned property, as will all the open space required by the PRD code. The remainder of the property, zoned R-5, will be placed into a perpetual conservation easement and granted to a land conservancy with Forterra. (See, Exhibit A.5)

Associated with the proposal are open space tracts with trails and a playground, a stormwater management system incorporating an underground detention/infiltration vault, and right-of-way
improvements including sidewalks. A stream and wetland within the R-5 zoned portion of the property will be permanently protected as Native Growth Protection Area and conservation easement. Water and sewer service is to be provided by the Alderwood Water and Wastewater District.

6. Site Description and Surrounding Uses. The project site is primarily comprised of second growth forest with dense underbrush. A 100 foot wide Puget Sound Power and Light (PSPL) easement traverses the site from north to south. A 50 foot wide Olympic Pipe Line easement is located within the PSPL easement. A 100 foot wide Snohomish County Public Utility District (PUD) easement traverses the site from east to west. A 50 foot wide Northwest Pipe Line easement parallels the north side of the PUD easement. An existing barn and two single family residences are located in the south central portion of the site. A tributary to Little Bear Creek and an associated wetland traverse the site from the northwest corner to the east-central site boundary. Both sides of the tributary are flanked by moderately sloping to steeply sloping terrain. The remaining upland portion of the property is gently sloping to the east and south. Adjacent properties include a mix of single family residences with urban zoning to the north and west of the subject property, and single family residences on large R-5 parcels to the south and east of the property.

7. Issues of Concern:

A. Agency Comments. There were no agency concerns.

B. Citizen Comments. In addition to numerous comments received at the open record hearing, written comments were received from several neighborhood residents and one developer (see Exhibits I.1-8). Primary issues of concern to residents are summarized as follows:

1. Concerns about traffic and safe pedestrian walking conditions

- 43rd Avenue SE is a rural road and should be upgraded to accommodate the traffic from the development.
- Children walk to Fernwood Elementary or to the bus stop at Jewell and 43rd Avenue SE. Wide paved shoulders or sidewalks are needed.
- Sending traffic from a new high density neighborhood through a rural residential neighborhood is inconsistent with the nature of a rural neighborhood.
- Traffic from the development should not be allowed to travel south on 43rd Avenue SE.
- Our septic system is only 10 feet away from 43rd Avenue SE and increased traffic on the road will undermine the working of the septic system.
- The intersection of 35th Avenue SE/York/Jewell/Maltby road needs to be upgraded to handle current traffic volumes.
- Inadequately designed rural roads are absorbing all the traffic from the new developments in the urban areas (for example, 180th Street SE, Jewell Road/196th Street SE and 51st Avenue SE have become major commuter routes).

In response, PDS and the Applicant noted that CamWest is required to provide mitigation for potential traffic impacts caused by the development (see discussion under the traffic section of this report, below). Those portions of 43rd Avenue SE offsite to the south that are not at least 20 feet wide will need to be widened by the developer to that width. In addition the developer will need to install an off-site pedestrian walkway for
school children along 43rd Avenue SE to 196th Street SE (unless bussing of students can be provided by the School District).

Regarding the need for traffic improvements in the neighborhood, Public Works noted there are several road improvement projects that are planned to be constructed by the County in the future. Also, the intersection of Maltby Road and 35th was recently improved by the county and now has a traffic signal, which is a significant improvement in the area.

Regarding needed road improvements in the vicinity of York and Jewell Road, Snohomish County had proposed to extend a new public road aligned with 198th Place SE from 35th Avenue SE to Jewell Road to address several traffic issues in the neighborhood north of Maltby Road. The current developer of the Jewell Assemblage development (file number 11-107100 SD), just north of the York/Jewell Road intersection, preferred to design the connecting road north of where the County had proposed it, and plans to complete the following:

- Construct the new 197th Street SE through road;
- Construct a signal at 35th Avenue SE for the 197th/198th Street SE intersections;
- Realign Jewell Road to form an intersection at 197th Place SE; and
- Construct the necessary improvements to the intersection of York and Jewell Roads to the satisfaction of the county.

Completion of the items above is a recommended condition of approval for the Jewell Assemblage subdivision.

PDS did not receive any comment from the Snohomish Health District concerning potential impacts to properties with drainfields along 43rd Avenue SE.

2. Drainage/Natural Environment Concerns

- Contaminants from surface water runoff from the development will enter the Little Bear Creek watershed
- Loss of existing forest/wildlife habitat.

PDS responded that the project has been designed with Low Impact Development features which include infiltration and water quality treatment of stormwater as shown in the project design and Targeted Drainage Plans. (Exhibits B.1 and B.4) Fifty-one acres of the forested site, which include a large wetland and a stream corridor, will be permanently protected as Native Growth Protection Area and conservation easement.

3. Project Design Concerns.

Comments from a development firm (the McNaughton Group) were received in 2007 and expressed concerns about the project design. (Exhibit I.6) The project was significantly re-designed in July 2008 and their concerns have been addressed. (Their letter also provides a good history of the process involved in moving the UGA boundary line in 2005.)
B. Compliance with Codes and Policies

Subdivision Approval

In order to grant preliminary subdivision approval, the Hearing Examiner must find that the applicant has met the approval criteria set forth in SCC 30.41A.100 et seq.

8. Park and Recreation Impact Mitigation (Chapter 30.66A SCC) The proposal is within the Nakeeta Beach Park Service Area, 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.

9. 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)

The developer proposes to subdivide 41.5 acres into 290 lots (the applicant originally proposed 301 lots). There is currently one existing home and one guest house located on the site, both of which will be removed. This project was submitted as a Low Impact Development. The subject property is located at 43rd Avenue SE and 184th Street SE in Transportation Service Area (TSA) “E”, inside the urban growth area. The Revised Plan used for this review was received by Planning and Development Services (PDS) August 22, 2012 (Exhibit B.1).

Five phases of development are proposed. Phase 1 includes 43rd Avenue SE and the connection to 184th Street SE in the west area with 56 lots, Phase 2 has 44 lots in the northeast area, Phase 3 has 28 lots in the north area, Phase 4 in the southwest area has 81 lots, and Phase 5 has 81 lots located in the southeast area.

The Applicant proposed 7 deviation requests to the Engineering Design and Development Standards (EDDS), which have been approved by the County Engineer for this proposed development. (Exhibit G.1) The project is vested to the 2004 version of EDDS, and each request is detailed in Exhibit J.

i. Road System Capacity Impacts (SCC 30.66B.330) 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 289 new single-family residences. The development will generate 2,627.44 new ADT and
has a road system capacity impact fee of $604,311.20 ($2,083.83/lot), based on $230 per ADT. This amount includes a 5% credit given for on-site TDM measures and a credit for 1 existing home at 9.57 ADT. Payment of such impact fees as mitigation for impacts to county roads demonstrates compliance with SCC 30.66B.330.

ii. **Concurrence** (SCC 30.66B.120) The County makes a concurrency determination for each development application to ensure the development will not impact a county arterial unit in arrears or cause a county arterial to go in arrears. The subject development is located in TSA F, which, as of the date of submittal, had no arterial units in arrears.

The subject development generates 205.91 new A.M. peak-hour trips and 277.30 new P.M. peak-hour trips, which is more than the threshold of 50 peak-hour trips, and thus, the developer was also evaluated under SCC 30.66B.035. Pursuant to 30.66B.035(1), the applicant has evaluated the future level-of-service on the road system consistent with the specific traffic study requirements imposed by the County and has found that there are no arterial units in arrears in the TSA based on forecast level-of-service conditions and the development is deemed concurrent under 30.66B.130(4).

