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August 22, 2022



Snohomish County Council  
c/o Department of Planning and Development Services  
2<sup>nd</sup> Floor, County Administration-East Building  
3000 Rockefeller Avenue  
Everett WA

Dear Snohomish County Council and DPDS:

Enclosed for filing is an appeal of Hearing Examiner decisions in the Cathcart Crossing project application referred to by File No. 21-107654 SPA/BSP, with six attachments, and a check for the appeal fee of \$500 (provided by Deborah Wetzel) in accordance with appeal instructions provided in the Hearing Examiner's Amended Decision issued August 8, 2022.

Please promptly review this appeal, and if you have any issues with the appeal or attachments please advise Ms. Wetzel immediately so that filing of the appeal remains timely.

Thank you for your assistance with this filing.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard Aramburu". The signature is fluid and cursive, with the first name "Richard" and last name "Aramburu" clearly distinguishable.

J. Richard Aramburu

JRA:cc

cc: Clients

BEFORE THE COUNCIL  
OF THE COUNTY OF SNOHOMISH

In Re the APPEAL of

KATRINA STEWART and DEBORAH  
WETZEL,

Appellants,

of the Hearing Examiner Decision for the  
CATHCART CROSSING Project  
Application

Applicant: Pacific Ridge-DRH, LLC  
(Donald R. Horton)

Snohomish  
County

File No.: 21-107654 SPA/BSP

APPEAL OF LAND USE  
DECISION BY KATRINA  
STEWART AND DEBORAH  
WETZEL (SCC chap. 30.72.070)

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1     **1.     IDENTIFICATION OF APPEAL.**

2             This is an appeal of land use decisions made by the Snohomish County Hearing  
3 Examiner ("Examiner") as permitted by SCC 30.72.070).

4  
5     **2.     DECISIONS APPEALED.**

6             The decisions appealed herein are the July 7, 2022 Decision of the Hearing  
7 Examiner approving the Cathcart Crossing proposal applications for a binding site plan,  
8 and a planned community business preliminary plan with urban residential design  
9 standards, hereinafter "Decision." Also appealed is the August 8, 2022 "Order Granting  
10 and Denying Petitions for Reconsideration" and an August 17, 2022 "Order Denying  
11 Further Petitions for Reconsideration and Motion to File Late Reconsideration Petition."  
12 These decisions are attached.<sup>1</sup>

13  
14             These decisions dealt with the Cathcart Crossing proposal for 286 town homes  
15 and two commercial buildings (a fast food facility and a mini-storage) on a 31-acre  
16 parcel owned during project review by Snohomish County ("County"), but purchased by  
17 the Applicant Horton (see Section 3) on July 15, 2022. As will be discussed below, the  
18 Snohomish County Staff and Hearing Examiner should have concurrently considered  
19 the proposal for a linked Park and Ride project during SEPA procedural review and  
20 during the open record hearing.  
21  
22

23             <sup>1</sup>See: Attachment 1, Decision of the Hearing Examiner dated July 7, 2022.  
24 Attachment 2, Amended Decision of the Hearing Examiner dated August 8, 2022.  
25 Attachment 3, the August 8, 2022 "Order Granting and Denying Petitions for Reconsideration." Exhibit N.3.  
26 This decision modified provisions related to school impact fees, not at issue in this appeal.  
27 Attachment 4, the August 17, 2022 "Order Denying Further Petitions for Reconsideration and Motion to File  
28 Late Reconsideration Petition."  
Citations to the Decision (Attachment 1) are made by page and line number as follows, e.g. "Decision at 13/18-20."

1     **3.     IDENTIFICATION OF PARTIES.**

2             The Appellants herein are Katrina Stewart, 23526 82<sup>nd</sup> Ave SE, Woodinville,  
3     Washington 98072, email tstewart@nsuch.com, and Deborah Wetzel, 9715 162<sup>nd</sup> St  
4     SE, Snohomish Washington 98296, email debbieleewetzel@gmail.com, both parties of  
5     record to the proceeding who submitted written comments ("Appellants"). Appellants  
6     are represented in this proceeding by attorney J. Richard Aramburu, 705 Second  
7     Avenue, Suite 1300, Seattle, Washington 98104, phone 206-625-9515, fax 206-682-  
8     1376 and email: rick@aramburu-eustis.com.  
9

10            Respondents include the project applicant Pacific Ridge - DRH, LLC who is now  
11     the owner of the Cathcart Crossing property ("Horton")<sup>2</sup> and Snohomish County, the  
12     owner of the property during project review. At all times during the review process,  
13     Snohomish County appeared and was represented by Snohomish County Planning and  
14     Development Services ("PDS"), not by representatives of the County in its proprietary  
15     capacity as owner of the property in question.  
16  
17

18     **4.     RECORD OF PROCEEDING.**

19            The Clerk of the Hearing Examiner has assembled a List of Witnesses and  
20     Exhibits, which is found online and attached hereto. See Attachment 5. Exhibits in this  
21     appeal will be referenced to this list. A transcript of the open record hearing held by  
22     the Snohomish County Hearing Examiner on the afternoon of June 14, 2022 is found in  
23     the record as Exhibit M.3, Exhibit 9.  
24

25     \_\_\_\_\_  
26     <sup>2</sup>Because the PSA provides that no agreements will be valid without being executed by Donald R.  
27     Horton, the applicant is referenced herein as "Horton."  
28

1     **5.     SUMMARY OF ISSUES.**

2             The following issues will be addressed in this appeal:

3             5.1     INADEQUATE NOTICE UNDER SEPA AND THE LAND USE CODE.

4             Based on a lack of notice to several Snohomish County residents who  
5  
6 specifically requested to be parties of record, the Snohomish County Council  
7 (“Council”) is requested to reopen the process for comment and appeal for procedural  
8 compliance with the State Environmental Policy Act (SEPA) and for zoning issues the  
9 land use hearing.

10            5.2     APPEARANCE OF FAIRNESS.

11            In this appeal, Appellants contend that the Hearing Examiner’s review of a  
12  
13 matter that involved the sale of county property and refusal to recuse himself violated  
14 the appearance of fairness doctrine. The Council will be asked to appoint a special  
15 Hearing Examiner and remand to that Examiner for a reopened land use hearing and  
16 decision.

17            5.3     UNTIMELY STAFF REPORT.

18            Appellants contend that the final staff report (Exhibit L.2) was not timely  
19  
20 submitted to the Hearing Examiner, nor made available to the public, prior to the June  
21 14, 2022 hearing, contrary to county ordinances and procedures. The Council will be  
22 asked to remand the subject matter of the proceeding with direction to re-notice and  
23 hold a new open record public hearing allowing consideration of the final staff report .  
24

1           5.4    FAILURE TO DISCLOSE AND CONSIDER THE PURCHASE AND SALE  
2                    AGREEMENT WITH APPLICANT HORTON THAT INCLUDED ITS  
3                    LINKAGE TO THE PARK AND RIDE PROPOSAL: ZONING HEARING.

4           Appellants contend that Horton and County failed to disclose the existence of  
5           the Purchase and Sale Agreement (the "PSA") between them as a part of zoning and  
6           land use review. Because of this failure of disclosure, and the PSA's linkage between  
7           the Cathcart Crossing and Park and Ride proposals, land use review was inadequate  
8           and incomplete, requiring a remand for reopening of the public hearing.

9           5.5    FAILURE TO DISCLOSE AND CONSIDER THE PURCHASE AND SALE  
10                   AGREEMENT BETWEEN APPLICANT HORTON AND THE COUNTY,  
11                   INCLUDING ITS LINKAGE TO THE PARK AND RIDE PROPOSAL:  
12                   SEPA.

13           Appellants contend that Horton and the County failed to disclose the existence  
14           of the PSA between them as a part of SEPA procedural compliance. Because of this  
15           failure of disclosure, and the PSA's linkage between the Cathcart Crossing and Park  
16           and Ride proposals, the SEPA analysis was inadequate, requiring re-noticing and  
17           reopening of the SEPA public comment and appeal periods.

18           5.6.   FAILURE TO CONSIDER WHETHER THE CATHCART CROSSING  
19                   PROPOSAL WAS CONSISTENT WITH "COMPETITIVE SELECTION  
20                   PROCESS" AND DESIGN STANDARDS.

21           The PSA disclosed that Snohomish County engaged in a "competitive selection  
22           process" that resulted in Horton being selected as the possible owner/developer of this  
23           County property. However, there was no disclosure or consideration of the terms and  
24           conditions or the results of that "competitive selection process." The Council will be  
25           requested to remand the proposal to direct the County to fully consider whether the  
26



1 outcome of the proposal under review is consistent with the competitive selection  
2 process and the selection of the present applicant.

3 **6. SPECIFIC STATEMENT OF GROUNDS FOR APPEAL, SUPPORTING FACT**  
4 **AND ARGUMENT.**

5 The following is detailed discussion of the grounds for each appeal issue,  
6 supporting facts (with reference to the record) and argument supporting each issue.  
7

8 **6.1 INADEQUATE NOTICE UNDER SEPA AND THE LAND USE CODE.**

9 In his decision, the Examiner concluded that:

10 PDS notified the public of the open record hearing, SEPA threshold  
11 determination,<sup>16</sup> and concurrency and traffic impact fee determinations.<sup>17</sup>

12 [FN] <sup>16</sup> Ex. E.1.

[FN] <sup>17</sup> Exhibits F.1 through F.4.

13 Decision at 11/14-15. This determination that notice was properly made for SEPA and  
14 open record hearing purposes is an error of law, is not support by the record and failed  
15 to follow applicable procedure under SCC 30.72.080(2).

16 For his finding of adequate notice for SEPA purposes, the Examiner relies on  
17 Exhibit E.1, signed by Stacey Abbott as “Responsible Official” on May 4, 2022. This  
18 notice included dates for comments and a deadline for appeal of the SEPA  
19 Determination of Non-significance (DNS). Though not mentioned by the Examiner,  
20 Exhibit F.2 is an “Affidavit of Mailing” for the “Issued Determination of Significance.”  
21 Both Exhibits E.1 and F.2 declare that mailing of the DNS was made to a “Parties of  
22 Record” listing of only 10 names.  
23

24 However, it has been discovered that persons who requested to be parties of  
25 record were not provided notice of either the SEPA determination of non-significance or  
26 the open record hearing held on June 14, 2022.  
27

1 Attached Hearing Exhibit I.11 (Attachment 6 hereto) is a letter from 14 residents  
2 of Snohomish County commenting on Project "21-107654-BSP" and specially  
3 requesting to become parties of record of this proposal and "any other projects on  
4 property," specifically mentioning the "Possible, Urban Park & Ride." The letter  
5 explicitly raised concerns regarding the rural community, roads and contribution of the  
6 project to "uncontained urban sprawl," as well as "improper notification" because signs  
7 on the property were not "able to be read." The letter further states that: "All Signees  
8 below Request to become Party of Record to Project #21-107654-BSP." (Emphasis  
9 supplied.)  
10

11  
12 As shown on the face of Exhibit I.11, it was received by PDS on July 26, 2021  
13 and directed to the assigned staffer Stacey Abbott. *Id.*<sup>3</sup> Per SCC 30.91P.110, a person  
14 becomes a "Party of record" as follows: "(2) Any person who submitted written  
15 comments to the department prior to a Type 1 decision or Type 2 recommendation; . . ."  
16 See also SCC 2.02.165(1)(c), definition of a "party of record."  
17

18 However, the Affidavit of Mailing for the "Issued Determination of  
19 Nonsignificance" for the Cathcart Crossing project prepared by Kris Barnett and signed  
20 on May 10, 2022, includes a list of 23 persons who were notified, but includes only one  
21 person who had requested to become a party of record in Exhibit I.11. See Exhibit F.2.  
22 This notice indicates the comment/appeal period will start on May 11, 2022 and the  
23 "SEPA comment/appeal period end date is Wednesday, May 25, 2022." Except for  
24

25  
26  
27 <sup>3</sup>The specific request that each person become a party of record separates this letter from treatment as  
28 a mere petition as will be discussed herein.

1 Janet Miller, no notices were sent to persons requesting to be parties of record in the  
2 July 26, 2021 letter to PDS, Hearing Exhibit I.11.

3 Exhibit F.1 is the "Combined Notice of Open Record Hearing" prepared on May  
4 11, 2022, which included (at PDF page 9) a written notice of the open record hearing  
5 and a deadline for SEPA comments/appeal. The Parties of Record are found at PDF  
6 page 4 and do not include persons requesting notice in the Exhibit I.11, except (again)  
7 for Ms. Miller. Hearing Exhibit F.1 explicitly provided notice of the hearing (scheduled  
8 for June 14, 2022), the SEPA Comment period (ending May 25, 2022) and the deadline  
9 for a SEPA appeal (also May 25, 2022) at PDF page 9.<sup>4</sup>

10 Keeping accurate records of those that are registered as Parties of record is  
11 required by Hearing Examiner Rules at Paragraph 4.6, which orders the keeping of a  
12 "Parties of Record Register" as follows:

13 4.6 Parties of Record Register

14 a) Land Use Matters. In land use matters before the Hearing Examiner,  
15 the Department shall prepare a Parties of Record Register (as defined by  
16 SCC 2.02.165(1)) which shall be available on the County's computer  
17 network no later than the time that the pre-filed exhibits are transmitted to  
18 the Examiner's Office. The listing shall be in a software program and use  
19 format, storage and naming conventions as mutually agreed upon by the  
20 Department and the Examiner. Thereafter, the Clerk will maintain the  
21 official Parties of Record.

22 (Emphasis supplied). Per this rule, the Party of Record Register shall be initially  
23 maintained by PDS, but transmitted to the Hearing Examiner a minimum of seven days  
24 before the hearing. The Parties of Record Register is not included in the List of

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25 <sup>4</sup>Even the Project Manager for Horton submitted a "Response to Public Comments" on the project which  
26 addressed Exhibit I.11's letter from "Concerned Citizens of Clearview." Hearing Exhibit K.2. Ironically, one  
27 of the concerns expressed by Hearing Exhibit I.11 was improper public notification. Compare Hearing  
28 Exhibits I.11 and K.2.

1 Exhibits and Witnesses for the hearing. The Examiner is required by SCC 2.02.160 to  
2 use the Parties of Record Register in providing notice of the Examiner's decision:

3       The office shall mail a copy of the examiner's decision by certified mail,  
4       return receipt requested, to the appellant, and by inter-office or regular  
5       mail, as appropriate, to any other party of record within the time period  
6       allowed by SCC 2.02.155.

7 (Emphasis supplied).

8       By August 10 and 11, 2022, it became apparent that notice for both SEPA and  
9       the open record hearing was deficient when declarations of three of the persons on the  
10      "Concerned Citizens of Cathcart" letter, Joan Bjornson, Ronald Jeffs and Wendy Jeffs,  
11      were submitted to the Hearing Examiner's office. See Exhibits M.8, M.9 and M.10. See  
12      Attachment 4 hereto. Declarations of David Green and Phyllis Hopkins, also  
13      signatories, are include as Exhibit M.15. These Declarations confirm the lack of notice  
14      to persons who had requested to be parties of record of the DNS and asked that it be  
15      reissued to all parties of record, including the Declarants.<sup>5</sup>

17      These Declarations also indicate that the Hearing Examiner's office made phone  
18      calls to some of the persons on Exhibit I.11. Joan Bjornson, Ronald Jeffs and Wendy  
19      Jeffs each state they received phone calls from the Hearing Examiner's Office just days  
20      before the June 14, 2022 hearing "asking if I wanted a link to the Zoom hearing."  
21      Exhibits M.8, M.9 and M.10. This communication from the Examiner's office  
22      acknowledged that those on Hearing Exhibit I.11 were indeed parties of record, but it is  
23      uncontested that no notices were sent to them for the SEPA comment or the appeal  
24

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25  
26      <sup>5</sup>If comments are not made during the SEPA process, then the failure to comment "shall be construed  
27      as lack of objection to the environmental analysis, if the requirements of WAC 197-11-510 are met."

