RECOMMENDATION OF THE
SNOHOMISH COUNTY HEARING EXAMINER

DECISION DATE: November 30, 2012
PROJECT NAME: Oak Heights Urban Center
APPLICANT/LANDOWNER: GRE Ash Way, L.L.C.
128 Alaskan Way, Suite 310
Seattle, WA 98104
FILE NO.: 12-100479 LU
TYPE OF REQUEST: URBAN CENTER DEVELOPMENT
DECISION (SUMMARY): RECOMMEND APPROVAL, SUBJECT TO PRE-CONDITIONS and CONDITIONS
GENERAL LOCATION: 15525 Ash Way, Lynnwood; in Section 2, Township 27 North, Range 4 East, W.M., Snohomish County, Washington
ZONING: Urban Center (UC)
COMPREHENSIVE PLAN: Urban Center

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

I. FINDINGS OF FACT

A. BACKGROUND INFORMATION

1. The Record: The official record for this proceeding consists of the exhibits set forth in the List of Exhibits and Witnesses entered into evidence (Exhibits A.1 through L.4), as well as the testimony of witnesses received at the Open Record Hearing. The entire record was admitted into evidence and considered by the Examiner in reaching the decision herein.

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

2. Parties of Record: The Parties of Record are set forth in the Parties of Record Register and include interested parties who testified at the Open Record Hearing.
3. **Public Hearing.** The Hearing Examiner held an Open Record Hearing on November 14, 2012. At the start of the hearing, the Examiner disclosed that she is an elected Commissioner of Snohomish County Fire District No. 1, and that the proposed project is within the District’s service area boundary. She stated that she had not discussed the project with anyone at the District, nor had any District personnel attempted to contact her about the proposal. The Examiner asked whether anyone wanted to seek her recusal from this case under the Appearance of Fairness Doctrine. None of the parties or members of the public sought her recusal and the hearing proceeded as scheduled. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Notice of the application and public hearing were made according to the provisions of SCC 30.70.050(5). (Exhibits F.1, F.2, F.3) At the close of the public hearing, the Examiner left the record open until November 16, 2012, so that PDS could submit comments from the transportation reviewer, Fire Marshal and a draft Ordinance for Council consideration.

Paul MacCready, Randy Sleight, David Killingstad, Monica McLaughlin and Mark Brown appeared on behalf of Snohomish County Department of Planning and Development Services (PDS).

For the Applicant, attorney Jack McCullough appeared along with consultants Brenda Barnes, design architect, Lorraine Pai, landscape architect, Brad Lincoln, traffic engineer, and Rob Long, civil engineer.

No members of the public appeared or testified at the public hearing.

4. **Application Request.** The Applicant requests that the Hearing Examiner recommend approval of the proposed Oak Heights Urban Center Development to the Snohomish County Council and prepare an Ordinance adopting the Development Agreement and approving the Project for the Council’s consideration at a closed record hearing. The project is vested as to the County’s regulations that were in effect on January 23, 2012.

5. **Project Description.** The development will be situated on a 8.05 acre site located within the 164th Street Urban Center, north of the Ash Way Park and Ride facility, adjacent to the west side of I-5, approximately a half mile north of 164th Street SW. The Urban Center Development consists of 383 apartment units in five-story multi-family residential buildings, one leasing/recreational building with swimming pool and site amenities. The project includes outdoor active and passive recreational areas, including a tot lot playground, amphitheater gathering area, walking trail connecting to offsite properties, a dog park, community garden, park benches, art, a waterfall feature, landscaping, barbecuing area, and other features. No phasing is currently planned.

Several construction permit applications have been submitted; however, no permit can be issued until the development agreement is adopted by ordinance and recorded with the Auditor. All permit requests were considered for purposes of review under SEPA.

6. **Site Description.** The site consists of four parcels and is 8.05 in total acreage. The site lays approximately a third of a mile north of the Ash Way Park and Ride facility. It is adjacent to the west side of I-5 and the east side of Ash Way approximately a half mile north of the 164th Street SW interchange. Two dilapidated houses were located on the site, but have been demolished. The property consisted mostly of overgrown landscaping and trees, with some residential type impervious surfaces. The slopes range from 2 to 8 percent, sloping in a southwesterly direction. A very small wetland straddles the southern boundary.
7. **Adjacent uses.** The surrounding zoning is Urban Center (UC). Nearby uses are mostly residential, a mix of single and multi family, including a single-family detached unit (SFDU) development to the north and a multi family development currently under construction to the south. Ash Way is a collector arterial. A large mixed use development lies on the west side of Ash Way across the street from the Park and Ride. Bethany Korean Church is situated northwest of the site. Interstate-5 is adjacent to site on the east.

8. **State Environmental Policy Act Compliance.** A SEPA Checklist was submitted by the Applicant on May 10, 2012. (Exhibit E.1) A DNS was issued on July 29, 2012. (Exhibit E.2) Notice of the decision was made according to the County’s regulations. (Exhibits F.1, F.2, and F.3) No appeal of the SEPA determination was filed. Accordingly, the Examiner finds that compliance with the substantive and procedural requirements of SEPA have been met.

9. **Issues of Concern.**

   A. **Public Agency Review.** There were no concerns expressed from reviewing agencies.

   B. **Citizens.** Two letter of concern were sent from nearby neighbors. (Exhibits H.1 and H.2) The primary issue of concern was the additional traffic and potential overflow parking that the project would generate. In addition, both citizens raised concerns that the project would exacerbate existing congestion at the Ash Way Park and Ride. Their other concerns included landscaping buffers, pedestrian safety, crime, and noise.

   The Applicant submitted a response to the comment letters. (Exhibit I.1) They noted that Traffic Studies (Exhibits C.1 and C.2) were submitted that addressed the additional traffic that would be generated and the compatibility of the project with the neighborhood. No inadequate road conditions were identified during PDS transportation review. A Voluntary Trip Reduction Plan (Exhibit A.8) was also submitted by the Applicant as part of this project. A new Community Transit bus stop is proposed at the site and several pedestrian facilities are proposed. Landscaping is also an integral part of the plan (Sheet SP.2 of Exhibit B.1). Increases to the level of noise and crime in the area will be negligible. The development will not exceed noise standards specified in Chapter 10.01 SCC. Finally, they noted that the area is not shown as a high crime area on the Snohomish County Sheriff’s website.

10. **APPLICABLE REGULATIONS**

    **Approval Process.** This project is the County’s first proposal under its new Urban Centers standards. According to SCC 30.34A.180, the Applicant has two methods under which it can pursue approval of its project: (1) The Development Agreement process; or (2) the Type 2 Permit Decision Process.

    The Applicant has chosen the first option and negotiated a development agreement with the City of Lynnwood, based on the fact that the site is within the City’s Municipal Urban Growth Area (MUGA) boundary. SCC 30.34A.180(1) That development agreement (hereinafter the “Municipal Agreement”) is now complete and was executed by the parties on October 8, 2012. (Exhibit A.3.1) The Municipal Agreement and project proposal were submitted to PDS for review and processing under Chapter 30.75 SCC. (SCC 30.34A.180(1)(b))

    Under SCC 30.75.020, the development agreement reached between PDS and the Applicant (which incorporates the Municipal Agreement and project proposal), is reviewed in the manner and following the procedures established in Chapters 30.70 and 30.72 SCC, except as follows:
(a) The hearing examiner's decision, as set forth in SCC 30.72.060, shall be a recommendation to the county council instead of a decision, provided that any decision on a Type 1 appeal of a SEPA threshold determination shall be a final decision;

(b) Each hearing examiner recommendation shall include a proposed ordinance for council consideration that would adopt the hearing examiner's recommendation as a final decision;

(c) A party of record may request review of the hearing examiner's recommendation by the county council using the same process as required for appeal of a Type 2 decision; and

(d) If no party of record requests review of the hearing examiner's recommendation, the department shall forward the recommendation to the county council for a closed record hearing, allowing for a presentation to the council by the Applicant and the department regarding the recommendation and the proposed ordinance.