The development was determined to be concurrent as of October 22, 2012. The concurrency determination expires 6 years from the date of the determination. (Exhibit A.7)

iii. **Inadequate Road Conditions** (SCC 30.66B.210) 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)) 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)

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, the subject development proposal will not impact any IRC locations identified within TSA “E” with three or more of its p.m. peak hour trips, nor will it create any. Therefore, no IRC-related mitigation is required.
B. Frontage Improvements (SCC 30.66B.410) All developments will be required to make frontage improvements along the parcel’s frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable. Construction of frontage improvements is required prior to recording unless bonding of improvements is allowed by PDS, in which case construction is required prior to any occupancy of the development.

A portion of subject property frontage (property zoned R-5) is located along 180th Street SE. The County Engineer has determined that frontage improvements will not be required for 180th Street SE. A corridor improvement project is listed in the Snohomish County 2011 – 2016 Six Year Transportation Improvement Program for that section of 180th Street SE. DPW Rule 4222.040 details engineering criteria that may preclude the construction of full standard frontage improvements. The following criteria are included in the list, and apply to this development:

(a) The probability of horizontal realignment of the road precludes the building of full frontage improvements in their ultimate horizontal location.

(b) The probability of vertical realignment precludes the building of full frontage improvements in their ultimate vertical location.

(c) The road is scheduled in the Six-Year TIP and/or Annual Construction Program for construction within the next six years and it would be more efficient for Public Works to construct the full frontage improvements as part of its construction project for the entire road.

C. Access and Circulation (SCC 30.66B.420 and Chapter 30.24 SCC) All developments are required to: (1) Provide for access and transportation circulation in accordance with the comprehensive plan and this chapter applicable to the particular development; (2) Design and construct such access in accordance with the EDDS; (3) Improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430; (4) Access to state highways and city streets must be made in accordance with the applicable state or city standards and requirements; and (5) All developments that propose to take access via an existing public or private road which, for the vehicle trips projected to use the road after full occupancy of the development, is not designed and constructed in accordance with the EDDS, must improve such road to bring it into compliance with the EDDS, when the DPW Director determines it necessary to provide for safety and the operational efficiency of the road. The extent of improvements is established by the director of public works in accordance with SCC 30.66B.430.

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 J (at pages 7-14), which is incorporated herein by this reference as if set forth in full.

D. 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, above. The County’s transportation review staff determined that the road system should be as follows:

**External Road System Description:** The proposed access to the development is via 184th Street SE east off of 35th Avenue SE, by extending the road into the development, called Road A on the plans. The existing east section of 184th Street SE is currently constructed as a “half” street; which is 20 feet of pavement with full urban standard frontage improvements on the south side. A future development to the north (Nature’s Ridge PFN 09-102096 SD) will complete the pavement width and frontage improvements on the north side of 184th Street. The improvements to 184th Street stops approximately 270 feet short (west) of the property line for Timber Creek Ranch, so the road improvements must be extended west from the development to connect with and match the existing improvements offsite, which has been shown on the current set of plans.

The second public road connection with the road system for the development is from the south via 43rd Avenue SE, which has been identified on the Snohomish County GMA Comprehensive Plan as a future collector arterial along the west side of the development property. DPW will require that 43rd be dedicated and constructed from 184th Street SE inside the development, to the current north end of 43rd Avenue SE at 188th Street SE, along the west property line.

The property is aligned with 188th Street SE, which has been identified on the Snohomish County GMA Comprehensive Plan as a future collector arterial along the south side of the development property. It was determined by DPW that right-of-way dedication and construction of 188th Street SE would not be required, and that DPW would instead accept a 35-foot reservation for future right-of-way along the south property line of the development (the west two-thirds of the property that lies within the Urban Growth Area), which has been placed in separate tracts (Tract 971 and 978).

**External Road Classification:**

(a) **184th Street SE:** Under the authority of the County Engineer in accordance with the EDDS, and based on the road serving 1 to 1,000 ADT; 184th Street SE is classified as a non-arterial urban public residential road. The design speed for a residential road is 25 mph. The offsite improvement required adjacent to the west in conjunction with this development is a minimum of 20 feet of pavement with vertical curb, 5-foot planter, 5-foot sidewalk and 1-foot of space behind the sidewalk on the south side. Road improvements must be extended west from the development to connect with and match the existing improvements offsite at 42nd Avenue SE. The improvements on the north side will be completed by the developer of the property fronting the north side of the offsite section of 184th Street SE (Nature’s Ridge PFN 09-102096). Most of 184th Street SE has been constructed to EDDS specifications for a public urban residential road with a 28-foot pavement width, vertical curbs, 5-foot planters and 5-foot sidewalks on both sides between the development property and 35th Avenue SE. There is one section of the road that does not have sidewalk on the south side for approximately 640 feet, and the pavement width in that section is 28 feet with vertical curb and sidewalk on the north side. DPW has determined that the existing condition offsite 184th Street SE is adequate for the number of users proposed, with the exception of the section adjacent to the west of the development (between 42nd Avenue SE and 43rd Avenue SE) that will be improved as a condition of approval.
(b) 43rd Avenue SE: Under the authority of the County Engineer in accordance with the EDDS; 43rd Avenue SE will be classified as a collector arterial road, based on the Snohomish County GMA Comprehensive Plan. The improvement design standard required inside the development (which is inside of the Urban Growth Area) is a 20-foot pavement width (design speed of 35 mph) with vertical curb, 5-foot planter strip, and 5-foot sidewalk along the east side. The west side of the road in that section will be completed by Snohomish County in the future since the property to the west has already been developed. A minimum of 20 feet of pavement is required offsite to the south (which is outside of the Urban Growth Area) wherever less than 20 feet currently exists. Future development will complete 43rd Avenue north of 184th Street. It will curve to the west and intersect with 180th Street SE aligned with Sunset Road.

Additionally, there are seven approved LID-related modification and EDDS deviation requests that were approved. They are as follows:

1. EDDS 3-01 (B) (4) requires the following: A road serving more than 250 ADT shall be constructed in at least two locations with another road or roads that meet the applicable standards for the resulting traffic volume. A deviation was submitted to request approval of a cul-de-sac road (Road H) in the northwest area of the development that would serve 277.53 ADT. The request was approved based on a desire of the applicant to reduce the amount of impervious area in the development, and minimizing environmental impacts to the site.

2. EDDS 3-05 (E) Alleys: An alley is a public or private access way that provides secondary access to a property. The applicant proposes to serve approximately 30 lots with an alley as the primary access. The alleys that will serve as primary access have been designed with a 20-foot width; the secondary access alleys have a 16-foot width. The alleys are connected at both ends to a public road, so are drive through rather than dead ends. There is one stub alley proposed, which is less than 150' in length. The deviation request was approved by DPW based on the provision of the 20-foot wide alleys where they serve as primary access to a lot and because the alleys were re-designed as drive-through.

3. EDDS 3-04 (Plates 3-050/065) Typical Non-Arterial Road (Residential) – Urban Areas: a deviation was approved for the use of auto courts in the development. There is currently no design standard for an auto court in EDDS, but a guideline has been issued until a design has been adopted. The request can be conditionally approved if the plans show the required elements: there must be a minimum clear zone width of 28 feet (face of garage to face of garage setbacks across the auto court), it must be demonstrated that no users have to back out to the main road, i.e. they can turn around within and at the end of the auto court, there shall be alternative pedestrian facilities connecting all building fronts unless already provided for with a sidewalk on a public or private road constructed to EDDS, at least one parking stall per unit outside of the auto court must be provided. The deviation request was approved because the above conditions have been met for the auto court standard.