1 periods for the DNS or for the principal hearing on June 14, 2022, by any county  
2 department or staff member.<sup>6</sup> Each of these local residents emphasized that they  
3 wanted to have comment and appeal periods for SEPA reopened.  
4

5 Nor did the failure to provide comments to concerned citizens on Exhibit I.11 slip  
6 by the Hearing Examiner's office. Exhibit M.16 is an email exchange between the Clerk  
7 for the Examiner (Allegra Clarkson) and PDS staffers (Stacey Abbott and Kris Arnett)  
8 on the very subject of notice and party of record status regarding the concerned  
9 citizens on Exhibit I.11. The email string begins with an email from Ms. Clarkson just  
10 four days before the hearing (June 10, 2022; 8:36 AM) stating:  
11

12 Good morning, gals –

13 In reviewing the file to send to the HE, I saw that the petition from  
14 Cathcart Concerned Citizens included formal requests for all signers to be  
15 added as parties of record. I went ahead and added them to the POR list,  
got emails for a few of them, and sent Zoom invitations to those that  
wanted them.

16 Almost immediately, on June 10, 2022 at 9:06 AM, Ms. Abbott objected, asserting that  
17 Hearing Exhibit I.11 was a "petition" and there was no need to notify each signatory.<sup>7</sup>

18 Six minutes later (June 10, 2022; 9:12 AM), Ms. Clarkson responded that she was  
19 looking at Hearing Exhibit I.11, which contained the phrase (cited above) that "All  
20 Signees below Request to become Party of Record to Project #21-107654-BSP" and  
21 said: "It just seemed more than just a petition signature, but a specific request to be a  
22

23  
24  
25 <sup>6</sup>The SEPA rules address the reasonable notice as "(g) Mailing or e-mailing notice to any person, group  
or agency who has requested notice." WAC 197-11-510(1)

26 <sup>7</sup>At this point PDS knew it had not properly provided notice to persons requesting it on Hearing Exhibit  
27 I.11 and appreciated the ramifications of this failure to do so.

1 party of record.”<sup>8</sup> However, Ms. Clarkson, the Administrative Hearings Clerk for the  
2 Hearing Examiner, backed down and said: “Sorry if I overstepped here!” At 9:15 AM,  
3 Ms. Abbott said: “No worries. I will let the applicant know.”<sup>9</sup> Despite issues of notice  
4 being prevalent at the hearing, no disclosure of the foregoing email exchange was  
5 made on the hearing record by the Examiner or PDS.<sup>10</sup> This was an ex parte  
6 communication between the Examiner, PDS and project applicant Horton, which  
7 includes major appearance of fairness issues as discussed below.  
8

9 Now the Hearing Examiner does an about-face and claims that Exhibit I-11 is a  
10 “petition,” not a comment letter, so notice is not required to be made to these  
11 signatories. This ignores the plain and unambiguous request made three times in the  
12 letter: a) on the top of page one: “Request to become Party of Record to the Above  
13 Project known as Cathcart Crossing,” b) at the bottom of page 1: “All Signees below  
14 Request to become Party of Record to Project # 21-107654- BSP,” and c) on the  
15 second page of the letter above the signatures: “Party of Record Request.” Hearing  
16 Exhibit I.11. In fact, in his Decision, the Examiner – perhaps tongue in cheek – admits  
17 that:  
18  
19  
20

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21  
22 <sup>8</sup>The Concerned Citizens of Clearview is not identified as an organization or a group, but rather is simply  
23 a number of neighbors living in close proximity to one another who together wrote a comment letter, with  
24 each requesting to become a party of record. See Exhibit I.11.

25 <sup>9</sup>Though not specifically reflected in the email string, it appears that the Applicant was exerting influence  
26 over who received notice. The exchange, which involved ex parte communications, also raises appearance  
27 of fairness issues.

28 <sup>10</sup>Nor is there a claim that including the fourteen residents of Clearview on the Parties of Record List was  
burdensome; all that was required was the entry of these several lines of text in the Parties of Record  
Register.

1 Neighbors complained that notice to the public was insufficient because  
2 the posted signs were too small and notices were only mailed to  
3 property owners within a radius of 1,000 feet. The public was notified as  
4 required by county code; disagreement with county code requirements is  
5 not within the Hearing Examiner's jurisdiction.

6 Decision at 13/13-16. He makes no mention of communications between the Hearing  
7 Examiner and Snohomish County staff on June 10.

8 There was no reason to draw fine lines between "petitions" and "letters" where  
9 the fundamental, due process issue of notice was at stake, especially when these  
10 neighbors specifically requested notice. Indeed, one of the Growth Management Act's  
11 key goals is to "Encourage the involvement of citizens in the planning process." RCW  
12 36.70A.020(11). Keep in mind the notice issue here relates to persons that expressly  
13 requested to become a party of record, not an issue of receiving notice because they  
14 were a certain distance from the property or might be a member of an organization in  
15 the community. Moreover, even if Exhibit I.11 might be considered a "petition," it  
16 contains three specific requests that the signatories be made "parties of record," which  
17 takes it beyond just a petition, as the Examiner's office correctly described.<sup>11</sup> Indeed,  
18 the Hearing Examiner process was established in Snohomish County "to establish a  
19 quasi-judicial hearing system which will ensure procedural due process and  
20 appearance of fairness in regulatory hearings; provide an efficient and effective hearing  
21 process for quasi-judicial matters;. . ." SCC 2.02.020(1).  
22  
23  
24

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25 <sup>11</sup>The characterization of Exhibit I.11 as a "petition" was made by PDS staff; the 14 residents that signed  
26 the letter did not call it a petition or use the word petition as either a noun or a verb. Exhibit M.16.  
27 Additionally, the letter does not indicate an organization or group, and Janet Miller did not sign it as a  
28 representative of such.

1 As the Examiner was aware of the notice deficiency shown by this email  
2 exchange between his office and PDS, he should have ordered an immediate  
3 continuance to allow proper and complete written notice to be sent to all parties of  
4 record, including those on Hearing Exhibit I.11. At the same time, he should have  
5 allowed a new comment and appeal period for the SEPA DNS because persons  
6 requesting to be parties of record had not been provided notice of those important  
7 proceedings.  
8

9 SCC 30.70.135, entitled "Clerical Mistakes -- Authority to Correct" provides:

10  
11 Clerical mistakes and errors arising from oversight or omission in hearing  
12 examiner and council decisions and/or orders issued pursuant to this  
13 chapter may be corrected by the issuing body at any time either on its  
14 own initiative or on the motion of a party of record.

15 (Emphasis supplied.) Though the errors arising from the failure to provide notice to the  
16 residents who signed Hearing Exhibit I.11 were fundamental to a fair hearing process,  
17 provisions for dealing with such errors were encompassed in SCC 30.07.135.

18 In addition, Washington caselaw makes clear that notice is required so that  
19 persons can effectively participate in hearings:

20 Washington courts have held that notice must apprise interested citizens  
21 of the nature and purpose of the hearing so they can participate  
22 effectively. *Barrie v. Kitsap Cy.*, 84 Wn.2d 579, 584-86, 527 P.2d 1377  
23 (1974); *Glaspey Sons, Inc. v. Conrad*, 83 Wn.2d 707, 711-12, 521 P.2d  
24 1173 (1974); *Port of Edmonds v. Northwest Fur Breeders Coop., Inc.*, 63  
25 Wn. App. 159, 166-67, 816 P.2d 1268 (1991), review denied, 118 Wn.2d  
26 1021 (1992). If notice fails to apprise parties of the nature and purpose of  
27 proceedings the good intentions of officials in satisfying statutory  
28 requirements are irrelevant. *Barrie*, at 584-86.

29 *Responsible Urban Growth v. Kent*, 123 Wn 2d 376, 386 (1994). Here "interested  
30 citizens" specifically requested to be made parties of record so they could "participate



1 effectively” in the hearing. Given the critical element of notice, a behind-the-scenes  
2 decision by the Examiner’s office and PDS staff to not provide notice was singularly  
3 inappropriate.  
4

5        Though the Examiner’s office did provide telephone notice to some of the  
6 concerned citizens identified in Hearing Exhibit I.11 – concerning Zoom access to the  
7 hearing – such “good intentions” were not only untimely – coming just days before the  
8 hearing – but also lacked the content and detailed project information required by SCC  
9 30.70.050(2). Moreover, it appears from the record that Ms. Clarkson ceased her  
10 phone calls once being “corrected” by PDS staff, whom we suspect were in direct  
11 communication with the Applicant over the issue.  
12

13        The Council should act to assure that notice provisions are fully met for those  
14 that specially asked to be parties of record. The Council should reopen the comment  
15 and appeal periods for procedural SEPA compliance and, once SEPA procedural  
16 compliance is complete, reopen the public hearing to give all interested parties notice  
17 and the opportunity to participate.  
18

## 19        6.2    APPEARANCE OF FAIRNESS.

20        In the Decision, the Examiner determined that he would not recuse himself from  
21 the proceedings based on appearance of fairness issues (see pages 5-6) nor to reopen  
22 the hearing (pages 9-11). This was repeated in the “Order Denying Further Petitions”  
23 entered on August 18, 2022. This ruling was contrary to established state and county  
24 law; the Council should order the Examiner to recuse himself from further proceedings  
25 and order the public hearing be reopened with a new hearing examiner.  
26  
27  
28

1 The Snohomish County Code is explicit on the subject of recusal:

2 **2.50.040 Recusancy.**

3 Any county elected or appointed official shall remove him or herself from  
4 hearing any quasi-judicial matter where, in the judgment of that official,  
5 his or her impartiality might be reasonably questioned. Grounds for such  
6 self-removal include, but are not limited to, a violation of the Appearance  
of Fairness Doctrine as defined in SCC 2.50.010(2).

7 (Emphasis supplied.) SCC 2.50.010(2) provides:

8 (2) "Appearance of Fairness" means that Doctrine applied by Washington State  
9 Courts and chapter 42.36 RCW to quasi-judicial actions;

10 The Examiner first says that the request for his recusal was "not timely raised."  
11 Decision at 6/26. However, the Examiner allowed comments to be emailed if received  
12 by 5 p.m. on the day of the hearing (June 14, 2022). As indicated in the transcript (M.3,  
13 Wetzel Exhibit 9) at page 35, this was due to concerns regarding the Zoom format:

14  
15 Now, some people, we've had problems with them figuring out, the  
16 technology has failed them during the hearing. They have not been able  
17 to testify during the hearing and I don't want you to be concerned that if  
18 for some reason you're unable to get the Zoom platform to work for you so  
19 you can speak now, I will accept written emailed comments by close of  
20 business today if you don't speak now. Okay? So, if you're unable to  
21 speak now and you want to say something and you think it's important  
that I hear it, I'll hear it. Just send me an email. Send it to  
hearing.examiner@snoco.org by 5:00 p.m. Put Cathcart Crossing in the  
subject header, and tell me what I need to know and give us your name  
and address.

22 An objection to the current Examiner making a decision on the Cathcart Crossing  
23 matter was raised at 4:32 p.m. on the afternoon of the hearing, June 14, 2022.<sup>12</sup> See

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24  
25 <sup>12</sup>In Footnote 2 on page 6, the Examiner says that allowing the objection at 4:30 p.m., before the 5 p.m.  
26 deadline was not permissible because: "In addition, such a rule would encourage laying behind the log and  
27 objecting later to create unnecessary delay." There is no basis to conclude that community comments  
expressing concern about the fairness of the hearing were made to "create unnecessary delay."

1 Exhibit L.20. This was well within the Examiner's imposed time limit and before the  
2 Examiner even began his review on the merits of the matter. Without mentioning SCC  
3 2.50.040, the Examiner declined to recuse himself.<sup>13</sup>  
4

5 In addition, as described above, previously undisclosed appearance of fairness  
6 issues arose just before the hearing as described in Section 6.1 of this appeal. As  
7 described there, an email (and possibly verbal) exchange occurred between the  
8 Examiner's office and the PDS staffers concerned about who would – or would not –  
9 receive notice of the hearing set to occur four days later. See Exhibit M.16. These  
10 exchanges were made with parties with a very large financial interest in the outcome.  
11 As will be discussed below, Snohomish County (as the proprietary owner of the  
12 property) had agreed to sell its property to the permit applicant Horton, contingent on  
13 receiving permits for a development project. If notice was given to persons who had  
14 already expressed concerns about the project (residents of Clearview as shown in  
15 Exhibit I.11), they might make critical comments on the DNS, even appeal it, or appear  
16 at the hearing. These possible comments/appeals might result in changes in the  
17 project or other delays in Snohomish County receiving its money and Horton getting the  
18 property and permits required for his 286 townhouse development.  
19  
20

21 As noted in Exhibit M.16, the Examiner relented to the pressure from Snohomish  
22 County staff and declined to provide notice. However, the Examiner did not disclose at  
23 the hearing that these communications had occurred or that it was decided no notice  
24 should be provided to residents on Exhibit I-11. Indeed, in the hearing transcript  
25

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26  
27 <sup>13</sup>Though the objection was made before the close of the record at 5 p.m. on the date of the hearing.  
28

1 (provided in the Wetzel motion for reconsideration at Exhibit M.3, Ex. 9) the Examiner  
2 said: "I have not had any prehearing contacts regarding the application." Exhibit M.3,  
3 Ex. 9, page 2, line 10. He repeated this factual assertion in his Decision, claiming that  
4 "he had not had any pre-hearing contact with anyone regarding the proposal."  
5 Decision, page 5, lines 6-7. These statements were inaccurate as shown by the email  
6 exchange.  
7

8 These ex parte communications might have been allowable as exceptions to the  
9 appearance of fairness doctrine under RCW 42.36.060 if the Examiner would have: a)  
10 "placed on the record the substance of any written or oral ex parte communications  
11 concerning the decision of action" and then b) informed the public "of the parties' rights  
12 to rebut the substance of the communication [which] shall be made at each hearing  
13 where action is considered or taken on the subject to which the communication  
14 related." Neither action was taken, either at the hearing itself or when the Decision was  
15 entered on July 7.<sup>14</sup>  
16  
17

18 The appearance of fairness doctrine has been a part of Washington law for more  
19 than 50 years, and the original test is applicable today:

20 The test of fairness, we think, in public hearings conducted by law on  
21 matters of public interest, vague though it may be, is whether a  
22 fair-minded person in attendance at all of the meetings on a given issue,  
23 could, at the conclusion thereof, in good conscience say that everyone  
24 had been heard who, in all fairness, should have been heard and that the  
25 legislative body required by law to hold the hearings gave reasonable  
26 faith and credit to all matters presented, according to the weight and force  
27 they were in reason entitled to receive. Neither the hearings before the  
28

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26 <sup>14</sup>The email exchange between the Examiner's office and PDS staff was discovered only when a public  
27 records request was made to and responded to by the County.

1 planning commission nor the hearing before the board of county  
2 commissioners, in our judgment, met this test.

3 *Smith v. Skagit County*, 75 Wn 2d 715, 741 (1969). The law is clear that decisions  
4 made in violation of the appearance of fairness doctrine will be vacated:

5 The appearance of fairness doctrine requires that quasi-judicial land use  
6 decisions, such as rezones, must be fair, and appear to be fair, in order to  
7 be valid. The nature of the zoning process, which requires local decisions  
8 regulating and restricting the use of property, requires confidence that the  
9 processes bringing about such regulation are fair and equitable.

10 *Chrobuck v. Snohomish Cy.*, 78 Wn.2d 858, 480 P.2d 489 (1971);  
11 *Hayden v. Port Townsend*, 28 Wn. App. 192, 622 P.2d 1291 (1981). The  
12 remedy for an ordinance passed in violation of the appearance of fairness  
13 doctrine is to void the ordinance. *Swift v. Island Cy.*, 87 Wn.2d 348, 552  
14 P.2d 175 (1976). It has never been suggested that the government entity  
15 would be liable in tort for holding a meeting which violates this doctrine.

