

Project: **Snohomish Garden Townhomes**
 9321 Paradise Lake Road
 Snohomish, WA

File Nos.: **22-116648 PSD/SPA 22-116648 001 PSD/SPA**

A. Introduction

This is a Petition for Reconsideration and a Request for Order Reopening Record for Limited Purposes of the Hearing Examiner’s February 22, 2024 Decision (“Decision”). Snohomish County Code, and the Hearing Examiner’s Rules of Procedure are silent as to reopening the record for limited purposes, whether by the Hearing Examiner’s volition or request by a party of record. As such, the request is being made for the reasons below.

B. Background of Project

This project was initially submitted as Paradise Lake Apartments for either 360 apartments or 220 townhomes. The project received a Determination of Significance and was pulled from consideration due to traffic and emergency services response time issues. The only difference between the current project, Snohomish Garden Townhomes and the former is a reduction of townhome units by 24 to 196 and most importantly an illegally applied SEPA exemption based upon the Infill Development State Code (RCW 43.21C.229).

C. The Hearing Examiner’s findings/conclusions regarding the following issues are not supported by the record.

1. EMERGENCY SERVICES

The Hearing Examiner disregarded the evidence in the record provided by the local emergency services Fire Marshals submitted by Linda Gray¹ and instead opined and speculated

¹ Ex. I.115 pgs 2 -3

as to what concerns the regional fire authority may or may not have. The Hearing Examiner's Decision dated February 22, 2024 ("Decision") states:

The public are [sic] concerned about the ability of first responders to respond to emergencies in a timely fashion. The public is concerned that emergency vehicles will be slow to arrive, imperiling lives and property. They point to a previous concern expressed by a fire district representative regarding the prior, larger apartment project proposal. Two things have happened since then, however. First, the project has been substantially reduced in scale.⁽¹⁾ Second, and most importantly, the regional fire authority that succeeded the fire district did not ratify or express the earlier concerns nor identify any new or different concerns, though it had the opportunity to do so.²⁽²⁾

(a) This project was not substantially reduced in scale. The October 2021 DEIS offered Alternative B-220 Townhome units is just 24 more than the 196 Snohomish Garden Townhome unit proposal (Exhibit L-3 pg iv)

(b) Unlike 2016, 2017 and 2021, the regional fire authority was never directly asked if they still supported Deputy Chief Fitzgerald's concerns now that the development was 196 units.

In 2016 and again in 2017, Fire Marshal Michael Fitzgerald expressed grave concerns as follows:

Our comments (below) submitted in December 2016 for this project stand.

...

1. The proposed project presents as an anomaly to the existing land uses in the areas surrounding the subject project.
2. The experience of the fire district is that significant traffic congestion exists in the exact area of the proposed project, and that at times this traffic presents already meaningful delays to emergency services. Providing such a high density project as is proposed can be expected to magnify the level of traffic congestion to an unacceptable level of delay of fire and EMS services. This doesn't seem consistent with permitted projects, or the goal of emergency services delivery.
...
6. The proposed project assumes that the fire district has the capacity to serve this proposed development. However, the fire district does not assume the same. . . .

² Decision, pp. 9-10, l. 23-4

this proposal is not supported by the strategic plan of Snohomish County Fire District 7.

7. . . . The fire district has long-standing plans to close the nearest fire station to the proposed project site (Station 74), and is in the process of building a new station 2.8 miles from the proposed project site.

We feel that the local comprehensive plan and regulations and conditions of this proposed project do not mitigate all of the significant environmental impacts of the proposed development. We respectfully request, therefore, that you deny site plan approval.³

Even then, after SCFD merged with Snohomish County Regional Fire & Rescue (“SRFR”), the same concerns clearly existed following release of the Oct 2021 DEIS now offering 3 alternatives – Alternative A-360 Units, Alternative B-220 Townhomes and Alternative C-No Build.(Exhibit L-3)

Tom Barnett, PDS emailed D. Michael Messer, Jr., Deputy Chief, Fire & Life Safety, Dec 17, 2020 “David Evans and Associates, the consultant for the Snohomish County Department of Planning and Development Services, is nearing completion of the Draft Environmental Impact Statement for the proposed 360-unit Paradise Lake Road Garden Apartments project. Chief Fitzgerald has provided comments on this project during the public commenting periods for the proposal - his e-mails are attached.

Does your department have any **additional** comments?...”.[emphasis added] (Exhibit I-115 pg 5) Deputy Chief Messer response dated January 7, 2021: “. . . I can provide comment and have nothing else to include.”⁴ This statement clearly indicates that SRFR ratified the previous submission by SCFD 7.