11. Decision Criteria. According to SCC 30.75.100, in order to make a recommendation in favor of passage of an ordinance approving the development agreement and proposed project, the hearing examiner must find that:

(a) The proposed agreement is compatible with the goals and policies of the comprehensive plan;

(b) The proposed agreement is consistent with applicable development regulations, unless modified pursuant to SCC 30.75.130;

(c) The proposed agreement provides for adequate mitigation of adverse environmental impacts; provided that if the development is not defined at a project level, the agreement shall provide a process for evaluating and appropriately mitigating such impacts in the future; and

(d) The proposed agreement reserves authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

The Hearing Examiner considers each criterion below:

12. The proposed agreement is compatible with the goals and policies of the comprehensive plan:

The Applicant has provided significant analysis of the County's GMA Comprehensive Plan (GMACP) and how the proposed urban center is compatible with its goals and policies. (See, Exhibit K.6) That analysis is incorporated herein as if set forth in full. PDS Staff have performed a similar analysis and reached the same conclusion. (Exhibit J) The Hearing Examiner takes official notice of the County's adopted GMACP. The GMACP has recognized and supports the creation of urban centers such as the one here. (See, LU 3.A.2, 3.A.3 and 3.A.4) The proposal supports GMACP Land Use Goal LU 3: "to establish a system of compact, clearly defined mixed-use centers, linked by well-planned transit emphasis corridors, that promote a neighborhood identification and support the County's sustainability goals." (See also, Objectives LU 3.H; LU 3.G.5, Goal TR-2, TR Policy 2.C.2, and TR Goal 3) The Hearing Examiner finds that the proposed agreement and urban center proposal is compatible with the goals and policies of the GMACP.
13. **The proposed agreement is consistent with applicable development regulations, unless modified pursuant to SCC 30.75.130.**

(A) **Traffic Mitigation and Road Design Standards** (Title 13 SCC & Chapter 30.66B SCC)

PDS Traffic has reviewed the proposal for compliance with Title 13 and Chapter 30.66B SCC, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures. The subject property is located within the Urban Growth Area (UGA) in Transportation Service Area (TSA) “D.” The proposed development is vested to the 2010 Version of the EDDS. Credit will be granted for two existing single-family residences. (Exhibit L.3)

1. **Road System Impacts** [SCC 30.66B.310] A development must mitigate its impact upon the future capacity of the Snohomish County 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 or acceptable specific trip generation information provided by the Applicant or their Traffic Engineer.

    The proposed urban center will generate 1,423.62 new ADT from 383 new living units. The rate for road system impact fees within TSA “D” is $267.00 per ADT. The total road system impact fee owed as mitigation for impacts to roads within TSA “D” is $380,106.54 (or $992.45 per living unit).

2. **Concurrency** [SCC 30.66B.120] The County makes a concurrency determination for each development application to ensure the development will not impact a county arterial unit in arrears or cause a county arterial to go in arrears.

    The County received letters from citizens with concerns about the additional traffic on Ash Way and the amount of time it currently takes to reach 164th St SW. (Exhibit H.2 – letter from Patrick Olsen). Although the current level of congestion experienced by users may increase, the Traffic Study shows that the County’s adopted level of service (LOS) will be met. The County has adopted LOS “E” at the intersection of an urban road with a state highway. (LOS “E” means a standard speed of 8 mph and expected “very long delays” at intersections on an urban transit compatible urban road), based on SCC 30.66B.101. (Exhibit C.2)

    The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120. The development is located in TSA “D” which, as of the date of submittal of the application, had no arterial units in arrears. Therefore, the project is deemed to be concurrent as of March 12, 2012. The expiration date of the concurrency determination is six years from that date on March 12, 2018.

    However, the subject development generates 102.06 new a.m. peak-hour trips, and 132.62 new p.m. peak-hour trips which is more than the threshold of 50 peak-hour trips, which triggers additional review under SCC 30.66B.035. Pursuant to SCC 30.66B.035, the future level-of-service on the road system was evaluated in a specific Traffic Study. (Exhibit
C.1) The Traffic Study found that the forecast level of service conditions in TSA “D” does not place any arterial units into arrears. Therefore, the project is deemed to be concurrent under SCC 30.66B.035.

3. Inadequate Road Condition (IRC) [SCC 30.66B.210] Regardless of the existing LOS, any development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing IRC at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC.

According to the Traffic Study, the subject development proposal will not impact any IRC locations identified within TSA D with three or more of its p.m. peak hour trips, nor will it create any. Therefore, mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

4. Frontage Improvement Requirements [SCC 30.66B.410] All developments are required to make frontage improvements along the parcel’s frontage on any opened, constructed, and maintained public road. Here, DPW Rule 4222.020(1) and the comprehensive plan require full urban frontage improvements along the subject parcel’s frontage on Ash Way which consist of:

- Asphalt concrete pavement consisting of 29 feet width from right-of-way centerline to the face of curb;
- Cement concrete curb and gutter;
- Planter strip with a width of five (5) feet; and
- Cement concrete sidewalk with a width of seven (7) feet.

Ash Way, on which the development’s frontage improvements are required, is in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore, credits towards the Applicant’s impact fee for any frontage improvements that can be used in the ultimate build-out of the road are applicable.

In addition to those requirements, the County’s current adopted Countywide Bicycle Facility System Map (CBFSM) became effective on February 1, 2006. The subject development is located on the right-of-way that is identified on the CBFSM for the construction of a bicycle path. As such, the Applicant is required to provide a bike path along the development’s frontage on Ash Way. The Applicant has proposed to provide the bike path and it is adequately shown on the site plan.

Construction of frontage improvements and the bicycle lane is required prior to any certificate of occupancy being issued and is included as recommended condition of approval.

5. Access and Transportation Circulation [SCC 30.66B.420] All developments are required to provide for access and transportation circulation in accordance with the comprehensive plan and this chapter applicable to the particular development, to design and construct such access in accordance with the EDDS, and to improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430. (See, SCC 30.66B.420) Access to state highways and city streets must be in accordance with the applicable state or city standards and requirements. Additionally, 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, will be required to improve such road to bring it into compliance with the EDDS when the Director of the Department of Public Works (DPW) determines it necessary to provide for safety and the operational efficiency of the road. The extent of improvements will be established by the director of public works in accordance with SCC 30.66B.430. (See, Exhibits J and L.2) The Hearing Examiner has reviewed the analysis and finds that there is substantial evidence in the record to support the required road and transportation improvements recommended by PDS and DPW.

6. Right-of-Way Requirements [SCC 30.66B.510, and .520] A development shall be required to dedicate, establish or deed right-of-way to the County for road purposes as a precondition of approval of the development, when to do so is reasonably necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development.

Ash Way serves the development and is designated as a collector arterial, typically requiring a right-of-way width of 35 feet on each side of the right-of-way centerline. Currently, 20 feet of right-of-way exists on the development’s side of the right-of-way. The development is required to dedicate to the County 23 feet of additional right-of-way to accommodate the required frontage improvements. This is included as recommended condition of approval. The required right of way is adequately shown on the construction plans.

Ash Way is in the impact fee cost basis (Appendix D of the Transportation Needs Report), therefore, credit towards the Applicant’s impact fee for the deed right-of-way beyond 30 feet from centerline is applicable. In this case, the Applicant will receive credit for dedication of 13 feet of right of way.

7. Impacts to State Highways [SCC 30.66B.710] When a development’s road system includes a state highway, mitigation requirements will be established using the County’s SEPA authority consistent with the terms of the interlocal agreement between the County and the Washington State Department of Transportation (WSDOT). This is consistent with the County’s SEPA policy SCC 30.61.230(9), through which the County designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County’s SEPA authority. This development is subject to ILA between Snohomish County and the WSDOT that became effective on December 21, 1997, and as amended through the date of completeness for this application.

The Applicant’s Traffic Study indicates that since no State projects on the State’s Exhibit “C” will be impacted by the subject development mitigation should not be required. An e-mail from WSDOT dated January 27, 2012, indicates that they agree. (Exhibit G.2) Accordingly, no mitigation for impacts to state highways is required.

8. Impacts to Roads in Other Jurisdictions, [SCC 30.66B.720] Mitigation requirements for impacts on streets inside cities and roads in other counties will be established consistent with the terms of a Reciprocal Traffic Mitigation Interlocal Agreement (ILA) between the County and the other jurisdiction(s). This development is subject to SEPA and therefore is subject to the ILA between Snohomish County and the City of Mukilteo. The Applicant’s Traffic Study indicates that no city projects will be impacted by the subject development and argues that no mitigation is required. A comment letter was
received from the City of Mukilteo dated January 27, 2012, concurring that no mitigation is required. (Exhibit G.1)

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

9. Transportation Demand Management (TDM) [SCC 30.66B.630] All new developments in the urban area shall provide TDM measures. For urban centers, sufficient TDM measures shall be provided to indicate the potential for removing a minimum of 15 percent of the development’s P.M. peak hour trips from the road system. This requirement shall be met by the provisions of onsite design requirements under SCC 30.66B.640, as applicable, except where the development proposes construction or purchase of specific offsite TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.620 and SCC 30.66B.625. Here the Applicant proposes to meet both requirements.

The Applicant proposes to pay an impact fee of $47,888.75 ($125.04 per living unit), which is equal to meeting five percent of their 15 percent obligation. In addition, the site plan meets the on-site TDM requirements; therefore an additional credit of five percent will be applied toward their required TDM amount. Finally, the Applicant has proposed to meet the final five percent required by implementing ongoing trip reduction programs on site. These TDM measures have been accepted by DPW and PDS. It is a condition of approval that the TDM agreement be signed by the County Engineer and recorded with the Auditor.

(B) Urban Center Development Standards (Chapter 30.34A SCC)

Development in the Urban Center (UC) Zone must comply with the standards set forth in Chapter 30.34A SCC. The standards outlined in the chapter are meant to encourage higher density transit-oriented and pedestrian-oriented development that provides a mix of uses and encourages high quality design.


