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SNOHOMISH COUNTY COUNCIL

BSRE POINT WELLS, LP ,)
Appellant)
v.)
SNOHOMISH COUNTY PLANNING AND)
DEVELOPMENT SERVICES,)
Respondent.)

NO. 11-01457 LU/VAR
11-101461 SM
11-101464 RC
11-101008 LDA
11-101007 SP

BSRE POINT WELLS, LP'S
APPEAL OF AMENDED
DECISION DENYING
EXTENSION AND DENYING
APPLICATIONS WITHOUT
ENVIRONMENTAL IMPACT
STATEMENT

BSRE POINT WELLS, LP ("BSRE"), by and through its undersigned counsel of record,
hereby submits this Appeal of the Amended Decision Denying Extension and Denying
Applications Without Environmental Impact Statement, dated August 3, 2018 (the "Decision").

I. STATEMENT OF FACTS

I. Appellant.

The appellant here is BSRE Point Wells, LP. The address of appellant is:

BSRE Point Wells, LP
c/o Karr Tuttle Campbell
Attn: Douglas Luetjen
701 Fifth Avenue, Suite 3300
Seattle, WA 98104

Exhibit S-1 Appeal Letter Received August 17 2018
PFN: 11-101457 LU

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1
2 **II. Description of the Project.**

3 The Snohomish County Council in 2009 and 2010 revised its comprehensive plan, adopted
4 Chapter 30.34A SCC (the “Urban Center Code”) and designated the land owned by BSRE (“Point
5 Wells”) as an Urban Center. *See* Pre-Hearing Brief of BSRE Point Wells, LP (“Pre-Hearing
6 Brief”). These combined actions satisfied, at least in part, Snohomish County’s (the “County”)
7 obligation pursuant to the Growth Management Act to plan for the accommodation of future
8 population growth within unincorporated portions of the County. *Id.* The designation of Point
9 Wells as an Urban Center largely satisfied the County’s density allocation obligation. *Id.*
10

11 Following the Council’s action, BSRE’s predecessor submitted a complete Urban Center
12 Development Application (and other related supporting applications, collectively, the “Land Use
13 Applications”) for the development of a mixed-use Urban Center including approximately 3,000
14 residential units, approximately 100,000 square feet of commercial space and a large public access
15 beach. *Id.*
16

17 **III. BSRE’s Development and Permit Applications.**

18 BSRE has been working with the County on submitting and revising its applications to
19 develop Point Wells as an Urban Center since 2011. *Id.* Throughout the pendency of the
20 permitting process, BSRE has spent approximately seven years and more than \$10 million in
21 pursuing approval of the Land Use Applications. *See* Pre-Hearing Brief; Douglas Luetjen May
22 24, 2018 Testimony.
23

24 On October 6, 2017, the County submitted a 389-page letter to BSRE, which stated
25 “Snohomish County has completed its review of the Point Wells application materials submitted
26 on April 17, 2017. This letter transmits our review comments.” *See* Exhibit K-31. Immediately
27

1 upon receipt of the letter (the “October 2017 Letter”), BSRE and its consultants began reviewing,
2 analyzing, and developing scopes of work for BSRE’s consultants to address the County’s
3 concerns. BSRE budgeted spent approximately \$1,000,000 in addressing the comments raised in
4 the October 2017 Letter. *See* Pre-Hearing Brief. In the October 2017 Letter, the County requested
5 a response no later than January 8, 2018.
6

7 On November 13, 2017, BSRE, its consultants, and its attorneys met with Planning and
8 Development Services (“PDS”) staff, its department management and a member of the prosecuting
9 attorneys’ office to discuss BSRE’s anticipated response to the October 2017 Letter. *See* Pre-
10 Hearing Brief, Douglas Luetjen May 24, 2018 Testimony. At the meeting, PDS explicitly stated
11 that the January 8 date set forth in the October 2017 Letter was merely a “target” and not a
12 statutorily prescribed deadline. *Id.* When BSRE and its consultants informed the County that the
13 required work could not conceivably be completed by January 8, PDS advised BSRE to submit a
14 letter stating that it could not meet the target and stating the date by which BSRE would respond.
15 *Id.* In addition, PDS clearly and unequivocally stated that there was no reason to suspect that an
16 additional extension request might not be approved. *Id.* This was consistent with the statement
17 made in a May 2, 2017 letter from PDS to BSRE stating that “As the Applicant, if you wish to
18 request a further suspension of the application expiration period pursuant to the above-mentioned
19 Code provision, you should make a request to PDS prior to May 30, 2018, in order for the PDS
20 director to have time to evaluate the request.” *See* Exhibit K-19. BSRE subsequently informed
21 PDS that the revised submittal would be made no later than April 30, 2018. *See* Exhibit G-8.
22
23

24 Despite the statements made by PDS that the January 8 date was simply a “target” and that
25 there was no reason an extension would not be approved, suddenly, on January 9, 2018, the County
26 abruptly changed its position and actively began working to terminate BSRE’s Land Use
27

1 Applications. Exhibit K-33. PDS's decision to deny the very same extension request it represented
2 would be forthcoming and to instead seek a complete termination of the Land Use Applications
3 understandably surprised BSRE, its attorneys and its consultants. BSRE has yet to receive an
4 explanation for PDS's abrupt change in position.
5

6 PDS's termination decision was first conveyed by correspondence dated January 9, 2018
7 from Principal Planner/Project Manager Paul MacCready to BSRE's land use counsel Gary Huff.
8 Exhibit K-33. This letter follows by one day the supposed "target date" for resubmittal. This
9 evidences PDS's intent to terminate the Application as quickly as possible, despite its assurances
10 to the contrary. As reflected in this letter (the "January 2018 Letter"), PDS determined, despite its
11 prior representations to the contrary, that *as of the date of that letter*, BSRE's application *as it then*
12 *existed* could not be approved under Snohomish County Code (the "Code"). PDS therefore began
13 the process outlined in SCC 30.61.220 to terminate BSRE's forthcoming revised submittals
14 without preparation of an environmental impact statement ("EIS"). Nonetheless, PDS in effect
15 invited BSRE to continue to work on its plan revisions and submit them to the Hearing Examiner
16 for consideration. *See* Exhibit K-40.
17