4. EDDS 3-04 (Plates 3-050/065) Typical Non-Arterial Road (Residential) – Urban Areas: A design was approved for the interior Roads A, A-1, D, E, F, and H utilizing LID techniques consisting of a pavement width of 28 feet sloped towards a planted 11.5-foot wide biofiltration swale. A 5-foot sidewalk and vertical curb is proposed on the uphill side, and will be located within a 34-foot right-of-way (that includes the pavement). The bio-filtration swale with a 5-foot sidewalk on the far side will be
located in a private tract. No curb is proposed between the low point of the asphalt and the bio-swale so that sheet flow from the road will take place into the swale. The bio-filtration swale and the sidewalk in the tract will be maintained by the Homeowners Association.

5. EDDS 3-04 (Plates 3-050/065) Typical Non-Arterial Road (Residential) – Urban Areas: A revised design was approved for Roads B, B-1, C and G utilizing LID techniques consisting of a pavement width of 26 feet sloped towards a planted 9.5-foot wide bio-filtration swale. A 5-foot sidewalk, 5-foot planter and vertical curb are proposed on the uphill side, and a 5-foot sidewalk is proposed on the far side of the bio-filtration swale. No curb is proposed between the low point of the asphalt and the bio-swale so that sheet flow from the road will take place into the swale. This request differs from the previous design by adding the planter on the uphill side of the road with a right-of-way width of 36.5 feet (the bio-filtration swale and sidewalk on the downhill side of the road are within a 14.5-foot tract instead of right-of-way and will be privately maintained by the Homeowners Association). The width of the bio-swale and the pavement were reduced by 2 feet, and there will be no extra space behind the sidewalk on the uphill side instead of the usual 1 foot. A planter was added to the uphill side of those roads at the request of the City of Mill Creek to meet their design standards since the project is located within the City’s urban growth area. A letter from Bill Trimm, the Director of Community Development for Mill Creek, was included with the deviation request indicating approval of the proposed design. A letter from Gary Meek, the Fire Chief for Fire District 7, was received by PDS on May 4, 2012 indicating approval of the proposed 26 foot pavement width.

6. EDDS 3-04 (Plates 3-050/065) Typical Non-Arterial Road (Residential) – Urban Areas: A deviation was approved to add perpendicular parking along the south side of Road A (in the northeast area of the road system) for approximately 145 feet (15 spaces). That section of Road A was subsequently eliminated from the design, so this deviation approval is not needed.

7. Section 3-04 (Plates 3-050/065) Typical Non-Arterial Road (Residential) – Urban Areas: a deviation was approved for the use of a Shared Access Way in three locations that would be the primary access to approximately 52 homes. The proposed design is a 20-foot wide cement concrete surface, composed of two 8-foot cement concrete strips separated by a 4-foot pervious concrete strip. Under the pervious concrete strip is a gravel trench with an under drain to collect the drainage. The request was reviewed by the Snohomish County Traffic Engineer and the PDS Chief Engineering Officer, and was approved with the condition that the design is approved by the Fire Marshal’s Office per SCC 30.63C.030 (2), which states (in part): Deviations from the EDDS may only be granted if the applicant can demonstrate that adequate fire safety and adequate access will be provided. The Fire Marshal’s Office has reviewed and approved the Shared Access Way design.

E. Extent of Improvements (SCC 30.66B.430) 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). (See, Exhibit J at pages 11-13 and Exhibits C.1 through C.3a; H.2, K.4, and K.6) 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.
F. **Impacts to State Highways** (SCC 30.66B.710) The impact mitigation measures under the ILA, Section IV (4.1)(b), may be accomplished through a) voluntary negotiated construction of improvements, b) voluntary negotiated payment in lieu of construction, c) transfer of land from the developer to the State, or d) a voluntary payment in the amount of $36.00 per ADT. Should the applicant choose the voluntary payment option to mitigate their impact to the state highway system, the payment is calculated at 2,627.44 ADT x $36.00/ADT = $94,587.97 ($326.17 per lot).

The above amount has been adjusted proportionately for the current number of lots proposed (289 with credit for one existing home). A copy of a voluntary offer to the State, signed by the applicant was included with the application for $103,356.00 based on the original proposal for 300 lots. Comments dated October 11, 2006 (Exhibit H.3) were received from WSDOT indicating agreement with the offer, and a copy of the executed agreement was attached to the letter. Payment of the adjusted amount, $94,587.97, is a condition of approval for this development.

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 Cities of Mill Creek and Bothell for traffic mitigation for impacts on the City's road system.

The traffic study dated October 2, 2006 by The Transpo Group indicates that the project will owe Mill Creek $15,089.40 based on the area averages method and the City's mitigation rate. Comments dated October 11, 2006 (Exhibit H.2) have been received from the City indicating that the development would owe $15,139.70 based on 301 new lots. The current number of new lots is 289 (290 lots plus credit for one existing home), and the calculation for the area averages method is 289 x 1.01 x 5% x $996.00; which equals $14,536.12. That is the correct amount and payment of that amount to the City of Mill Creek is a condition of approval.

This project falls within the interlocal agreement area designated by the City of Bothell for traffic mitigation. The latest traffic mitigation offer to the city was signed by the applicant on September 21, 2011 for the amount of $157,812.20, and signed by the city as accepted on September 29, 2011 (Exhibit H.1). The amount offered is based on the proportionate share calculation of 290 units (unit count provided by applicant in traffic offer) x 26% (applicable percentage of the City's fee) x the adopted City impact fee rate of $2,093 per unit. Payment of that amount to the City of Bothell is a condition of approval.

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. TDM Measures shall have the potential to remove a minimum of five percent of a development's P.M. peak hour trips 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. (See, SCC 30.66B.650).
The Applicant submitted a TDM Plan that was reviewed and accepted by PDS as fulfilling the requirements of the County Code. (Exhibit B.1) TDM credit has been applied to the impact fee above. Therefore the TDM obligation fee has been waived, and a 5% reduction credit on the number of ADT generated by this project has been given.

Based on the Findings of Fact set forth above, the Hearing Examiner finds that the proposed development as conditioned, will meet the County's traffic mitigation and road design standards.

10. Pedestrian Facilities (RCW 58.17.110)

A. Safe Walking Conditions for School Children. The County is required to make findings regarding safe walking conditions for school children that may reside in the subject development. The interior roads in the development will have sidewalks constructed between all of the homes and 184th Street. 184th Street has an existing sidewalk along the south side between the development property and 35th Avenue SE, except for approximately 270 feet between the west development boundary line and 42nd Drive SE to the west. It will be a condition of approval that an offsite sidewalk is constructed by the developer between the development on 184th Street and the existing sidewalk at the east radius return for 42nd Avenue SE.

With regard to off-site conditions, as a general rule, school children living within one mile of a public school are now required to walk to school based on school district policy. (Exhibit H.6.A) In response to the proposed development, comments were received from the Northshore School District on May 9, 2007, indicating that the elementary students would walk to Fernwood Elementary School, located to the south of the subject development at 3933 Jewell Road. The School District reiterated these comments in a letter dated October 30, 2012. (Exhibit H.6.A)

The shortest public route between the development and Fernwood Elementary would be walking south on 43rd Avenue SE to 196th Street, then west on 196th Street to the existing elementary school where there is an entrance located on 196th Street SE/Jewell Road. The School District has recently purchased property north of and immediately adjacent to Fernwood Elementary for construction of a new high school; although construction requires passage of a bond and other requirements. The District’s property extends from Fernwood Elementary north to 188th Street SE. PDS has recommended as a condition of Preliminary Plat that the applicant be required to provide offsite walkway improvements between the development and the existing or future elementary school along 43rd Avenue to 196th Street SE, and then to the west along 196th to connect with Fernwood Elementary School’s entrance.