Multi family dwelling units are an allowed use under the UC Zone in Urban Zone Categories: Use Matrix (30.22.100 SCC). No reference note listed under 30.22.130 SCC applies to this application.

2. Floor Area Ratios — SCC 30.34A.030. Floor to area ratios (FAR) in the UC zone are established in accordance with Table 30.34A.030(1) SCC. Additional FAR are allowed in accordance with the bonuses as set forth in SCC Table 30.34A.030(2) (FAR Bonuses) and SCC Table 30.34A.030(3) (FAR Super Bonuses).

The maximum FAR for residential use is 1.0. Here, the maximum allowable square footage for this project is 350,658 square feet. The proposed square footage is 334,697 square feet. The proposal complies with this section. No bonuses are proposed, therefore, Tables 30.34A.030(2), (3) SCC are not applicable.

3. Building height and setbacks — SCC 30.34A.040. The maximum building height in the UC zone is 90 feet. Under certain circumstances, a building height increase up to an additional 90 feet may be approved under SCC 30.34A.180. Buildings or portions of buildings that are located within 180 feet of adjacent R-9600, R-8400, R-7200, T or LDMR
zoning must be scaled down and limited in building height to a height to meet the requirements of SCC 30.34A.040(2). All ground floor residential units facing a public street must maintain a minimum structural ceiling height of 13 feet to provide the opportunity for future conversion to nonresidential use. Finally, excluding weather protection required in SCC 30.34A.150, buildings must be setback pursuant to SCC Table 30.34A.040(4).

As noted in the regulations, the maximum building height in the UC Zone is 90 feet. Here, the following heights are proposed for the 5-story residential buildings:

- Building A - 58 feet, 10 inches
- Building B - 58 feet, 4 inches
- Building C - 61 feet, 2 inches
- Building D - 78 feet, 2 inches
- Building E - 57 feet, 4 inches

All buildings are well within the building height requirements. For the proposed project, no front, side, or rear setbacks are required by SCC 30.34A.040(4). All structures are subject to setbacks specified in the International Building Code (Ch. 30.52A SCC).

4. Parking ratios, parking locations and parking lot and structure design – SCC 30.34A.050. Developments in the UC zone must comply with the parking ratios established in Table 30.34A.050(1) SCC. Parking must be located under, behind or to the side of buildings. Parking lots must be landscaped pursuant to SCC 30.25.022. Parking garage entrances must be minimized, and where feasible, located to the side or rear of buildings. Lighting fixtures within garages must be screened from view from the street. Exterior architectural treatments must complement or integrate with the architecture of the building through the provision of architectural details. Parking can be reduced under certain circumstances. (See, SCC 30.34A.050(5))

The parking stalls required for the project is 393 to 595 stalls. The project provides 408 on-site parking stalls. Of those stalls, 356 stalls are located outside to the side and rear of the site. Building D provides an additional 52 parking stalls in a lower level garage. (Exhibit B.1, SP-1; Exhibit J.1) Incorrect narrative text on the site plan (Exhibit B.1, CS2) has been changed to reflect the corrected number of stalls. An additional 21 parallel parking spaces will be added to Ash Way street improvements. A minimum of two bicycle parking spaces are required by this provision. The project provides two bicycle racks per building that exceeds the minimum 766 spaces required.

As proposed, the Hearing Examiner finds that the parking requirements have been met by the site plan. (Exhibit B.1)

5. Landscaping Requirements – SCC 30.34A.060. In addition to the landscaping requirements contained in SCC 30.25.015, 30.25.017, 30.25.023, 30.25.043 and 30.25.045, requirements for developments in the UC zone are as follows:

- Where a development abuts an R-9600, R-8400, R-7200, T or LDMR zone, a Type A landscaping buffer pursuant to SCC 30.25.017 averaging 25 feet, but not less than 15 feet must be provided. Where appropriate, existing vegetation and significant trees must be retained within the landscaping buffer.
- Areas of a site not occupied by buildings, parking lots, other improvements or textured paving must be intensively planted with trees, shrubs, hedges, ground
covers, and/or grasses, unless such area consists of attractive existing vegetation and significant trees to be retained. Perennials and annuals are encouraged.

- Landscaping must be integrated with other functional and ornamental site design elements, where appropriate, such as recreational facilities, ground paving materials, paths and walkways, fountains or other water features, trellises, pergolas, gazebos, fences, walls, street furniture, art, and sculpture.
- The landscape design must reinforce and support the open space design, pedestrian circulation and building architecture.
- Street trees must be planted along public and private roads and drive aisles according to the road cross section and general landscaping standards of the EDDS. Street trees are not required around turnarounds at the end of roads less than 150 feet in length. Maintenance of street trees must be provided pursuant to SCC 30.25.015(9).
- No landscape buffer is required along or from a developed railroad right-of-way.

The proposed landscaping plan for the project is shown on Sheets SP1, SP2, L1.01, L1.02, and L1.03. (Exhibit B.1) PDS has reviewed each of the design drawings and found that the proposal complies with the landscaping requirements for urban centers. (SCC 30.34A.060) The site does not abut a residential zone; therefore, no additional landscaping buffer is required. As designed, the proposed landscaping complies with all the additional provisions required for an urban center. Installation of the landscaping shall be according to the approved urban center plan.

6. Open Space – SCC 30.34A.070. All developments in the UC zone must have a coherent integrated open space network that links together the various open spaces within the project. Open space must be provided at a rate of 150 square feet per residential unit and two percent of the floor area of non-residential development (excluding parking), and at least 50 percent of which must be accessible to the public as an active recreation area. In addition, at least 25 percent of the required active recreation area must be located on a single tract. Those portions of required sidewalks that abut an active recreation area may be counted toward the 50 percent active recreation open space requirement. On-site recreational open space for residential and non-residential developments must be designed and improved to allow one or more active uses as defined in SCC 30.34A.070(3).

Here, the proposed urban center provides open spaces connected by walkways. A total of 57,450 square feet of open space is required. The proposal provides 65,098 square feet of open space. Of the total required open space, 50 percent must be active or 28,725 square feet. The active open space provided by the proposed development totals 43,752 square feet, well in excess of the required amount. The active open space includes: a playground with play equipment, picnic areas, plaza, walkways, and an amphitheater. The four lots are proposed to be merged into one, so the development will not have separate tracts. The walkway through the development, which passes next to the amphitheater and southern playground, will be open to the public. The walkway connects to an existing offsite walkway. The total area of the public walkway, plus adjacent active open space areas, exceeds the required 50 percent required to be accessible to the public.

7. Circulation and Access – SCC 30.34A.080. The vehicular and pedestrian circulation system must be designed to be consistent with Ch. 30.24 SCC, the EDDS Manual, and the provisions described in the following design reports available at PDS: (a) Southwest Snohomish County Urban Centers Phase 1 Report, (February 2001), Appendix
E, Street Design, at pp. 9-13; and (b) Specific road designs for public roads in urban centers that have been approved by the Department of Public Works, including but not limited to Ash Way Design for the Transit/Pedestrian Village, (August 2003). Additional requirements are set forth in SCC 30.34A.080(1) through (9).

The proposed development was reviewed by PDS transportation section and was found to comply with the design standards set forth in Ch. 30.24 SCC and the Southwest Snohomish County Urban Centers Phase 1 Report (February 2001), Appendix E, Street Design, at pp. 9-13, and the specific road designs for public roads in urban centers that have been approved by the Department of Public Works, including but not limited to Ash Way Design for the Transit/Pedestrian Village, August 2003.

An eight foot wide public walkway through the site connects the southern boundary to the Urban Center Development now under construction and, to the north, connects the pathway to the existing sidewalk along Ash Way. The walkway links on-site open space activity nodes to the new Ash Way bus stop in front of the proposed development. Lighting is provided along the walkway for nighttime safety. All of the right-of-way improvements (a bike lane, parallel parking, planter strips with intermittent pathways for parallel parking, and a 7-foot wide sidewalk) will be constructed to County standards to ensure they coordinate with and relate well to abutting existing and planned development features. (Exhibit A.2)

The development complies with all additional urban center standards (SCC 30.34A.080(1) through (9), and has submitted a transportation demand management plan (Exhibit B.2) as required.

8. Access to public transportation -- SCC 30.34A.085. Business or residential buildings within an urban center either: (1) Shall be constructed within one-half mile of existing or planned stops or stations for high capacity transit routes such as light rail or commuter rail lines or regional express bus routes or transit corridors that contain multiple bus routes; (2) Shall provide for new stops or stations for such high capacity transit routes or transit corridors within one-half mile of any business or residence and coordinate with transit providers to assure use of the new stops or stations; or (3) Shall provide a mechanism such as van pools or other similar means of transporting people on a regular schedule in high occupancy vehicles to operational stops or stations for high occupancy transit.

