From:	Tom McCormick
To:	Davis, Kris
Cc:	Otten, Matthew; Kisielius, Laura; Cummings, Jason; Gary Huff; Douglas Luetjen; Jacque St. Romain; J. Dino Vasquez; Mock, Barb; Countryman, Ryan; MacCready, Paul; Debbie Tarry; Eric Faison
Subject:	My Pre-Hearing Memorandum 2 of 2
Date:	Wednesday, May 16, 2018 11:30:10 AM
Attachments:	Tom McCormick Pre-Hearing Memo 2 of 2.pdf

Kris, could you please provide the attached document to the hearing examiner. It's my Pre-Hearing Memorandum 2 of 2.

Thank you.

Tom McCormick

I-408 McCormick, Tom -- May 16, 2018
PFN: 11 101457 LU

TO: The Office of the Snohomish County Hearing Examiner
FROM: Tom McCormick
DATE: May 16, 2018

RE: Request to DENY WITH PREJUDICE the applications submitted by BSRE to develop Point Wells as an Urban Center

CC: Matt Otten, Laura Kisielius, Jason Cummings - Snohomish County Prosecuting Attorneys Office
CC: Gary Huff, Douglas Luetjen, Jacque St. Romain, J. Dino Vasquez - Karr Tuttle, Attorneys for BSRE
CC: Barb Mock, Paul MacCready, Ryan Countryman - PDS
CC: Debbie Tarry - City of Shoreline
CC: Eric Faison - Town of Woodway

I am a Richmond Beach resident and retired attorney working with others who, like me, oppose the proposed Point Wells Urban Center development. This Pre-Hearing Memorandum addresses the following:

A. Introduction — totality of BSRE's substantial Code conflicts and failures compels denial of BSRE's applications without an EIS
B. Eight substantial Code conflicts and compliance failures that compel denial
    1. Building heights exceeding 90 feet
    2. Landslide hazards — safety trumps vesting — post-OSO regulations apply
    3. Second access road — post-OSO regulations apply — no vesting also because road not in BSRE's 2011 applications
    4. Failure to properly depict and apply the 150-foot buffer from ordinary high-water mark — failure to comply with critical areas regulations
    5. Failure to provide adequate beach parking and a parking study
    6. Failure to provide public roads
    7. Projected traffic >10,000 AWDTs — exceeds Shoreline's 4,000 AWDT cap
    8. Grossly defective traffic study; and no road capacity as acknowledged by BSRE
        a. Inaccurate (inflated) transit ridership assumption
        b. Unreliable gross trip generation
        c. Unreliable north-south trip distribution
        d. Unrealistic construction completion dates cause severe underestimate in non-project traffic growth
        e. The 3-lane Richmond Beach Road quagmire — no capacity — cannot squeeze traffic from a size 16 development into a size 3 road network
C. Conclusion — denial is a just result to protect the public

A. Introduction— totality of BSRE's substantial Code conflicts and failures compels denial of BSRE's applications without an EIS

The County's Department of Planning and Development Services (PDS) recommends denial of BSRE's applications, originally submitted in 2011, and revised most recently on April 27, 2018, to develop Point Wells as an Urban Center. (Exhibits N-1 and N-2)

The standard of review: The Examiner may deny BSRE's applications if the Examiner concludes that BSRE's applications are in "substantial conflict with adopted plans, ordinances, regulations or laws" (SCC 30.61.220, denial without EIS). In addition, the Examiner may deny BSRE's Urban Center development application if it fails to comply with County Code requirements (SCC 30.34A.180(2)(c)(i), negative inference).

Because BSRE's applications are in substantial conflict with County Code and fail to comply with County Code requirements, I respectfully request that the Examiner deny BSRE's applications, with prejudice.

Any one substantial conflict with County Code, or Code compliance failure, provides reason to deny BSRE's applications. But the totality of conflicts and failures is so great as to compel denial.