The Applicant objects to this requirement, arguing that the requirement is too onerous. They note that they have designed the project so that automobile traffic will be routed along improved urban roads, and that pedestrian improvements will exist to nearby Northshore School District bus routes. They argue that all prior plats in the area have invested money to develop walkways to the north and west along 35th Avenue, where bus stops already exist. They do not believe that this development should be the only one asked to construct offsite improvements along a rural road down 43rd to Fernwood Elementary School. In addition, CamWest argues that the requirement may be difficult to achieve due to existing site conditions (including the location of wetlands, a stream crossing and open drainage ditch features), the need to acquire additional right of way, and that the cost of the improvement are proportional to the impacts of the development under RCW 82.02.020. They also argue that a nearby development (Nature’s Ridge, File No. 09-102096), that was approved in July, 2012, was not required to provide offsite
walkway improvements for school children and that the Hearing Examiner should make the same ruling in this case.

The County's senior transportation analyst, Ann Getz, disagreed. She testified that the School District is requesting the condition and has indicated that elementary kids will not be bused from the Timber Creek Ranch development. (Exhibit H.6.A) She argues that the conditions are required and reasonable pursuant to the authority granted the director in SCC 30.66B.430(o). She stated that there is adequate right of way to achieve the required rural walkway without the need to purchase more private property. She noted that the raised, five-foot wide walkway was proposed by the Applicant and would require lighting. However, the EDDS rural walkway standards do not require lighting. Ms. Getz testified that the required EDDS standard for rural road pedestrian walkways is an at-grade paved shoulder adjacent to road.

In terms of CamWest's request to be treated like other developments in the area, the Hearing Examiner notes that there are significant differences between this development and Nature's Ridge. Here, the developer proposes to subdivide 41.5 acres into 290 lots. The Nature's Ridge development encompassed 19.6 acres and added only 72 new lots. (Exhibit K.10) In Nature's Ridge decision, the school district informed the County that they would bus students to school and that none would walk on the public right of way. Accordingly, no offsite walkways could have been required as there were no facts to support such a requirement.

The present development is three times larger than the Nature's Ridge development and presents a much larger impact on both the School District's bus system. Ms. Kolouskova acknowledged in response to the Examiner's question that the bus stops are already overcrowded along 35th Street. With the addition of the Timber Creek Ranch development, the School District has indicated that they cannot bus the additional students and that the development's elementary-aged school children will be required to walk to school. As such, there is a direct nexus between the new impact and the requirement to construct off-site walkway improvements. But for the addition of 290 new families, many of whom will have school children attending Fernwood Elementary, there would be no need for elementary school children to walk on 43rd Avenue down to the school.

The conditions along that rural road are not safe for pedestrians, especially young school children, based on the evidence in the record and the testimony of existing residents received at the public hearing. In terms of CamWest's proportionality argument, the Examiner finds that there is insufficient evidence to find that the requirement is disproportionate in its impact on the Applicant. PDS staff testified that a rural design standard can be constructed within the existing right of way, and will have less expense than the five-foot raised, lighted urban sidewalk proposed by the applicant.1

It is true that other developments have used up the School District's capacity to provide buses for this development; however, that doesn't relieve CamWest of its obligation to provide safe walking conditions for children walking to school from the development under both Chapter 58.17 RCW and Chapter 30.66B SCC. The Examiner finds that the offsite walkway improvements are proportional to the impacts of this proposed development and must be constructed in order to provide safe walking conditions for Timber Creek Ranch's youngest school children.

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1The Hearing Examiner can't help but note that the Applicant is required to pay $805,311.20 in impact fees for its impacts to county roads, $103,556.00 for impacts to state highways, $15,089.40 for impacts to Mill Creek streets and $157,812.20 for impact to Bothell streets, but does not argue these amounts are disproportionate to the development's impacts. Clearly they are not. The subject proposal is a significant project and does have a large impact on the surrounding roads. The same is true for impacts to the Northshore School District. They will now require this development's students to walk to school.
As to middle and high school students, Northshore School District initially stated that those student would walk to a bus stop located adjacent to the development on 180th Street SE. The development has frontage on 180th Street, but no road from the development intersects 180th Street. Clarification was sought from the school district transportation office for this review. On June 26, 2012, the school district verified via a telephone conference that the bus would only travel on the main perimeter roads surrounding the development and would not go through the development even if new roads connected between the main perimeter roads. There are bus stops for middle and high school students that will live in the new development located at the intersections of 184th Street SE and 35th Avenue SE, and at 43rd Avenue SE and 196th Street SE. Offsite pedestrian facilities along 43rd Avenue SE south to 196th Street SE are a condition of preliminary plat approval unless other busing or safe walking routes are agreed upon between the applicant and School District and approved by the County Engineer.

B. Bicycle Facilities. The County’s current adopted Countywide Bicycle Facility System Map (Map) became effect on February 1, 2006 and is part of the County’s GMA Comprehensive Plan (GMACP). The subject development borders on a right-of-way that has been identified on the adopted Bicycle Facility System Map. A bicycle path will be constructed by Snohomish County as part of a road corridor improvement project along the development property frontage on 180th Street SE.

11. 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 Northshore School District at the time of building permit application and collected at the time of building permit issuance for the proposed new units. Credit shall be given for 2 existing lots. This requirement has been included as a condition of approval.

12. Drainage and Land Disturbing Activities (Clearing and Grading) (Chapters 30.63A and 30.63B SCC) PDS has found the targeted plans (Exhibit B.4) and supplementary drainage report (Exhibit C.5) submitted with the application to be in conformance with the regulatory provisions of Chapter 30.63A SCC and the county Drainage Manual. The project has also been found to be consistent with the Low Impact Development (LID) regulations, Chapter 30.63C SCC, in effect at the time the application was vested. (See, Exhibit A.7 for copy of LID supplemental and LID design features). In conjunction with the LID review process, several deviations were approved by PDS and DPW (see Exhibit G.1). Randy Sleight, the County’s Chief Engineering Officer reviewed the drainage and LID proposals for the development and testified that the proposal meets the latest edition of the DOE Western Washington Stormwater Management Manual. The Low Impact Development design is demonstrated in Exhibit A.7 and shows the number of best management practices that will be used to create a positive environmental impact. The Hearing Examiner finds that the Applicant should be commended for its project design, and for preserving over half of the subject property in permanent conservancy, protecting the headwaters of Little Bear Creek, and important salmon-bearing stream.

The applicant proposes greater than 5,000 square feet of new impervious. A full engineered stormwater site plan is therefore required prior to development activity per SCC 30.63A.300(3). The project is not exempt from runoff treatment since the project site does exceed the thresholds listed in SCC 30.63A.530. The project is not exempt from flow control since the project exceeds the thresholds listed in SCC 30.63A.555. Special inspections will be required for construction of the biofiltration swales and stormwater infiltration vault to assure that the base of the vault is excavated down to the outwash soils and that a proper sand filter is installed.
to further clean stormwater prior to discharge to the subsurface aquifers. A geotechnical engineer will be required to be involved in the inspection of the construction of the stormwater infiltration vault and a report of the soils conditions and vault concrete and steel placement shall be provided to the County at the as-built stage of construction for this work.

Grading to accommodate site development is estimated at 55,000 cubic yards excavation and 75,000 cubic yards fill. Approval of a Land Disturbing Activity (LDA) permit and Storm Water Pollution Prevention Plan (SWPPP) in accordance with Volume 2 of the Drainage Manual and Chapter 30.63B SCC will be required prior to construction. Soils at the portion of the site slated for development consist of Alderwood gravelly loam with a thin till cap overlying an outwash soils condition over much of the site.