The location of the proposed development is approximately a third of a mile from the Ash Way Park and Ride. In addition, Community Transit proposes to add a bus stop on Ash Way that will accommodate an articulated bus located in front of the recreation building. A memorandum from Gibson Traffic Consultants, Inc. dated January 20, 2012, detailing how the proposal meets the County’s transit compatibility standards, is set forth at Exhibit C.2. The Hearing Examiner finds that this requirement has been met.

9. Design standard-signs -- SCC 30.34A.090. In addition to the sign requirements contained in Chapter 30.27 SCC, signs in the UC zone must fit with the overall architectural character, proportions, and details of the development. The base of any freestanding, pole, ground or monument sign must be planted with shrubs or seasonal flowers. No electronic signs are allowed. Freestanding or pole signs located along non-arterials may be permitted if they are approved under SCC 30.34A.180 and if they meet certain criteria. (See, SCC 30.34A.090(4)) Freestanding or pole signs located along freeways or principal arterials may be permitted if they are approved by the director and if they meet certain criteria. (See, SCC 30.34A.090(5))
The proposed signage is for residential identification. No commercial activity is proposed.

10. Design standard-screening trash/service areas and rooftop mechanical equipment – SCC 30.34A.100. Garbage collection and service areas must be placed away from public right-of-way and screened from view on all sides with solid evergreen plant material or architectural treatments similar to those used in the design of the adjacent building. Rooftop mechanical equipment must be screened by an extended parapet wall or other roof forms that are integrated with the architecture of the building.

The Applicant has proposed a design that properly screens all rooftop mechanical equipment and trash/service areas in accordance with SCC 30.34A.100. The project shall comply with the urban center site plan, Exhibit B.1.

11. Design standard-lighting – SCC 30.34A.110. All lighting fixtures must be equipped with a “cut-off,” which is either an external housing or internal optics that directs light downward. Flashing lights are prohibited, except for low wattage holiday and special occasion accent lights. Lighting directed upwards above the horizontal plane (up-lighting) is prohibited.

Proposed lighting will comply with these standards. Lighting shall be installed as depicted in Sheet L1.02 of Exhibit B.1.

12. Design standard-step back and roof edge – SCC 30.34A.120. The urban center zone design regulation require that any parts of the building façade over 60 feet high facing a public right-of-way and those portions of buildings facing R-9600, R-8400, R-7200, T or LDMR zoning must be stepped back at least 10 feet from the first floor façade. In addition, façades of floors that are stepped back must be distinguished by a change in elements such as window design, railings, trellises, details, materials and/or color so that the result is a rich and organized combination of features that face the street. Balconies may extend into the step back areas. Buildings with pitched roofs must have a minimum slope of 4:12. Finally, an alternative step back may be approved under SCC 30.34A.180, provided the effect is that the upper floor(s) appears to recede from view.

In the present case, Buildings C and D are over 60 feet high. However, both buildings are situated behind other buildings and do not face the public right-of-way. As such, the Hearing Examiner finds that the step back requirement does not apply as to those buildings. The rooflines and façades of the buildings are, however, of varying colors and materials and are modulated as required. (See, Sheets A.2.3 and A.2.5, Exhibit B.1).

13. Design standard-massing and articulation – SCC 30.34A.130. Buildings over 30 feet in height must distinguish a “base” at ground level using articulation and materials such as stone, masonry, or decorative concrete. The “top” of the building must emphasize a distinct profile or outline with elements such as projecting parapet, cornice, upper-level setback or pitched roof line. For buildings over 60 feet in height, the “middle” of the building may be distinguished from the top and base by a change in materials or color, windows, balconies, step backs and signage. An alternate design for massing and articulation may be approved under SCC 30.34A.180 provided the design reduces the apparent bulk of multi-story buildings and maintains pedestrian scale.
Here, only the residential buildings are over 30 feet in height. Buildings C and D are over 60 feet in height. The proposal meets the design requirements for massing and articulation by providing variations in color and materials, terraced landscaping, vertically projected parapets, and modulated eaves.

14. Design standard-ground level detail and transparency – SCC 30.34A.140. Façades of commercial and mixed-use buildings that face the streets must be designed to be pedestrian-friendly through the inclusion of at least three design elements set forth in SCC 30.34A.140. In addition, street-facing, ground-floor façades of commercial and mixed-use buildings must incorporate glass in storefront-like windows in sufficient type and quantity to produce the following quality and dimensions: clear, transparent glass must be incorporated in at least 40 percent of the ground level façade length and the bottom of such glass must be located no higher than two feet above grade and top of such glass must be located up to at least 10 feet above grade.

The Applicant has proposed no commercial or mixed-use buildings. However, the recreation building façade shall use canopies and awnings, kickplates for storefront windows, pedestrian scale signage, and containers for seasonal plantings. Accordingly, the Examiner finds that the requirements of this regulation have been met.

15. Design standard-weather protection – SCC 30.34A.150. Overhead weather protection elements such as canopies and awnings, kickplates for storefront windows, pedestrian scale signage, and containers for seasonal plantings. Accordingly, the Examiner finds that the requirements of this regulation have been met.

The Applicant proposes to install canopies and awnings on building facades along the public street. The canopies and awnings will comply with the size and width requirements of this regulation.

16. Design standard-blank walls – SCC 30.34A.160. Blank walls longer than 20 feet must incorporate two or more of the following: (1) vegetation, such as trees, shrubs, ground cover and/or vines adjacent to the wall surface; (2) artwork, such as bas-relief sculpture, murals, or trellis structures; (3) seating area with special paving, lighting fixtures and seasonal plantings; and/or (4) architectural detailing, reveals, contrasting materials or other techniques that provide visual interest.

All buildings will have some areas of blank walls that are longer than 20 feet. Those areas where blank walls occur will be covered with vegetation, to include trellises where necessary. As designed, the Hearing Examiner finds that the project meets this requirement.

(C) Drainage, Clearing and Grading – (Ground Disturbing Activity) (Chapters 30.63A, 30.63B, and 30.63C SCC). The site currently contains two single family residences. Ground cover consists of a combination of impervious surfaces, landscaping and trees. Drainage generally sheet flows in a southwesterly and then southern direction to a concentration point located near the southwest corner of the property. Soils are Alderwood-Urban Complex with 2 to 8 percent slopes. A small (400 square foot) wetland is located along the southern boundary of the site.

In order to construct the project’s residential apartment buildings and recreation center, nearly all of the existing vegetation will be removed from the site. Landscaping and lawns will stabilize the site upon building construction. Stormwater from the developed area will be
collected in a system of roof drain downspouts, catch basins, and pipes. An underground two-cell detention vault located under the southern parking lot will provide flow control. The vault will discharge its two-year peak outflow to a storm filter system that provides water quality treatment and then to an overflow structure. Some of the stormwater will bypass the treatment facility. Finally the overflow structure will discharge into a tight-lined conveyance system that connects to the frontage drainage system along the east side of Ash Way and downstream systems. The design of the Stormwater Pollution Prevention Plan (SWPPP) will be completed in conformance with the 2010 Drainage Manual. (Exhibit C.3) (See also, Exhibit B.1, Sheets C4 and C5)

A land disturbing activity construction permit has been submitted that meets the targeted drainage plan. Grading and drainage requirements for this project will be issued with that permit after the development agreement is recorded.

(D) **Critical Areas Regulations** (Chapters 30.62, 30.62A, 30.62 B, and 32.62C SCC) The site contains only a single, 400-square foot, low functioning wetland. It has been classified as a Class IV wetland. The project proponent is proposing to fill the wetland. Under the County’s Critical Area Regulations, impacts to a Category IV wetland are allowed pursuant to 30.62A.510(3)(g) SCC. Mitigation for lost functions and values as proposed includes creation of Critical Area Protection Area (CAPA) in the northeast corner of the site. This area shall be equal in size to the square footage of lost wetland and prescriptive buffer area which meets the requirements of SCC 30.62A.320(3) Table 3 and Table 30.62A.340- Table 4. Lost storm water storage function of the wetland (approximately 100 cubic feet) will be mitigated by capturing the storm water storage capacity of the small wetland in the proposed storm water facility. (Exhibit C.5) Permanent identification, protection and recording of critical areas is required pursuant to 30.62A.160 SCC. No conditions are required for this process. All mitigation and requirements will be completed through the land disturbing activity permit, 12-103500 LDA, which will require the recording of a Critical Area Site Plan (CASP).

PDS reviewed the Critical Areas Study (Exhibit C.4) and determined that the application is in conformance with Chapter 30.62A SCC (critical areas regulations) and is consistent with the purpose and objectives of the chapter to safeguard the public health, safety and welfare. The Hearing Examiner agrees and finds that the critical areas regulations have been met.