18 As earlier promised, BSRE nonetheless completed its further analyses, revised its plans
19 and fully responded to the matters raised by the County in its October 2017 Letter. *See* Exhibits
20 A-28, A-29, A-30, A-31, A-32, A-33, A-34, B-7, B-8, B-9, C-23, C-24, C-25, C-26, C-27, C-29,
21 C-30, C-31, C-32, C-33, G-12, G-13, G-14, and G-15 (collectively, the "April 2018 Revisions").
22 Following receipt of the April 2018 Revisions, the County issued a Supplemental Staff
23 Recommendation on May 9, 2018 (the "May Recommendation", *see* Exhibit N-2), which was
24 based on an incomplete review of the April 2018 Revisions and identified a new comment not
25 previously included in any prior comments made by PDS.
26
27

1 **IV. The Hearing Examiner**

2 BSRE and Snohomish County Planning and Development Services (PDS) participated in
3 an extensive hearing between May 16, 2018 and May 24, 2018 regarding PDS's recommendation
4 to deny BSRE's permit application due to several alleged substantial conflicts with applicable
5 Snohomish County codes. Additionally, BSRE requested an extension of its permit application
6 from June 30, 2018, the date which PDS set as the expiration of the permit application.¹
7

8 After the completion of live testimony, the parties submitted closing briefs, and proposed
9 findings of facts and conclusions of law. The Hearing Examiner held substantial conflicts existed
10 between BSRE's permit application and applicable codes and therefore denied BSRE's permit
11 application. *See* the Decision, Exhibit R-2. In addition, the Hearing Examiner denied BSRE's
12 request for an extension to cure the alleged conflicts between the permit application and applicable
13 codes. *Id.*
14

15 BSRE submitted a Motion for Reconsideration and Request for Clarification (the "Motion
16 for Reconsideration/Clarification") on July 9, 2018. *See* Exhibit R-1. In response, the Hearing
17 Examiner granted in part and denied in part BSRE's Motion for Reconsideration/Clarification and
18 issued an Amended Decision Denying Extension and Denying Applications Without
19 Environmental Impact Statement. *See* Exhibits R-3, R-4. As directed by the Hearing Examiner,
20 BSRE hereby submits this Appeal to the County Council.
21
22
23
24

25 _____
26 ¹ PDS claims that the termination date of the Land Use Applications was June 30, 2018. However, there is
27 a Request for Code Interpretation pending which may show that June 30, 2018 is not the correct termination date. *See*
Exhibit G-21.

1 buildings in the Urban Plaza must be restricted in height because they are located adjacent to
2 residential zones.

3 However, as noted in F.45, the buildings proposed to be built in the Urban Plaza are
4 adjacent to property which is zoned R-14,500 and Urban Restricted. There is no property which
5 is zoned R-9600, R-7200, T or LDMR adjacent to the buildings proposed to be built by BSRE.
6 Therefore, the plain language of SCC 30.34A.040(2)(a) makes this statute inapplicable to this
7 project. *See Bravo v. Dolsen Cos.*, 125 Wn.2d 745, 752, 888 P.2d 147 (1995) (holding that where
8 statutory language is “plain, free from ambiguity and devoid of uncertainty, there is no room for
9 construction because the legislative intention derives solely from the language of the statute”).
10 The statute does not include any language which would make it applicable to “similar” or
11 “equivalent” zoning designations. Because the buildings proposed to be constructed in the Urban
12 Plaza are not located adjacent to any R-9600, R-7200, T or LDMR zones, SCC 30.34A.040(2)(a)
13 does not apply and no residential setback is required.
14
15

16 Thus, all findings, conclusions and rulings in the Decision which state or imply that SCC
17 30.34A.040(2)(a) is applicable or that a variance is required because of a residential setback reflect
18 an error of law and should be reversed. There can be no substantial conflict with SCC
19 30.34A.040(2)(a) where it does not apply.
20

21 In addition, Finding F.50 should also be reversed because BSRE included the two service
22 buildings in the variance request, as submitted to the Hearing Examiner with its Motion for
23 Reconsideration/Clarification. *See Exhibit R-1, Addendum 2.* SCC 30.72.065(f) specifically
24 allows an applicant to propose changes to the application in response to deficiencies identified in
25 the Decision. The Hearing Examiner ignored all changes proposed by the applicant, thereby
26 committing an error of law and failing to follow the applicable procedures.
27

1 **C. With Respect to all Findings, Conclusions and Rulings Related to the Ordinary**
2 **High Water Mark, the Hearing Examiner Committed an Error of Law and Failed**
3 **to follow the Applicable Procedures, and the Hearing Examiner's Findings and**
4 **Conclusions were not Supported by the Record.**

5 BSRE submits that all findings, conclusions and rulings related to the Ordinary High Water
6 Mark (the "OHWM"), including, but not limited to, F.38, F.97, C.12, C.13, C.14, C.15, C.17, C.73,
7 C.74, C.75, C.78, and ruling 4 reflect an error of law and are not supported by the record. In
8 addition, the Hearing Examiner failed to follow applicable procedure, in contravention of SCC
9 30.72.065(f), by ignoring additional information and changes submitted to the Hearing Examiner
10 in response to the Decision.

11 The Hearing Examiner's Findings and Conclusions of Law which state or imply that BSRE
12 was derelict in not determining the OHWM are not supported by the record. As Gray Rand of
13 David Evans & Associates, Inc. testified on May 23, 2018, the first time that the County claimed
14 BSRE was deficient because the shoreline buffer was not determined based on the OHWM was in
15 its May Recommendation. Exhibit N-2. There, for the first time, the County stated,

16 The 200-foot shoreline jurisdiction is not correctly depicted on plans
17 (see, e.g., sheets Ex-2 & C-010). The Mean Higher High Water
18 (MHHW) was used rather than the Ordinary High Water Mark
19 (OHWM) for determining the landward extend [sic] of shoreline
20 jurisdiction. This may affect limitations on development activities
21 occurring within shoreline jurisdiction such as building heights.

22 Ex. N-2, p. 19. In its April 17, 2018 Staff Recommendation (the "April Recommendation"), sent
23 just two weeks prior to the May Recommendation, the County mentioned no such deficiency.
24 Exhibit N-1. In addition, the October 2017 Letter, only made two comments specific to the
25 OHWM:

26 Urban Center Comment (s): Sheets A-050 and 051 indicate location
27 of an Ordinary High Water Line along the shoreline. Sheets C-201

1 – 203 indicate location of a Line Mean Higher High Water along the
2 shoreline. Do these terms represent the same line?

3 Ex. K-31, p. 24.

4 PDS notes that the drawings for the Urban Center Submittal from
5 March 4, 2011, make interchangeable use of the terms OHWM and
6 Mean Higher High Water (MHHW) (underline added by PDS).
7 Some pages show OHWM and others show MHHW. This latter
8 term, appears to be intended to refer to Mean High Higher Tide
9 (MHHT), which is synonymous with OHWM at salt water locations
per RCW 90.58.030(2)(c). For clarity, when there are revisions to
the application for other reasons, please update the pages that refer
to MHHW so that they refer to either MHHT or OHWM.”