B. Eight substantial Code conflicts and compliance failures that compel denial

In its Staff Recommendation, PDS presents many Code conflicts and compliance failures, highlighting five: second access road feasibility and compliance; building heights exceeding Code maximums; inadequate parking; failure to address Shoreline Management Regulations; and failures to comply with landslide hazard and critical areas regulations.

Below I identify and discuss several additional conflicts and compliance failures, and in some instances (e.g., landslide hazards) I discuss why PDS was too lenient or applied the wrong standard which diminished the true extent of BSRE's failings.

1. Building heights exceeding 90 feet — violating SCC 30.34A.040(1)

See my Pre-Hearing Memorandum 1 of 2 (90-foot maximum building height), dated May 15, 2018. (Exhibit I-392)

If the Examiner determines to deny BSRE's applications as PDS recommends, I request that the Examiner's decision specifically find that BSRE's applications violate the maximum building height limit in SCC 30.34A.040(1).

If the Examiner determines not to deny BSRE's applications as PDS recommends, but instead remands the applications to PDS for further processing, I request that the Examiner's decision specifically find that BSRE's applications violate the maximum building height limit in SCC 30.34A.040(1), and state that the remand is conditioned on BSRE adhering to the 90-foot maximum building height limit, and adhering to a tiered building height layout as discussed in Exhibit I-222.

2. Landslide hazards — safety trumps vesting — post-OSO regulations apply

The Staff Recommendation concludes that BSRE's applications failed to comply with the County Code's regulations governing landslide hazards. I agree that there are numerous Code conflicts and compliance failures that provide ample grounds for

denying BSRE's applications. But in its analysis, PDS wrongly applied an outdated version of the landslide hazard regulations which diminished the true extent of BSRE's failings.

PDS wrongly concluded that BSRE is vested to the less protective 2007 version of the landslide hazard regulations, then used those regulations to evaluate whether the project satisfies Code requirements. PDS erred. It should have used the more protective post-OSO landslide hazard regulations adopted in 2015 (Ordinance 15-034), which, among other things, redefine "landslide hazard area" to cover a much larger area than under the outdated 2007 version that PDS used.

Under the post-OSO regulations, the landslide hazard area:

> includes lands within … a distance of the toe of the slope equal to two times the height of the slope. SCC 30.91L.040 [current version].

This distance is four times greater than under the outdated 2007 version (SCC 30.62B. 340(2)(a)(ii) [2007]). The significance for the proposed Point Wells development is this: As depicted on the Architectural Plans (Exhibit B-7), the landslide hazard area ends east of the train tracks. If the post-OSA regulations were used instead, the landslide hazard area would extend across the train tracks and into the water.

The post-OSO regulations define an area of landslide risk that is consistent with recent landslide activity near Point Wells. On January 15, 1997, at a location just 1,500 feet north of Point Wells. A large landslide occurred, carrying several cars of a freight train into Puget Sound, and burying the railroad tracks under tons of debris. (Exhibit C-33, page 20)

The post-OSO regulations do more. They require a more comprehensive geotechnical report which, among other things, must include "a hazard analysis and finding of risks associated with geologic hazards and the potential impacts to public safety, the hazard area and the subject property." SCC 30.62B.140(2)(i)(v) [current version]. Such an analysis would be expected to address the risk of a big landslide pushing oil cars off the tracks, or freight cars carrying other hazardous substances, and the need for extra-wide berms and extra-wide retaining walls to protect the residents of the proposed development from derailments. (Cf. Exhibit I-136)

The post-OSA regulations also add notice, disclosure, and covenant requirements for development activities or actions requiring a project permit in a landslide hazard area. SCC 30.62B.l60(4) [current version]. And the regulations impose a revised requirement that must be satisfied before a deviation can be granted to build structures within a landslide hazard area: The geotechnical report must demonstrate that building within a landslide hazardous area "will provide protection commensurate to being located outside of the landslide hazard area." SCC 30.62B.340(1)(b)(i) [current version].