(E) **International Fire Code** (Chapter 30.53A SCC)

The application was reviewed and approved by the County’s Fire Marshal’s Office on February 28, 2012. Fire apparatus access as depicted has been found by the Fire Marshal to meet the minimum requirements of SCC 30.53A.150. Staff asserts that during the construction plan review of the land disturbing activity permit application (12-103500 LDA), detailed plans have been reviewed and approved by the Fire Marshal’s Office to determine the appropriate placement of fire hydrants and any required signage or pavement striping denoting fire lanes to ensure access by emergency vehicles is not impeded. (Exhibit J) Ron Tangen, Senior Fire Inspector, stated that any appropriate Fire Code conditions will be included with the issuance of construction permits. (Exhibit L.4) Comments were received from Fire District 1 (Exhibit G.5) and reviewed by the Fire Marshal. No additional conditions are required as a result of those comments.

(F) **Utilities** As indicated in correspondence received from the Alderwood Water District, water and sewer will be available to serve this development. (Exhibit G.3). The Snohomish County P.U.D. No. 1 indicates that it has sufficient capacity to provide electrical power to the
proposed project. (Exhibit G.4) The Snohomish Health District has no objections to the Urban Center Development as long the Applicant identified existing on site or adjacent sewage disposal systems or wells. (Exhibit G.6) No condition is necessary as this requirement is part of the application for the LDA permit (12-103500 LDA). Accordingly, the Hearing Examiner finds that adequate public facilities exist to support the proposed development.

(G) School Impact Mitigation (Chapter 30.66C SCC) The proposal is subject to Chapter 30.66C SCC which requires payment of mitigation fees or comparable mitigation for each new dwelling unit to the appropriate school district. Pursuant to SCC 30.66C.100, school impact mitigation fees will be determined, according to the Base Fee Schedule in effect for the Edmonds School District, at the time of building permit application and collected at the time of building permit issuance for the proposed new units.

According to PDS staff, all building permits for the multi-family units have been applied for, and no school mitigation fees are required for the Edmonds School District (Table 30.66C.100(1) School Impact Mitigation Fees). (Exhibit J)

(H) 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 $491.05 per each new multi-family residential unit, to be paid prior to building permit issuance for each building. Such payment is acceptable mitigation for parks and recreation impacts in accordance with county codes and policies. A condition is included within the project decision to comply with the requirements of Chapter SCC 30.66A SCC.

(I) Noise Regulations (SCC 10.01.070(3)) For new residential structures located along interstate highways, such as this development which is located adjacent to Interstate 5, SCC 10.01.070(3) provides:

In situations where the general conditions within a residential plat or short plat applied for after the effective date of this chapter indicate that noise from existing airports or interstate freeways may cause the exterior noise level anywhere within the proposed plat to exceed an Ldn of 60 dBA, buffering or other mitigating measures may, prior to the approval of the preliminary plat, be required to be incorporated into the design and construction plans of the site and structure which are capable of reducing sound inside each home (with windows closed) to a level no higher than a Ldn of 40 dBA. The following factors shall be considered in making a determination to require such mitigation measures:

(a) Whether reasonable noise mitigation measures are available, and
(b) Whether the financial impacts of the mitigation measures are disproportionate to the overall cost of the project, and
(c) Whether the benefit outweighs the cost

PDS is authorized to enforce the provisions of SCC 10.01.070(3). Appeals from administrative decisions of the Director must be filed with the Hearing Examiner pursuant to Chapter 2.02 SCC.

Here, the Applicant requested a reduction in the required noise mitigation standard from a Ldn of 40 dBA to a Ldn of 45 dBA based on an assertion of financial hardship, noting that the "cost of the noise mitigation associated with this standard will be prohibitive, and will have a significant impact on the project cost." (Exhibit C.6) There is no documentation in the record showing whether PDS responded to this request. When asked
about it by the Examiner at the public hearing. Paul MacCready, PDS, testified that SCC 10.01.070(3) pertains to single-family residences only, and that the standard is voluntary. He testified that the Department cannot require the Applicant to meet the 45 dB(A) standard. The Applicant’s attorney, Jack McCullough, agreed that the standard is directed at single-family development, but also argued that PDS has the discretion not to require the noise mitigation based on the use of the word “may” instead of “must” in SCC 10.01.070(3). The Hearing Examiner agrees with the Applicant’s interpretation of the regulation. PDS does have the authority to require the noise mitigation for new residential developments located along I-5; however, the requirements can be reduced or waived based on an analysis of the factors set forth in SCC 10.01.070(3) (a) through (c). Here, based on the testimony of Paul MacCready, PDS did not require compliance with the 45 dB(A) standard. Accordingly, the Hearing Examiner finds that the PDS determined that the noise standards set forth in SCC 10.01.070 do not apply. No appeal of that determination was filed; therefore, the Hearing Examiner finds that there is no issue before the Examiner related to the County’s noise standards.

Based on the foregoing Findings of Fact, the Hearing Examiner finds that the proposed urban center meets the County’s development and zoning regulations.

14. **The proposed agreement provides for adequate mitigation of adverse environmental impacts; provided that if the development is not defined at a project level, the agreement shall provide a process for evaluating and appropriately mitigating such impacts in the future:**

Here, the development agreement presents more than a conceptual plan. The development is defined at the project level. The Oak Heights Urban Center Development, as conditioned, provides adequate mitigation for adverse environmental impacts pursuant to the County’s development regulations set forth in Title 30 SCC.

Based on his review of the project as conditioned and in light of the disclosures made in the SEPA Checklist, the SEPA Responsible Official issued a determined of nonsignificance (DNS). No appeal was filed. Accordingly, the Hearing Examiner finds that the third criterion for approval of the development agreement has been met.

15. **The proposed agreement reserves authority to impose new or different regulations to the extent required by a serious threat to public health and safety.**

The Development Agreement contains a provision in Paragraph 5.1 which states that:

“...the proposed development shall not vest against new development regulations to the extent the application of such new regulations to the Project is specifically required by a serious threat to public health and safety.”

The Hearing Examiner finds that this statement, if amended to read as follows, complies with this requirement:

“... the proposed development shall not vest against new or different development regulations to the extent the application of such new regulations to the Project is specifically required by a serious threat to public health and safety.”

See, SCC 30.75.100(4).
16. Having reviewed the terms and conditions of the proposed Development Agreement and the provisions of SCC 30.34A.170, SCC 30.34A.180 and Chapter 30.75 SCC, the Hearing Examiner finds that the Agreement should be further amended to reflect and incorporate the approved Urban Center Plan as conditioned. Accordingly, the Examiner has included revisions to the Development Agreement to bring it into conformance with recommended final Plan, pre-conditions and conditions. (See, Attachment 1). The Examiner recommends that the County Council adopt these changes to the Development Agreement as part of its approval of the Project.

17. Based on a preponderance of the evidence in the record and the foregoing Findings of Fact, the Hearing Examiner finds that the proposal meets all of the requirements of Title 30 SCC and, in particular, finds the Development Agreement meets the requirements of SCC 30.75.100, and should be approved, subject to the recommended conditions.

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

CONCLUSIONS OF LAW

1. The Examiner has jurisdiction over this Urban Center project application pursuant to Chapter 30.34A SCC, 30.75.020 and SCC 30.72.020.

2. Pursuant to SCC 30.75.100, the hearing examiner concludes that, the Urban Center Plan as conditioned and the Development Agreement, as amended, is compatible with the goals and policies of the comprehensive plan; is consistent with applicable development regulations; provides for adequate mitigation of adverse environmental impacts; and if amended as described in Attachment 1, reserves authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

3. Adequate public and/or private services and utilities exist to serve the proposal.

4. Based upon the entire record and the Findings of Fact herein, the Examiner concludes that the application has met all of the required approval criteria for an Urban Center project.

5. The urban center development application should be granted by the Council.

6. If approved with the recommended pre-conditions 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 AND ORDER

The proposed Urban Center Development agreement is RECOMMENDED FOR APPROVAL by the County Council, subject to the following PRE-CONDITIONS and CONDITIONS:
PRE-CONDITIONS

A. The Development Agreement shall be amended as shown in Attachment 1 to this Recommendation. The Development Agreement shall be executed by the parties and recorded with the Auditor.

B. A Record of Developer's Chapter 30.66B SCC Mitigation Obligations shall have been recorded with the County Auditor.

C. The Voluntary Trip Reduction Program Agreement shall be approved by the County Engineer and recorded SCC 30.66B.070.

CONDITIONS

A. The Urban Center Development plan received by PDS on 5/10/2012 and 7/17/2012 (Exhibit B.1), as amended, shall be the official Urban Center Development plan. SCC 30.34A.180(3)(b) governs changes to the Urban Center Development plans.

B. The Urban Center Development shall comply with all agreed conditions of the proposed Development Agreement, as amended (Attachment 1, hereto), and shall be signed by the Applicant and the County and recorded with the County Auditor.