16 *Alger v Mukilteo*, 107 Wn 2d 541, 547 (1987) (emphasis supplied). Moreover, the  
17 appearance of fairness doctrine applies where the participation of a decision maker will  
18 benefit that person's employer:  
19

20 [2] The second major issue raised by the parties has to do with the  
21 appearance of fairness doctrine. In our view, that doctrine requires that  
22 we reverse the trial court and find that the city council and planning  
23 commission actions were invalid. It is beyond dispute that in considering a  
24 rezoning application the planning commission and city council are acting  
25 in a quasi-judicial capacity. E.g., *South Capitol Neighborhood Ass'n v.*  
26 *Olympia*, 23 Wn. App. 260, 595 P.2d 58 (1979). The appearance of  
27 fairness doctrine, as it has developed, has consistently been applied to  
28 quasi-judicial land use decisions. The doctrine appears to have first  
evolved in this context. *Smith v. Skagit County*, 75 Wn.2d 715, 453 P.2d  
832 (1969). The core of the doctrine announced in *Smith* and repeated  
often is that hearings to which the doctrine applies must not only be fair in  
fact, but must appear to be fair and to be free of an aura of partiality,  
impropriety, conflict of interest, or prejudgment. *Chrobuck v. Snohomish*  
*County*, 78 Wn.2d 858, 480 P.2d 489 (1971). As the Supreme Court  
pointed out in *Chrobuck*, the nature of the zoning process warrants  
considerable effort to protect it from an appearance of impropriety.  
As it has developed, the appearance of fairness doctrine has been applied not  
only to cases where actual conflict of interest is demonstrated, but also to

1 situations where a conflict of interest may have affected an administrative action.  
2 The doctrine reaches the appearance of impropriety, not just its actual presence.  
3 *Buell v. Bremerton*, 80 Wn.2d 518, 495 P.2d 1358 (1972). The apparent benefit  
4 from the rezone application need not even inure directly to a commission  
5 member. It is enough that the member's employer receive an undeniable major  
6 benefit. *Narrowsview Preservation Ass'n v. Tacoma*, 84 Wn.2d 416, 526 P.2d  
7 897 (1974).

8 *Hayden v Port Townsend*, 28 Wn App 192, 195-96 (1981) (emphasis supplied).

9 As described above, in the present case, Snohomish County, acting in its  
10 proprietary role as a land owner, has obligated itself to sell the Cathcart Crossing  
11 property (with a requirement to develop a Park and Ride on an adjacent property) for a  
12 substantial sum (\$9,600,000). The County also voluntarily, and as a matter of contract,  
13 decided that as the seller of the property it "shall fully cooperate with Buyer to obtain all  
14 Entitlement Approvals that Buyer deems necessary or appropriate, . . . ." Moreover, the  
15 record indicates that Snohomish County's transaction with Horton included a  
16 commitment that Horton build a public facility for the County at no cost to it, i.e. the  
17 Park and Ride Facility. Under these circumstances the Hearing Examiner, as a county  
18 employee, should decline to act on a matter so closely connected with Snohomish  
19 County business.

20 Moreover, the Examiner's decision to refuse to provide notice of hearing to  
21 identified opponents of the project, who expressly requested to be parties of record,  
22 clearly benefits both the County (who will receive a large amount of money) and the  
23 private applicant Horton (who will now own property with entitlements in place). The  
24 record is clear that the County Council established criteria for development of the  
25  
26  
27  
28

1 parcel as part of a “competitive selection process.” See Wetzel Exhibit 1.<sup>15</sup> Deciding  
2 the current matter places the Examiner in a position to review, and possibly deny, a  
3 priority of the Council.  
4

5 In support of his Decision to not recuse himself, the Examiner cites *Valley View*  
6 *v. Social Health Services*, 24 Wn App 192, 200-201 (1979) (Decision at 6), but that  
7 case is not relevant here. In *Valley View*, the Examiner was performing his ordinary  
8 review of a regulatory matter under the jurisdiction of DSHS. However, in this case, the  
9 Examiner is reviewing a case where Snohomish County deals with its own property, not  
10 just calling balls and strikes in a regulatory or quasi-judicial role. By keeping interested  
11 parties in the dark about opportunities for public participation under SEPA, and in the  
12 open hearing process, economic benefit flows to both the Snohomish County and  
13 Horton.  
14

15 The Examiner is appointed by the Council and serves for a two year term. SCC  
16 2.02.015(1). A decision that runs contrary to Council priorities could mean that the  
17 current Examiner would not be reappointed.<sup>16</sup> While the Examiner says: “He remains  
18 an employee irrespective of whether he approves the application” (Decision at 6/9-10),  
19 nothing prevents the Council declining to reappoint him in the future.  
20

21 Moreover, public disclosure of the exchange between the Examiner and PDS  
22 over a decision on notice is hardly a burden on the decision making process. In  
23

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24 <sup>15</sup>The Wetzel Petition for Reconsideration is Hearing Exhibit M.3; each Wetzel exhibit is also identified  
25 by the addition of “M.3” at the beginning of the Exhibit name.

26 <sup>16</sup>The Examiner’s citation to *Van Harken v. City of Chicago*, 103 F.3d 1346 (7<sup>th</sup> Circuit, 1997) is therefore  
27 similarly not on point. Unlike Superior Court judges, the Snohomish County Hearing Examiner is appointed  
28 by the Snohomish County Council, not elected by the residents of the County.

1 addition, the engagement of a qualified, independent pro-tem examiner to hear this  
2 matter does not present substantial burdens to the County. The Council can take  
3 judicial notice of the existence and availability of qualified examiners to preside over  
4 the present proceedings. Given the circumstances, the failure to appoint an  
5 independent examiner could result in significant delay if a reviewing court determines  
6 that the Council or Examiner erred in requiring recusal.

8 Actions of the Examiner should favor adherence to the principles of a fair  
9 hearing. In the present case, the involvement of the County in the sale of its own  
10 property and ensuing "cooperation" by the County on "entitlements" indicates the need  
11 to conduct a hearing not tainted by a possibility of fairness issues. The standard under  
12 the Snohomish County Code is whether "his or her impartiality might be reasonably  
13 questioned." SCC 2.50.040 (Recusancy). This objective test is met here.

15 The Examiner's decision not to recuse himself fails to follow applicable  
16 procedures for recusancy, exceeded his jurisdiction, and was a failure to follow  
17 applicable procedure, constituting errors of law under SCC 30.72.080(2)(a)(b) and (c).  
18 The Council should order the Examiner to recuse himself, appoint an independent  
19 Examiner and remand the matter for a new open record hearing.

### 21 6.3 UNTIMELY STAFF REPORT.

22 The Snohomish County Code ("SCC") provides that the staff report for any  
23 proposal must meet certain requirements, as follows:

#### 25 **SCC 2.02.130(2)**

26 . . . .

27 (2) At least seven calendar days prior to the scheduled appeal hearing,  
the report shall be filed with the examiner and copies thereof shall be



1 mailed by the responsible department to the appellant and made available  
2 for public inspection. Copies thereof shall be provided to interested  
3 persons upon payment of reproduction costs.

4 (Emphasis supplied.) This rule is repeated in the Unified Development Code:

5 **SCC 30.72.040 Report of department and transfer of file.**

6 (1) Following expiration of required comment periods on the notice of  
7 application, and to complete project review, the department shall  
8 coordinate and assemble the reviews of other county departments and  
9 governmental agencies having an interest in the application. The  
10 department shall prepare a report describing how the application meets or  
11 fails to meet the applicable decision criteria. The report shall include  
12 recommended conditions, if appropriate, and a recommendation to the  
13 hearing examiner on the action to be taken on the application.

14 (2) The report shall be filed with the hearing examiner and made available  
15 for public review and copying at least seven days before the open record  
16 hearing.

17 (Emphasis supplied.) This same rule is also found in the Snohomish County Hearing  
18 Examiner Rules of Procedure at Section 4.1(a): "The Departmental report shall be filed  
19 with the Hearing Examiner's Office no later than seven (7) days before the hearing."

20 (Emphasis supplied.)

21 Staff did prepare a "Staff Recommendation" prior to the hearing, but it is  
22 undated. Exhibit L.1. However, a revised Staff Recommendation was filed just a *few*  
23 *minutes* before the hearing began. See Exhibit L.2. Indeed, the Examiner admitted in  
24 the Decision at 11/3-5: "The Hearing Examiner noted that a revised departmental  
25 report had been filed the morning of the hearing and that he had not had the  
26 opportunity to review it."<sup>17</sup> As the Cathcart Crossing application was filed on April 21,

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27 <sup>17</sup>In fact, Ms. Abbott, the assigned staff, emailed the Revised Staff report to the Examiner at 1:31 p.m.  
28 for a hearing scheduled to begin at 2:00 p.m. **Exhibit M.12, page 27.** However, it was not sent to parties  
of record and was only made part of the record the next day, after the hearing was closed. **Exhibit M.12,**  
**page 28.**

1 2021 (Exhibit A.1), there is no reason for late submission of a revised staff report,  
2 denying the public any opportunity to review it in preparation for the public hearing.

3       The Examiner's Decision says the revised staff report (Exhibit L.2) identified  
4 changes in the report (Decision at 11/5-11). While Stacey Abbott did point out there  
5 was an "error in calculation" for vehicle trip calculation, and there were "new a.m and  
6 p.m. peak hour trips," she did not describe the impacts of the new information. See  
7 Hearing Transcript, Exhibit M.3, Ex. 9, page 27, lines 6-9. However, once the public  
8 was actually provided a copy of the revised report, it became apparent that the revised  
9 staff report included *significant* changes. At page 27, the Revised Staff Report shows  
10 an increase in peak hour traffic volume from 131.56 new AM peak hour trips in the  
11 original staff report to 202.43 trips in the revised report, an increase of 54%. A similar  
12 increase is shown for PM peak trips, from 160.16 to 225.11 trips, a 40% increase.<sup>18</sup> All  
13 the while, the revised Staff Report indicated that "*Increase in traffic and poor road*  
14 *conditions related to industrial traffic*" was the first "Issue of Concern" in the public  
15 comments submitted (Exhibit L.2, page 4) and the Examiner's Decision echoed that  
16 comment at 13/3-12 .

17       SCC 2.02.130(2) is clear and unequivocal: the staff report must be made  
18 available to the Examiner and the public seven days before the hearing. No excuses for  
19 the late filing were provided by Snohomish County staff, nor for the failure to make it  
20 available to the public. See Transcript (M.3, Wetzel Ex. 9) at 27-29.

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23  
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25  
26  
27 <sup>18</sup> As will be discussed herein the revised Staff Report was also deficient because it did not consider the  
28 traffic impacts of the Park and Ride that was linked to the Cathcart Crossing project by the PSA.

1 The Examiner proceeded with the hearing based on that late-filed staff report,  
2 not available to the public, and thus “failed to follow the applicable procedure in  
3 reaching his decision.” SCC 30.72.080(2)(a). The Council should remand and reopen  
4 the open public record hearing to allow members of the public to review and comment  
5 on the revised staff report.  
6

7 6.4 FAILURE TO DISCLOSE AND CONSIDER THE PURCHASE AND SALE  
8 AGREEMENT BETWEEN APPLICANT HORTON AND THE COUNTY,  
9 INCLUDING ITS LINKAGE TO THE PARK AND RIDE PROPOSAL.

10 6.4.1 Failure to Disclose Relevant Information and Newly Discovered  
11 Evidence.

12 As indicated in the Staff Report(s), the sole subject for review at the public  
13 hearing was Horton’s residential development (286 townhouses) with the smaller fast-  
14 food and mini-storage commercial developments at the Northwest and Southeast  
15 corners. Staff Report (Exhibit L.1) at 2. The surrounding uses to the south of the  
16 property were described by staff as follows:

17 Existing and projected land uses and development densities:  
18 The existing and projected land use in the area is residential and  
19 commercial, zoned as PCB and R-5.

20 Exhibit L.1 at 35.

21 Multiple issues of concern were raised regarding the proposal, including  
22 stormwater, zoning, critical areas, wetlands and increases in traffic. Exhibit L.1 at 4-5.  
23 Multiple drawings were submitted showing building locations. *Id.* The plans described  
24 two planned entrances to the project from Cathcart Way and from SR-9, and two  
25 entirely new internal roads, together called the “spine road,” provided access across  
26 the property, connecting those entrances. The proposal was to proceed in three  
27

1 phases. Exhibit L.1 at 9.

2        Though not considered in any analysis of Horton's proposed residential and  
3 commercial construction project, there is passing reference to a possible Park and Ride  
4 project in the Staff Report. Exhibit L.1 at 37. The paragraph uses vague language that  
5 the "applicant *appears* to be proposing improvements," and that the "adjoining parcel  
6 *appears* to have future development." No information is provided as to whether the  
7 parcel that "*appears* to have future development" was related or linked in any manner  
8 to Horton's Cathcart Crossing proposal for townhouses, fast-food and mini-storage  
9 facility.<sup>19</sup> (Emphasis supplied.)  
10

11        When the Examiner asked during the hearing about the ownership of the  
12 Cathcart Crossing property, there was this exchange between the Examiner and  
13 Horton's Project Manager at page 8 of the Hearing Transcript (Exhibit M.3, Wetzel  
14 Ex. 9):  
15

16            HEARING EXAMINER: So, is that gonna be a, are your folks gonna end  
17 up buying it from the County, or just leasing it from the County? How is  
18 that gonna work?

19            LINDSEY SOLARIO: Uh, yes. There's a Purchase and Sale Agreement  
20 that will be finalized in the near future here.

21 (Emphasis supplied) There was no mention of any existing "Purchase and Sale  
22 Agreement" in the original Staff Report (Exhibit L.1) or the late-filed, revised report  
23 (Exhibit L.2), much less its content.  
24

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25        <sup>19</sup>In fact, the same staff person who was responsible for the Department's report to the Hearing Examiner  
26 in the Cathcart Crossing proposal, Stacey Abbott, is the staffer for the Park and Ride project. See Letter  
27 from Lindsey Solorio to Stacey Abbott in the Park and Ride proceeding dated March 2, 2022 found in the  
28 Park and Ride file (21 113267 LDA) attached hereto as Exhibit **M.12, PDF page 29-39**. Indeed, Ms Abbott  
signed the DNS for the Cathcart Crossing project just two days later. See Exh. E.1, page 2.

1           However, after the hearing was completed, community members made inquiries  
2 about the ownership of the property and a possible Purchase and Sale Agreement  
3 between Snohomish County and Horton. It was then discovered that there was a long-  
4 standing arrangement between the Snohomish County and Horton regarding not just  
5 acquisition of the 31-acre parcel which is the site of the Cathcart Crossing proposal, but  
6 also concerning property to the south. Indeed a Purchase and Sale Agreement  
7 between Snohomish County and Horton (hereinafter “the PSA”) had been signed more  
8 than two years before the hearing, on April 13, 2020. Exhibit M.3, Ex. 1. The Fifth  
9 Amendment to that PSA provides: “Buyer shall design, permit and construct the Park  
10 and Ride Facility. . .” Exhibit M.12 at Exhibit 4(b) (PDF pages 52-53). Thus at the time  
11 of the open record hearing, the County/Horton PSA obligated the Seller to sell, and  
12 convey to Buyer, all the interest in the 31-acre property at Cathcart Way and SR-9 –  
13 the property that is the subject of this land use proceeding – and contracted the Buyer  
14 to build a Park and Ride facility for Snohomish County, for a total payment to the  
15 County of \$9,600,000. *Id.*

16  
17  
18  
19           Neither the PSA nor its conditions were mentioned in the Staff Reports, nor was  
20 it mentioned during Staff’s oral presentation at the hearing (see Transcript, M.3, Wetzel  
21 Ex. 9), nor in Horton’s presentation, Exhibit G.2.<sup>20</sup>

22           But the County/Horton PSA was not some garden-variety agreement to purchase  
23 real property; it contained some forty pages of terms and conditions for the sale dealing  
24

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25  
26           <sup>20</sup>One of the problems presented was that the Park and Ride was outside the Urban Growth Area, and  
27 the Cathcart Crossing proposal inside it.

1 with the very project before the Hearing Examiner. One of the PSA's terms is the  
2 following, at page 6 (Snohomish County is the "Seller" and Horton is the "Buyer"):

3 **9.2 Seller's Cooperation** Seller shall fully cooperate with Buyer to obtain all  
4 Entitlement Approvals that Buyer deems necessary or appropriate, which  
5 cooperation may include, but shall not be limited to, executing all applications,  
6 plans or other document related to the Entitlement Approvals requested by  
7 Buyer, the City, the County or any other applicable Government Authority; . . .  
8 assisting to resolve boundary or other issues (if any) with surrounding land  
9 owners; . . . .