<u>No vesting. Safety trumps vesting.</u> Contrary to PDS's contention, BSRE is *not* vested to the less protective 2007 regulations that were in effect when BSRE submitted its applications in 2011. No developer has a vested right to endanger the public's health

and safety. *Safety always trumps vesting.* " 'There is no such thing as an inherent or vested right to imperil the health or impair the safety of the community.' " Hass v. Kirkland, 78 Wn.2d 929, 931-32, 481 P.2d 9 (1971) (quoting City of Seattle v. Hinckley, 40 Wn. 468, 471, 82 P. 747 (1905)). The post-OSO regulations were adopted to protect public health and safety. As declared in Ordinance 15-034 (Sept. 2, 2015),

> The amendment to the definition [of landslide hazard area] further protects the public health and safety by including areas in the landslide hazard area definition that can potentially be impacted by a landslide event. … The amendments protect the public health and safety by not allowing most development in landslide hazard areas.

Just as a developer does "not have a legitimate expectation that pollution control measures will be frozen in time to outdated or ineffective measures," Snohomish County v. Pollution Control Hearings Board, 386 P.3d 1064 (Wash. 2016)(rejecting Snohomish County's vested rights argument)(internal cite omitted), even more so, a developer does not have a legitimate expectation that landslide hazard regulations designed to protect public health and safety will be frozen in time to outdated or ineffective measures.

It's noteworthy what BSRE acknowledged in its recent submittal:

> an exception to the general [vesting] rule can require compliance with subsequent codes where such codes involve matters of public health. BSRE recognizes the public interest and concern regarding drainage and grading and has therefore voluntarily complied with the provisions of the January 22, 2016 drainage and grading codes. (Exhibit G-13, Response 168 at page 154)

If public health trumps vesting, as BSRE is saying, then surely safety trumps vesting too.

If the Examiner determines to deny BSRE's applications as PDS recommends, I request that the Examiner's decision specifically find that the post-OSO landslide regulations apply to BSRE's applications (not the 2007 regulations), and find that BSRE's applications violate both the 2007 regulations (which PDS wrongly used to evaluate the project) and the post-OSO landslide hazard regulations.

If the Examiner determines not to deny BSRE's applications as PDS recommends, but instead remands the applications to PDS for further processing, I request that the Examiner's decision specifically find that the post-OSO landslide hazard regulations apply to BSRE's applications (not the 2007 regulations), and state that the remand is conditioned on BSRE complying with the post-OSO landslide hazard regulations.

3. Second access road — post-OSO regulations apply — no vesting also because road not in BSRE's 2011 applications

The proposed second access road is in a landslide hazard area. Staff recommends denial because, among other reasons, BSRE's geotechnical report does not

demonstrate how the second access road, first proposed in 2017, satisfies the mandatory criteria for building in a landslide hazard area. I agree with the recommendation of denial. But like I discussed above, I disagree with PDS's use of the less protective 2007 pre-OSO regulations in assessing BSRE's compliance.

Above I explained that because safety trumps vesting, PDS should have used the current (post-OSO) landslide regulations in assessing BSRE's compliance.

For the second access road, there's a separate reason why PDS should have used the current (post-OSO) landslide regulations in assessing BSRE's compliance

It wasn't until last year (2017) that BSRE submitted plans for a second access road. The original applications that it submitted in 2011 did not contain a second access road. For many years, BSRE resisted adding a second access. Its draft Secondary Access Report prepared in 2015, says this:

> Based on a review of the site conditions and constraints mentioned above (and that none of the secondary access options are deemed to be viable), it appears that the provision of a secondary access to the site to provide for public safety and welfare, whether for public vehicular access or restricted to emergency and possibly pedestrian use, is not warranted. The project design includes appropriate measures to allow for the safe, efficient circulation of and access for vehicles, including emergency vehicles, within, to and from the development. (Exhibit C-21, page 7.)