³ Exhibit_I-115 pgs 2-3, __

⁴ Exh. ____

In November 2022, Deputy Fire Marshal Jason Bowen did not retract the previous concerns because, unlike 2016, 2017, and 2021, he was never directly asked if he still supported Fitzgerald's comments. It is nonsensical to insist that someone keep repeating something already affirmed; this is black and white—if SRFR no longer supports it. Fire Marshal Fitzgerald's concerns, PDS, and the Applicant should provide written proof.

To date, neither the Applicant nor PDS has provided proof that this occurred, and for this reason, the record should be reopened to ascertain the local emergency services' stance on the project. The residents in the area are not simply statistics—they are human lives. Their safety should be paramount, and based on emergency services' long-standing concerns, this issue needs to be addressed.

For the Hearing Examiner to make a dismissive statement with blatant disregard for public safety makes the County and SRFR liable for future harm to persons and property,

PDS and the Applicant must practice due diligence by following up with SRFR and asking the current staff questions about whether they still support Fire Marshal Fitzgerald's concerns. It is important to remember that following the "mitigation" traffic is 1-3 seconds longer than the current for two key troubled identified intersections.

Merely providing more funds to SRFR or just claiming the County and the Applicant tried to get their information will not resolve this issue (Exhibit I-115 pg 83-11d, pg 100-39e, pg 105-46h). Even then, the County cannot assume that the taxpayers will subsidize any increase in SRFR funding, primarily solely for the Applicant's benefit.

2. TRAFFIC AND PEDESTRIAN SAFETY -- CROSSWALK

Condition 43(c) states:

Pursuant to design plans approved by the county, a rapid rectangular flashing beacon (RRFB) crossing sign(s) and raised median (pedestrian refuge island) at

the school crossing located on Paradise Lake Road near the southwest property corner. PDS and Public Works **are urged** to require a design consistent with best practices for pedestrian refuge islands (also known as crossing or pedestrian islands) from such sources as the Federal Highway Administration, AASHTO, and other professional sources, especially regarding illumination and highlighting or marking the island to increase its visibility to drivers on Paradise Lake Road.⁵

[emphasis added]

The Hearing Examiner cannot give the County a free pass on liability by “urging” PDS and Public Works to require something that may or may not happen.

Public concern for pedestrian safety was expressed at the hearing, and even the Hearing Examiner voiced concern with this design.

Currently, a pedestrian crossing does not exist on Paradise Lake Road, and would be installed solely due to this project. The Applicant should have factored into the traffic study the significant delays the pedestrian crossing will create.. The Hearing Examiner assumed that only school children will use the crossing. , He should have considered how often that would occur and at what times. Of course, the project's residents will also use it to get to the convenience store, which the **Applicant’s Traffic Study should have considered.**

An objection to the Applicant’s traffic study could not have been made until the Hearing Examiner issued his Decision setting forth the parameters for the pedestrian crossing.

Even if this project is somehow exempt from SEPA under an RCW that clearly was not written for this type of project the County owes a duty to the residents to ensure public safety.

To ensure public safety it is within the Hearing Examiner’s jurisdiction to make a condition for approval of the project that requires the Applicant (not the County) to construct a pedestrian overpass on Paradise Lake Road. For the Hearing Examiner to make a dismissive

⁵ Decision, p. 29, l. 4-10

statement with blatant disregard for public safety makes the County liable for future harm to persons and property. Public safety is paramount since Paradise Lake Road is a County road, hence, it is County liability. 200+ public concerns were raised and just a few stated:

The sidewalks to be added along Paradise Lake Rd are inadequate to handle the real world behavior of the Hidden River Middle School students when considering the increase in traffic. For one they will go down Paradise Lake Rd to the convenience store at the intersection with Bostian Rd (Exhibit I-115 pg 108 #52d)

The Builder states they will add a cross walk with flashing lights for pedestrian safety, that is a joke especially with the additional large truck volume from the companies on the other side of 522 that use Paradise Lake as their main route to the east side and elsewhere. The potential for injury and death in trying to cross Paradise Lake even with a cross walk is too great a risk. Again, there is a reason this school is a NO WALK school. (Exhibit I-115 pg 99 #37c)

This project is pretty much a ghetto housing project in the middle of nowhere – none of it qualifies as affordable housing, and there is no infrastructure to support it. This project (whether it be 360 apartments, 220 townhomes or the “new and improved” 196 townhomes) had a Determination of Significance. Ms. Wetzel clearly stated in her testimony that this is not “a horse of a different color,” but simply the same horse with a different bridle and saddle. Allowing this project to skirt the SEPA exemption requirements for public safety cannot be permitted.