C. Prior to issuance of any development/construction permits by the County:
   
i. All construction shall comply with the requirements of the urban center standards and as shown in Exhibit B.1 approved pursuant to Condition A, above.

   ii. The developer shall pay the County $491.05 per multi-family unit as mitigation for parks or recreation impacts within the Nakeeta Beach park service area of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued five years after the completeness date of the subject application. After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance.

   iii. The Applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area "D" in the amount of $380,106.54 ($992.45/living unit). This payment may be made proportionately with each building permit. Credit for certain expenditures may be allowed against said payments to the extent authorized by County Code.

   iv. The Applicant shall make a payment to Snohomish County for Transportation Demand Management measures within Transportation Service Area "D" in the amount of $47,888.75 ($125.04/living unit). This payment may be made proportionately with each building permit.

   v. 23 feet shall have been deeded as right-of-way along the property frontage from the centerline of the right-of-way.

   vi. The amount of $213.70 shall be paid to the County for the installation of striping.
D. Prior to any Certificate of Occupancy or Final Inspection:

i. Urban frontage improvements shall be constructed along the parcel's frontage on Ash Way in accordance with the County Code requirements and EDDS, and approved by the County Engineer, consisting of:

- Asphalt concrete pavement consisting of 29 feet width from right-of-way centerline to the face of curb;
- Cement concrete curb and gutter;
- Planter strip with a width of five (5) feet; and
- Cement concrete sidewalk with a width of seven (7) feet.

In addition, a bicycle lane shall be provided along the development's frontage on Ash way in accordance with the County Code requirements and EDDS, and approved by the County Engineer.

ii. The TDM Agreement shall be signed by the County Engineer and recorded with the Auditor. The features on the approved TDM plan shall be constructed and/or installed.

iii. Proof of compliance with the developer's Transportation Demand Management obligation shall have been provided.

iv. All construction shall comply with the requirements of the urban center standards and as shown in Exhibit B.1 approved pursuant to Condition A, above.

v. All construction shall comply with the Development Agreement (Attachment 1) as recorded with the County Auditor.

E. Any revision which substantially alters the approved Urban Center Development plan is no longer vested and re-submittal of a complete application is required pursuant to SCC 30.34A.170. Revisions not requiring re-submittal are vested to the regulations in place as of the date the original application was submitted. Revisions after approval of the development which cause an increase in traffic generated by the proposed development shall be reviewed pursuant to SCC 30.66B.075.

F. This Urban Center Development approval shall expire after six years from the date of recording unless a complete application for construction of a project or for installation of the main roads and utilities has been submitted to the department.

Nothing in this agreement 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 30th day of November, 2012.

Millie M. Judge, Hearing Examiner
EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

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

Reconsideration

Any party of record may request reconsideration by the Examiner 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 DECEMBER 10, 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.

Review/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 at the Public Assistance Counter of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: 3000 Rockefeller Avenue M/S 604, Everett, WA 98201) on or before DECEMBER 14, 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.

COUNTY COUNCIL APPROVAL

If no review of the Hearing Examiner's recommendation is filed, PDS shall forward the Hearing Examiner's Recommendation and proposed Ordinance to the County Council for a closed record hearing. The Department and Applicant may make a presentation to the Council about the Recommendation and proposed Ordinance to the Council. However, no new evidence or testimony may be introduced at a closed record hearing. (SCC 30.75.020)

In accordance with SCC 30.75.100, the County Council may adopt a development agreement upon passage of an ordinance with findings that:

(a) The proposed development agreement is compatible with the goals and policies of the comprehensive plan;
(b) The proposed development agreement is consistent with applicable development regulations;
(c) The proposed development agreement provides for adequate mitigation of adverse environmental impacts; and
(d) The proposed development agreement reserves authority to impose new or different regulations to the extent required by a serious threat to public health and safety.
Staff Distribution:

Department of Planning and Development Services: Paul MacCready, Howard Knight, Tom Rowe

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.
PRECONDITION NOTICE

This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed with PDS within one calendar year from the date the Development Agreement is executed and recorded.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).

2. One six-month period will be allowed for resubmittal of any required document(s) which is (are) returned to the Applicant for correction.

3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:

   A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and

   B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

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

Certified by:

__________________________________________
(Name)

__________________________________________
(Title)

Nothing in this approval excuses the Applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.
PARTY OF RECORDS REGISTER
12-100479-LU OAK HEIGHTS URBAN
CENTER
HEARING – NOV 14, 2012
1:00 PM

SNO CO PLANNING & DEVLAND USE
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EVERETT WA 98201

SSA ACOUSTICS
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SEATTLE WA 98109

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ATTACHMENT I

DEVELOPMENT AGREEMENT

GRE ASH WAY, LLC AND SNOHOMISH COUNTY

Oak Heights Urban Center Project

This DEVELOPMENT AGREEMENT ("Agreement") between GRE ASH WAY, LLC, a Washington limited liability company ("Owner") and SNOHOMISH COUNTY, WASHINGTON ("County"), a political subdivision of the State of Washington, is entered into pursuant to the authority of RCW 36.70B.170 through .210, under which a local government may enter into a development agreement with an entity having ownership or control of real property within its jurisdiction.

A development agreement must be approved by ordinance or resolution after a public hearing. A public hearing for this Development Agreement was held on November 14, 2012. The County Council approved this Development Agreement by Ordinance ___ on ___, 2012. (Exhibit C) The adoption of this Agreement constitutes a final land use action pursuant to RCW 36.70C.020.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and the long-term benefit to both the County and Owner, the parties hereby agree as follows:

1. Property. The property subject to this Agreement (the "Property") is that certain property located in Snohomish County, Washington, and more particularly described in Exhibit A attached hereto. The Property is bounded by Ash Way on the west and Interstate 5 on the east, with a total site area of approximately 8.05 acres. The Property is located within the MUGA and has been designated and zoned as an Urban Center by the County.

2. Project. Owner proposes to develop on the Property a multi-family housing project including approximately 383 dwelling units and approximately 408 parking stalls (the "Project"). The Project includes the new construction of five 5-story multifamily residential buildings, one Leasing and Recreation Facility with swimming pool and all related parking, drives, on-site recreation areas and right-of-way improvements along the eastern boundary of Ash Way adjacent to the Property.

3. Land Use Approvals. The following land use approvals and reviews have been issued and completed for the Project by the County. The following represent all such land use reviews and approvals by the County necessary for construction, development and operation of the Project:

3.1—Urban Center Development Plan. Owner has filed an application (the "Application") for approval of an Urban Center Development Plan for the Project, pursuant
to SCC 30.34A.170. The County has reviewed the Application under the relevant Code criteria, including SCC 30.34A.180(2)(c), and has approved the Urban Center Development Plan (the "Plan") for the Project subject to the Preconditions and Conditions set forth in the Hearing Examiner's Recommendation issued on November 29, 2012. The Plan includes the Application, site plan and other supporting documents and reports set forth in Exhibits A.1 through K.6 entered into the record in this matter before the Hearing Examiner, as well as the Hearing Examiner's Recommendation set forth therein. The urban center development plan received by PDS on 5/10/2012 and 7/17/2012 (Exhibit B.1), as amended, shall be the official urban center development site plan. SCC 30.34A.180(3)(b) governs changes to the urban center development plans. The Plan is incorporated herein and made a part hereof by this reference. The approved Plan includes the use of the parking reduction allowance, as set forth in SCC 30.26.040(3). Revisions to the Plan shall be processed in accordance with SCC 30.34A.180(3)(b). Any such Revisions not requiring re-submittal may be administratively approved subject to the provisions of SCC 30.34A.180(3)(b) and SCC 30.75.210 without the need to amend this Agreement.

3.2 SEPA Review. The County has reviewed the environmental impacts of the Project and has issued a Determination of Nonsignificance dated July 29, 2012 (the “DNS”) in accordance with the requirements of the State Environmental Policy Act, RCW 43.21C. The DNS was not appealed.

3.3 Municipal Agreement. Pursuant to SCC 30.34A.180(1)(a), Owner has negotiated and entered into a Municipal Agreement with the City of Lynnwood, Washington, the city in whose MUGA the Project is located. Accordingly, the County is authorized to enter into this Agreement under SCC 30.34A.180(1)(b). A true and correct copy of the Municipal Agreement is set forth in Exhibit B attached hereto.

4. Allowable Development. The maximum allowable development for the Project shall be as set forth in chapter 30.34A SCC ("Allowable Development"). The Project (and its Plan) may be revised after the Effective Date in accordance with the Development Regulations to which the Project is vested up to the Allowable Development, subject to Paragraph 5 of this Agreement. Any such revision not requiring a re-submittal may be approved by the Director of the Department of Planning and Development Services, subject to the provisions of SCC 30.34A.180(3)(b) and SCC 30.75.210, without the need to amend this Agreement. Upon any revision to the Project and its Plan, the parties hereto may record a document updating this Agreement to reflect such amendment. No approval of the County Council shall be required for a revision not requiring a re-submittal to the Project and its Plan, subject to the provisions of SCC 30.34A.180(3)(b) and SCC 30.75.210.