PDS rejected BSRE's stance, and required BSRE to submit plans for a second access. Not until last year (2017), more than six years after it filed its original applications, did BSRE submit plans for a second access road. (Exhibit A-7)

Because it wasn't until 2017 that BSRE submitted its plans for a second access road, the County's landslide hazard regulations in effect at that time (and not the outdated pre-OSO rules) are the ones that PDS should have used in assessing BSRE's compliance or lack thereof. BSRE does not have a vested right to have the 2007 pre-OSO regulations apply to a second road first submitted well after the post-OSO regulations were adopted.

If the Examiner determines to deny BSRE's applications as PDS recommends, I request that the Examiner's decision specifically find that the post-OSO landslide regulations apply to BSRE's applications (not the 2007 regulations), and find that BSRE's applications violate both the 2007 regulations (which PDS wrongly used to evaluate the project) and the post-OSO landslide hazard regulations.

If the Examiner determines not to deny BSRE's applications as PDS recommends, but instead remands the applications to PDS for further processing, I request that the Examiner's decision specifically find that the post-OSO landslide hazard regulations apply to BSRE's applications (not the 2007 regulations), and state that the remand is conditioned on BSRE complying with the post-OSO landslide hazard regulations.

4. Failure to properly depict and apply the 150-foot buffer from ordinary high-water mark — violating critical areas regulations

The Architectural Plans (Exhibit B-7) fail to satisfy Code requirements. They improperly depict the 150-foot Type I critical areas buffer and the 200-foot shoreline management zone, both of which are to be measured from the ordinary high water mark. See Code requirements in SCC 30.41B.040, 30.62A.130, 30.62B.130, 30.62A.320, and 30.67.410 [2010 versions] and the short plat checklist.

As a result of this failure, BSRE's critical areas report (Exhibit C-30) and other reports are inaccurate to the extent they address the 150-foot Type I critical areas buffer and the 200-foot shoreline management zone. And any request for special allowance for Innovative Development Design per SCC 30.62A.350 [2010 version] is flawed to the extent it addresses the 150-foot Type I critical areas buffer and the 200-foot shoreline management zone.

This failure appears to have greatest impact for the south village, where the 150-foot and 200-foot lines should have been drawn roughly 50 feet farther east (inland) than depicted on the Architectural Plans. Five buildings in the south village, which the Architectural Plans show as being outside the 150-foot buffer, would become partially located within the buffer. (Exhibit I-348)

This latest failure by BSRE is inexcusable, and gives cause for the Examiner to deny BSRE's applications. All BSRE needed to do was read SCC 30.62A.320(1)(b)(i) [2010 or current version] before it revised and re-submitted its application materials:

> "the buffer for … marine waters shall be measured from the ordinary high-water mark …."

It is most curious that, after complaining about PDS raising this issue, BSRE says that it "can and will make this change based on the extent to which the OHWM is determinable … the OHWM can be difficult to discern …." (Exhibit O-3, page 10) Does not BSRE know that it has already been discerned? (Exhibit B-7, page 42 —Sheet EX2 "Ordinary High Water Mark (OHWM) Located by DEA Biologist March 2018")

If the Examiner determines to deny BSRE's applications as PDS recommends, I request that the Examiner's decision specifically find that BSRE's applications violate the critical areas regulations by failing to properly depict the buffer lines measured from the ordinary high water mark, and as a result the critical areas report which assumes incorrect buffer lines also violates the critical areas regulations, as do BSRE's plans for Innovative Development Design.

If the Examiner determines not to deny BSRE's applications as PDS recommends, but instead remands the applications to PDS for further processing, I request that the Examiner's decision specifically find that BSRE's applications violate the critical areas regulations by failing to properly depict the buffer lines measured from the ordinary high water mark, and as a result the critical areas report which assumes incorrect buffer lines also violates the critical areas regulations, as do BSRE's plans for Innovative

Development Design, and state that the remand is conditioned on BSRE correcting the buffer lines and the critical areas report and the Innovative Development Design plans to being them into compliance.

5. Failure to provide adequate beach parking and a parking study

"Public beach parking will exist on the south edge of the South Village, behind the Tower 6. This will provide parking for the public …." (Exhibit A-32, page 6) The Architectural Plans (Exhibit B-7, page 10 - sheet A-054.2) show **a measly 20 parking spaces** for the public's beach access, when perhaps 300 or more parking spaces are needed.