13. Critical Areas Regulations (Chapter 30.62A SCC) PDS has reviewed the Critical Areas Study, Wetland Mitigation and Habitat Management Plan (Exhibit C7) submitted with the subject land use application and has determined that the project can comply with county Critical Areas Regulations (CAR).

The northern and eastern half of the subject property is dominated by a large forested Category 1 riparian wetland complex as a headwater to a tributary stream that flows into Little Bear Creek a short distance to the east of the site. The tributary stream forms in the approximate center of the site where it flows to the southeast, passing through two existing 12" culverts within an existing utility easement. The stream above the culverts meets the criteria for a Type 4 stream but downstream of the culverts, the stream meets the criteria for a Type 3 stream and is presumed habitat for the federally listed threatened species Chinook salmon due to its close proximity to and access from Little Bear Creek, a known Chinook salmon stream. There are steep slopes > 33% on both sides of the Category 1 wetland. Most of the site is forested.

The applicant is proposing a 290 lot plat with access from 43rd Avenue SE. Due to the required road alignment, two isolated scrub-shrub Category 3 wetlands, which lie 800-1000 ft. to the west of the stream-wetland complex, are proposed to be filled, with mitigation in the form of additional buffer (>6:1) within a forested area adjacent to the Category 1 wetland. A minor impact is also proposed within the buffer of the Category 1 wetland to accommodate the stormwater outfall and spreader trench. Mitigation for the wetland and buffer impacts is proposed in the form of additional wetland buffer via innovative development as allowed per SCC 30.62.370. The applicant is proposing to increase the buffer adjacent to the fish and wildlife habitat conservation area and the standard Category 1 wetland buffer by 87,988 square feet, exceeding a 6:1 mitigation ratio for the wetland impacts and a 2:1 mitigation ratio for buffer impacts. Restoration of the disturbance area for the stormwater discharge is proposed at a 2:1 ratio. Innovative development is required because the applicant is not proposing to create additional wetland to replace the wetland being filled and thus the application does not meet the standard requirements per SCC 30.62.345(1)(c).

All of the mitigated critical areas and buffers are proposed to be permanently protected as Native Growth Protection Area Easements (NGPA/E). The applicant has demonstrated avoidance and compliance with SCC 30.62.365 because Snohomish County required the road alignment in the location as proposed. In addition to the additional 87,988 s.f. of mitigation for the direct impacts, the applicant is proposing to grant a conservation easement to a substantial portion of the forested areas that lie outside of the proposed NGPA/E boundaries. While the conservation easement is not technically "mitigation", it will nevertheless act to preserve the ecological integrity of the stream and wetland complex. Vegetative management within the overlapping NGPA/E-existing utility easements is allowed to continue as ongoing maintenance utilizing BMPs per SCC 30.62.360(1). Conditions of approval have been included require compliance with the Critical Areas Regulations.
14. **International Fire Code** – (Chapter 30.53A SCC) The Fire Marshal’s Office has determined that the preliminary plat can comply the provisions of SCC 30.53A.150, and was involved in the approval process for the LID/EDDS deviations having implications for emergency fire access (Exhibit G1). The minimum required fire flow for this project has been determined to be 1,000 GPM at 20 psi for a 2-hour duration. It shall be noted as a restriction in the recording of the final plat that if there are dwellings that exceed 3,600 square feet the required fire flow shall be determined using Appendix B of the 2009 edition of the International Fire Code. If the dwellings that exceed 3,600 square feet cannot meet the required fire flow of Appendix B the dwellings shall be provided with NFPA 13D fire suppression systems. The project will be done in phases and the fire code dictates that there are not any dead end roads in excess of 150' without a required cul-de-sac turnaround, which may be a temporary turnaround.

If the Applicant wishes to pursue and gain approval for a temporary hammerhead design the developer will need to make the request in writing and provide NFPA 13-D fire suppression systems in the dwellings. During the construction plan review stage the Fire Marshall’s Office shall confirm the appropriate placement of fire hydrants and fire lane striping. PDS inspection staff will ensure that prior to the start of combustible construction, fire hydrants are installed and operational, that the address is placed on the building as required and that pavement striping denoting fire lanes has been provided. Comments received from Snohomish County Fire District 7 indicate that they are satisfied with the overall project design but have a concern about how the lots will be addressed.

15. **Utilities**. As indicated in correspondence received from the Alderwood Water and Wastewater District, water and sewer will be available to serve this development (Exhibit H.5). The Snohomish Health District has no objections to the project as long as public sewer and water is provided (Exhibit H.4). The Snohomish Health District recommends approval with the understanding that the existing/remaining onsite sewage system(s) will be abandoned by having the septic tank(s) pumped by a certified pumper, then having the top of the tank removed or destroyed and filling the void (WAC 246-272A-0300). A condition is included at the end of this decision to this effect. Electrical service is available from the Snohomish County PUD No. 1 (Exhibit H.8).

The subject property is also subject to existing utility easements from Puget Sound Energy, Olympic Pipeline and Williams Northwest Pipeline. A 100-foot-wide Puget Sound Power and Light easement traverses the site from north to south. A 50-foot-wide Olympic Pipe Line easement is located within the western portion of the PSPL easement. Walking trails are proposed that will cross these easements. A public road cul-de-sac is also to be located within the easements. Correspondence was received from Olympic Pipeline (Exhibit H.7) indicating that a building setback line from those homes nearest the pipeline will not be required given the proposal of a fence in back of the units, and that the proposed public road cul-de-sac east of lots 56 and 57 is approved with the condition that there be a minimum of 5 feet of cover over the pipelines and an API 1102 load calculation performed to insure that there is no stress to the pipelines. This has been included as a recommended condition at the end of this report.

The last comments PDS received from Puget Sound Energy are from 2008 (Exhibit H.9) where they state that the proposal has the potential to interfere with their easement rights. The project has been redesigned since these comments were received. The applicant reports that PSE will not provide any more comments until final plans are developed at the construction plan review stage and that they have worked with PSE on several projects that included a cul-de-sac and recreation trails. PDS recommends a condition that PSE approval be obtained prior to any development permits are issued for the project.
A 100-foot-wide Snohomish County PUD easement traverses the site from east to west. A 50-foot-wide Northwest Pipe Line easement parallels the north side of the PUD easement. Roads, sidewalks, trails and drainage swales are to be located within the easements. The applicant has been in communication with the Snohomish County PUD No. 1 and they indicate (Exhibit H.8) that the plat should not conflict with their utility easement. The applicant will need obtain final approval from the PUD during the construction phase of the project. A condition to this effect is included at the end of this report.

PDS did not receive any correspondence directly from Williams Pipeline in response to a request for comment. The applicant provided PDS with an e-mail chain (Exhibit H.11) where a utility representative states that they have no objections to the project design as long as parking stalls and entrance signage are not proposed within the easement and detailed plans are provided to them during the construction review stage. A condition to this effect is included in this decision.

16. **Zoning** (Chapter 30.2 SCC) This project has been evaluated by staff and will meet zoning code requirements for lot size, bulk regulations and other zoning code requirements, including those required under the PRD Code, as discussed below.

17. **State Environmental Policy Act (SEPA)** (Chapter 30.61 SCC) PDS issued a Determination of Nonsignificance (DNS) for the subject application on April 18, 2012 (Exhibit E.2). The DNS was not appealed. Accordingly, the Hearing Examiner finds that compliance with the procedural requirements of SEPA has been met.

18. **Subdivision Code** (Chapter 30.41A SCC) The proposed plat meets the requirements of Chapter 30.41A SCC. As conditioned, the plat will meet 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 J) 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.

19. **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 active open space, wetland, stream 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.
Planned Residential Development Criteria

In addition to meeting the requirements of the County’s subdivision regulations, the Applicant is seeking to develop a Planned Residential Development (PRD), and must meet the additional requirements of Chapter 30.42B SCC.