10 Ex. K-31, p. 115 (emphasis in original). The first comment, on page 24, simply requested
11 clarification of whether the terms Mean Higher High Water (“MHHW”) and OHWM had the same
12 meaning. BSRE addressed this issue in the April 2018 Revisions. The second comment, on page
13 115, requested a revision to the use of the terms “when there are revisions to the application for
14 other reasons”. The fact that the County only requested that this change be made “when there are
15 other revisions to the application for other reasons” clearly implies that this change was not urgent
16 and was not a reason to deny the applications in their entirety. Certainly, these comments did not
17 indicate that such an issue would be a “substantial conflict” with the code, as later claimed in the
18 May Recommendation. Contrary to the County’s claims and the Findings of Fact, Conclusions of
19 Law and rulings in the Decision related to the OHWM, BSRE was not derelict in failing to address
20 an issue which was not even raised by the County until May 9, 2018.

22 As soon as BSRE became aware of the issue with the OHWM, it authorized its consultants
23 to begin work to determine the OHWM. Gray Rand, while working on his Critical Area Report in
24 March 2018, investigated the OHWM and discovered that it could be discerned and that, therefore,
25 the buffer should be determined from the OHWM rather than the MHHW, which had been used
26

1 previously. *See* Gray Rand’s May 23, 2018 Testimony. Once Mr. Rand became aware of the
2 issue, he immediately began working to address it. BSRE was unable to revise the plans prior to
3 the April 2018 Revisions, but BSRE continued working on such revisions after the April 27, 2018
4 submittal and, after meeting with the Department of Ecology, determined the appropriate location
5 of the OHWM. With its Motion for Reconsideration/Clarification, BSRE submitted an aerial
6 depiction of the OHWM and a memorandum from Perkins + Will which addresses the changes
7 needed to the site plan in order to provide a sufficient setback. *See* Exhibit R-1, Addenda 7-8. As
8 noted in the memorandum, BSRE can and will comply with the setback and make the necessary
9 changes. It is expected that these revisions may cause a loss of approximately 200 units. A
10 reduction of approximately 200 units in a development which is proposed to have 3080 units
11 represents a loss of less than 6.5% of the units. Contrary to C.74, this is not a “substantial element”
12 of the proposal and correcting this would not require a significant redesign of the proposal. *See*
13 Exhibit R-1, Addendum 8.

14
15
16 SCC 30.72.065(2)(f) allows for reconsideration before the Hearing Examiner where the
17 applicant proposes changes based on the hearing examiner’s decision. SCC 30.72.065(2)(e) allows
18 for reconsideration where the applicant presents new evidence which could not reasonably have
19 been produced at the open record hearing. Addenda 7 and 8 were submitted to the Hearing
20 Examiner with BSRE’s Motion for Reconsideration/Clarification and conclusively showed that
21 BSRE proposed changes based on May Recommendation and the Decision. This evidence was
22 not reasonably available at the hearing because the work was being done at the time of the hearing
23 and because the issue was not raised by the County until its May Recommendation, which was
24 received just days before the hearing began. In order to determine the OHWM, Mr. Rand had to
25 schedule a meeting with the Department of Ecology at the site, which was held on June 26, 2018.
26
27

1 Immediately after this meeting, Mr. Rand began the work to depict the OHWM on the site plans.
2 This was reflected in Addenda 7 and 8. As noted by Mr. Seng in Addendum 8, the work needed
3 to redesign the buildings located on the site to accommodate the change in the buffer area will take
4 approximately 2-4 weeks. This cannot be considered substantial given the amount of time already
5 spent by both BSRE and the County on this proposal. The Hearing Examiner failed to follow
6 appropriate procedures and committed an error of law by failing to even consider this additional
7 information.
8

9 For these reasons, all Findings of Fact, Conclusions of Law and rulings related to the
10 OHWM including, but not limited to, F.38, F.97, C.12, C.13, C.14, C.15, C.17, C.73, C.74, C.75,
11 C.78, and ruling 4, should be reversed on appeal. BSRE did not fail to act diligently by not
12 determining the OHWM earlier when the County failed to even raise this issue until its May
13 Recommendation and, further, this cannot be considered a substantial conflict given the
14 circumstances here.
15

16 **D. The Findings of Fact, Conclusions of Law and Rulings Related to the Innovative**
17 **Development Design Should be Reversed Because the Hearing Examiner Failed**
18 **to Follow Applicable Procedures by Failing to Consider the Changes Made and**
19 **Additional Evidence Presented by BSRE Based on the Decision.**

20 As noted above, SCC 30.72.065(2)(f) allows for reconsideration where the applicant
21 proposes changes based on the hearing examiner's decision. Here, BSRE made changes to its
22 applications based on the Decision and therefore all Findings of Fact, Conclusions of Law and
23 rulings related to the Innovative Development Design ("IDD"), including, but not limited to F.104,
24 C.76, C.77, C.78, and ruling 4, should have been revised to state that analysis of the "functions
25 and values" had been provided and that there was no substantial conflict with the Snohomish
26 County Code related to IDD. The Hearing Examiner's failure to consider these changes and
27

1 additional evidence constituted a failure of the Hearing Examiner to follow applicable procedures,
2 in direct violation of SCC 30.72.065(2)(f). Accordingly, all Findings of Fact, Conclusions of Law
3 and rulings related to IDD should be reversed, such that there is no substantial conflict with the
4 Code related to IDD.

5
6 On May 23, 2018, Gray Rand of David Evans & Associates, Inc. testified that the critical
7 area report (Exhibit C-30) provided a step-by-step explanation of how each of the criteria of the
8 IDD would be met and provided an overview of the improvement and ecological benefits as a
9 whole. However, because the County expressed concern that the specific “functions and values”
10 were not expressly labeled as such, BSRE had its consultants engage in further work to better
11 address those concerns after the hearing. With additional evidence presented to the Hearing
12 Examiner with its Motion for Reconsideration/Clarification, BSRE specifically satisfied the
13 requirement set forth in F.103: a proposed IDD “must compare the existing functions and values
14 of affected critical areas and buffers with functions and values after the development to ensure the
15 IDD protects the functions and values at least as well as the standard prescriptive measures.” *See*
16 Exhibit R-1, Addendum 3.