BSRE has failed to prepare a parking study as required by SCC 30.34A.050(1)(Table) and (5) [2010].

In the absence of the required parking study, compare the nearby lower parking lot at Richmond Beach Saltwater Park. It has 114 parking stalls for a bare-bones rocky beach. The beachfront at Saltwater Park is about the same length as the development's proposed promenade (0.70 miles). That's where the similarities end. As provided in the BSRE's project narrative:

> The Concept for the Master Plan proposes access to amenities *for public benefit across the site*. As a destination community the main access will be via a formal boulevard to access a beachfront plaza and public space which will include an outdoor amphitheater, shops and restaurant spaces with generous outdoor terraces oriented southwest to capture sun and the waterfront environment. The entire length of the Point Wells beachfront will be accessible via a beachfront esplanade that will provide direct access to the shoreline and the waterfront properties. The restored beach is envisioned as an active continuous open space and varied recreation environment, the wooded areas will provide a backdrop that breaks up the built environment.
>
> The focal point of the shoreline will be the re-purposed 1000' existing pier as an iconic and sculptural structure, offering the unique experience of a recreational public pier and viewing platform. The Master Plan concept envisions the Pier becoming the destination amenity for the development, accessible to the public via a new bridge structure extending from the beachfront plaza. The parking requirement for the pier will be met by street parking stalls located within 300' of the entrance to the bridge structure. (Exhibit 32, pages 30-31, emphasis added)

Considering all the attractive "amenities for public benefit across the site," if Saltwater Park has 114 stalls for access to its bare-bones rocky beach, one would think that the number of dedicated parking stalls at Point Wells for public access to the beach and beachfront esplanade and the pier would be at least two or three times as many, perhaps 300 or more.

Because 20 parking stalls for public beach access is ridiculously low (compare Saltwater Park), and because BSRE has failed to prepare a parking study as required by SCC 30.34A.050(1)(Table) and (5) [2010] that addresses public access to the beach, beachfront esplanade, the pier, etc., the Examiner should deny BSRE's applications. BSRE has been asked on numerous occasions to provide a parking study. There simply is no excuse for not having prepared one by now that covers the above uses.

If the Examiner determines to deny BSRE's applications as PDS recommends, I request that the Examiner's decision specifically find that BSRE's applications violate the parking requirement for public beach access due to a grossly deficient number of parking stalls, and that its applications violate parking regulations by failing to provide a parking study.

If the Examiner determines not to deny BSRE's applications as PDS recommends, but instead remands the applications to PDS for further processing, I request that the Examiner's decision specifically find that BSRE's applications violate the parking requirement for public beach access due to a grossly deficient number of parking stalls, and that its applications violate parking regulations by failing to provide a parking study, and state that the remand is conditioned on BSRE performing a parking study that specifically addresses beach parking for the public and increasing the number of stalls as PDS may determine is appropriate.

6. Failure to provide public roads

BSRE seeks to use private roads within its proposed development instead of public roads. (Exhibit A-30)

SCC 30.24.060 [2010] says that access shall be provided by a public road, except private roads may be approved in unique circumstances. Because SCC 30.24.060 authorizes the County Engineer to approve a private road in lieu of a public road in unique circumstances, SCC 30.24.060 does not truly require a public road. Indeed, that was borne out recently when the County Engineer determined that given the unique circumstances of the Point Wells site and surrounding road systems, County public roads are not required within the development and private roads will be used. (Exhibit K-38, page 5)

To the extent that PDS or the County Engineer (see above) would allow the use of private roads instead of public roads, such determination should be rejected by the Examiner.

Under the SCC 30.34A.180(2)(c)(ii), the Examiner may approve an Urban Center application only if "the proposal is consistent with the comprehensive plan." BSRE's proposal to use private roads within the development, which is part of its Urban Center application, is inconsistent with the County's comprehensive plan [2010], which provides in part:

> Policy TR 1.D.2(b) When a public road is not required, as per TR 1.D.1, a private road or access way shall be permitted where [, among other requirements]: ... it is clearly established that the private road would not attract public use ..."