20. **Unit Yield** (SCC 30.42B.040) For all PRDs (except certain retirement housing), the maximum number of dwelling units permissible shall be 120 percent of the maximum number of units permitted by the underlying zoning (here R-7,200). Pursuant to SCC 30.42B.040(3), in residential zones the maximum number of dwelling units allowed is reduced so that the maximum net density does not exceed nine (9) dwelling units per net acre. PDS has determined that the net density for the subject application is 7.07 du/acre. Accordingly, the requirement has been met. (Exhibit J)

21. **Design Criteria** (SCC 30.42B.100) The proposed project has been reviewed by PDS and was found to meet the requirements of the applicable Zoning regulations. The application complies with all of the general design criteria, as modified by approval of the LID deviations (Exhibit G.1). This PRD is accompanied by an application for a preliminary subdivision and the applicant has appropriately proposed the construction of single-family detached and two-unit zero lot line homes in the 7,200 zone. There are no proposed condominiums or multi-family dwellings proposed in the subject development. The Applicant provided the Official Site Plan (Exhibit B.1) and the architect’s rendering of the proposed residences (Exhibit A.8), demonstrating that the proposed designs can meet the architectural design requirements set forth in SCC 30.23A.040.

22. **Open Space** (SCC 30.42B.115)

   (1) **Open Space:** A minimum of twenty percent of the gross site area which is 530,329 square feet, or 106,066 square feet of open space, is required. For this project 362,290 square feet (8.32 acres) is required. The total open space provided is 559,611 square feet (12.84 acres). Total open space will be permanently established in clearly designated separate tracts. The tracts in this development will be owned by all lot owners or a homeowners association per SCC 30.42B.115(1)(e)(iii). A permanent easement granting stewardship of Tract 999 to Forterra, a nonprofit conservation organization, will be provided, as required by the development agreement between the City of Mill Creek and the applicant (Exhibit A.5). Required covenants, conditions and restrictions will be recorded to provide for maintenance of the total open space in a manner which will assure its continued use as approved. Conditions are included to this effect.

   (2) **On-site Recreation:** Total open space must contain on-site recreation space in the amount of 600 square feet per dwelling unit. The minimum requirement in this case is 290 units x 600 = 174,000 square feet. The developer has provided 176,161 square feet of the total open space as usable within portions of Tracts 976, 984, 988, 991, 996, 997 and 998. In addition, "40% (69,600 square feet) of the required usable open space shall be located in a single open space tract or permanent easement.” Tract 998 contains 69,695 sq. ft. of usable open space.

   As required by SCC 30.42B.115(2)(d), no areas of usable open space can be less than 20 feet wide (except for segments containing trails, which can be no less than 10 feet wide). Usable open space shall be accessed by all-weather pedestrian pathways and/or sidewalks from all lots and dwellings within the PRD [SCC 30.42B.115(2)(e)]. The proposal meets this criterion.

   (3) **Active Recreation Uses:** Thirty percent of the required on-site recreation space is to be developed for active recreation uses. Usable open space provided (176,161 square feet) x .30
23. **Tree Retention and Landscaping** (SCC 30.42B.125) PRDs must meet the requirements of Chapter 30.25 SCC relating to landscaping and tree retention.

   (1) **Drainage Detention Facilities**: No man-made surface detention facilities are proposed, so the landscaping standards of this subsection are not applicable to this application.

   (2) **Site Perimeter Landscaping**: Site perimeter landscaping shall be established as a tract or easement along any property boundary of a PRD, except for any portion developed as usable open space pursuant to SCC 30.42B.115 or as permanently protected as Native Growth Protection Area (NGPA), where adjacent property is currently zoned or designated for single-family residential use. Perimeter landscaping shall consist of a vegetative screen located along the perimeter of the PRD site with a minimum planting bed width of no less than 15 feet when adjacent property is not developed as a PRD.

There are certain circumstances outlined in the code when the 15-foot-wide buffer can be waived: "(a) – Exceptions: The following exceptions are applicable to this project:

   Exception (i) Where the proposed perimeter lots have rear yards abutting road frontage, a 10 foot type B landscape buffer shall be provided, except in areas for required driveways, project roads, storm drainage facility maintenance roads, pedestrian trail connections, or where encumbered by utility crossings or other easements subject to permanent access and maintenance (if the buffer separates the abutting road from a home within the lot, the buffer may be contained within a 10 foot wide easement within the lot)."

Here, in lieu of the 10 foot wide Type B buffer along 43rd Avenue SE the applicant has requested to substitute a 6 foot high wood fence along the street in lieu of the buffer. Per SCC 30.42B.125(3)(a)xii., PDS recommends approval of the fence in lieu of the landscape buffer as long as ornamental landscaping is planted on the west side of the fence to soften its appearance. Since the landscape plan does not currently depict this ornamental landscaping, a condition was recommended that this be added to the final landscape plan submitted to PDS at the construction plan review stage. The Hearing Examiner concurs.

**Exception (ii)** Where the perimeter of the PRD abuts a utility easement greater than 15 feet in width, no perimeter landscaping will be required.

In the present case, there are utility easements abutting at the northwest property boundary and the east side of the development. Therefore, no such perimeter landscaping is required.

**Exception (v)** When the perimeter of the PRD abuts a property that currently contains adjacent buffer areas, including formally designed NGPAs, open space, landscaping buffers, mapped critical areas, (or) the adjacent abutting rear yards are 40 feet or greater in depth, no site perimeter landscaping will be required.

The northeast side of the development abuts the portion of the property zoned R-5 to be preserved as a conservation easement/NPGA area.

(3) **Streetscape Landscaping**: Landscaping has been provided that complies with the criteria for streetscape as shown on the landscape plans. (Exhibit B.3)
(4) **Performance Bond**: The submittal of a bond or other guarantee of performance, for approval by PDS prior to construction plan approval, will be required as per the requirements of County Code. A condition of approval has been included to this effect.

(5) **SCC 30.42B.130 - Design criteria - Tree Retention.** The applicant has submitted a conceptual tree plan (see Exhibit B.3, sheet L1.1) that provides trees at the required rate of two per lot (580 trees required) and identifies the number of significant trees to be retained and/or replaced within the open space tracts, perimeter landscaping buffers and native growth protection areas. Trees within these types of tracts, which cannot be saved due to site grading, are required to be replaced at a 2.1 ratio per SCC 30.42B.130(3)(b). The conceptual plan shows that 96 significant trees are to be retained within the open space tracts and 43 removed. A total of 672 new required "per lot" and replacement trees will be planted throughout the development.


25. **Roads, Access, Circulation, Pedestrian Facilities and Parking (SCC 30.42B.140)** In a PRD, roads, access, circulation, and pedestrian facilities shall be provided pursuant to Chapter 30.24 SCC. The configuration and design of the roads and access facilities in this development have been reviewed extensively and have been found to be accordance with Chapter 30.24 SCC, 30.66B SCC, Chapter 30.53A SCC, and the Engineering Design and Development Standards (EDDS), as modified by the County Engineer. These issues are addressed in Findings of Fact above, and will not be repeated here.

The PRD shall also provide for parking as required in Chapter 30.26 SCC, which requires two (2) parking spaces per unit. In addition, guest parking shall be provided at the rate of one-half space per single family dwelling. Each dwelling unit will have either an attached two car garage or a one car garage with a tandem stall in the outside driveway in front of the garage door. Guest parking will be provided along one side of the proposed internal public roads or in front of some of the unit’s garage doors in private driveways. The amount of tandem parking stalls proposed does not exceed the maximum 30% allowed. To assure that building permits issued for the individual homes are in compliance with parking requirements for the project, conditions are included to this effect.