C. FLAWED TRAFFIC ANALYSIS

Inadequate Road Conditions (IRC) (SCC30.66B.210)

The Applicant cannot use a 7-year-old traffic study from a different project to justify approval of this project. The Decision states: “. . . First, the project has been substantially reduced in scale.”⁶ This project has not substantially reduced in scale. The previous project’s

⁶ Decision, p. 10, 1-2

October 2021 DEIS Alternative B-220 townhome units is just 24 more than the 196 Snohomish Garden Townhome unit proposal.⁷

The Decision states at pg 15 lines 15-20, pg 16 lines 1-2:

“Irrespective of the existing level of service, a development which adds at least three evening peak hour trips to a place in the road system that has an Inadequate Road Condition (IRC) must eliminate the IRC to be approved.(1) (2) During its review (3) of the previous proposed development of 360 dwelling units, the county studied Paradise Lake Road from the eastern edge of WSDOT's right of way near 91 Ave. SE-Paradise Lake Road southeast to the King County line. Collision history(4), one of several factors reviewed, did not show a distinct pattern indicating a clear inadequacy. The county determined the road segment did not contain any inadequate road conditions (39)

The development will not affect any IRCs in the transportation service area with three or more evening peak hour trips, nor will it create an IRC. Therefore, mitigation will not likely be required for any IRC”

(39) WSDOT has jurisdiction of State Route 522, State Route 524 (Maltby Road), and a portion of Paradise Lake Road. The county does not have the authority to declare an IRC on these roads. WSDOT did not advise the county of any IRCs on these (5)

a. Failure to include the entire code - Inadequate Road Condition (IRC) [SCC

30.66B.210] Regardless of the existing level of service, any development which adds three or more P.M. peak-hour trips to a location in the road system determined to have an existing IRC at the time of imposition of mitigation requirements, **or development whose traffic will cause an IRC at the time of full occupancy of the development**, must eliminate the IRC.

b. Failure to disclose Snohomish County is only looking at predevelopment not at full occupancy. There are no declared IRC’s in TSA E at this time (exhibit C-1 pg 41)

⁷ Exhibit L-3 pg iv

It is absurd to claim this project won't cause an IRC when the definition of an IRC is 3 or more PM Peak-hour trips. An IRC will happen because traffic from the site will likely turn right into the traffic backup heading towards SR522. Expanding Paradise Lk Rd with a left turn lane won't help either because the traffic is turning right.. The only thing will be the unfunded SR522/Paradise Lk Road Interchange

Citizens are going to have endure road construction taking them back from worse than gridlock to gridlock. Then face construction a second time when the final WSDOT Interchange is constructed. Thousands of citizens have endure nightmare traffic because developers don't want to wait (Exhibit I-115 pg 102 #41e)

c. Failure to publicly disclose Snohomish County used a study from 2017 to determine IRC's.(exhibit H-8 pg 5)

The County received over 200 emails from public citizens concerned with existing traffic in the vicinity and how the roads will be affected by the forecasted trips from the project and previous 360/220 unit development. Based on this, Snohomish County conducted an IRC study along Snohomish County's segment of Paradise Lake Road. The Paradise Lake Road segment was performed from the eastern edge of the WSDOT right-of-way near the 91st Ave SE-Paradise Lake Road (spur road) and extended southeast to the King County line. Results of this analysis were completed on **December 20, 2017** (during the larger 360/220 unit proposed development on the subject development site), and it was determined that this segment is NOT an inadequate road condition. The collision history at that time nor currently shows a distinct pattern that would indicate a clear inadequacy that would fix the collisions along the corridor. Excerpts from a few of the emails state:

At rush hour times, traffic can back up many miles waiting to get through the stop light, going every direction. Our home is 0.6 miles driving from our driveway to that intersection, in its current state there are times where it can take up to 20

minutes to travel what should be a 2 min drive. Adding more people to that without building an overpass seems idiotic and like there's not care for the effect it'll have on the environment and surrounding neighborhoods. Also, just thinking about the construction traffic that would be going in and out and how slowly they move, I could see those traffic times increase exponentially 8#25)

Traffic has always been abysmal trying to get over 522 to Paradise Lake Road to work and then back home in the opposite direction. By abysmal I mean routinely sitting in traffic for up to 18 minutes just to cross the highway, morning and afternoon, day after year.⁹

d. Failure to acknowledge determination of an IRC is more than just collision

history. "Inadequate road condition" (SCC 30.911.0200 means any road condition, whether existing on the road system or created by a new development's access or impact on the road system, **which jeopardizes the safety of road users, including non-automotive users**, as determined by the county engineer.