Under Policy TR 1.D.2(b), a request for private roads *shall* be granted where, among other requirements, it is clearly established that the private roads would not attract public use. By negative inference, Policy TR 1.D.2(b) would preclude the granting of a deviation request to allow use of private roads where the private roads *would* attract public use.

Since the beach and other amenities at Point Wells will attract public use (e.g., beach parking is accessible only via a long winding drive through the development), allowing private roads in the development would be inconsistent with the Comprehensive Plan's Policy TR 1.D.2(b) (negative inference).

I request that the Examiner rule that public roads within the development are required, and that BSRE's use of private roads represents another compliance failure. "[T]he proposal [must be] consistent with the comprehensive plan." SCC 30.34A.180(2)(c)(ii).

If the Examiner determines to deny BSRE's applications as PDS recommends, I request that the Examiner's decision specifically find that public roads within the development are required, and that BSRE's applications violate this requirement.

If the Examiner determines not to deny BSRE's applications as PDS recommends, but instead remands the applications to PDS for further processing, I request that the Examiner's decision specifically find that public roads within the development are required, and that BSRE's applications violate this requirement, and state that the remand is conditioned on BSRE providing public roads within the development.

7. Projected traffic >10,000 AWDTs — exceeds Shoreline's 4,000 AWDT cap

The City of Shoreline has adopted a hard cap traffic limit for Richmond Beach Drive.

The "City designates this as a local street with a maximum capacity of 4,000 vehicles trips per day.". (Exhibit I-403, page 2).

Because BSRE states that traffic from the proposed development will exceed 10,000 AWDTs (Exhibit G-15, page 28), the proposed development is in "substantial conflict with adopted plans, ordinances, regulations or laws" (SCC 30.61.220, denial without EIS), and therefore the Examiner should deny BSRE's applications.

If the Examiner determines to deny BSRE's applications as PDS recommends, I request that the Examiner's decision specifically find that the projected traffic from the development violates the City of Shoreline's 4,000 AWDT trip limit for Richmond Beach Drive.

If the Examiner determines not to deny BSRE's applications as PDS recommends, but instead remands the applications to PDS for further processing, I request that the

Examiner's decision specifically find that the projected traffic from the development violates the City of Shoreline's 4,000 AWDT trip limit for Richmond Beach Drive, and state that the remand is conditioned on BSRE ensuring to the satisfaction of the City of Shoreline and PDS that the 4,000 AWDT trip limit will not be exceeded.

8. Grossly defective traffic study; and no road capacity as acknowledged by BSRE

A traffic study for the proposed development is required by SCC 30.66B.035(1) [2010].

The draft Expanded Traffic Impact Analysis that BSRE submitted in August 2016 (the 2016 ETIA, Exhibit C-28) is grossly defective and unreliable in substantial ways. Consequently, the Examiner should deny BSRE's application for failure to comply with County Code.

In its initial Staff Recommendation (Exhibit N-1), here is what PDS said about the 2016 ETIA:

> [The Snohomish County Department of] Public Works [(DPW or Public Works)] concluded the methodology utilized by the Applicant in the 2016 ETIA "is not well justified nor would [the traffic report and assumptions proposed by the Applicant] be a fair representation of the development" …. Without a traffic report that utilizes realistic assumptions to identify potential impacts from the project, Snohomish County cannot identify the magnitude of impacts that might result from the project or possible mitigation measures to alleviate those impacts. Thus, the County Engineer cannot conclude concurrency requirements are met, cannot conclude adequate provisions for access and mitigation of impacts have been made, and cannot recommend approval to the Hearing Examiner under SCC 30.66B.050(2). (Exhibit N-2)

Both PDS and DPW maintain that the 2016 ETIA continues to be defective. However, in a change of mind, PDS now believes that the traffic study "issues primarily are related to SEPA mitigation rather than code compliance. Therefore, the County will not address this issue in the hearing under SCC 30.61.220, as it relates primarily to the adequacy of the EIS."