26. **Bulk Requirements (SCC 30.42B.145(1))** The proposed PRD site plan has been determined to comply with the dimensional standards within Table 1 for single-family residential development to include lot width, lot area, setbacks and lot coverage or as modified by the approved LID deviations. (The approved LID deviations allow an increase in building lot coverage from 55% to 64% and include special building setbacks from the proposed autocourts.)

27. **Specific Housing Types (SCC 30.42B.150)** The applicant proposes two- and three-story detached single-family residential and attached two-unit zero lot line structures for this development. The development plans indicate variation in modulation of the front setbacks and building envelopes of the proposed residences. The conceptual floor plans and street elevation drawings submitted (see Exhibit A.8) will provide for a visually diversified streetscape as shown in the plans. The use of a variety of floor plans, elevations, and product types provide the modulation and variation prescribed. No portion of any building or appurtenance shall project
into any open space. Also, a condition has been included in the final plat to insure that this requirement is carried over into the building permit stage.

28. Official Site Plan (SCC 30.42B:200) The PRD Site Plan received by PDS on August 22, 2012 (Exhibit B.1) shall constitute the PRD Official Site Plan. Site improvements and landscaping shall be installed, inspected and approved as depicted on the approved site and landscape plans for the project. CCRs will be submitted and reviewed by PDS to assure establishment of a Homeowners Association for the development and mandatory membership in it by all homeowners. The CCRs must also require on-going maintenance of commonly owned tracts and restrict the use of the tracts to that specified in the approved PRD.

The Hearing Examiner finds that, based on Findings of Fact Nos. 8 through 28, the Applicant has met the requirements of the PRD regulations and the Official Site Plan should be approved.

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

CONCLUSIONS OF LAW

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

2. 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, subject to the required conditions. As conditioned, 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.

3. Given the information provided in the record and the Findings of Fact made above, the Examiner also concludes that the Applicant has met its burden in showing that the subdivision application meets the requirements of Chapter 30.41A SCC.

4. The Hearing Examiner has reviewed the requirements for Planned Residential Developments (Chapter 30.42B SCC), and concludes that the development as designed meets the design and performance standards of the PRD regulations.

5. The Examiner concludes that adequate public services exist to serve this proposal.

6. If approved with the recommended preconditions and conditions, the proposal will make adequate provisions for the public health, safety, and general welfare.
7. 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 application for Preliminary Subdivision Approval and Planned Residential Development of Timber Creek Plat are GRANTED subject to the following CONDITIONS:

CONDITIONS

A. The Preliminary Plat received by PDS on August 22, 2012 (Exhibit B.1), shall be the approved plat configuration. Changes to the approved preliminary plat are governed by SCC 30.41A.330. The PRD Site Plan received by PDS on August 22, 2012 (Exhibit B.1) shall constitute the PRD Official Site Plan. Changes to the PRD Official Site Plan are governed by SCC 30.42B.220.

B. Prior to initiation of any further site work, and/or prior to issuance of any development permits by the county:

i. A detailed landscape, tree retention and recreational facilities plan shall have been submitted to and approved by PDS. The plan shall be prepared in general conformance with Exhibit B.3 and with all required landscape standards for perimeter, streetscape and open space treatment. The landscape plan shall show ornamental landscaping planted adjacent to the west side of the proposed fence along 43rd Avenue SE.

ii. A bond or other guarantee of performance shall have been submitted to and accepted by PDS to assure compliance with the provisions of SCC 30.42B.125(5)(b) and SCC 30.42B.210(3) (PRD development and landscaping).

iii. The platter 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.

iv. A final mitigation plan based on the Critical Area Study, IDD Wetland Mitigation and Habitat Management Plan for Timber Creek Ranch PRD prepared by Wetland Resources, Inc. dated Revision August 23, 2007 (Exhibit C.7) shall be submitted for review and approval during the construction review phase of this project.

v. Documentation shall be submitted to the county from the Olympic Pipeline Company, Williams Northwest Pipeline, Puget Sound Energy and the Snohomish County PUD No. 1 that they have approved the proposed construction plans and uses shown within their respective utility easements.

C. The phases of the plat shall be constructed in consecutive order (Phase 1, 2, 3 etc.).
D. Prior to recording Phase 1:

i. The offsite improvements to 184th Street must have been completed between the development property and 42nd Avenue SE to connect with and match the existing improvements (including sidewalk on the south side and a minimum of 20 feet of pavement) to the satisfaction of the County.

ii. The 20-foot x 60-foot property currently owned by Seattle City Light, located within the future alignment of 184th Street SE and 43rd Avenue SE adjacent to the west of the west property line of the development shall have been conveyed to the County in the form of a permanent easement, or some other manner acceptable to the County, for the purpose of construction and maintenance of the public road, to the satisfaction of the County.

iii. 43rd Avenue SE shall have been constructed from 184th Street SE along the west property line inside the development to the current north end of 43rd Avenue SE at about 188th Street SE.

iv. The 43rd Avenue SE pavement shall be widened to a minimum of 20 feet between the south property line of the development and 196th Street SE in any locations where it is less than 20 feet wide.

v. An offsite pedestrian facility shall have been constructed in any location where none currently exists between the development and Fernwood Elementary School in the most direct legal route, to the satisfaction of the County, identified as follows:

Unless altered pursuant to this condition, this offsite route is to be provided along the east side of 43rd Avenue SE from the southwest corner of the development to 196th Street SE, and along the north side of 196th Street SE west to the entry to Fernwood Elementary School. The requirement to provide offsite pedestrian facilities along 43rd Avenue SE may be satisfied by constructing an extruded curb, raised 5 foot asphalt or concrete walk, and pedestrian lighting; or by constructing other pedestrian improvements subject to the approval of the County Engineer.

The Applicant may also directly satisfy this condition, without need for revision, should conditions change and school children from the development are bused to school instead of walking; or a new school is constructed or an alternative pedestrian connection becomes available; subject to review by the School District and approval by the County Engineer.

vi. An offsite pedestrian facility shall have been constructed in the most direct legal route in any location where none currently exist between the development and the nearest bus stop identified by the Northshore School District for the middle and high school students to the satisfaction of the County, identified as follows:

The applicant will construct offsite pedestrian facilities on 184th Street SE, where none currently exist, to its intersection with 35th Avenue SE. Unless altered pursuant to this condition, the applicant will also construct offsite pedestrian facilities along the east side of 43rd Avenue SE from the southwest corner of the development to the intersection of 43rd Avenue SE with 196th Street SE. The requirement to provide offsite pedestrian facilities along 43rd Avenue SE may be satisfied by constructing an extruded curb, raised...
5' asphalt or concrete walk, and pedestrian lighting; or by constructing other pedestrian improvements subject to the approval of the County.