10 Exhibit M.3, Ex. 1 (emphasis supplied). The "Entitlement Approvals" referenced in  
11 Section 9.2 are defined in the preceding section:

12 **9.1 Entitlement Approvals.** As of the date hereof, Buyer plans to divide  
13 and develop the Property for a mixed use development consisting of  
14 approximately 139 townhouse units and five commercial pads with  
15 apartments above. During the term of this Agreement, Buyer may, at  
16 Buyers's sole cost and expense, apply for, process and obtain approval  
17 for a preliminary plat, site plan or other legal division for the Buyer's  
18 planned development ("P-Plat Approval").

19 (Emphasis supplied.) Further down in Section 9.1 is the following:

20 The Permits may include all discretionary permit and entitlements  
21 necessary to construct the Park and Ride Facility, including by way of  
22 example any conditional use permit. Collectively, the Engineering  
23 Approvals, P-Plat approval, Permits and other approvals for the planned  
24 development, are herein referred to as the "Entitlement Approvals."

25 Exhibit C to the PSA (page 32) provides Snohomish County and Horton "shall  
26 negotiate to mutual acceptance the following terms and conditions of a voluntary Park  
27 and Ride Agreement to be executed prior to or at Closing: . . ." <sup>21</sup> Subsection 1 to PSA  
28 Exhibit C provides:

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<sup>21</sup>Horton's presentation to the Examiner, under "Project Details" at page 8, did not show any plan for the  
Park and Ride. Exhibit G.2.

1       **1. Park and Ride Facility:** As a condition to the sale and purchase of the  
2       Property, Buyer shall agree to construct, at its sole expense, a Park and  
3       Ride Facility on County-owned adjoining property with tax parcel nos.  
4       004038-000-156-00 and 004038-000-141-01. The Park and Ride  
5       Agreement shall address size, standards, layout, location and reduced  
6       offer price associated with the construction of the Park and Ride Facility.

7       As agreed upon between Snohomish County and Horton, the purchase of the Cathcart  
8       Crossing property was expressly linked to the construction of a Park and Ride facility  
9       on the adjacent parcel. Furthermore, **the** Park and Ride Agreement at Subsection 3  
10      said: "The buyer will furnish the equipment and install a traffic signal along Cathcart  
11      Way . . . ." Subsection 4 provides:

12             The Buyer will design, perform necessary studies, develop plans, obtain  
13             permits and construct to County standards a public road connecting SR 9  
14             to Cathcart Way.

15      The "Project Narrative" for the Park and Ride (Exhibit M.12 at PDF page 39, dated  
16      August 16, 2021), prepared by Horton indicates: "The primary site access is off Road  
17      A which will be constructed as part of the proposed Cathcart Crossing project. Road A  
18      connects to SR-9 adjacent to the northeast side of the project." (Emphasis supplied.)  
19      Core Engineering, the author of the "Narrative" for the Park and Ride is also the project  
20      manager for the Cathcart Crossing project.<sup>22</sup>

21             Following the receipt of the PSA described herein, community interests sought  
22      and received additional information regarding the PSA, which included five

23      \_\_\_\_\_  
24      <sup>22</sup>The Park and Ride Agreement also includes a condition relating to the Cathcart Crossing project, as  
25      follows:

26             **5. Commercial Use Requirements.** The Buyer agrees and acknowledges that the Property must  
27             contain commercial uses in addition to residential uses. At a minimum 50,000 square feet of  
28             commercial development must be constructed within the development. Any reduction to the square  
29             footage for commercial use is subject to obtaining approval from the Snohomish County Council.  
30      There is no explanation of the source for the 50,000 square foot requirement for commercial development.

1 amendments thereto. See Exhibit M.12, PDF pages 40-51.<sup>23</sup>

2 The first four amendments extended the deadline for Horton to complete its “due  
3 diligence” review, which was originally due 90 days from the April 29, 2020, execution  
4 of the PSA (i.e., July 28, 2020), with the first extending the deadline to September 25,  
5 2020, the second to November 11, 2020, the third to December 14, 2020, and the  
6 fourth to January 4, 2021. *Id.*

7  
8 The Fifth Amendment (January 29, 2021) was more substantive, with a new  
9 “Schedule 2 to Exhibit C” which included a combined “Phasing Plan” for both Cathcart  
10 Crossing and the Park and Ride. See Exhibit M.12, PDF pages 52-57. As seen, the  
11 “Phasing Plan” included as the “Third Phase” construction of the western section of the  
12 residential development, some commercial development, *and* the Park and Ride.  
13 Exhibit M.12, PDF page 57. This was consistent with a new section 7 to Exhibit C to the  
14 PSA that the Park and Ride will be completed prior to occupation of new construction in  
15 the third phase.  
16

17  
18 However, no information about the promises and connections between the  
19 Cathcart Crossing project and the Park and Ride – explicitly agreed upon by the  
20 County and Horton – were mentioned by either Snohomish County or Horton in the  
21 hearing materials, staff report or at the open record hearing. Horton’s “Applicant  
22 Presentation” to the Hearing Examiner dated June 14, 2022 (Exhibit G.2) does not  
23 mention a word about the Park and Ride in the “Project Details” at page 8, and the  
24

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25 <sup>23</sup>One of the conditions of the PSA was Exhibit F, entitled “Form of Memorandum of Agreement” at page  
26 41. The purpose of the “Memorandum of Agreement” was to give notice of the PSA while not disclosing its  
27 terms, to assure the continuing negotiations between Snohomish County and Horton would remain secret.



1 “Project Phasing” also does not show the Park and Ride, contrary to the terms of the  
2 Fifth Amendment to the PSA. Horton’s Master Permit Application (Exhibit A.1), the  
3 Preliminary Civil Drawings (Exhibit B.3), the Binding Site Plan (Exhibit B.4), and the  
4 “Technical Memorandum” (Exhibit C.5) say nothing about the Park and Ride, though  
5 each was prepared after the Fifth Amendment to the PSA obligated Horton to build the  
6 Park and Ride for Snohomish County. The Cathcart Crossing Traffic Impact Analysis  
7 (Exhibit C.1, April, 2021) also did not consider traffic impacts of the Park and Ride.  
8

9 The Staff Report (Exhibit L.1) at page 15 says that:

10 A phasing plan has been submitted as part of the Preliminary Planned  
11 Community Site Plan and is further detailed as part of the civil plan set.

12 The “civil plan set” cited also does not disclose that the Park and Ride is included in  
13 the Phasing Plan per the Fifth Amendment. See Exhibit B.3, page 2. This is despite  
14 the fact that the Park and Ride proposal was at a high level of detailed review as  
15 demonstrated by Exhibit M.12, PDF pages 29-39, an exchange between the same  
16 county staffer (Stacey Abbott) and Horton project manager (Lindsey Solorio), who  
17 presented at the open record hearing for Cathcart Crossing.  
18

19 Moreover, there was extensive discussion between Brad Lincoln (Horton’s traffic  
20 engineer for the Cathcart Crossing project (Exhibit C.1)) and David Irwin, the county’s  
21 Transportation Development Reviewer, about the traffic impacts of the Park and Ride  
22 proposal, including discussion of Cathcart Way as a “Critical Arterial Unit” to SR 9.  
23 See Exhibit M.3, Ex. 4.  
24

25 Despite the contractual obligation to build the Park and Ride, a road and traffic  
26 signal along with other common elements to serve the facility, neither Snohomish  
27

1 County nor Horton provided any disclosure of the linkages and interconnections  
2 between it and the Cathcart Crossing proposal before or during the open record  
3 hearing on June 14, 2022.

4  
5 Equally important, the community only belatedly learned from the withheld PSA  
6 that:

7 Buyer was selected by the County through a competitive selection  
8 process in which the County set forth certain development parameters  
9 upon analysis of the Property.

10 Exhibit M.3, Ex. 1, page 1. The proposal that made Horton the “winner” of the  
11 “competitive selection process” was set forth in PSA Paragraph 9.1:

12 **9.1 Entitlement Approvals.** As of the date hereof, Buyer plans to divide  
13 and develop the Property for a mixed use development consisting of  
14 approximately 139 townhome units and five commercial pads with  
15 apartments above. During the term of this Agreement, Buyer may, at  
16 Buyer’s sole cost and expense, apply for, process and obtain approval for  
17 a preliminary plat, site plan, or other legal division for Buyer’s planned  
18 development (“P-Plat Approval”). . . .

19 Exhibit M.3, Ex. 1, page 6 (emphasis supplied). Throughout the PSA amendment  
20 process, Horton and Snohomish County never changed the “planned development;” the  
21 planned 139 townhomes and five commercial pads were retained throughout. Nor did  
22 PDS ever disclose the true nature of all the “planned development” during the open  
23 record hearing process.

24 Information regarding the “competitive selection process” and the “planned  
25 development of 139 townhomes” was relevant and important to the review process  
26 before the Hearing Examiner. Somehow, Horton had more than doubled the number of  
27 townhomes from 139 to 286, but also decreased the amount of community commercial  
28

1 development from five pads to only two. The commitment to commercial development  
2 with “apartments above” in the PSA has vanished entirely.

3       The present proposal, with rectangular streets and minimal community-serving  
4 retail (only a fast-foot restaurant and a mini-storage), dominated by 286 townhouses,  
5 bears little resemblance to the plans for the “Cathcart South” development that were  
6 presented to the public by the County in 2017. See Exhibit M.12, at PDF pages 64-69.  
7 The “Potential Development Topologies,” showing abundant commercial uses for the  
8 community, shared public spaces with a beach volleyball court (see page 10), “wine  
9 bars,” “grills,” and jewelry stores, has disappeared. Compare Exhibit M.12, at PDF  
10 pages 64-69 with Exhibit B.3, the approved Cathcart Crossing civil plans. These  
11 commitments by the County as to the nature of the Cathcart Crossing development  
12 were not mentioned at all in the Staff Report or by Horton. These materials are newly  
13 discovered because neither Horton nor the Snohomish County staff disclosed them  
14 during the land use process, with the public learning of them only because of an off-  
15 hand question from the Examiner to Horton’s project manager concerning a (possible)  
16 purchase and sale.

17       It was plainly in the interest of both Snohomish County and Horton to keep this  
18 information from disclosure, especially to members of the community that were critical  
19 of the proposal. The County had agreed in the PSA to “fully cooperate with Buyer to  
20 obtain all Entitlement Approvals that Buyer deems necessary or appropriate” and  
21 closing would not occur until: “Buyer shall have obtained final Entitlement Approvals for  
22 its planned development.” Exhibit M.3, Ex. 1, PDF pages 6 and 7. Issues that put in  
23  
24  
25  
26  
27  
28

1 question Horton's entitlements could keep Snohomish County from getting its  
2 \$9,600,000 and Horton its land.

3 In addition, as will be described in Section 6.4.2 of this appeal, Horton and  
4 Snohomish County staff did not disclose the above information regarding the project in  
5 the Environmental Checklist or the DNS. Given the same county staffer was assigned  
6 to both Cathcart Crossing (and was the SEPA Responsible Official) and the Park and  
7 Ride indicates there is no excuse for such failure to fully disclose available information.  
8

9 Reconsideration and reopening of the hearing should be granted for full review  
10 of the previously undisclosed arrangement between Snohomish County and Horton  
11 because the Hearing Examiner failed to follow applicable procedures, committed errors  
12 of law and his findings were not supported by substantial evidence. See SCC  
13 30.72.080(2)(b), (c), and (d).  
14

15 6.4.2 Failure to Disclose and Consider the Purchase and Sale  
16 Agreement Between Applicant Horton and the County, Including its  
17 Linkage to the Park and Ride Proposal, Violates SEPA

18 In his decision, the Examiner concluded that there had been complete  
19 compliance with SEPA, rejecting claims that the environmental checklist was  
20 "inadequate and incorrectly filled out by the applicant." Decision at 14/19-22 and  
21 Footnote 35 and 36. These conclusions were in error and should be reversed by the  
22 Council and remanded for reopening of the SEPA comment and appeal periods.  
23

24 As described above, by January 13, 2021, Snohomish County and Horton had  
25 agreed in the Fifth Amendment to PSA that Horton would build, at no expense to the  
26 County, a Park and Ride on property adjacent to the Cathcart Crossing residential  
27

1 proposal. Exhibit M.12, at PDF pages 52-57. Snohomish County had agreed to “fully  
2 cooperate with Buyer to obtain all Entitlement Approvals that Buyer deems necessary”  
3 including “all discretionary permits and entitlements necessary for Buyer to construct  
4 the Park and Ride Facility, including by way of example any conditional use permit.”  
5 Exhibit M.3, Ex. 1, PDF page 6. Horton would also provide road access to the Park and  
6 Ride by constructing the internal roads in the Cathcart Crossing development. The Fifth  
7 Amendment to the PSA confirmed that the Park and Ride would be constructed, and in  
8 operation, prior to occupancy of the final phase of the residential development on the  
9 Cathcart Crossing proposal. A drawing showing this phasing is shown on Exhibit M.12,  
10 at PDF page 57.  
11  
12

13 However ten months later, on November 9, 2021, when Horton submitted the  
14 required Environmental Checklist for the Cathcart Crossing project, there was no  
15 mention of the Park and Ride proposal at all. Exhibit E.1. at page 6, Question 7 asked:

16 7. Do you have any plans for future additions, expansion, or further  
17 activity related to or connected with this proposal? If yes, explain.

18 Question 9 asked:

19 9. Do you know whether applications are pending for governmental  
20 approvals of other proposals directly affecting the property covered by  
21 your proposal? If yes, explain.

22 Horton answered both Questions 7 and 9 in the negative. Though it was a party to the  
23 PSA, and knew Horton was going to build it for them, no attempt was made by the  
24 County to correct Horton's answers. Nor was there any mention of the Park and Ride in  
25 the Determination of Nonsignificance (DNS) issued by the County on May 11, 2022,  
26 despite the fact that Horton had prepared actual construction plans for the Park and  
27  
28

1 Ride in May 2021, a year before. See Exhibit M.12, at PDF pages 71-74.<sup>24</sup>

2 These inaccurate answers, demonstrating a “lack of material disclosure” at a  
3 minimum, require both the withdrawal of the DNS and consideration of cumulative  
4 impacts of the Cathcart Crossing and Park and Ride project during environmental  
5 review following remand.  
6

7 6.4.2.1 *The DNS should be withdrawn and a new threshold*  
8 *determination issued.*

9 The SEPA rules allow for the issuance of a determination of nonsignificance as  
10 provided in WAC 197-11-340. However, the lead agency “shall withdraw a DNS” under  
11 the circumstances outlined in Subsection 3(a)(iii) which provides:

12 (iii) The DNS was procured by misrepresentation or lack of material  
13 disclosure; if such DNS resulted from the actions of an applicant, any  
14 subsequent environmental checklist on the proposal shall be prepared  
15 directly by the lead agency or its consultant at the expense of the  
16 applicant.

17 (Emphasis supplied). The consequences of withdrawal of a DNS are outlined in  
18 Subsection (C):

19 (c) If the lead agency withdraws a DNS, the agency shall make a new  
20 threshold determination and notify other agencies with jurisdiction of the  
21 withdrawal and new threshold determination. If a DS is issued, each  
22 agency with jurisdiction shall commence action to suspend, modify, or  
23 revoke any approvals until the necessary environmental review has  
24 occurred (see also WAC 197-11-070).

25 (Emphasis supplied). As described above Horton had committed to construct the Park  
26 and Ride, was working on a proposal in conjunction with the Cathcart Crossing  
27

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28 <sup>24</sup>Exhibit M.12, at PDF page 70 is Snohomish County's current listing of Park and Ride documents in  
file 21-113267, applied for 7.16.2021, being reviewed by the same county planner who reviewed the Cathcart  
Crossing application.

1 proposal in the PSA and amendments, all signed well before an environmental  
2 checklist for Cathcart Crossing was filed. These materials disclose that the County was  
3 actually reviewing the Park and Ride proposal when the Cathcart Crossing  
4 Environmental Checklist and DNS were prepared.<sup>25</sup>

5  
6 On this basis, the Council should order the withdrawal of the May 11, 2022 DNS,  
7 issue a new threshold determination based on full disclosure of all facts and  
8 circumstances (including the associated Park and Ride proposal), provide for new  
9 comment and appeal periods and, while those processes are underway, suspend or  
10 revoke approvals based on the prior DNS, including the Examiner's decisions.