I respectfully disagree with PDS.

If a traffic study is substantially defective, it is as if no traffic study has been submitted; in such case, the applicant fails to satisfy SCC 30.66B.035(1), and in turn, SCC 30.66B. 045 (Review of traffic study) and SCC 30.66B.050 (Director of public works' recommendation on approval of development).

Because of a substantial compliance failure (substantially defective traffic study), and BSRE's acknowledgement in its traffic study (2016 ETIA page 88, Exhibit C-28) that Richmond Beach Road lacks the needed capacity for the proposed development, I request that the Examiner deny BSRE's applications.

If the Examiner determines to deny BSRE's applications as PDS recommends, I request that the Examiner's decision specifically find that BSRE's traffic study (2016 ETIA) is grossly defective and noncompliant for the reasons provided below and in the initial Staff Recommendation to deny (Exhibit N-1). Further, I request that the decision specifically find that the three so-called mitigations that BSRE offers to address Richmond Beach Road's lack of capacity, (2016 ETIA page 88, Exhibit C-28) and (Exhibit I-217), are not recognized as valid mitigations.

If the Examiner determines not to deny BSRE's applications as PDS recommends, but instead remands the applications to PDS for further processing, I request that the Examiner's decision specifically find that BSRE's traffic study (2016 ETIA) is grossly defective and noncompliant for the reasons provided below and in the initial Staff Recommendation to deny (Exhibit N-1), and find that the three so-called mitigations that BSRE offers to address Richmond Beach Road's lack of capacity, (2016 ETIA page 88, Exhibit C-28) and (Exhibit I-217), are not recognized as valid mitigations. I further request that the decision state that the remand is conditioned on BSRE preparing an updated traffic study that corrects all the identified defects to PDS's' satisfaction, and providing mitigations to fix any traffic impacts the development may cause, other than the three so-called mitigations that BSRE offered to address Richmond Beach Road's lack of capacity, which are rejected and not recognized as valid mitigations.

Here are some of the failures (many more are identified in Staff's Exhibit N-1):

a. Inaccurate (inflated) transit ridership assumption

The 2016 ETIA assumes that transit ridership will be 15% at full buildout. As stated in the Staff Recommendation (Exhibit N-1, page 27), "the Applicant does not provide adequate documentation to explain why the 2016 ETIA assumes 15% of the development's peak hour trips will use transit. Without this documentation, the assumption cannot be relied on to yield an accurate estimation of traffic impacts generated by the project."

Instead of 15%, a more realistic transit ridership assumption might be 2.4% of average daily trips by vehicles (AWDTs) — this 2.4% figure is based on transit ridership data that I received from King County Metro (Exhibit I-404), and traffic counts that I received from the City of Shoreline (Exhibit I-405). In Richmond Beach, there are 264 average daily boardings and deboardings (Exhibit I-404). Average daily traffic volume at NW Richmond Beach Road between NW 191st and NW 190th is 11,208 AWDTs (Exhibit I-405). Boardings and deboardings (264) ÷ AWDTs (11,208) = 2.36% transit ridership as a percentage of gross AWDTs.

BSRE's unsupported 15% transit ridership assumption improperly reduces the net AWDTs generated by the development, making the traffic study extremely unreliable. Also, the unsupported 15% transit ridership assumption cannot be used to satisfy the required 15% transportation demand management (TDM) measures in SCC 30.34A.080(9) [2010].

b. Unreliable gross trip generation — is it 19,826 AWDTs, 19,110, 18,535 or 14,692?

In 2011, BSRE projected that its proposed development would generate 19,826 gross AWDTs (Exhibit C-14). In 2014, it was 19,110 gross AWDTs. In May 2016, it became 18,535 gross AWDTs. Finally, in August 2016, it plummeted to just 14,692 gross AWDTs (Exhibit C-28).