The Applicant may also directly satisfy this condition without requirement of revision should conditions change and middle/high school children from the development are bused directly from the entrance of the development to school instead of walking to a nearby bus stop; or a new school is constructed or an alternative pedestrian connection becomes available; subject to review by the School District and approval by the County Engineer.

vii. A temporary interior road connection to 43rd Avenue SE within a temporary public access easement shall have been constructed by extending Road G south to 43rd Avenue. Once the permanent connection to 43rd Avenue is made with Road C, the temporary road leg in Phase 1 will be removed and replaced with the approved design.

viii. The owner of the property shall record a permanent easement granting stewardship of the approximately 51-acre conservancy area to an entity of regional stature, (e.g., Forterra or similar nonprofit organization).

ix. The applicant shall submit to PDS covenants, deeds, and homeowners' association bylaws, and other documents guaranteeing maintenance of landscaping, commonly owned tracts and common fee ownership, if applicable, and restricting use of the tracts to that specified in the approved PRD Official Site Plan. Membership in the homeowners association and payment of dues or other assessments for maintenance purposes shall be a requirement of home ownership. The documents shall have been reviewed by and accompanied by a certificate from an attorney that they comply with Chapter 30.42B SCC requirements prior to approval by PDS.

x. 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, 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.

xi. The Final Critical Areas Mitigation Plan shall be completely implemented.

xii. Documentation demonstrating that the existing onsite sewage system (for the home within the Phase 1 boundary of the plat) has been abandoned by having the septic tank pumped by a certified pumper, then having the top of the tank removed or destroyed and filling the void (WAC 246-272A-0300) must be provided to the PDS inspector and to the Snohomish Health District.
E. The following additional restrictions and/or items shall be indicated on the face of the final plat:

i. 10 feet of property, parallel and adjacent to the existing right-of-way for 186th Street SE shall be dedicated to the County along the development frontage to total 40 feet from the centerline of the right-of-way.

ii. 35 feet of property shall be dedicated to the County along the west development property line for 43rd Avenue SE, to total 35 feet from the centerline of the right-of-way.

iii. 35 feet shall be reserved for future right-of-way along the south property line of the development (within the Urban Growth Area only).

iv. A 50-foot wide vegetative and/or screening buffer shall be shown along the southern property line of the development west of the 51 acre conservation area (Tract 999). ***

v. This proposal depicts that this project will be done in phases. There shall not be any dead ends in excess of 150’ without the required cul-de-sac turnaround which may be a temporary turnaround. If the developer wishes to pursue and gain approval for a temporary hammerhead design the developer will need to make the request in writing and provide NFPA 13-D fire suppression systems in the dwellings.

vi. “Each final subdivision approval for any phase or for any portion of the property shall require proof of the following mitigation payments to the City of Mill Creek for parks:

- $1,740.65 per unit approved in the final subdivision phase, for mitigation of Neighborhood Park land acquisition and/or development needs within the City of Mill Creek; and

- $1,490.50 per unit approved in the final subdivision phase, for mitigation of Community Park land acquisition and/or development needs within the City of Mill Creek.” ***

vii. Prior to the recording of Phase 5, documentation demonstrating that the existing onsite sewage system (for the home within the Phase 5 boundary) has been abandoned by having the septic tank pumped by a certified pumper, then having the top of the tank removed or destroyed and filling the void (WAC 246-272A-0300) must be provided to the PDS inspector and to the Snohomish Health District.

viii. “The City of Mill Creek has a significant interest in transportation system improvements proposed within its designated Municipal Urban Growth Area/UGA boundary including any potential extension of 188th Street SE beyond this UGA boundary. The City of Mill Creek and the County will coordinate on the merits of any County review concerning whether to plan or construct this new roadway. Nothing herein limits the City of Mill Creek’s rights related to any process or decision concerning the roadway.

The plat owners will not protest dedication of the 35’ reserved area should the County elect to construct the road and the property will be donated to the county free of charge at time of dedication.” ***

ix. “Prior to assigning addresses to lots, PDS will consult with Fire District 7 regarding the assignment of addresses to those lots in the plat accessed by alleys.”
x. "SCC Title 30.66B requires the new lot mitigation payments in the amounts shown below for each single-family residence building permit:

$2,083.83 per lot ($604,311.20 total) to Snohomish County as mitigation for project impacts on county road system capacity within Transportation Service Area E. Credits for certain expenditures may be allowed against said payment to the extent authorized by county code.

$326.17 per lot ($94,587.97 total) for mitigation of impacts on state highways paid to the County, ***

$50.12 per lot ($14,536.12 total) for mitigation of impacts on City streets for the City of Mill Creek paid to the City. Proof of payment shall be provided. ***

$544.18 per lot ($157,812.20 total) for mitigation of impacts on City streets for the City of Bothell paid to the City. Proof of payment shall be provided. ***

These payments are due in accordance with the provisions of SCC 30.66B.340 for each single family residence."

xi. "All development within the plat shall be consistent with the PRD Official Site Plan and the landscape and open space/recreation plans approved for construction under file number 06-131306 SD."

xii. "Any proposed revisions to the PRD Official Site Plan shall be approved by Snohomish County Planning and Development Services and by the City of Mill Creek in accordance with the development agreement recorded under Auditors File #200507220038."

xiii. "All open space shall be protected as open space in perpetuity. Use of the open space tracts within this subdivision is restricted to those uses approved for the planned residential development, to include any critical areas and their buffers, open play areas, sport courts, tot lots, trails, drainage facilities, picnic tables, benches, and required landscape improvements as shown on the approved site plan and the approved landscape plan. Covenants, conditions and restrictions as recorded with the plat, and as may be amended in the future, shall include provisions for the continuing preservation and maintenance of the uses, facilities and landscaping within the open space as approved and constructed."

xiv. "The dwelling units within this development are subject to park impact fees for the Nattlea Beach park service area of the County parks system in accordance with SCC 30.66A. Park impact fees shall be based upon the rate in effect at the time of building permit issuance."

xv. "The lots within this subdivision will be subject to school impact mitigation fees for the Northshore 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 2 existing lots. Lots 1 and 2 in Phase 1 shall receive credit."

xvi. "In accordance with SCC 30.42B.150(1)(d), floor plans and street elevations of the proposed single family homes in the plat shall be designed to reduce the visual impact of the garage doors and emphasize the entry living space."
xvii. 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. Vegetative management within the overlapping NGPA/E-existing utility easements is allowed to continue as ongoing maintenance utilizing BMPs per SCC 30.62.360(1)."

xviii. "If there are dwellings that exceed 3,600 square feet the required fire flow shall be determined using Appendix B of the 2009 edition of the International Fire Code if the dwellings that exceed 3,600 square feet cannot meet the required fire flow of Appendix B the dwellings shall be provided with NFPA 13D fire suppression systems."

xix. "Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or access way fronting the property. Numbers shall contrast with their background Section 505.1 IFC."

xx. "On those lots served by alleys, individual sidewalks must be provided from the front of the home to the sidewalk within the adjoining the public road right-of-way. If the alley lot does not front on a public right of way, the sidewalk needs to extend to a pedestrian pathway within an adjoining open space tract."

xxi. "Parking stalls shall be provided in accordance with the PRD Official Site Plan approved under file number 06-131306 SD."

xxii. "Driveways in front of garage doors to be used for required or guest parking shall be a minimum of 18 feet deep."

xxiii. "Each tandem parking stall (including a stall within a single car attached garage with outside driveway stall) shall have a minimum dimension of 8.5 x 19 feet."

xxiv. "If compact sized parking stalls are proposed, the applicant shall provide PDS with documentation that the amount of compact stalls within the development does not exceed 40%."

F. Prior to occupancy of the first unit within each phase:

i. Street signage (which may include the proposed alleys, autocourts and shared access ways) shall be in place.

ii. Fire lane signs and/or striping shall be completed as required by the county Fire Marshal's Office.

iii. Site improvements including landscaping, fencing, pedestrian facilities, recreational amenities and trails depicted on the approved PRD Official site plan and landscape plans shall be installed, inspected and approved.
iv. The applicant shall provide a maintenance bond for all required landscape improvements within each phase in an amount and form satisfactory to PDS.

*** = condition carried forward from the MDNS

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.

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.

Decision issued this 16th day of November, 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 November 26, 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]

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

The grounds for seeking reconsideration are limited to the following:

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

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

**Appeal**

An appeal to the County Council may be filed by any aggrieved party of record **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 November 30, 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.

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**Staff Distribution:**

Department of Planning and Development Services: Monica McLaughlin
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.