17
18 BSRE specifically provided to the Hearing Examiner a Critical Areas Report Addendum
19 prepared by Gray Rand of David Evans & Associates, Inc., dated June 21, 2018, which expressly
20 provided the “functions and values” analysis which the Hearing Examiner deemed to be lacking
21 in the Decision. *Id.* As noted in this Addendum, “the use of the IDD measures will result in a
22 significant net ecological benefit compared to implementation of standard administrative buffers.
23 Overall, the project as proposed will result in significant improvement to ecological function along
24 the shoreline of Puget Sound equivalent to application of the standard prescriptive measures of
25 SCC 30.62A.” *Id.* This is demonstrated by the analysis of the “functions and values.” *Id.* at pp.
26
27

1 5-7. For this reason, all Findings of Fact, Conclusions of Law and rulings related to the IDD
2 should have been revised pursuant to SCC 30.72.065(2)(f), and the Hearing Examiner's Decision
3 should be reversed on these points because of the Hearing Examiner's failure to follow applicable
4 procedures.

5
6 **E. The Findings of Fact, Conclusions of Law and Rulings Related to the Requirement**
7 **for High Capacity Transit Reflect an Error of Law, are not Supported by the**
8 **Record, and Failed to Follow Applicable Procedures.**

9 BSRE supplied sufficient evidence to indicate that proximity to a high capacity transit route
10 is sufficient to allow for additional height pursuant to SCC 30.34A.040(1). In the alternative,
11 BSRE demonstrated its dedication to providing high capacity transit, in the form of Sound Transit
12 and/or via water taxi, such that the Hearing Examiner could and should condition the project on
13 having high capacity transit rather than finding that the project is in substantial conflict with the
14 code at this point. Further, the requirement for the additional height to be "necessary or desirable"
15 is a conclusion to be made following the analysis to be included in the project's environmental
16 impact statement, as set forth in SCC 30.34A.040(1). This matter was not discussed at the hearing,
17 and the Hearing Examiner erred by deciding that issue on his own prior to the completion of the
18 EIS. For these reasons, all Findings of Fact, Conclusions of Law and rulings in the Decision which
19 relate to high capacity transit, including, but not limited to, F.56, F.57, F.58, F.59, F.60, F.62, F.63,
20 C.20, C.34, C.35, C.36, C.37, C.38, C.39, C78, and ruling 4, should be reversed.

21
22 *i. Proximity to a Transit Station is Sufficient.*

23 The Hearing Examiner committed an error of law by determining, without justification,
24 that while "a high capacity transit route is near the project, proximity alone is not enough." C.36.
25 SCC 30.34A.040(1) states:
26
27

1 The maximum building height in the UC zone shall be 90 feet. A
2 building height increase up to an additional 90 feet may be approved
3 under SCC 30.34A.180 when the additional height is documented to
4 be necessary or desirable when the project is located near a high
5 capacity transit route or station and the applicant prepares an
6 environmental impact statement pursuant to chapter 30.61 SCC that
7 includes an analysis of the environmental impacts of the additional
8 height on, at a minimum:

- 9 (a) Aesthetics;
- 10 (b) light and glare;
- 11 (c) noise;
- 12 (d) air quality; and
- 13 (e) transportation.

14 SCC 30.34A.040(1). The Hearing Examiner's conclusion that proximity is not enough ignores the
15 plan language of the statute. "Statutes must be read so that each word is given effect and no portion
16 of the statute is rendered meaningless or superfluous." *City of Spokane Valley v. Spokane County*,
17 145 Wn. App. 825, 831, 187 P.3d 340 (2008). While the County has argued that "proximity is not
18 enough," an agency does not get deference for a statutory interpretation which conflicts with the
19 plain language of the statute. *Dept. of Labor & Indus. v. Landon*, 117 Wn.2d 122, 127, 814 P.2d
20 626 (1991).

21 C.36, and all other Findings of Fact, Conclusions of Law and rulings which state or imply
22 that proximity to a route is not sufficient, directly conflict with the plain language of the statute,
23 which provides two alternatives for high capacity transit—the project must be located either near
24 a high capacity transit route *or* a high capacity transit station. SCC 30.34A.040(1) (emphasis
25 added). The only reading of this statute which does not render a portion of the statute "meaningless
26 and superfluous" is that which recognizes both options: (1) proximity to a high capacity transit
27 route; or (2) proximity to a high capacity transit station.

1 The fact that the Growth Management Hearing Board (the “GMHB”) ruled in *City of*
2 *Shoreline, et al. v. Snohomish County, et al.*, Coordinate Case Nos. 09-3-0013c and 10-3-0011c,
3 that proximity is not enough has no bearing on the interpretation of SCC 30.34A.040(1) [2010].
4 RCW 36.70A.302 provides the GMHB may determine that all or part of a comprehensive plan or
5 development regulations are invalid, however, it states that such authority is “proscriptive in
6 effect” only:
7

8 A determination of invalidity is prospective in effect and does not
9 extinguish rights that vested under state or local law before receipt
10 of the board’s order by the city or county. The determination of
11 invalidity does not apply to a completed development permit
application for a project that vested under state or local law before
receipt of the board’s order by the county or city

12 RCW 36.70A.302(2). The Washington Supreme Court recognized this in *Town of Woodway v.*
13 *Snohomish County*, 180 Wn.2d 165, 322 P.3d 1219 (2014). There, the Court held that “whether
14 or not a challenged plan or regulation is found to be noncompliant or invalid, any rights that vested
15 before the [GMHB]’s final order remain vested after the order is issued.” *Id.* at 175. Therefore,
16 even if the interpretation of SCC 30.34A.040(1) changed after the GMHB’s ruling in *City of*
17 *Shoreline*, that does not alter the plain language of the statute as it applies to BSRE’s applications.
18

19 Because the GMHB’s ruling does not change the plain language of SCC 30.34A.040(1)
20 and because statutes must be interpreted such that no word or phrase is rendered meaningless or
21 superfluous, the only possible reading of SCC 30.34A.040(1) allows additional height where the
22 urban center is proposed near *either* a high capacity transit route *or* station. Point Wells is located
23 near a high capacity transit route and therefore additional height for the buildings is available.
24
25
26
27

1 ii. *BSRE Acted Diligently in Attempting to Reach Agreement with Sound*
2 *Transit for a Station at Point Wells.*

3 The record shows that BSRE has had substantial contact with Sound Transit and that Sound
4 Transit has advised BSRE *that it will not commit to providing a station at Point Wells until BSRE*
5 *has received approval and can guarantee a certain number of residents. See Douglas A. Luetjen’s*
6 *May 24, 2018 Testimony; Exhibit H-24. The Examiner clearly erred in faulting BSRE for failing*
7 *to obtain Sound Transit’s commitment to provide service for a project which has not yet been*
8 *approved.*