Particularly troubling is the lack of explanation or support for the revision that occurred between May and August of 2016, resulting in a drop of 3,843 gross AWDTs.

The 14,692 AWDT gross trip generation in the 2016 ETIA is extremely suspect and unreliable, producing a potentially grossly defective traffic study.

c. Unreliable north-south trip distribution — is it 60% going north, 50%, 25% or 10%?

The 2016 ETIA assumes that 25% of Point Wells trips will travel to and from the north, and 75% south. (2016 ETIA page 10, Exhibit C-28)

The 75%/25% split is a relatively recent assumption. In early 2009, the distribution of site-generated trips projected as part of the travel demand modeling process, showed 60% of trips would be to and from locations north of the County line, and 40% to and from locations south of the County line. (Draft Supplemental EIS, Final Docket XIII Comprehensive Plan Amendment-Paramount of Washington LLC, Feb. 2009, page 3.11-26 and Figures 3.11-5 and 3.11-6.)

A few months later in 2009, "a supplemental sensitivity analysis was completed for [the] Final SEIS, in which site-generated trip distribution was assumed to be split approximately 50% to/from the north, and 50% to/from the south." (Final Supplemental EIS, Final Docket XIII Comprehensive Plan Amendment-Paramount of Washington LLC, June 2009, page 3-34).

With the huge changes in the north-south trip distribution over time (60% north, then 50%, then 25%), the trip distribution is extremely suspect and unreliable, producing a potentially grossly defective traffic study. To validate its assumptions, BSRE should have at least conducted multiple origin-destination studies of the travel patterns of current residents residing in the lower Richmond Beach area.

d. Unrealistic construction completion dates cause severe underestimate in non-project traffic growth

The 2016 ETIA assumes construction of the first phase of the proposed development will be completed in 2020. That's impossible of course. So is the 2035 full buildout date. It likely will take five or more years to get a cleanup plan approved by Ecology, and possibly decades to clean up the site (Exhibit I-219). Because the assumed completion dates grossly misrepresent reality, cumulative background and other growth in non-Point Wells traffic volume is grossly inaccurate, making the study's analysis of projected level of service failures extremely inaccurate.

e. The 3-lane Richmond Beach Road quagmire — no capacity — cannot squeeze traffic from a size 16 development into a size 3 road network

Denial of BSRE's applications now will "avoid incurring needless county and applicant expense." (SCC 30.61.220).

Even without an EIS, it is abundantly clear that the main access arterial to Point Wells that runs through the City of Shoreline (Richmond Beach Road) is already at, over, or near failing capacity under the City's LOS "D" standard (intersections) and its 0.90 V/C standard (road segments), especially following the arterial's recent conversion from four lanes to three lanes, which the City Council approved for safety reasons (a "road diet" or "rechannelization").

In its 2016 ETIA, BSRE admitted that these severe failures exist — with its own data showing the failures. (2016 ETIA page 88, Exhibit C-28)

BSRE has offered no valid or possible mitigations that would even marginally address the failures. (Exhibit I-217, BSRE's three proposed mitigations — all are either not valid mitigations or not possible) Yet, BSRE insists on squeezing traffic from a size 16 development into a size 3 road network.

BSRE's proposed development does not make adequate provisions for the "*public health, safety, and general welfare," as required by SCC 30.41B.100(1) to gain approval of a short subdivision application.* See also 30.66B.005. The proposed development would bring traffic to a standstill, and jeopardize the public's safety by blocking the primary route that emergency vehicles travel. The proposed development would be harmful to the public's "general welfare" by creating traffic congestion and delays. Traffic volume would greatly exceed the City of Shoreline's 0.90 V/C standard for arterial segments and its LOS "D" standard for intersections.

C. Conclusion — denial is a just result to protect the public

For all of the above reasons, BSRE's applications should be denied. Denial is a just result that will protect the public from landslide hazards, contested and unsafe roads, a huge development without access to high capacity transit, buildings out of scale with the neighborhood, and more.