5. Vesting.

5.1 Vesting of Development Regulations. Pursuant to RCW 36.70B.180, the Property is hereby vested to all development regulations (as that term is defined in RCW 36.70A.030(7)) in effect on the Vesting Date (the "Development Regulations"). Except as set forth in Section 6.1 below, the Vesting Date is January 23, 2012, the date of submittal of the complete Application, consistent with SCC 30.34A.170(6). Development of the Property shall not be subject, during the Term of this Agreement, to any amendments or replacements of the Development Regulations, except
as set forth herein. These are rights vested under state law for purposes of RCW 36.70A.300(3)(a) and RCW 36.70B.180.

5.2 Police Power. Nothing herein relieves Owner of any obligations it may have during the Term to comply with state or federal laws or regulations of any kind. As provided by RCW 36.70B.170(4), the proposed development shall not vest against new or different development regulations to the extent the application of such new or different regulations to the Project are specifically required by a serious threat to public health and safety.

5.3 Term of Vesting. Pursuant to SCC 30.34A.180(3)(c), the vesting described herein shall apply for six (6) years from the Effective Date of this Agreement (the “Term” of the Agreement).

5.4 Optional Regulations. During the Term of this Agreement and to the extent permitted by law, Owner and County may jointly elect to provide for development of the Property or portions thereof in accordance with new code provisions or generally applicable standards for that subject adopted after the date of execution of this Agreement, without the obligation to bring other portions of the Property into conformance with newly-adopted code or regulations.

5.45 Stormwater Regulations. The Project is vested to the stormwater regulations of the County in effect as of the date of application for the Urban Center approval for the Project, which date of vesting is January 23, 2012.

5.56 Effective Date. The Effective Date of this Agreement shall be the date on which this Agreement has been executed by both parties, unless an appeal of this Agreement is filed. If an appeal of this Agreement is filed, then the Effective Date shall be the date on which all such appeals have been fully and finally resolved.

6. Project Mitigation. Compliance by Owner with the following obligations shall constitute full and complete mitigation of all impacts related to the Project.

6.1 Transportation. The County has issued a concurrency determination for the Project dated March 12, 2012. This Project is vested to the requirements of the versions of Title 24 SCC and Chapter 30.66B SCC that were in effect as of April 21, 2009. As a condition to development of the Project, Owner agrees to implement the following transportation mitigation:

A. As a Pre-condition, to be completed within one year from the date of execution and recording of this Agreement:

1) A record of developer’s Chapter 30.66B SCC mitigation obligations shall have been recorded with the County Auditor.

2) The voluntary trip reduction program agreement shall be approved by the County Engineer and recorded SCC 30.66B.070.
B. As a Condition, prior to issuance of any development/construction permits by the County:

1) The applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area “D” in the amount of $380,106.54 ($992.45/living unit). This payment may be made proportionately with each building permit. Credit for certain expenditures may be allowed against said payments to the extent authorized by County code.

2) The applicant shall make a payment to Snohomish County for Transportation Demand Management measures within Transportation Service Area “D” in the amount of $47,888.75 ($175.04/living unit). This payment may be made proportionately with each building permit.

3) 23 feet shall have been deeded as right-of-way along the property frontage from the centerline of the right-of-way.

4) The amount of $213.70 shall be paid to the County for the installation of striping.

C. As a Condition, prior to any Certificate of Occupancy or Final Inspection:

1) Urban frontage improvements shall be constructed along the parcel’s frontage on Ash Way in accordance with the County Code requirements and EDDS, and approved by the County Engineer, consisting of:
   - Asphalt concrete pavement consisting of 29 feet width from right-of-way centerline to the face of curb;
   - Cement concrete curb and gutter;
   - Planter strip with a width of five (5) feet; and
   - Cement concrete sidewalk with a width of seven (7) feet.

2) In addition, a bicycle lane shall be provided along the development’s frontage on Ash Way in accordance with the County Code requirements and EDDS, and approved by the County Engineer.

3) The TDM Agreement shall be signed by the County Engineer and recorded with the Auditor. The features on the approved TDM plan shall be constructed and/or installed.

4) Proof of compliance with the developer’s Transportation Demand Management obligation shall have been provided.
5) All construction shall comply with the requirements of the Plan as shown in Exhibit B.1 and the urban centers standards set forth in Ch. 30.34A, SCC.

a. Owner shall pay a transportation mitigation fee pursuant to Chapter 30.66B SCC. Owner shall receive a credit for the value of the dedications of land and other contributions of Transportation System Improvements described herein.

b. Owner shall enter into a Voluntary Developer Trip Reduction Program Agreement in the form approved under the Application.

c. Owner shall construct half-street frontage improvements on Ash-Way along the western boundary of the Property.

6.2 Open Space/Parks. Open Space will be provided in accordance with the applicable provisions of the Urban Center zone, SCC 20.34A.070 and as shown in the approved Plan. In addition, parks mitigation fees will be paid in accordance with Chapter 30.66A SCC, in the amount of $491.05 per multifamily dwelling unit in the Project for impacts to parks and recreation within the Nakeeta Beach Park Service Area. Payment of these mitigation fees is required prior to building permit issuance, provided that the building permit is issued five years after the completeness date of the subject application. After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance.

6.3 Stormwater. Owner shall install stormwater quantity and quality control facilities as shown in the approved Plan in accordance with the provisions of the 2010 Snohomish County Drainage Manual, to which the Project is vested.

6.4 Critical Areas. The County has determined that the Plan fully conforms to the provisions of Chapter 30.62 SCC and other relevant Code provisions with respect to critical areas on the Property. Mitigation for impacts to critical areas shall be made as provided in the approved Plan.

6.5 Schools. In accordance with the provisions of Chapter 30.66C SCC, no school impact fees are due in connection with development of the Project.

7. Utilities.

7.1 Sanitary Sewer System. Sanitary sewer service for the Project shall be provided by the Alderwood Water & Sewer District (the "District"). The District
has certified the availability of adequate sanitary sewer service for the Project by certificate dated October 7, 2011 (the “Sewer Certificate”). For as long as the Sewer Certificate remains valid and in force, the County shall not deny the issuance of any permits or approvals related to the Project by reason of lack of adequate sanitary sewer capacity.

7.2 Water Service. Water service for the Project shall be provided by the District. The District has certified the availability of adequate domestic water service for the Project by certificate dated October 7, 2011 (the “Water Certificate”). For as long as the Water Certificate remains valid and in force, the County shall not deny the issuance of any permits or approvals related to the Project by reason of lack of adequate domestic water flow or capacity.

7.3 Storm Sewer. Storm Sewer service for the Project shall be provided by the County. The County shall provide adequate capacity to provide transmission of storm sewer flows to accommodate the Project, and the County shall not deny the issuance of any permits or approvals related to the Project by reason of lack of such adequate capacity.


8.1 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington.

8.2 Binding on Successors; Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Owner and upon the County. The parties acknowledge that development of the Property may involve sale and assignment of all or portions of the Property to other parties who will, subject to this Agreement, own, develop and/or occupy portions of the Property and buildings thereon. Upon such assignment, the assignee shall be entitled to all interests and rights and be subject to all obligations under this Agreement, and Owner shall thereafter be released of liability hereunder as to that portion of the Property so transferred. This Agreement shall be recorded against the Property as a covenant running with the land and shall be binding on Owner, its successors and assigns.

8.3 Interpretation; Severability. The parties intend this Agreement to be interpreted to the full extent authorized by law as an exercise of the County’s authority to enter into such agreements, and this Agreement shall be construed to reserve to the County only that police power authority which is prohibited by law from being subject to a mutual agreement with consideration. If any provisions of this Agreement are determined to be unenforceable or invalid by a court of competent jurisdiction, then this Agreement shall thereafter be modified to implement the intent of the parties to the maximum extent allowable under law. If a court finds unenforceability or invalidity of any portion of this Agreement, the parties agree to seek diligently to modify the Agreement consistent with the court decision, and no party shall undertake any actions inconsistent with the intent of this Agreement until the modification to this Agreement
has been completed. To provide an expeditious and fair process, the parties shall meet in
good faith to settle the dispute within 45 days after such a court ruling. The parties during
said meeting will also seek to agree upon a single arbitrator if the parties do not
voluntarily settle the dispute. If the parties cannot agree on a single arbitrator, then the
arbitration will be referred to the Judicial Dispute Resolution (JDR) in Seattle, WA, but if
JDR is not in existence or not able to hear the matter, then either the County or Owner
may apply to the Washington Superior Court for appointment of a single arbitrator
pursuant to RCW 7.04A.050. If the parties do not mutually agree to modifications within
forty-five (45) days after the court ruling, then either party may initiate the dispute
resolution proceedings for determination of the modifications which implement the intent
of this Agreement and the court decision. The parties agree to settle the dispute over
these matters by arbitration by a single arbitrator, and judgment on the award rendered by
the arbitrator may be entered in any court having jurisdiction thereof. The arbitrator shall
establish the procedures and allow presentation of written and oral information, but shall
render its final decision within thirty (30) days after the matter is referred to arbitration.
The parties shall pay equally the cost of the arbitration, but each party shall pay its own
attorney's fees. The arbitrator's decision shall be in writing and specifically set forth
those modifications necessary to implement the parties' intent consistent with the court
invalidation or unenforceability decision. Dispute resolution on the subjects covered by
this Section 8.3 is the exclusive remedy of the parties. This Agreement has been
reviewed and revised by legal counsel for all parties and no presumption or rule that
ambiguity shall be construed against the party drafting the document shall apply to the
interpretation or enforcement of this Agreement

8.4 **Authority.** The County and Owner each represent and warrant it
has the respective power and authority, and is duly authorized, to execute, deliver and
perform its obligations under this Agreement.