9 As demonstrated by Exhibit H-26 and Douglas A. Luetjen’s May 24, 2018 testimony,
10 Sound Transit has considered adding a stop in the Richmond Beach/Shoreline area, and it is
11 BSRE’s understanding that the stop considered to be in the Richmond Beach/Shoreline area was
12 specifically considered by Sound Transit to be at Point Wells. *See Exhibit H-24, where Sound*
13 *Transit specifically added a comment on its Final Environmental Impact Statement in response to*
14 *a letter from BSRE stating “A Sounder station in the general vicinity of Shoreline/Richmond*
15 *Beach is included in Appendix A of the Final SEIS as a ‘representative project’ under the Current*
16 *Plan Alternative . . . These are projects that could be implemented along the corridors that comprise*
17 *the Current Plan Alternative regardless of whether service is already implemented along these*
18 *corridors. . . .” This indicates that Sound Transit was contemplating a possible stop at Point Wells.*
19 *Contrary to the statements made in F.55, F.58 and C.35, BSRE received a letter of support from*
20 *the appropriate individual (not just a “mid-level manager”) in 2010 indicating that Sound Transit*
21 *was open to the possibility of a stop at Point Wells. In fact, the letter stated that Sound Transit’s*
22 *interest in such a station would be increased if BSRE was willing to fund that station. BSRE has*
23 *unequivocally made that commitment.*

1 In addition, F.60 is not supported by the record because Douglas A. Luetjen testified on
2 May 24, 2018 that BSRE has met with “various transit agencies that included King County Metro
3 and Community Transit as well as Sound Transit to discuss transit-related issues for the
4 development.” See Douglas A. Luetjen May 24, 2018 Testimony.

5
6 In addition, BSRE has retained the firm of Shields Obletz Johnson, a project management
7 consultancy group in the Pacific Northwest that has specific experience working with BNSF and
8 commuter lines to get approvals for additional stops. See *id.* This shows BSRE’s diligence and
9 dedication to building a Sound Transit station at Point Wells. Furthermore, BSRE has considered
10 Sound Transit’s design guidelines in creating its design and has acted in accordance with the
11 direction received from Sound Transit, which was to wait until approvals were received before
12 pursuing a written agreement with Sound Transit. *Id.* Any Findings of Fact, Conclusions of Law
13 and rulings which state or imply that BSRE was derelict in its duties by failing to obtain a written
14 commitment from Sound Transit or another transit agency are not supported by the record, do not
15 take into account the particular facts and requirements of the transit agencies, and should be
16 reversed.
17

18 *iii. BSRE Acted Reasonably to Provide Alternative High Capacity Transit with*
19 *a Water Taxi.*

20 In order to satisfy the County’s concerns regarding high capacity transit, BSRE proposed
21 providing a water taxi between the site and the Edmonds Sound Transit station at least until an on-
22 site Sound Transit station is constructed. The Hearing Examiner’s Findings of Fact, Conclusions
23 of Law, and rulings regarding the water taxi proposal are not supported by the record and fail to
24 consider evidence provided with BSRE’s closing brief.
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1 In F.63, the Hearing Examiner stated that operating a water taxi would be prohibited by
2 the Shoreline Management Master Program because it is a commercial use and BSRE has not
3 applied for a conditional use permit. However, neither of these statements is supported by the
4 record. Randy Middaugh testified that the water taxi would not be a prohibited use if it was free.
5
6 See Randy Middaugh May 22, 2018 Testimony. Instead, he said it would simply require a
7 conditional use permit, which would be reviewed by the Department of Ecology. *Id.* BSRE
8 submitted such a conditional use permit with its closing brief. See Exhibit Q-4, Appendix 1.
9 Therefore, F.64, C.38, C.39, C.78 and ruling 4, should be reversed.

10 As stated in F.62, the pier at Point Wells is subject to an aquatic lands lease from the
11 Washington Department of Natural Resources (the "DNR"). In its April Recommendation and
12 May Recommendation, the County did not include any allegations with respect to BSRE's dealings
13 with DNR. For this reason, BSRE did not submit any evidence into the record regarding BSRE's
14 contacts with DNR. However, this does not mean BSRE has not had discussions with DNR about
15 the use of the pier. Rather, BSRE has had substantial contact with DNR over the years. See
16 Declaration of Douglas A. Luetjen, submitted as Addendum 9 to the Motion for
17 Reconsideration/Clarification. As recently as August of 2017, BSRE was advised by DNR to wait
18 to modify the lease until after the urban center has been approved so as to allow the industrial uses
19 to continue in the meantime. *Id.* BSRE's interactions and negotiations with DNR were not part
20 of the hearing and thus this evidence could not reasonably be expected to have been provided at
21 the time of the hearing. All Findings of Fact, Conclusions of Law and rulings related to BSRE's
22 water taxi proposal, including, but not limited to, F.62, F.63, C.38, C.39, C.78 and ruling 4, should
23 therefore be reversed and revised accordingly.
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1 iv. *The Hearing Examiner Erred in Raising a New Issue of "Necessary or*
2 *Desirable" in Decision.*

3 In C.37, the Hearing Examiner, for the first time, concluded BSRE failed to show that the
4 height increase was "necessary or desirable." This is a decision which is to be made following the
5 completion of a view analysis in the project EIS. Further, the County has never claimed that BSRE
6 is not entitled to additional height under SCC 30.34A.040 because the height is not "necessary or
7 desirable"; such a claim was not before the Hearing Examiner and therefore the parties did not
8 present evidence on this issue. See April Recommendation and May Recommendation. In
9 addition, neither party addressed this issue in their closing briefs or in their proposed findings of
10 fact and conclusions of law. Neither party has had a chance to brief or argue whether the additional
11 height is "necessary or desirable." Because of this, the record is silent on this issue.

12 In making this determination, the Hearing Examiner failed to recognize that BSRE was not
13 arguing that the Land Use Applications were approvable at that exact moment. The project cannot
14 be approvable because the EIS has not been issued. Therefore, there is no allegation by either
15 party that every element of every issue either has been or needs to have been addressed.