I have witnessed so many people who have given up on courtesy and safety to circumvent the wait times, particularly heading westbound on Paradise Lake Road toward Hwy 522. It would be almost entertaining if it wasn't so alarming. People routinely cross the double yellow lines from great distances to avoid having to wait to turn left onto the highway. People enter the right turn lane and then speed up to pass those of us going straight across the highway. People cut through the gas station to go south on Bostian and cut through the gas station to get onto Paradise Lake Road. People drive on the narrow gravel shoulder to shove their way ahead. And pity the poor folks who are arriving at the southbound and northbound stop signs on Bostian, just trying to get anywhere. They are at the mercy of everyone going east and west. In short, it is a pitiful mess.¹⁰

Furthermore, these studies make no mention that on a regular day traffic will back up for 2 miles on Paradise lake road, this causes Bostian Rd to back up half a mile, this can add an additional 15 min to travel for a poorly designed and implements intersection. As a family that lives 1.7 miles from the 522 light we have times we can't even get out of our driveway as traffic is backed up past our house. ¹¹

e. It is absurd to claim that only WSDOT can declare Paradise Lk Rd an IRC when they are responsible for just a couple hundred feet from 91st to SR522.

⁸ Exhibit I-115-pg 40

⁹ Exhibit I-115 pg 76

¹⁰ Exhibit I-115 pg 77

¹¹ Exhibit I-115 pg 78 #6b); Exhibit I-115 pg 84-15c, pg 86-17b, pg 103 42a, pg 108 52d, pg 77-5c, pg 78-6b & 6e, pg 111-57a

Technically, an IRC already exists on this road, and 99% of it is County property!!!.

Blaming WSDOT for this problem and saying there's nothing SC can do is ridiculous. The following are just a couple of the 200+ emails SC received against this project.

Paradise lake road had a failing grade for many years in the past. Instead of planning upgrade and correcting the problem the county chose to change the metrics in which the road and intersections were measured to ensure a passing grade. . .¹²

The sidewalks to be added along Paradise Lake Rd are inadequate to handle the real world behavior of the Hidden River Middle School students when considering the increase in traffic. For one they will go down Paradise Lake Rd to the convenience store at the intersection with Bostian Rd ¹³

the Builder states they will add a cross walk with flashing lights for pedestrian safety, that is a joke especially with the additional large truck volume from the companies on the other side of 522 that use Paradise Lake as their main route to the eastside and elsewhere. The potential for injury and death in trying to cross Paradise Lake even with a cross walk is to great to risk. Again, there is a reason this school is a NO WALK school. ¹⁴

The experience of the fire district is that significant traffic congestion exists in the exact area of the proposed project, and that at times this traffic presents already meaningful delays to emergency services. Providing such a high density project as is proposed can be expected to magnify the level of traffic congestion to an unacceptable level of delay of fire and EMS services. This doesn't seem consistent with permitted projects, or the goal of emergency services delivery. ¹⁵

Traffic on PLR can get backed up at different times of the day. Since there is a school right across the street from where the property is located and another school just behind the property, traffic becomes quite jammed during peak school hours and peak travel times as many people commute on PLR. Bringing in the possibility of 300+ cars into a small area is incredibly damaging. Please listen to the residents that live by this road, it cannot sustain the cars the apartments would bring. ¹⁶

¹² Exhibit I-115, pg 42 #27

¹³ Exhibit I-115 pg 108 #52d

¹⁴ Exhibit I-115 pg 99 #37c

¹⁵ Exhibit I-115 pg 2 #2

¹⁶ Exhibit I-115 pg 106 #47a

D. CONCLUSION/RELIEF REQUESTED

Based upon the above, we respectfully request that the Hearing Examiner:

1. Deny the project;
2. Reopen the Record for Limited Purposes;
3. Remand the project for further consideration (including, but not limited to, requiring the Applicant to provide current project data, etc.); and/or
4. Modifying Conditions as identified above.

DATED THIS 4th day of March, 2024.

We certify and declare under penalty of perjury under the laws of the State of Washington that we have submitted this Petition/Request in good faith and have provided a copy via email to all parties of record.

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