11  
12 6.4.2.2 *Environmental review: the Cathcart Crossing and*  
13 *Park and Ride proposals must be reviewed in a single*  
*environmental document.*

14 Critical to content of SEPA review is the proper definition of the proposal under  
15 WAC 197-11-060(3)(a). Under certain circumstances, review of "closely related  
16 proposals" must be considered in a single document under Subsection 3(b):

17  
18 (b) Proposals or parts of proposals that are related to each other closely  
19 enough to be, in effect, a single course of action shall be evaluated in the  
20 same environmental document. (Phased review is allowed under  
21 subsection (5).) Proposals or parts of proposals are closely related, and  
22 they shall be discussed in the same environmental document, if they:

- 23  
24 (i) Cannot or will not proceed unless the other proposals (or parts  
25 of proposals) are implemented simultaneously with them; or  
26 (ii) Are interdependent parts of a larger proposal and depend on

27  
28 <sup>25</sup>In the Decision at Footnote 36, page 14, the Examiner discounts expressed concerns over the  
"accuracy of the initial checklist submitted by the applicant." he says:

The responsible official of the lead agency (in this case PDS) does not accept an applicant's  
checklist at face value. Subject matter experts review the application, checklist and available  
information such as publicly available databases and maps and information in the county's files.  
(Emphasis supplied). Ms. Abbott, the county reviewer (the "responsible official of the lead agency") did not  
make any corrections or changes to Horton's checklist regarding the Park and Ride, though she was the  
responsible staff for that project as well.

1 the larger proposal as their justification or for their implementation.

2 As indicated above, the development of Cathcart Crossing and the Park and Ride were  
3 legally and contractually linked by the PSA and its several amendments. Indeed, the  
4 Fifth Amendment "Phasing Plan," signed by the County and Horton, bound the parties  
5 to build the Park and Ride during the third phase of Horton's Cathcart Crossing  
6 construction. As such both criteria of WAC 197-11-060(3)(a) are met. Under  
7 Subsection (i) the Park and Ride "will not proceed" if the streets in Cathcart Crossing  
8 are not constructed.<sup>26</sup> Under Subsection (ii), the Park and Ride is an interdependent  
9 part of the larger Cathcart Crossing proposal, made so by the written agreements  
10 between Snohomish County and Horton.<sup>27</sup>

13 The present situation is even more egregious than that presented in *Indian Trail*  
14 *Prop. Ass'n v. City of Spokane*, 76 Wn App 430 (1994) which addresses WAC 197-11-  
15 060(3). That case concerned permits for a four-acre shopping center. The plans  
16 included underground fuel storage tanks and a car wash. 76 Wn.App. at 433. The  
17 *Indian Trail* applicant and the City of Spokane contended that these facilities would not  
18 be a part of the SEPA review for the shopping center because they would be developed  
19 later. The Court found this determination was inconsistent with the SEPA rules:

21 Phased Review. Phased review is defined as "the coverage of general  
22 matters in broader environmental documents, with subsequent narrower

---

24 <sup>26</sup>The plans for the Park and Ride show it as an isolated "island" of construction without any connection  
25 with the adjacent road system without the completion of the Cathcart Crossing project. See Exhibit M.13,  
PDF page 71-74.

26 <sup>27</sup>County staff did not disclose the critical links in the PSA and amendments that bound the Cathcart  
27 Crossing and Park and Ride project to each other either during the SEPA process (Environmental Checklist  
and DNS, Exhibit E.1) or in its Staff reports.



documents concentrating solely on the issues specific to the later analysis". WAC 197-11-776. SEPA allows for "phased review" because it assists agencies and the public to focus on issues ready for decision and to exclude from consideration issues already decided or not yet ready. WAC 197-11-060(5)(b). Cumulative Effects. We note at the onset that the responsible official's initial evaluation of the underground fuel storage tanks separate from other phases of the proposal was in error. Parts of proposals which are "related to each other closely enough to be, in effect, a single course of action shall be evaluated in the same environmental document". WAC 197-11-060(3)(b). Here, a phased review of the project was clearly inappropriate because it would serve only to avoid discussion of cumulative impacts. WAC 197-11-060(5)-(d)(ii). See also WAC 197-11-060(3)(b). However, the error was cured when the original MDNS and DNS were withdrawn, and the cumulative effects of the entire project considered before a new MDNS was issued.

Redevelopment of the shopping district also included plans for a car wash. In B1 zones, a car wash requires a special permit. When addressing neighborhood concerns about the noise impacts from the car wash, the hearing examiner responded "there is no car wash in this application and a special permit must be applied for before a car wash can be built in conjunction with this use." To the extent the hearing examiner was approving separate SEPA review for the car wash, he was in error. WAC 197-11-060(3)(b). However, the error was harmless because the responsible official considered the impact of the car wash when making the threshold determination and required mitigation measures for it.

76 Wn App at 442-43.

In the present case, there is no question that the Park and Ride is part of the overall development and cannot be built without the road system to be installed in the Cathcart Crossing development. Moreover, Snohomish County and Horton have contractually agreed that Horton will build the Park and Ride as a part of the Cathcart Crossing development and included it in the PSA phasing plan.<sup>28</sup> Of course, making full disclosure of these plans and engaging in a cumulative environmental (and land use)

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<sup>28</sup>Any phasing plan must be approved by the County in the open public process. SCC 30.41D.220.

1 review would threaten the time table for closing the real estate transaction. As  
2 described in Exhibit M.12, PDF page 70, a long list of specific plans for the Park and  
3 Ride have been prepared (by Horton) and the environmental impacts of the combined  
4 Park and Ride/Cathcart Crossing proposal can be considered in a cumulative manner.  
5

6 The Council should order that all procedural SEPA review, including the  
7 environmental checklist and DNS for the Cathcart Crossing project, should be revised  
8 to correct the actual projects being reviewed and remand for preparation of a new  
9 environmental checklist and threshold determination.  
10

11 6.4.2.3 *Failure to Consider Cumulative Impacts including*  
12 *Traffic.*

13 As described above, the Environmental Checklist and DNS did not consider any  
14 impacts of the Park and Ride proposal. These include the traffic and transportation  
15 impacts of the proposal, as well as pipeline projects, including other nearby  
16 developments. As described above, there has been significant review of the Park and  
17 Ride proposal already, including traffic review that is being conducted separately from  
18 the Cathcart proposal. On remand, these cumulative and additive traffic impacts of the  
19 two projects must be fully considered.  
20

21 6.4.2.4 *Conclusion Regarding SEPA Compliance.*

22 The SEPA process followed here is inconsistent with the established SEPA  
23 rules. First, there was a clear lack of full disclosure in the Cathcart Crossing  
24 Environmental Checklist and DNS of the terms of the PSA and the linkage with the Park  
25 and Ride proposal was not discussed. Second, because the Cathcart Crossing and  
26 Park and Ride proposals are clearly linked, review of them should be in a single  
27  
28

1 environmental document. Third, there was a lack of assessment of cumulative  
2 environmental impact of these two projects.

3 The Council should find that SEPA processing was based on a lack of full  
4 disclosure. PDS did not follow applicable procedures in their review and the Examiner  
5 did not follow applicable procedure in reaching his decision concerning SEPA, all  
6 creating errors of law under SCC 30.72.080(2)(b) and (c). The Council should remand  
7 for cumulative review of the two proposals, with a new environmental checklist and  
8 threshold determination. As required by the SEPA rules, the Examiner should suspend  
9 or revoke any approvals until the necessary environmental review has occurred.  
10

11  
12 6.5 RECONSIDERATION IS NECESSARY TO EVALUATE WHETHER THE  
13 PROPOSAL IS CONSISTENT WITH COUNTY DEVELOPMENT  
PARAMETERS FOR THE PROPERTY.

14 As noted on the first page of the PSA (M.3 Ex.1), the transaction between  
15 Snohomish County and Horton was based on the following:

16 B. Buyer was selected by the County through a competitive selection  
17 process in which the County set forth certain development parameters  
18 based on analysis of the Property.

19 (Emphasis supplied.) Once again, both the SEPA (Environmental Checklist/DNS) and  
20 land use reviews of the property failed to disclose either the “development parameters”  
21 or the “analysis of the Property” they were based on. Neither Staff Report mentioned  
22 this factor, nor did Horton mention it in its presentation to the Examiner.

23 Page 6 of the PSA defines the parameters of the project that Horton presented  
24 during the “competitive selection process:”

25 As of the date hereof, Buyer plans to divide and develop the property for  
26 a mixed use development consisting of approximately 139 townhouse  
27

1 units and five commercial pads with apartments above.

2 There were at least five amendments of the PSA, but none of them modified the  
3 description of Horton's "planned development."  
4

5 Instead of 139 townhouses, as a result of the "competitive selection process"  
6 the number approved by the Examiner has more than doubled to 286 units. The  
7 number of commercial pads has shrunk from five to two; the "commercial pads," a fast-  
8 food outlet and the mini-storage, have no apartments above them. No explanation is  
9 provided as to why, or how, this wholesale deviation from the prior plan has been  
10 approved by Snohomish County. This "bait and switch" appears to be accepted by  
11 Snohomish County anxious to rid itself of the property and get \$9,600,000 for it from  
12 Horton.  
13

14 The Examiner conducts review of the proposal under several standards found in  
15 Title 30 of the Snohomish County Code. Chapter 30.23A. addresses Urban Residential  
16 Design Standards which are:  
17

18 (2) To implement the county's desire for creating quality residential  
19 development as set forth in Objective LU 4.A and associated policies in  
the Snohomish County GMA Comprehensive Plan;

20 . . . .

21 (5) To improve compatibility of new residential development with existing  
22 residential development by appropriate design scale and massing of new  
residential development; and

23 SCC 30.23A.010. Under SCC 30.23A.030, concerning compatibility design standards:

24 (1) The purpose of compatibility design standards is to require additional  
25 features to be incorporated into higher density residential development  
26 when located adjacent to properties zoned and developed or designated  
for lower density single-family use in order to enhance the compatibility  
between uses.  
27

1 (Emphasis supplied.) Certainly the “development parameters based on the (County’s)  
2 analysis of the Property” are relevant to the determination of compatibility of  
3 development of Cathcart Crossing and the south parcels under these standards.

4 The Hearing Examiner also considered and approved a “Binding Site Plan”  
5 pursuant to SCC Chapter 30.41D. See Decision at 18/15-22. However, the Examiner’s  
6 decision failed to address the special provisions for county-owned property:  
7

8 **30.41D.030 Application process for county-owned property.**

9 A binding site plan application for county-owned property will be  
10 processed in the same manner as any other binding site plan application,  
11 except that when a master development plan exists for county-owned  
12 property, the master development plan will serve as the approved binding  
13 site plan. To effect the proposed land division, the binding site plan must  
14 be recorded with a record of survey. (Added by Amended Ord. 02-064,  
15 Dec. 9, 2002, Eff date Feb. 1, 2003).

16 Here the property is county owned<sup>29</sup> and “development parameters have been adopted  
17 for it.” Given this background, it is appropriate to determine the following:

- 18 • Whether Horton’s current development plan is consistent with the “development  
19 parameters” previously established for the site by Snohomish County for the  
20 “competitive selection process.” Exhibit M.3, Ex. 1.
- 21 • Whether the current proposal is consistent with the “Buyer’s planned  
22 development” agreed upon in the PSA, i.e. “a mixed use development consisting  
23 of approximately 139 townhouse units and five commercial pads with apartments  
24 above.”
- 25 • Whether the current proposal is consistent with the master plan designs

26 <sup>29</sup>The property was transferred to Pacific Ridge-DRH LLC by Snohomish County on July 15, 2022, just  
27 six days until after the hearing examiner’s July 7, 2022 The statutory warranty deed was actually record on  
28 July 18, 2022 under Snohomish County Recording Number 202207180382.

1 presented to the public in 2017 as described in Exhibit M.12,<sup>30</sup> showing  
2 generous common open space, community retail, restaurants, jewelry stores and  
3 not dominated by row of rectangular townhouses.  
4

5 These Alternative “Concept Development Plans” are relevant to a consideration  
6 of county criteria for development approvals. The Examiner has clear authority “to  
7 impose conditions and limitations on the binding site plan” under SCC 30.41D.110(1) to  
8 assure the plans presented are consistent with SCC 30.41D.030 and compatible with  
9 the neighborhood, including these development plans.  
10

11 Remand to address these issues should be ordered by the Council. The County  
12 Staff and Horton failed to disclose this important information in their submissions to the  
13 Hearing Examiner. The public is entitled to a full and fair review of these aspects of the  
14 proposal and the opportunity to argue to the Examiner that the present proposal is not  
15 consistent with prior representations. This is especially true where both the County  
16 and the applicant will substantially profit from a lack of full disclosure.  
17

18 The Council should determine that PDS staff and the Hearing Examiner have  
19 failed to follow applicable procedures in reaching their decisions for this application  
20 and that the Hearing Examiner findings of consistency with design standards at page  
21 17-19 of the Decision are not supported by substantial evidence pursuant to SCC  
22 30.72.080(2)(b) and (d).  
23  
24  
25

---

26 <sup>30</sup>Exhibit M.12, PDF pages 58-69 are public documents for the Cathcart South Property - Concept  
27 Development Plan and Park and Ride prepared by Snohomish County.  
28

1     **7.     CONCLUSION AND RELIEF REQUESTED.**

2             The processing and review of the Cathcart Crossing proposal was marred by  
3 improper notice, violations of the appearance of fairness, and a failure of full disclosure  
4 by the staff and Horton leading to serious errors by the Hearing Examiner regarding  
5 compliance with SEPA and land use criteria. The contractual arrangements between  
6 the County and the applicant, involving more than a \$9,000,000 payment to the County  
7 and transfer of valuable land to the applicant, require special care to assure that the  
8 public interest is fully protected when Snohomish County acts in its proprietary  
9 capacity. As a result, the Council should order a remand to the Examiner to reopen  
10 both the SEPA review and the open record hearing, based on the following.  
11

12             First, there was a failure to provide notice to residents that specifically requested  
13 in writing to be made “parties of record.” As demonstrated by emails between the  
14 Hearing Examiner and PDS staff this omission was a deliberate action. Comment and  
15 appeal periods under SEPA should be reopened.  
16

17             Second, the actions of the Examiner and staff plainly violated the appearance of  
18 fairness doctrine, requiring that the Council require the recusal of the sitting Examiner  
19 and engagement of an unbiased Examiner to conduct a new open record hearing.  
20

21             Third, without any excuse, PDS staff failed to file its complete staff report seven  
22 days before the hearing as explicitly required by county code. Because the report was  
23 not available in a timely fashion, the open record hearing should be reopened on  
24 remand.  
25

26             Fourth, neither staff nor the applicant disclosed that a purchase and sale  
27  
28

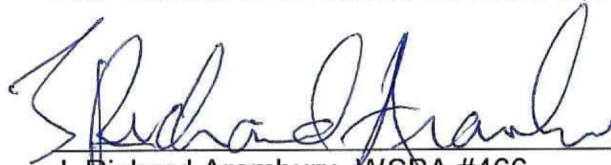
1 agreement existed containing explicit provisions relating to the proposal. The Council  
2 should remand to the new Hearing Examiner to allow full inquiry into the application of  
3 the PSA to hearing issues.

4  
5 Fifth, the Council should remand for reopening of SEPA procedural processes  
6 due the lack of disclosure of the linkage of the present proposal with the Park and Ride  
7 proposal. The environmental checklist should be revised to include information  
8 regarding the Park and Ride, and DNS comment and appeal period reopened.

9  
10 Sixth, the Council should remand to the new Examiner for evaluation of the  
11 combined Cathcart Crossing and Park and Ride proposals in light of prior development  
12 parameters.