16 Before the Hearing Examiner can rule on whether the additional height is "necessary or
17 desirable", the parties must be given a chance to brief this subject. Therefore, either this
18 Conclusion should be deleted in its entirety, or the matter should be remanded to the Hearing
19 Examiner to allow BSRE the opportunity to show why the additional height is both necessary and
20 desirable from a "public, aesthetic, planning, or transportation standpoint."
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1 **F. The Hearing Examiner's Findings of Fact, Conclusions of Law and Rulings**
2 **Regarding the Landslide Deviation Requests Were Not Supported by the Record**
3 **and Failed to Follow Applicable Procedures.**

4 BSRE submitted two distinct landslide hazard deviation requests: one for buildings
5 proposed to be located in the Urban Plaza, and one for a secondary access road to be located in
6 that same general area. The County never issued a formal decision on BSRE's deviation requests.
7 *See* Ryan Countryman's May 24, 2018 Testimony. Because the County did not issue a formal
8 decision on the landslide deviation requests, BSRE was not been given an opportunity to respond
9 to any such decision. As Randy Sleight testified on May 22, 2018, the typical process for a
10 deviation request includes a conversation between Mr. Sleight and the developer to discuss what
11 additional information Mr. Sleight needs and what options are available. BSRE should have been
12 given this opportunity prior to the Hearing Examiner issuing its findings of fact, conclusions of
13 law and rulings related to the deviation requests.
14

15 The Findings of Fact, Conclusions of Law and rulings regarding the landslide deviation
16 requests, including, but not limited to, F.84, F.85, F.89, F.91, F.93, F.94, C.53, C.54, C.56, C.59,
17 C.60, C.61, C.62, C.63, C.64, C.65, C.67, C.68, C.69, C.70, C.78 and ruling 4, should be reversed
18 because the deviation requests were not denied, the findings are not supported by the evidence and
19 the Hearing Examiner failed to follow applicable procedures by failing to consider the changes
20 made by BSRE in order to address the concerns raised by the County and by the Hearing Examiner
21 in the Decision.
22

23 *i. BSRE Has Shown there is No Alternate Location Available for the Buildings in*
24 *the Urban Plaza.*

25 The landslide deviation request for the buildings proposed to be located in the Urban Plaza
26 was updated in response to the Decision, as provided for in SCC 30.72.065(f), to show that there
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1 is no alternate location available for those buildings. This change was made after the hearing in
2 order to address the County's concerns and was submitted with the Motion for
3 Reconsideration/Clarification. See Exhibit R-1, Addendum 6. Therefore, the Hearing Examiner
4 should have revised all Findings of Fact, Conclusions of Law and rulings related to the issue of
5 whether there is an alternate location for those buildings, including, but not limited to, C.54.
6 Despite code language explicitly providing to the contrary, the Hearing Examiner refused to
7 consider the new information provided and therefore failed to follow the applicable procedures.
8 For this reason, all such Findings of Fact, Conclusions of Law and rulings should be reversed.
9

10 ii. *The Geotechnical Report Does Not Substantially Conflict with the County*
11 *Code.*

12 The Hearing Examiner raised the following concerns about the geotechnical report: (1) that
13 the geotechnical report does not adequately demonstrate that the proposed deviation provides
14 protection equal to that provided by the prescribed minimum setbacks (F.84, C.56, C.61); (2) that
15 the subsurface conditions report does not provide the required information regarding the method
16 and locations of drainage (F.89, C.59); (3) that the geotechnical report does not address the safety
17 of the vehicles and pedestrians on the secondary access road (F.91, C.65); (3) that the geotechnical
18 report does not confirm the site is suitable for the proposed development (F.93, F.94); and (4) that
19 the geotechnical report and/or deviation requests do not include what surcharges were included in
20 the safety factor calculations (C.60).
21

22 SCC 30.62B.340 specifically provides deviations may be granted to allow development
23 within a landslide hazard area. BSRE has not been given the typical treatment of scheduling a
24 meeting between Mr. Sleight and BSRE's consultants to discuss any outstanding issues.
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1 BSRE's consultant, John Bingham of Hart Crowser, did significant additional work in
2 order to address these concerns. Mr. Bingham revised the subsurface conditions report and the
3 landslide area deviation request. *See* Exhibit R-1, Addenda 4 and 5. This new evidence was not
4 reasonably available during the hearing because BSRE only received the County's feedback on
5 the deviation requests in the May Recommendation and during the hearing itself. Mr. Bingham
6 promptly revised his reports to provide additional information to address these concerns as soon
7 as he received the feedback and this additional information was provided to the Hearing Examiner,
8 as provided for in SCC 30.72.065(f). The Hearing Examiner failed to consider this new
9 information and therefore failed to follow the applicable procedures.
10

11 The record does not support F.91 and C.65 because Mr. Sleight testified that designs had
12 been submitted which would make the road safe for pedestrians and vehicles. Mr. Bingham's role
13 was not to design the road, but to provide that it could be built safely in the landslide hazard area.
14 He did that. However, the April 20, 2018 geotechnical report and Addendum 4 to the Motion for
15 Reconsideration/Clarification did show that the current slope stability analysis and conceptual
16 retaining wall design were done to achieve at least the minimum static and seismic factors of safety
17 required by the Snohomish County Code. The analysis in these two reports showed that there
18 would not be shallow slides which would affect vehicles or people on the road. No evidence was
19 presented that these issues were not considered in Mr. Bingham's analysis of the secondary access
20 road. In addition, as Mr. Sleight testified, Mr. Bingham took a conservative approach with the
21 geotechnical report, assuming high liquefaction throughout the area in which the buildings and
22 road would be constructed. *See* Randy Sleight May 22, 2018 Testimony; John Bingham May 22,
23 2018 Testimony.
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1 The geotechnical report, landslide hazard deviation requests, and subsurface conditions
2 report, with their respective addenda, provided sufficient information to determine that the project
3 is feasible. The project is not yet at a buildable stage, which means that there will be additional
4 time to provide further details and conduct further tests, if necessary. This project must still go
5 through the environmental impact statement preparation, which allows ample opportunity for any
6 required design changes to be made.
7

8 It is an error of law to find a substantial conflict with the code where a deviation request is
9 pending. Unless and until the deviation requests are denied, there is reasonable doubt that the
10 proposal is in substantial conflict with SCC 30.62B.320 and .340. If a project with a pending
11 deviation request is considered to be in substantial conflict with the code, provisions allowing for
12 deviation requests would be directly in conflict with the statute allowing premature denial.
13

14 BSRE provided landslide hazard deviation requests, geotechnical reports, and subsurface
15 condition reports which did not substantially conflict with the Snohomish County Code and
16 therefore the Findings of Fact, Conclusions of Law and rulings related to the landslide hazard areas
17 should be revised accordingly. If the County or the Hearing Examiner believes additional work is
18 necessary to show compliance with any applicable provision, then it would be appropriate to
19 condition any future approvals on obtaining the deviation and any necessary approvals for the
20 secondary access road. The Decision failed to recognize that additional revisions will be made as
21 the environmental review continues and that conditions to approval would be appropriate.
22

23 **G. BSRE's Request for an Extension Should be Granted.**

24 The Findings of Fact, Conclusions of Law, and rulings related to BSRE's actions since
25 April 2013 and related to whether BSRE should be granted an extension, including, but not limited
26 to, F.19, F.10, F.21, F.24, F.27, F.31, F.34, F.32, C.12, C.13, C.14, C.19, C.20, C.21, C.22, C.53,
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1 C.69, C.78, C.79, ruling 3 and ruling 4, are not supported by the evidence. In addition, the Hearing
2 Examiner failed to follow the applicable procedures by failing to consider the changes proposed
3 by BSRE in response to the Decision.