8.5 **Time of Essence.** Time is of the essence of this Agreement in
every provision hereof.

8.6 **Integration.** This Agreement represents the entire agreement of the
parties with respect to the subject matter hereof. There are no other agreements, oral or
written, except as expressly set forth herein. This Agreement may not be amended except
by an instrument in writing executed by the parties hereto.

8.7 **Default and Remedies.** No party shall be in default under this
Agreement unless it has failed to perform under this Agreement for a period of thirty (30)
days after receipt of written notice of default from the other party. Each notice of default
shall specify the nature of the alleged default and the manner in which the default may be
cured satisfactorily. If the nature of the alleged default is such that it cannot be
reasonably cured within the thirty (30) day period, then commencement of the cure
within such time period and the diligent prosecution to completion of the cure shall be
deemed a cure. Any party not in default under this Agreement shall have all rights and
remedies provided by law including without limitation damages, specific performance or
writs to compel performance or require action consistent with this Agreement. The
prevailing party (or the substantially prevailing party if no one party prevails entirely) shall be entitled to reasonable attorneys' fees and costs.

8.9 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties hereto and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

8.10 Recording. This Agreement, upon execution by the parties and approval of the Agreement by ordinance of the County Council, shall be recorded with the Real Property Records Division of the Snohomish County Auditor.

8.11 Notice. All notices and demands of any kind which a party under this Agreement requires or desires to give to any other party shall be in writing and either (i) delivered personally, (ii) sent by reputable overnight courier delivery service, such as Federal Express, or (iii) deposited in the U.S. mail, certified mail postage prepaid, return receipt requested, and addressed as follows:

If to the County: Snohomish County Director, Department of Planning and Development Services

Everett, Washington 98201
Attn: 

with copy to: Office of the Prosecuting Attorney Snohomish County, Washington Robert J. Drewell Building 8th Floor – M/S 504 3000 Rockefeller Avenue Everett, Washington 98201-4060

If to Owner: GRE Ash Way, LLC

with a copy to: McCullough Hill, PS
701 Fifth Avenue
Suite 7220
Seattle, WA 98104
Attn: John C. McCullough

Notice by hand delivery shall be effective upon receipt. If sent by overnight courier service, notice shall be deemed delivered one (1) business day after sent. If deposited in the mail, notice shall be deemed delivered three (3) business days after deposited. Any party at any time by notice to the other party may designate a different address or person to which such notice or communication shall be given.
DATED this ___ day of ____________________, 2012__.

[Signatures are provided on the following pages.]
COUNTY:

SNOHOMISH COUNTY,
a political subdivision of the State of Washington

By: Aaron G. Reardon
Its: County Executive

Approved as to Form:
_____________________, Prosecuting Attorney

By: ______________________________________
Deputy Prosecuting Attorney

OWNER:

GRE ASH WAY, LLC,
a Washington limited liability company

By: ______________________
Its: ______________________
STATE OF WASHINGTON )
COUNTY OF SNOHOMISH ) ss.

On this ______ day of __________, 201__2, before me, a Notary Public in and for the State of Washington, personally appeared __________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that ______ was authorized to execute the instrument, and acknowledged it as the __________________ of the Snohomish County, to be the free and voluntary act and deed of said county for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

______________________________
NOTARY PUBLIC in and for the State of Washington, residing at ____________
My appointment expires ____________
Print Name ____________________
STATE OF WASHINGTON  
COUNTY OF KING  

On this ______ day of ___________, 2012__, before me, a Notary Public in and for the State of Washington, personally appeared __________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument, on oath stated that ______ was authorized to execute the instrument, and acknowledged it as the ____________ of GRE ASH WAY, LLC, to be the free and voluntary act and deed of said limited liability company for the uses and purposes mentioned in the instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

NOTARY PUBLIC in and for the State of Washington, residing at ________________
My appointment expires __________________
Print Name __________________________
### LIST OF EXHIBITS

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13
SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ORDINANCE NO. 13-_____

AN ORDINANCE RELATING TO THE ADOPTION OF THE HEARING EXAMINER'S
RECOMMENDATION APPROVING THE OAK HEIGHTS URBAN CENTER AND
AUTHORIZING THE EXECUTIVE TO SIGN A DEVELOPMENT AGREEMENT WITH GRE ASH
WAY, LLC GOVERNING DEVELOPMENT OF THE URBAN CENTER

WHEREAS, RCW 36.70B.170 authorizes the use of development agreements that
establish development standards and other provisions applicable to, governing and vesting the
development, use, and mitigation of real property; and

WHEREAS, Chapter 30.34A.180(1) of the Snohomish County Code authorizes urban
center developments to be approved using the development agreement process; and

WHEREAS, Chapter 30.75 of the Snohomish County Code establishes the process for
approving development agreements; and

WHEREAS, GRE Ash Way, LLC (the “Applicant”), intends to develop an urban center
project within the Urban Center (UC) Zone on Ash Way near 164th Street, known as the Oak
Heights Urban Center; and

WHEREAS, pursuant to SCC 30.34A.180(1)(a), the Applicant is required to enter into
negotiations with the City of Lynnwood, in whose urban growth area the proposed development
will be located; and

WHEREAS, the Applicant entered into a Municipal Agreement with the City of Lynnwood
on October 8, 2012 (Exhibit A to this Ordinance), confirming that the proposed urban center was
informed by the City of Lynnwood’s City Center and Multi-Family Design Guidelines and other
City regulations, and the City supports the project; and

WHEREAS, the urban center development application has been reviewed by PDS staff,
who negotiated a development agreement with the Applicant pursuant to SCC
30.34A.180(1)(b); and

WHEREAS, the Hearing Examiner held a public hearing on the development agreement
and urban center development proposal on November 14, 2012 pursuant to SCC 30.75.020(2),
and issued a recommendation on November 30, 2012, that the County Council approve the
project and development agreement, subject to certain amendments, pre-conditions and
conditions (Exhibit B to this Ordinance); and

WHEREAS, the Hearing Examiner determined by a preponderance of the evidence that,
in light of the entire record, the Oak Heights Urban Center project as conditioned, meets the
decision criteria set forth in SCC 30.34A.180; and
WHEREAS, no party has requested review of the Hearing Examiner’s Recommendation and the County Council held a closed record hearing on the recommendation on January ___, 2013; and

WHEREAS, the County Council has reviewed the record and the proposed Oak Heights Urban Center project as conditioned, and finds that it meets the requirements of Chapter 30.34A SCC, and other applicable provisions of Title 30 SCC; and

WHEREAS, the County Council has reviewed the Development Agreement (Attachment 1 to Exhibit B), as amended by recommendation of the Hearing Examiner, and finds that those amendments should be adopted, and the Development Agreement should be approved as amended;

NOW, THEREFORE, BE IT ORDAINED:

Section 1. The foregoing recitals are incorporated herein as if set forth in full. The Development Agreement with GRE Ash Way, LLC relating to its Oak Heights Urban Center development, as amended by the Hearing Examiner’s recommendation is attached hereto and incorporated herein by this reference as Exhibit C.

Section 2. The Council finds that the Development Agreement requires the Applicant, GRE Ash Way, LLC, to construct an urban center development that: (1) is compatible with the goals and policies of the Snohomish County GMA Comprehensive Plan; (2) is consistent with the requirements of Title 30 SCC; (3) provides for adequate mitigation of adverse environmental impacts; and (4) reserves the authority to the County to impose new or different regulations to the extent required by a serious threat to public health and safety in conformance with SCC 30.75.100.


Section 4. The Snohomish County Council hereby approves the Development Agreement between GRE Ash Way, LLC and Snohomish County for the development and construction of the Oak Heights Urban Center and directs the Executive to sign the Development Agreement attached to this ordinance as Exhibit C.

Section 5. Urban center project approval expires six years from the date of approval unless a complete application for construction of a project or for installation of the main roads and utilities has been submitted to the Planning and Development Services Department.

PASSED this ___ day of ______________________, 201__.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

__________
Council Chair

ATTEST:

__________
Asst. Clerk of the Council
( ) APPROVED
( ) VETOED
( ) EMERGENCY

DATE: ________________

ATTEST:

____________________________
Aaron G. Reardon, County Executive

Approved as to form only:

____________________________
Deputy Prosecuting Attorney