13 Respectfully submitted this 22<sup>nd</sup> day of August, 2022.

14 LAW OFFICES OF J. RICHARD ARAMBURU, PLLC

15  
16   
17 J. Richard Aramburu, WSBA #466





**Snohomish County**

**Office of Hearings Administration**

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**Peter Camp**

*Hearing Examiner*

## **DECISION of the SNOHOMISH COUNTY HEARING EXAMINER**

### **I. SUMMARY**

**DATE OF DECISION:** July 7, 2022

**PROJECT:** Cathcart Crossing  
Southwest corner of State Route 9 and Cathcart Way  
Snohomish, Washington 98296

**APPLICANT:** Pacific Ridge – DRH, LLC  
17921 Bothell-Everett Highway, Ste. 100  
Bothell, Washington 98012

**OWNER:** Snohomish County  
3000 Rockefeller Ave.  
Everett, Washington 98201

**FILE NO.:** 21-107654 SPA/BSP

**TYPE OF REQUEST:** Planned Community Business Preliminary Site Plan, Binding Site Plan, and Urban Residential Development Standards Administrative Site Plan for two commercial lots and one tract of 286 townhouses

**DECISION SUMMARY:** Planned Community Business Preliminary Site Plan, Binding Site Plan, and Urban Residential Development Standards Administrative Site Plan for two commercial lots and one tract of 286 townhouses is approved with conditions

#### **Cathcart Crossing**

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Decision Approving Planned Community Business Preliminary Site Plan, Binding Site Plan, and Urban Residential Design Standards Administrative Site Plan with Conditions

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### III. SITE INFORMATION

LOCATION: Southwest corner of State Route 9 and Cathcart Way  
Snohomish, Washington 98296

TAX PARCEL NO.: 280536-003-011-00

ACREAGE: Approximately 31 acres

COMPREHENSIVE PLAN  
DESIGNATION: Urban Commercial

ZONING: Planned Community Business

UTILITIES:

Water: Silver Lake Water and Sewer District

Sewer: Silver Lake Water and Sewer District

Electricity: Snohomish County Public Utility District No. 1

SCHOOL DISTRICT: Snohomish School District No. 201

FIRE DISTRICT: Snohomish Regional Fire and Rescue Authority

Based on a preponderance of the evidence, the Hearing Examiner enters the following findings of fact, conclusions of law, and decision.

### IV. APPEARANCE OF FAIRNESS

At the open record hearing, the Hearing Examiner announced that he had no financial or family interest in the applicant or proposal and that he had not had any pre-hearing contact with anyone regarding the proposal. He called for anyone who believed the Hearing Examiner had a conflict of interest to speak, but no one did.

After the hearing closed, the Office of Hearings Administration received an email raising an appearance of fairness concern.<sup>1</sup> The email's author stated that they learned the county currently owns the property which is the subject of the proposal. The author asserted that this is a potential conflict of interest and therefore potential violation of the appearance of fairness doctrine because the Hearing Examiner is an employee of the county, and the county is financially interested in the

---

<sup>1</sup> Ex. Z.4.

1 outcome of the proposal. They also claimed they were unable to raise the issue when the Hearing  
2 Examiner called for anyone with an objection to speak because they did not learn the county  
3 owned the property until later.

4 Employment by the county is not a conflict of interest as a matter of law and does not violate the  
5 appearance of fairness doctrine. *Valley View Convalescent Home v. Department of Social & Health*  
6 *Services*, 24 Wn. App. 192, 200–01, 599 P.2d 1313, 1318 (1979), rev. denied 93 Wn. 2d 1004  
7 (1980) (citations omitted) (the fact that a hearing examiner is an employee is insufficient to prove  
8 violation of the appearance of fairness doctrine). In addition, the Hearing Examiner is independent  
9 by law. SCC 2.02.060 (1980). He remains an employee irrespective of whether he approves or  
10 rejects the application. It is also very unlikely that the underlying transaction between the county  
11 and the applicant (of which the Hearing Examiner has no knowledge) is material or significant to  
12 the county's general fund or to the Office of Hearings Administration budget.

13 Further, both the Hearing Examiner and the *pro tem* Hearing Examiner are paid by the county—  
14 there is no alternative decision-maker that is not paid by the county. A decision could not be made  
15 if employment disqualifies the decision-maker. State law allows a decision-maker to proceed  
16 notwithstanding an appearance of fairness challenge if a decision could not be made because of  
17 the challenge. See RCW 42.36.090 (1982).

18 Third, application of this argument would mean that no judicial officer employed by a government  
19 could hear cases. A Superior Court judge is paid by the state and the county, yet decides criminal  
20 cases brought by the state, the judge's employer, and civil cases to which the employing  
21 government is a party. See *Van Harken v. City of Chicago*, 103 F.3d 1346, 1352–53 (7th Cir. 1997)  
22 (citation omitted) ("If [the fear that] a hearing officer lets off too many alleged parking violators, the  
23 Director of Revenue may get angry and fire him were enough to disqualify them on constitutional  
24 grounds, elected judges, who face significant pressure from the electorate to be 'tough' on crime,  
25 would be disqualified from presiding at criminal trials, especially in capital cases. They are not.")

26 Finally, the objection was not timely raised and therefore waived. The county's ownership of the  
27 parcel has been a matter of public record for years. Anyone can easily ascertain the title holder of  
28 any real estate parcel by using the tools on the Assessor's web page. Any objection could have,  
29 and should have, been raised when the Hearing Examiner called for objections, not after.<sup>2</sup> See  
30 *State v. Margensen*, 148 Wn. App. 81, 91, 197 P.3d 715, 719 (2008), rev. denied 166 Wn.2d 1007  
31 (2009).

---

<sup>2</sup> A rule that allowed an appearance of fairness objection based on an untimely objection would discourage due diligence. In addition, such a rule would encourage laying behind the log and objecting later to create unnecessary delay.

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## V. JURISDICTION

The Hearing Examiner has subject matter jurisdiction where, as here, the site was rezoned by county initiative and is five acres or larger. SCC 30.31A.200(3) (2020). The site was rezoned at the county's initiative to Planned Community Business and is approximately 31 acres.

## VI. REGULATORY REVIEW AND VESTING

On April 21, 2021, Pacific Ridge – DRH, LLC applied for approval of: (1) a binding site plan to create two commercial lots and three tracts; (2) a Planned Community Business preliminary plan for two commercial buildings and 286 townhouse dwellings; and (3) an Urban Residential Design Standards administrative site plan. Snohomish County Planning and Development Services (PDS) determined the application was complete as of the date of submittal. Pacific Ridge submitted additional information to PDS on November 30, 2021, and April 15, 2022.

## VII. OPEN RECORD HEARING

An open record hearing began on June 14, 2022. The Hearing Examiner left the record open until the close of business on June 14, 2022, for emailed public comment for those who did not or could not comment during the live hearing.

## VIII. THE RECORD

### 1. Evidence Considered

The Hearing Examiner considered exhibits A.1 through L.2 and the testimony of the witnesses at the open record hearing. The recording of the hearing is available through the Office of Hearings Administration.

### 2. Tardy Public Comments

The Hearing Examiner only considered public comments sent to the county prior to the hearing, made during the open record hearing, or were received by the Office of Hearings Administration by 5 p.m. on the day of the hearing from people who attended the hearing but were unable to testify during the hearing due to technical problems.

No evidence submitted after the close of the hearing will be considered by the Examiner unless, at such hearing, the Examiner granted additional time to submit such material and stated on the record that the hearing record was left open for such receipt.

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1 H. Ex. R. of Proc. 5.6(j) (2021). The Hearing Examiner expressly left the record open until 5 p.m.  
2 that day only for members of the public who did not testify during the hearing because of  
3 technology problems. For example, the Hearing Examiner considered an emailed public comment  
4 from someone who had technical problems that prevented them from testifying during the hearing.<sup>3</sup>  
5 Their emailed comment fell within the limited parameters for which the record was left open and  
6 was therefore considered.

7 Two persons who testified nevertheless also sent emails<sup>4</sup> after the close of public comment; those  
8 emails were not considered because they testified during the open record hearing. Their comments  
9 did not fall within the parameters set in the hearing for submission of comments after the hearing.  
10 The Hearing Examiner therefore did not consider their substantive comments regarding the  
11 proposal.

### 12 **3. Mandatory Judicial Notice**

13 Marshland Flood Control District asked the Hearing Examiner to take “mandatory judicial notice” of  
14 documents it submitted in a different matter before the Hearing Examiner last year.<sup>5</sup> Marshland  
15 cited ER 201(d) as authority. Marshland also asked the Hearing Examiner “to specifically rule” on  
16 issues raised in its brief in the other matter.<sup>6</sup>

17 The Hearing Examiner declines to do so for several reasons. First, H. Ex. R. of Proc. 5.6(i) applies  
18 to these proceedings, not ER 201.

19 The Examiner may take official notice of judicially cognizable facts and in addition  
20 may take notice of general, technical, or scientific facts within her/his specialized  
21 knowledge. When any decision of the Examiner rests in whole or in part upon the  
22 taking of official notice of a material fact, not appearing in evidence of record, the  
23 Examiner shall so state in her/his decision. Appellate court decisions and adopted  
24 state and local laws, ordinances, motions, policies, plans and other similar  
25 documents in the public domain may be referenced, cited, quoted and/or relied upon  
26 by the Examiner or any Party of Record.

27 Second, even if ER 201 applied, it is not mandatory for the Hearing Examiner to take judicial notice  
28 because Marshland failed to supply the Hearing Examiner “with the necessary information,” i.e.,

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<sup>3</sup> Ex. I.19.

<sup>4</sup> Exhibits Z.1 through Z.6.

<sup>5</sup> Ex. H.13. *In Re Remington East*, 20-118949 PSD.

<sup>6</sup> Marshland lists: (a) drainage facility plan review (i.e., Marshland wants the right to be involved formally in the county’s review of the drainage facilities); (b) “conditional assessment covenant” [sic]; and (c) drainage facility maintenance covenant mandating enforcement by the county’s Surface Water Management division. Ex. H.13, p. 2.

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1 Marshland did not supply the documents which contained the information that it wanted the  
2 Hearing Examiner to notice.<sup>7</sup> Marshland asked for judicial notice of documents filed in a **different**  
3 proceeding; a judge would not take judicial notice of the substance of pleadings filed in a different  
4 action than the one before them. "However, we cannot, while deciding one case, take judicial  
5 notice of records of other independent and separate judicial proceedings even though they are  
6 between the same parties." *Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89,  
7 98, 117 P.3d 1117, 1122 (2005) quoting *In re Adoption of B.T.*, 150 Wn.2d 409, 415, 78 P.3d 634  
8 (2003) (citations omitted).

#### 9 **4. Request to Re-Open**

10 After the hearing closed, the Office of Hearings Administration received a request to reopen the  
11 record, citing H. Ex. R. of Proc. 6.3 (2021).<sup>8</sup> The Hearing Examiner denies the request to reopen  
12 because he is fully informed of the material facts necessary to decide whether to approve, reject,  
13 or remand the application.

14 The movant alleges she found out during the hearing that the county owns the property and  
15 contends ownership creates a conflict of interest and bias. This is an appearance of fairness  
16 concern and is ruled upon above.<sup>9</sup>

17 The movant noted that the Hearing Examiner inquired during the hearing whether he had subject  
18 matter jurisdiction. She inaccurately alleges, "[N]o representative from the proposed developer or  
19 PDS addressed your concerns, yet you went forward with the hearing anyway." Counsel for the  
20 applicant explained the source of the Hearing Examiner's jurisdiction and the hearing proceeded.  
21 There was no reason to postpone the hearing or reopen the record.

22 Movant notes that the Hearing Examiner could visit the site, did not mention whether he had, and  
23 therefore apparently asks the record to be reopened to allow the Hearing Examiner to visit the site.  
24 First, there is no reason to reopen the record when the Hearing Examiner decides to visit a site.  
25 Second, the Hearing Examiner is not required by law or rule to visit a site. H. Ex. R. of Proc. 1.9  
26 (2021) ("Failure to conduct a visit shall not affect the validity of the Examiner's decision."). Third,  
27 the Hearing Examiner is well acquainted with the site and its location. A site visit is unnecessary to  
28 an informed decision by the Hearing Examiner.

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<sup>7</sup> "A court shall take judicial notice if requested by a party and supplied with the necessary information." ER 201(d).

<sup>8</sup> Ex. Z.6.

<sup>9</sup> See discussion at page 5 above.

1 The movant incorporated her earlier request to continue the hearing.<sup>10</sup> The Hearing Examiner did  
2 not continue the hearing because the cited grounds were insufficient, and they are insufficient to  
3 reopen the hearing. The stated grounds were: (1) the current system “discriminates against the  
4 public and favors the developers;” (2) the county failed to require a traffic analysis; (3) the county  
5 did not consider the multiple developments in the area; (4) alleged failure to comply with the Bald  
6 and Gold Eagle Protection Act<sup>11</sup> and Migratory Bird Treaty Act;<sup>12</sup> (5) disagreement with  
7 characterization of wetlands; and (6) Tulalip Tribes allegedly have “strong concerns” about this  
8 project.<sup>13</sup> The Hearing Examiner declines to continue or re-open the hearing as requested.

9 First, the Hearing Examiner does not have the legal authority to determine whether the “current  
10 system discriminates against the public” or to fashion a remedy if it did. Second, the county  
11 required a traffic analysis, and it is part of the record considered by the Hearing Examiner.<sup>14</sup> Third,  
12 the county’s development regulations account for other developments in the area. With respect to  
13 stormwater and drainage, the development regulations comply with state standards and requires a  
14 development to discharge treated stormwater to historic flow paths at a rate and volume that  
15 mimics forested, undeveloped conditions. All current developments must meet this standard and  
16 therefore effectively accounts for multiple new developments in area by limiting the discharge of  
17 stormwater from new developments to that of forested, undeveloped conditions. With respect to  
18 traffic, developments generating more than 50 average daily trips (ADT) must evaluate their impact  
19 on arterial units using the “pipeline” of known projects, even if such projects have not yet been  
20 built. Multiple developments are therefore explicitly considered in the traffic analyses. Movant failed  
21 to demonstrate a potential violation of federal law regarding birds and therefore did not carry her  
22 burden of demonstrating that a continuance or re-opening was warranted. Both the applicant and  
23 PDS’ subject matter experts considered the characterization and delineation of the wetlands.  
24 Movant alleged the conclusion that the wetlands were not properly characterized but provided no  
25 detail or information on which the Hearing Examiner could potentially base a decision granting the  
26 relief requested. Finally, the statement that Tulalip Tribes “expressed strong concerns” is only true  
27 with respect to early versions of the proposed development. After those concerns were conveyed  
28 to the applicant, Pacific Ridge revised the project to leave the wetlands almost entirely untouched.  
29 The record does not demonstrate that Tulalip has the same concerns with site plan under  
30 consideration by the Hearing Examiner.

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<sup>10</sup> Ex. I.13.

<sup>11</sup> 16 U.S.C. §668 (1964) *et seq.*

<sup>12</sup> 16 U.S.C. §703 (2004) *et seq.*

<sup>13</sup> Ex. I.13.

<sup>14</sup> Ex. C.1.

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1 Movant also alleged that the hearing should be reopened because the Hearing Examiner allegedly  
2 said he was unprepared for the hearing. The movant mischaracterized the Hearing Examiner's  
3 comments. The Hearing Examiner noted that a revised departmental report had been filed the  
4 morning of the hearing and that he had not had the opportunity to review it. PDS staff then  
5 identified the changes to the departmental report in their testimony. The amended report also  
6 clearly identified the changes.<sup>15</sup> If the Hearing Examiner determined after the hearing that more  
7 evidence on a topic is needed to make an informed decision, he re-opens the record for that limited  
8 purpose. The Hearing Examiner has not been shy about doing that in other matters when he felt it  
9 appropriate. The Hearing Examiner studied the record and finds he was sufficiently informed to  
10 make a reasoned decision on the application.

11 The movant did not demonstrate good cause that the Hearing Examiner should exercise his  
12 discretion to reopen the record. The motion is therefore denied.