4 A number of these findings are not supported by the record and should be revised: Nothing
5 in the record indicates that BSRE proposed a transportation corridor study on February 2, 2014,
6 and, in fact, BSRE never proposed a transportation corridor study (F.9). Instead, as testified to by
7 Kirk Harris on May 24, 2018, BSRE entered into a memorandum of understanding with Shoreline
8 regarding how a study would be conducted. *See* Kirk Harris May 24, 2018 Testimony. BSRE and
9 Shoreline conducted seven public meetings (F.10). Exhibit P-18. BSRE continued working with
10 Shoreline on traffic issues beyond April 20, 2015 (F.14). *See id.*; Kirk Harris May 24, 2018
11 Testimony.
12

13
14 Contrary to the Hearing Examiner's Finding, the County's March 31, 2016 letter granting
15 BSRE an extension does not state that further extensions will only be granted in "extraordinary
16 circumstances." Nor does it state that "the applications could be heard by the Hearing Examiner
17 if the alleged deficiencies were not remedied, though PDS would recommend denial" (F.21). *See*
18 Exhibit K-13. The County's letter on October 6, 2017, did not discuss further extensions at all.
19 Nor did it state that further extensions would only be granted in "extraordinary circumstances"
20 (F.31). *See* Exhibit K-32. F.32 mischaracterizes the meeting between the County and BSRE on
21 November 13, 2017: during that meeting, the County, including its legal counsel, assured BSRE
22 that there was no reason that another extension would be forthcoming, acknowledged that BSRE
23 could not meet the January 8, 2018 deadline (which the County admitted was not a "deadline" but
24 instead merely a "target"), and advised BSRE to submit a letter stating the date by which it would
25 be able to provide the necessary information. *See* Douglas A. Luetjen May 24, 2018 Testimony;
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1 *see also* Exhibit P-13 (Ryan Countryman’s notes show clearly that BSRE asked when the
2 extension request would need to be submitted).

3 In addition to the above inaccuracies, the Hearing Examiner failed to note in F.27 that the
4 County’s May 2, 2017, letter specifically stated, “As the applicant, if you wish to request a further
5 suspension of the application expiration period pursuant to the above-mentioned Code provision,
6 you should make a written request to PDS prior to May 30, 2018, in order for the PDS director to
7 have time to evaluate the request.” Exhibit K-19. Not only did the County not indicate that no
8 further extensions would be forthcoming, the County also provided a date by which the next
9 extension must be provided – just one month before the expiration date. BSRE complied with this
10 request, submitting its extension request in January, more than five months prior to the expiration
11 date of June 30, 2018.
12

13
14 C.19 is similarly inaccurate as it fails to show that BSRE and Shoreline were negotiating
15 for years before Shoreline ceased cooperating with BSRE and determined that it would only work
16 with BSRE if Shoreline was permitted to annex Point Wells. At one point, Shoreline advised
17 BSRE that it did not have the votes on the Shoreline Council to permit Shoreline to continue
18 negotiating with BSRE. *See* Kirk Harris May 24, 2018 Testimony.
19

20 As the Hearing Examiner stated in C.11, “[a]n imminent deadline concentrates the mind
21 wonderfully.” This was certainly true for the County. The County provided more substantive
22 feedback from October 2017 through May 2018 than it had in all the time prior to that, which
23 allowed BSRE to provide the responses it did in April and May 2018. If the County had provided
24 such substantive responses earlier, then BSRE could have responded in kind. However, until
25 BSRE received the feedback from the County in its October 2017 Letter and its April and May
26 Recommendations, BSRE was unable to do the work the County deemed necessary. This is
27

1 certainly true with respect to the OHWM, which was not even raised as an issue by the County
2 until its May Recommendation, providing BSRE with no time to respond substantively before the
3 hearing. *See* Section C *supra*.

4 For these reasons, all Findings of Fact, Conclusions of Law and rulings implying or stating
5 that BSRE was dilatory in not determining the OHWM sooner, including, but not limited to, C.12,
6 C.13, C.14, C.15, C.16, C.17, C.21, C.22, C.78, and ruling 3, should be reversed. Furthermore,
7 BSRE proposed to improve Richmond Beach Drive so as to meet applicable road standards (C.18).

8 BSRE diligently worked to obtain approval from Sound Transit, but was told repeatedly
9 that Sound Transit would not consider putting a stop there until after BSRE obtained the necessary
10 approvals. *See* Douglas A. Luetjen May 24, 2018 Testimony. The letter that BSRE received in
11 2010 was the strongest commitment Sound Transit was willing to make until BSRE obtained
12 approval from Snohomish County for its urban center. *Id.* BSRE engaged consultants who are
13 experienced with working with Sound Transit and BNSF to ensure that the necessary approvals
14 will be received at the appropriate time. *Id.* BSRE took all steps available to it to show its
15 commitment to providing high capacity transit at Point Wells. *Id.* Thus, all Findings of Fact,
16 Conclusions of Law and rulings implying or stating that BSRE was dilatory in not obtaining
17 consent from Sound Transit, including, but not limited to, C.20, C.21, C.22, C.39, C.78, and ruling
18 3, should be reversed.

19 As Ryan Countryman testified on May 21, 2018, applications typically go through seven
20 or eight iterations. With a project this complex, it is understandable why multiple iterations are
21 necessary, both from the applicant's perspective as well as that of the County. Multiple reviews
22 allow both parties to ensure code compliance. This ability to fix issues is exactly why the code
23 authorizes the Examiner to reconsider his decision based on post-decision submittals. This is also
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1 why SCC 30.34A.180 [2007] provides an applicant with the opportunity to revise and re-submit
2 its applications following an initial denial:

3 The hearing examiner may deny an urban center development
4 application without prejudice pursuant to SCC 30.72.060. If denied
5 without prejudice, the application may be reactivated under the
6 original project number without additional filing fees or loss of
7 project vesting if a revised application is submitted within six
8 months of the date of the hearing examiner's decision. In all other
9 cases a new application shall be required.

10 SCC 30.34A.180(2)(f) [2007]. *See* Section I *infra*. This project is by far the most complicated
11 project that Snohomish County has seen (*see* Ryan Countryman's May 24, 2018 Testimony),
12 making the need for multiple revisions even greater. BSRE has shown it is motivated to resolve
13 all issues raised by PDS and will work diligently to do so.

14 For all of the above cited reasons, ruling 3 should be reversed, BSRE should be granted an
15 extension and the parties should be directed to proceed with the draft environmental impact
16 statement.

17 **H. The Hearing Examiner Committed an Error of Law with Respect to Whether
18 BSRE is Entitled to Re-File Pursuant to SCC 30.34A.180 [2007].**

19 The Code expressly contemplates having a Hearing Examiner reconsider its decisions
20 where changes are made to an application to address deficiencies identified in a Hearing
21 Examiner's decision. *See* SCC 30.72.065(f). This reflects an on-going process in which an
22 application gradually evolves to come into full code compliance. This is reflected by the fact that
23 the Hearing Examiner's Decision was without prejudice. While the Hearing Examiner
24 appropriately determined that the Decision was without prejudice, the Hearing Examiner
25 committed an error of law by finding that SCC 30.34A.180(2)(f) [2007] was inapplicable simply
26 because the subject language had been replaced by subsequent code revisions which deleted the
27

1 “without prejudice” language. The Hearing Examiner failed to recognize the fact that BSRE’s
2 application was vested to the code in place on the date of its application. In fact, the Point Wells
3 page of PDS’s website explicitly includes the following provision as among those applicable to
4 this application. The vested code provision is set forth in SCC 30.34A.180(2)(f) [2007] which
5 provides in pertinent part:
6

7 The hearing examiner may deny an urban center development
8 application without prejudice pursuant to SCC 30.72.060. If denied
9 without prejudice, the application may be reactivated under the
10 original project number without additional filing fees or loss of
11 project vesting if a revised application is submitted within six
12 months of the date of the hearing examiner’s decision. In all other
13 cases a new application shall be required.

14 BSRE is particularly familiar with this code provision because BSRE suggested this verbiage be
15 included in the Urban Center Code at the time of its initial consideration. The goal was to address
16 this specific situation. PDS and the Snohomish County Council agreed and this provision was
17 included in the code when adopted.

18 Washington has adopted the “vested rights doctrine” with respect to land use applications.
19 See *Noble Manor v. Pierce County*, 133 Wn.2d 269, 943 P.2d 1378 (1997). “[V]esting’ refers
20 generally to the notion that a land use application, under the proper conditions, will be considered
21 only under the land use statutes and ordinances in effect at the time of the application’s
22 submission.” *Id.* at 275. The Final Legislative Report of the bill enacting RCW 58.17.033 further
23 clarifies the scope of Washington’s vesting rights: “The doctrine provides that a party filing a
24 timely and sufficiently complete building permit application obtains a vested right to have that
25 application processed according to zoning, land use and building ordinances in effect at the time
26 of the application.” “The purpose of the vested rights doctrine is to provide a measure of certainty
27

1 to developers and to protect their expectations against fluctuating land use policy.” *Noble Manor*,
2 133 Wn.2d at 278.

3 Pursuant to RCW 58.17.033(1), a land use application must be “considered under the
4 subdivision or short subdivision ordinance, and zoning or other land use control ordinances” in
5 effect at the time that the fully completed application is submitted. SCC 30.34A.180 is not a
6 subdivision or short subdivision ordinance, but it is a “land use control ordinance”. “[L]and use
7 control ordinances’ are those that exert a restraining or directing influence over land use.” *Graham*
8 *Neighborhood Ass’n v. F.G. Assocs.*, 162 Wn. App. 98, 115, 252 P.3d 898 (2011). The Code also
9 recognizes the scope of the vesting doctrine: “For the purpose of this section, ‘development
10 regulation’ means those provisions of Title 30 SCC that exercise a restraining or directing
11 influence over land, including provisions that control or affect the type, degree, or physical
12 attributes of land development or use.” SCC 30.70.300. The purpose of the vesting doctrine is to
13 allow property owners to proceed with their planned projects with certitude. *Graham*
14 *Neighborhood Ass’n*, 162 Wn. App. at 116.

17 Here, the Hearing Examiner committed an error of law by failing to recognize that the Land
18 Use Applications were vested to SCC 30.34A.180 [2007]. SCC 30.34A.180 [2007] granted
19 developers a significant property right – the right to re-submit a land use application within six (6)
20 months of a denial without prejudice, in order to have the land use application retain its vesting
21 status. This was a provision that was specifically negotiated by BSRE and the County, and is
22 directly related to and affecting property rights. Therefore, it is appropriately considered a land
23 use ordinance. Because Washington has adopted the vested rights doctrine with respect to land
24 use ordinances, and the County has further codified that doctrine, BSRE’s Land Use Applications
25 should be vested to SCC 30.34A.180 [2007], which provides that BSRE may re-submit revised
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1 Land Use Applications within six (6) months of the Hearing Examiner's Decision and have those
2 Land Use Applications considered under the law in effect at the time that the Land Use
3 Applications were originally submitted in 2011.

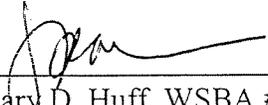
4 **I. BSRE's Short Plat Application (11-101007 SP) is Unaffected by the Perceived**
5 **Deficiencies in the Application and Should Not Be Terminated.**

6 The Hearing Examiner failed to address BSRE's request that the Short Plat Application be
7 deemed to be excluded from the decision terminating the Land Use Applications. BSRE asserts
8 that BSRE's short plat application stands alone and is unaffected by the issues raised in the hearing
9 and in the Decision. The Hearing Examiner committed an error of law by failing to exclude
10 BSRE's short plat application from the Decision.
11

12 **IV. CONCLUSION**

13 Base on the foregoing, BSRE requests that the Snohomish County Council reverse the
14 Hearing Examiner's Decision and (1) deny the County's request to deny BSRE's applications
15 without an environmental impact statement, (2) grant BSRE's request for an extension, (3) find
16 that the Land Use Applications are vested to SCC 30.34A.180 [2007], and (4) reverse all Findings
17 of Fact, Conclusions of Law or rulings which relate to any of the above issues.

18 DATED this 17th day of August, 2018.

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21 
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