## 13 IX. PUBLIC NOTICE

14 PDS notified the public of the open record hearing, SEPA threshold determination,<sup>16</sup> and  
15 concurrency and traffic impact fee determinations.<sup>17</sup>

## 16 X. BACKGROUND INFORMATION

### 17 1. Proposal

18 Pacific Ridge requests approval of a binding site plan to create two commercial lots and a tract for  
19 286 townhomes, a Planned Community Business (PCB) preliminary plan for two commercial  
20 buildings and 286 townhomes, and an Urban Residential Design Standards (URDS) administrative  
21 site plan. Pacific Ridge asked that the URDS administrative site plan be consolidated with the  
22 binding site plan and PCB preliminary plan for review by the Hearing Examiner.<sup>18</sup> PDS  
23 recommended conditional approval of Planned Community Business preliminary site plan, binding  
24 site plan, and Urban Residential Development Standards administrative site plan.

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<sup>15</sup> Ex. L.2.

<sup>16</sup> Ex. E.1.

<sup>17</sup> Exhibits F.1 through F.4.

<sup>18</sup> Ex. G.3. SCC 30.23A.100(2)(a) (2017)

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## 2. Site Description and Surrounding Uses

The site of the proposed subdivision is a single undeveloped parcel of approximately 31 acres. The site has one stream (Garden Creek) and ten wetlands.

Property to the west and north is zoned Light Industrial and developed with a county maintenance facility. Property to the south and east is zoned R-5 and developed with residences. Property to the southwest is zoned R-9,600 and is developed with residences.

## 3. Public Concerns

Public concerns raised by emails or testimony include: objection to SEPA threshold determination;<sup>19</sup> alleged conflict with laws such as the Growth Management Act;<sup>20</sup> traffic;<sup>21</sup> insufficient notice to the public;<sup>22</sup> impact on schools;<sup>23</sup> alleged concerns of regional fire authority and concern about lack of timely emergency response due to traffic;<sup>24</sup> impacts on critical areas such as wetlands;<sup>25</sup> impact on rural character;<sup>26</sup> unnecessary development;<sup>27</sup> increased theft, drug use, and light pollution from a future park and ride;<sup>28</sup> and potential impact on eagles, owls, and other birds.<sup>29</sup>

Although some objected to PDS' threshold SEPA determination of no significant impact, no one appealed the threshold determination. The time for appeal expired before the open record hearing. The Hearing Examiner does not have the legal authority to consider an untimely objection to a SEPA threshold determination.

An allegation that a proposed development otherwise allowed by county code conflicts with the Growth Management Act or other state law essentially challenges county code., i.e., county code

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<sup>19</sup> Exhibits I.10, I.15, and I.17. Testimony of Gray.

<sup>20</sup> Exhibits I.5, I.11, I.15, and I.16.

<sup>21</sup> Exhibits I.1, I.4, I.6, I.9, and I.19. Testimony of Gunderson.

<sup>22</sup> Exhibits I.11 and I.15.

<sup>23</sup> Exhibits I.4 and I.19.

<sup>24</sup> Ex. I.5. Testimony of Gray.

<sup>25</sup> Exhibits I.8, I.15, and I.17. Testimony of Gray and Gunderson.

<sup>26</sup> Ex. I.3.

<sup>27</sup> Ex. I.15.

<sup>28</sup> Ex. I.18.

<sup>29</sup> Ex. I.18.

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1 conflicts with state law. The Hearing Examiner does not have jurisdiction over allegations that  
2 county code conflicts with state laws.

3 Neighbors expressed concerns about traffic. County ordinances require approval of the site plan if  
4 a development's impact on traffic on arterial units (not intersections) causes the level of service to  
5 fall below the level of service that county code defines as acceptable. A project of this size must  
6 perform a traffic study, using required datasets, to model trip generation and distribution. County  
7 staff review the study and may require changes or additional work. The required study includes  
8 data for known projects that have not yet been built, thereby accounting for the cumulative impact  
9 of known, current projects. After reviewing the study, Public Works determined that the level of  
10 service on an arterial unit is not likely to fall below the lowest allowed level of service, even when  
11 considering other projects. Finally, new developments must mitigate their impact on county roads.  
12 Here, Pacific Ridge will pay over a \$1 million to mitigate its impact on county roads.<sup>30</sup>

13 Neighbors complained that notice to the public was insufficient because the posted signs were too  
14 small, and notices were only mailed to property owners within a radius of 1,000 feet. The public  
15 was notified as required by county code; disagreement with county code requirements is not within  
16 the Hearing Examiner's jurisdiction.

17 The development's impact on the public school system is mitigated by the payment of mitigation  
18 fees required by county code. Pacific Ridge must pay more than \$6,000 per dwelling unit for the  
19 development's impact on the Snohomish School District.<sup>31</sup>

20 The Hearing Examiner heard allegations that the Snohomish Regional Fire Authority had concerns  
21 about the development and its ability to respond in a timely way to emergencies. However, the fire  
22 authority did not identify any such concerns in its response to the county about the project. The  
23 Hearing Examiner does not give substantial weight to concerns raised several years ago about  
24 another project, especially when the fire authority omitted those concerns in its specific response to  
25 this project. The Fire Marshal's office reviewed, commented, and conditioned its approval of the  
26 project and considered the fire authority's comments about this specific project when it did so.

27 Neighbors complained that critical areas were mischaracterized and will be destroyed. First, county  
28 subject matter experts conducted an independent evaluation of the critical areas as part of their  
29 review of Pacific Ridge's experts' evaluation. The conclusory allegation that the wetlands were  
30 mischaracterized does not outweigh the specific evidence of wetlands characterization that  
31 persuaded county experts.<sup>32</sup> Second, impacts to wetlands and buffers were minimized and

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<sup>30</sup> See discussion below at page 21.

<sup>31</sup> See discussion below at page 24.

<sup>32</sup> See, e.g., wetland evaluation rating forms attached to Ex. C.5.

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1 mitigated as required by county code.<sup>33</sup> Approval is conditioned on implementation of the mitigation  
2 measures. With respect to critical areas, the proposal complies with county code and the Hearing  
3 Examiner lacks authority to override or contradict county code.

4 Concerns about the development's impact on rural character are also not a legal basis for  
5 rejection. The proposed uses (townhomes, mini-storage warehouse, and fast-food restaurant) are  
6 specifically allowed uses on land zoned Planned Community Business. The Hearing Examiner may  
7 not reject a project that proposes uses specifically allowed by law.

8 Similarly, objections to "unnecessary development" are legally insufficient. No law prohibits the  
9 proposed use of land because it is "unnecessary."

10 Objections to a perception of increased theft, drug use, and light pollution from a park and ride that  
11 has not been built are also insufficient reasons to reject an otherwise lawful project.

12 Finally, inchoate general concerns on the project's impact on eagles, owls, and other birds are also  
13 insufficient reasons at law to reject a project. The record contains no evidence that the proposed  
14 development would cause a taking of an endangered species. The record demonstrates that no  
15 priority species or their habitats are on the site.<sup>34</sup> There is insufficient evidence to reject the project  
16 because of concerns regarding birds and other wildlife.

## 17 **XI. ENVIRONMENTAL REVIEW**

### 18 **1. SEPA (Chapter 30.61 SCC)**

19 PDS issued a threshold determination of nonsignificance on May 11, 2022, from which no appeal  
20 was taken.<sup>35</sup> Members of the public asked for an environmental impact statement.<sup>36</sup> The Hearing  
21 Examiner does not have the legal authority to reverse the threshold determination of no significant  
22 impact and require an environmental impact statement in the absence of a timely SEPA appeal.

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<sup>33</sup> See discussion below at page 14.

<sup>34</sup> Ex. C.5, PDF p. 23.

<sup>35</sup> Ex. E.1.

<sup>36</sup> E.g., testimony of Gray, exhibits I.15 and I.17. Too, some complained that the SEPA checklist was inadequate or incorrectly filled out by the applicant. Such complaints misapprehend the SEPA threshold determination process, such as concerns regarding the accuracy of the initial checklist submitted by an applicant. The responsible official of the lead agency (in this case, PDS) does not accept an applicant's checklist at face value. Subject matter experts review the application, checklist, and available information such as publicly available databases and maps and information in the county's files. A subject matter expert in critical areas will visit the site to ascertain or confirm characterization and delineation of critical areas. Errors in a checklist become moot due to the review, evaluation, and investigation process of the lead agency.

## **2. Critical Areas Regulations (Chapters 30.62, 30.62A, 30.62 B, and 32.62C SCC)**

The site contains critical areas, including a stream and ten wetlands. Garden Creek, a fish bearing stream, flows south to north in the western portion of the site. The buffers of off-site critical areas do not extend on to the site because their functions are interrupted by existing roads. The wetlands and stream require buffers that are 150-feet wide.

County code allows reduction of buffer widths by implementing authorized mitigation measures. Pacific Ridge proposes to reduce the standard 150-buffer of Garden Creek by using permanent fencing and placing the buffer and stream in permanent tracts. Code authorizes a reduction of the buffer on the east side of the stream to 112.5 feet and to 127.5 feet on the west side of the stream. SCC 30.62A.320(1)(f) (2015).

Buffers may also be reduced if required for safe public access. Here, impacts to buffers of the stream and some wetlands cannot be avoided; no other feasible alternative exists. If impacts are unavoidable, the project must be designed to minimize the impact. SCC 30.62A.320(2)(c) (2015). The Hearing Examiner finds the proposed road and frontage improvements cannot be relocated because of access safety issues and they have been designed to minimize buffer impacts to the maximum extent feasible.

Code also allows buffers where no feasible alternative exists and impacts are minimized.<sup>37</sup> No feasible alternative exists for the water and sewer line alignments. SCC 30.62A.340(3) (2015). The location, design, and proposed construction techniques minimize the impact to the minimum necessary. SCC 30.62A.310 (2015).

Pacific Ridge will mitigate critical area impacts by creating 21,215 sq. ft. of wetland, creating 76,004 sq. ft. of buffer, enhancing 51,912 sq. ft. of buffer, and restoring 20,717 sq. ft. of buffer. A permanent habitat corridor connection will be created through wetland creation adjacent to wetlands M and J. The combination of wetland creation, buffer creation, buffer enhancement, and buffer restoration will not result in any net loss of ecological functions or values but will instead provide a net increase in functions over the existing baseline.

## **3. Drainage and Grading (Chapters 30.63A, 30.63B, and 30.63C SCC)**

Infiltration is not feasible at the site. Subsurface exploration revealed shallow depth to bedrock in several test pits, shallow perched groundwater seepage, and predominately fine-grained native

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<sup>37</sup> Approximately 6,270 sq. ft. will be affected by grading.

soils that generally have poor infiltration ability.<sup>38</sup> Pockets and layers of permeable soil were variable and not extensive enough to render infiltration feasible. Stormwater from the new public roads will be fully dispersed and stormwater falling on the remainder of the project will be collected, conveyed to detention facilities, treated for water quality, and discharged to the east in historic flow paths at a rate and volume that mimics forested conditions.

	Description	How Fulfilled?
1	Stormwater Site Plan	The drainage report and preliminary civil drawings satisfy this requirement. <sup>39</sup>
2	Stormwater Pollution Prevention Plan (SWPPP)	Pacific Ridge submitted an adequate SWPPP. <sup>40</sup>
3	Water pollution source control for new development or redevelopment	Residential projects do not have to address water pollution source control after the project is completed. Future development of the commercial lots (lots 1 and 2) may require source control when they are developed; source controls will be reviewed as part of those future development applications.
4	Preservation of natural drainage systems	The proposal discharges to the historic discharge of the site's flowpath. No impact to downstream drainage is expected based upon analysis of downstream conditions.
5	On-site stormwater management	As conditioned, the on-site stormwater management can comply with the county's stormwater regulations. Lawn and landscaped areas will implement BMP T5.13 for post-construction soil quality and depth. Runoff from the new north/south public road will be fully dispersed. BMP T5.30. Stormwater from a portion of the roofs in the northwest corner will be fully dispersed. BMP T5.10B.
6	Runoff treatment	Enhanced treatment units will provide water quality treatment. Oil control facilities will be included

<sup>38</sup> Ex. C.3, p. 13. (PDF p. 20).

<sup>39</sup> Exhibits B.3 and C.2.

<sup>40</sup> Exhibits B.3 and C.8.

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		upstream of flow control and water quality treatment for the fast-food restaurant.
7	Flow control requirements for new development or redevelopment	Flow control will be provided by full dispersion for the new north/south road and by detention vaults with control structures for discharge for the remainder of the project.
8	Detention or treatment in wetlands or wetland buffers	There will be no detention or treatment in wetlands or wetland buffers.
9	Inspection, operation, and maintenance requirements	Operation and maintenance information is contained in the drainage report. <sup>41</sup>

## **XII. URBAN RESIDENTIAL DESIGN STANDARDS (CHAPTER 30.23A SCC)**

### ***1. Urban Residential Design Standards (Chapter 30.23A.SCC)***

Approval will be conditioned on Pacific Ridge demonstrating that proposed buildings comply with chap. 30.23A SCC (Urban Residential Design Standards) before building permits may be issued. As conditioned and proposed, the site plan complies with urban residential design requirements that must be met at this stage, including setbacks, density, lot coverage, and building heights. Approval will be conditioned upon compliance with standards for architectural design elements.<sup>42</sup>

### ***2. On-Site Recreation Space (SCC 30.23A.080)***

Pacific Ridge proposes approximately 32,134 square feet of on-site recreation space, more than the minimum requirement of 28,600 sq. ft.<sup>43</sup> The proposed open space tracts exceed minimum code requirements for one location and active use.

The proposed basketball court is oriented from west to east with the hoop at the east end on SR 9. The Hearing Examiner asks Pacific Ridge to consider carefully measures to prevent balls from any sport flying into the SR 9 right of way and posing a danger to traffic.

<sup>41</sup> Ex. C.2, §9.

<sup>42</sup> SCC 30.23A.050(3) (2017).

<sup>43</sup> SCC 30.23A.080(2) (2013) requires 100 sq. ft. per dwelling unit.  $286 \times 100 = 28,600$  sq. ft.

1 **3. Landscaping (SCC 30.23A.090)**

2 The proposed landscape plan<sup>44</sup> and tree canopy calculations<sup>45</sup> comply with chap. 30.25 SCC.  
3 County code requires a projected tree canopy of at least 202,543 sq. ft. in 20 years.<sup>46</sup> Pacific Ridge  
4 proposes to retain 617,382 sq. ft. of existing canopy, satisfying code requirements.

5 **4. Expiration of Site Plan Approval (SCC 30.23A.100)**

6 If construction does not commence within five years, approval of the administrative site plan will  
7 expire.<sup>47</sup>

8 **5. Utilities (SCC 30.23A.110)**

9 Approval will be conditioned on the installation underground of all distribution and service lines for  
10 water, sewer, electricity, and communication.<sup>48</sup>

11 **6. Parking (SCC 30.26.030)**

12 Pacific Ridge complies with the county code requirements by providing 572 parking stalls for the  
13 townhomes, 21 parking stalls for the restaurant, 15 stalls for the storage site, and 57 off-street  
14 parking stalls.

15 **XIII. BINDING SITE PLANS (CHAP 30.41D SCC)**

16 The Hearing Examiner finds and concludes that the newly created lots function and operate as one  
17 site and that the binding site plan and record of survey comply and are consistent with chap.  
18 30.41D SCC. The proposal is consistent and can comply with requirements for: noise control in  
19 that the uses are residential and minimal noise producing commercial uses (chap. 10.01 SCC),  
20 public or private roads, right of way establishment and permits, access, and other applicable road  
21 and traffic requirements; fire lane, emergency access, fire-related construction, hydrants and fire  
22 flow and other requirements of chap. 30.53 SCC; applicable use and development standards;

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<sup>44</sup> Ex. B.5.

<sup>45</sup> Ex. C.9.

<sup>46</sup> 1,350,287 sq. ft. x 15% = 202,543 sq. ft.

<sup>47</sup> Extensions may be granted if allowed by SCC 30.70.140 (2017).

<sup>48</sup> SCC 30.23A.110 (2009)

environmental policies and procedures, and critical areas; drainage requirements; and sanitary sewer and adequate water supply. SCC 30.41D.100 (2012)

#### **XIV. PLANNED COMMUNITY BUSINESS PRELIMINARY SITE PLAN (CHAP. 30.31A SCC)**

Pacific Ridge's proposal complies with the performance standards required for a planned community business. SCC 30.31A.100 (2012). Townhomes, mini-storage, and a fast-food restaurant will not generate offensive odors, dust, smoke, gas, or electronic interference. The site will be developed in three phases, as is shown on the preliminary site plan. Buildings will be designed to comply with Urban Residential Design Standards and will therefore be compatible with their surroundings. Restrictive covenants will be required to ensure long-term maintenance and upkeep of landscaping, storm drainage facility, other private property improvements, and open space areas and improvements. The proposed parking complies with chap. 30.26 SCC. Signs have not been proposed at the time of hearing, but they are anticipated and will require separate permits. Noise levels will be typical of, and consistent with, residential neighborhoods and light commercial uses (fast food restaurant with drive through and storage mini warehouse). Proposed landscaping complies with chap. 30.25 SCC.

#### **XV. TRANSPORTATION**

##### ***1. Area Transportation***

##### **a. Concurrency Determination (SCC 30.66B.120)**

A proposal cannot be approved unless it is "concurrent."<sup>49</sup> "Concurrency" refers to whether a local transportation facility such as a road has enough capacity to handle the proposed project's impact. If the transportation infrastructure has sufficient capacity to handle the proposed development's impact without the level of service falling below the minimum set in the comprehensive plan, the project is deemed "concurrent." See RCW 36.70A.070 (6)(b) (2021). County ordinances and rules adopted by Public Works prescribe the measures and tests to determine concurrency. If a development proposal complies with the county's concurrency standards, the proposal may not be rejected based upon its impact on traffic.

As of the date of the development application, Transportation Service Area (TSA) D had no arterial units in arrears and one arterial unit designated to be at ultimate capacity.<sup>50</sup> The proposed

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<sup>49</sup> SCC 30.66B.120(1) (2003).

<sup>50</sup> Arterial unit 218/219 – 164<sup>th</sup> Street SE/SW is at ultimate capacity.

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development will generate more than 50 peak hour trips.<sup>51</sup> Level of service conditions on arterial units were projected based on the trip generation of this development plus known future development projects in the “pipeline.”<sup>52</sup> The development will not add three or more directional peak-hour trips to any arterial unit at ultimate capacity or cause any arterial unit to be in arrears by adding three or more peak-hour trips. Public Works therefore deemed the development concurrent as of March 2, 2022.<sup>53</sup> The development proposal therefore may not be rejected because of its impact on traffic.

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

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)<sup>54</sup> must eliminate the IRC to be approved. The development will not affect any IRCs in TSA D with three or more evening peak hour trips, nor will it create an IRC. Therefore, it is expected that mitigation will not be required with respect to IRC and no restrictions to issuance of building permits, certificates of occupancy, or final inspection will be imposed under SCC 30.66B.210.

**c. Transportation Demand Management (SCC 30.66B.630)**

Transportation demand management (TDM) is a strategy for reducing vehicular travel demand, especially by single occupant vehicles during commuter peak hours. TDM offers a means of increasing the ability of transportation facilities and services to accommodate greater travel demand without making expensive capital improvements. New developments like this within an urban growth area must comply with county code’s TDM requirements. Pacific Ridge must either incorporate features into its design that have the potential for removing five percent of the development’s evening peak hour trips from the road system or voluntarily pay.<sup>55</sup> Pacific Ridge did not submit an acceptable TDM plan with its application. Approval will therefore be conditioned on payment of \$73,160.75 (\$255.81/dwelling unit).

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<sup>51</sup> 202.43 new A.M. peak-hour trips and 225.11 new P.M. peak-hour trips.

<sup>52</sup> SCC 30.66B.035 (2010) requires concurrency for this development to be determined based upon a traffic study. DPW Rule 4220.030 (2016) establishes the requirements for traffic studies, including projected level of service that includes trip generation of the proposed development and those in the pipeline inventory. Department of Public Works Rule 4225.090 (2016). The Hearing Examiner takes official notice of the publicly available rules of the departments of Public Works and PDS. H. Ex. R. Proc. 5.6(i) (2021).

<sup>53</sup> SCC 30.66B.160(2)(a).

<sup>54</sup> An IRC is “any road condition, whether existing on the road system or created by a new development’s access or impact on the road system, which jeopardizes the safety of road users, including non-automotive users, as determined by the county engineer.” SCC 30.911.020 (2003) “Road condition” refers to a physical condition, such as sight obstructions and does not refer to traffic congestion, which is evaluated by the concurrency determination.

<sup>55</sup> SCC 30.66B.625(1) (2010).

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**d. Impact Fees**

***i. County***

The proposed development must mitigate its impact upon the future capacity of the Snohomish County road system by paying a road system impact fee.<sup>56</sup> The road system impact fee will be the product of the average daily trips (ADT)<sup>57</sup> created by the development multiplied by the trip amount per trip for TSA D identified in SCC 30.66B.330. Based on the average daily trips projected for the project, Pacific Ridge must pay \$1,418,239.98 for impacts to the county road system.

	<b>Townhouse ADT (Residential)</b>	
1	Number of Townhouse Dwelling Units (DU)	286
2	ADT per DU	7.32
3	New DU ADT (line 1 x line 2)	2,093.52
4	TSA D mitigation fee per ADT	\$502.00
5	Total Road System Impact Fee (line 3 x line 4)	\$ 1,050,947.04
6	Amount per Dwelling Unit (line 5 ÷ line 1)	\$ 3,674.64

	<b>Self-Storage ADT (Commercial)</b>	
1	Square footage	93,800
2	ADT per 1,00 sq. ft.	1.51
3	New Self-Storage ADT ((line 1 ÷ 1,000) x line 2)	141.64
4	TSA D mitigation fee per ADT	\$426.00
5	Total Road System Impact Fee (line 3 x line 4)	\$ 60,338.64
6	Amount per Square Foot (line 5 ÷ line 1)	\$ 0.64

	<b>Fast-Food Restaurant<sup>58</sup> ADT (Commercial)</b>	
1	Square footage	3,000

<sup>56</sup> SCC 30.66B.310 (2003).

<sup>57</sup> ADT is calculated using the Institute of Traffic Engineers' Trip Generation Report.

<sup>58</sup> Including drive-through window.

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2	ADT per 1,00 sq. ft.	470.95
3	New Fast-Food ADT ((line 1 ÷ 1,000) x line 2)	1,412.85
4	Pass-by reduction rate <sup>59</sup>	49%
5	Pass-by reduction (line 3 x line 4)	692.30
6	Net New ADT (line 3 – line 5)	720.55
7	TSA D mitigation fee per ADT	\$426.00
8	Total Road System Impact Fee (line 6 x line 7)	\$306,954.30
9	Amount per Square Foot (line 8 ÷ line 1)	\$ 102.32

**ii. Other Jurisdictions**

**a. State Highway Impacts (SCC 30.66B.710)**

When a development's road system includes a state highway, mitigation requirements will be established using the county's SEPA authority consistent with the terms of the interlocal agreement between the county and the WSDOT. This is consistent with the county's SEPA policy<sup>60</sup> through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the county's SEPA authority.

Credits for the value of frontage improvements, additional right of way, and channelization exceed the amount of monetary mitigation. Therefore, monetary mitigation to WSDOT will not be required.

**b. Other Jurisdictions (SCC 30.66B.710)**

The proposed project will affect the road network of the city of Mill Creek, with which the county has a reciprocal traffic impact mitigation interlocal agreement with the county. Approval will be conditioned on Pacific Ridge paying Mill Creek \$1,227.87 per dwelling unit (\$351,171.60 total).<sup>61</sup>

<sup>59</sup> Dept. of Public Works Rule 4220.050. Pass-by refers to trips that are not generated by the site. For example, a vehicle traveling from Silver Firs to SR 9 that stops at the new fast-food restaurant for a snack and then continues its way is not a trip generated by the proposed restaurant. In other words, it was a trip that would have occurred without the new restaurant.

<sup>60</sup> SCC 30.61.230(9) (2012).

<sup>61</sup> 225.11 P.M. peak-hour trips x 40% x \$3,900/PM peak-hour trip) = \$351,171.60 ÷ 286 dwelling units = \$1,227.87/dwelling unit.

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## **2. Project Site**

### **a. Access**

Pacific Ridge will create two new public roads in the shape of an L. The north/south leg (87<sup>th</sup> Ave. SE) will intersect Cathcart Way at a signalized intersection and the east/west leg (148<sup>th</sup> St. SE) will intersect State Route 9. Access to State Route 9 will be limited to right in from southbound State Route 9 to 148<sup>th</sup> St. SE and right out from 148<sup>th</sup> St. SE to southbound State Route 9. Drive aisles will extend from the new public roads to the interior of the development. Stopping and intersection sight distances at the access point meets the minimum requirements of EDDS §3-08.

### **b. Right of Way**

The site fronts on Cathcart Way and State Route 9 and a new public road (87<sup>th</sup> Ave. SE) will run from Cathcart Way south, then turn east to link to State Route 9 (148<sup>th</sup> St. SE). Cathcart Way is a principal arterial with 50 feet of right of way on each side of the center line. New public road 148<sup>th</sup> St. SE needs 65 feet of right of way at the west end near the elbow to 87<sup>th</sup> Ave. SE and 79 feet of right of way at the east end near its intersection with State Route 9. The existing unopened right of way is 30 feet wide. Approval will be conditioned upon the creation of the two new public roads. If the public process for creation of 148<sup>th</sup> St. SE has not been completed in time, Pacific Ridge must obtain a construction easement or other agreement from the county before installation of improvements on the south side of 148<sup>th</sup> St. SE.

State Route 9 is also a principal arterial and under the jurisdiction of the Washington State Department of Transportation (WSDOT). In addition to additional right of way, WSDOT requires frontage improvements and channelization. Approval will be conditioned on providing these and any other mitigation required by WSDOT.

The impact fee cost basis does not include either Cathcart Way or 148<sup>th</sup> St. SE; the additional right of way therefore cannot be credited against the county's impact mitigation fee.

### **c. Internal Road System**

No new public roads will be created within the development.<sup>62</sup> Drive aisles will provide internal vehicular circulation and will be designated as fire lanes.

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<sup>62</sup> Private road network elements are allowed for access to townhouse unit lots in lieu of a public road. SCC 30.24.055(1)(a) (2013).

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1 **d. Frontage Improvements (SCC 30.66B.410)**

2 Full urban frontage improvements are usually required where the project abuts a public road. The  
3 project abuts two public roads: Cathcart Way and State Route 9. New public road 87<sup>th</sup> Ave. SE will  
4 intersect Cathcart Way. Approval will be conditioned on installation of a traffic signal to the county's  
5 satisfaction. Approval will be conditioned on full urban frontage improvements on Cathcart Way,  
6 consisting of: asphalt concrete pavement from the roadway center line to the face of the curb;<sup>63</sup>  
7 cement concrete curb and gutter; five-foot-wide planter strip; and a ten-foot-wide cement concrete  
8 sidewalk on both sides of Cathcart Way from the new signalized intersection at 87<sup>th</sup> Ave. SE and  
9 Cathcart Way to the intersection of State Route 9 and Cathcart Way.<sup>64</sup>

10 ADA ramps at the intersections of all the public roads must comply with minimum ADA standard  
11 requirements for grades and landings as detailed in the current EDDS §4-05 D and WSDOT  
12 Standard Plans F-40 series. A detail of each ADA ramp will be required in the construction plans.

13 A horizontal clear/control zone is required along the parcel's frontages.<sup>65</sup> Existing or proposed fixed  
14 object obstructions must be removed or relocated from this buffer for motorist safety, including  
15 utility poles. The clear zone must be established as part of the frontage improvements. The clear  
16 zone will be addressed during construction plan review.

17 Approval will also be conditioned on illuminating 87<sup>th</sup> Ave. SE and 148<sup>th</sup> St. SE. EDDS §7-02.

18 The impact fee cost basis does not include Cathcart Way; the improvements will not be credited  
19 against the mitigation impact fee.

20 **e. Bicycle**

21 The development site borders Cathcart Way, which is identified as a bicycle path on the county's  
22 bicycle system map. Approval will be conditioned on providing a bicycle path on the north and  
23 south sides of Cathcart Way. The required frontage improvements, including the proposed shared  
24 use facilities, will provide the necessary bicycle facility.

25 **f. Signing and Striping**

26 Approval will be conditioned on Pacific Ridge paying the county for signing and striping installed or  
27 applied by county forces. Pacific Ridge must submit an acceptable channelization plan on 87<sup>th</sup> Ave  
28 SE, 148<sup>th</sup> Street SE, and Cathcart Way to enable the county to determine the appropriate amount.

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<sup>63</sup> The width varies from approximately 29 feet to 33 feet.

<sup>64</sup> The width includes a shared use path.

<sup>65</sup> EDDS §§4-15, 8-03; WSDOT Utility Manual.

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## **XVI. MITIGATION**

### **1. School Impact Mitigation (Chapter 30.66C SCC)**

Approval of the development will be conditioned upon the payment of school impact fees.<sup>66</sup> The amount will be \$6,039.00 per dwelling unit according to the base fee schedule in effect for the Snohomish School District on April 21, 2021, when Pacific Ridge submitted a complete development application. For building permits submitted on or after April 22, 2026, the mitigation fee will be determined by the fee schedule in effect when building permits are submitted. Mitigation fees will be collected at the time of building permit issuance for the proposed new dwellings. Credit shall be given for one existing lot.

### **2. Park and Recreation Impact Mitigation (Chapter 30.66A SCC)**

Approval of the development will be conditioned upon the payment of park and recreation facility impact fees. The fee schedule in effect when Pacific Ridge filed a complete development application determines the amount of the impact fee. The fee schedule in effect on April 21, 2021, established an impact fee of \$1,071.45 per dwelling unit. Pacific Ridge must pay the fee when building permits are issued for the townhouse units.<sup>67</sup>

## **XVII. PUBLIC SAFETY AND HEALTH**

### **1. Fire**

The Fire Marshal's Office reviewed the proposal and does not object to approval if its recommended conditions are required. Approval will be conditioned on satisfaction of the Fire Marshal's recommendations, including equipping all dwelling units and the commercial storage building with NFPA 13D automatic sprinkler systems.<sup>68</sup>

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<sup>66</sup> SCC 30.66C.100 (2014).

<sup>67</sup> SCC 30.66A.020 (2017). The project site lies in the Nakeeta Beach park service area. SCC 30.66A.040(1) (2017).

<sup>68</sup> Ex. G.1. EDDS usually requires turnarounds if a fire lane exceeds 150 feet. Two fire lanes exceeding 150 feet are proposed: one of 156 feet and another of 163 feet. A deviation was approved to allow these fire lanes, conditioned upon installation of automatic fire sprinklers in the dwellings.

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## 2. Pedestrian Facilities and Schoolchildren

Snohomish School District advised that students will meet their buses on the new public roads connecting Cathcart Way and State Route 9.<sup>69</sup>

## 3. Utilities

Adequate provisions have been made for utilities. Sanitary sewers and domestic water will be supplied by Silver Lake Water and Sewer District.<sup>70</sup> Snohomish County PUD has the capacity to provide electrical service.<sup>71</sup>

## XVIII. CONCLUSIONS

1. The Hearing Examiner also has authority to approve a preliminary Planned Community Business plan in parcels larger than 5 acres zoned by the county for Planned Community Business, binding site plan when proposed with another type 2 application,<sup>72</sup> and Urban Residential Design Standards administrative site plans where, as here, the applicant requested consolidated review of the preliminary plan and administrative site plan.<sup>73</sup>
2. The Hearing Examiner concludes that Pacific Ridge met its burden of proof and demonstrated that its proposal either does or can comply with county development regulations. The development proposal is consistent with the comprehensive plan, county code, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.
3. The Hearing Examiner concludes that adequate public services exist to serve the proposed project.
4. As conditioned, the proposed project makes adequate provisions for public health, safety, and the general welfare.
5. Any finding of fact in this decision which should be deemed a conclusion of law is hereby adopted as a conclusion of law.

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<sup>69</sup> Ex. H.3.

<sup>70</sup> Ex. H.1.

<sup>71</sup> Ex. H.2.

<sup>72</sup> SCC 30.41D.020 (2020).

<sup>73</sup> SCC 30.23A.100(2)(a) (2017); SCC 30.31A.200(3) (2020); and SCC 30.70.025 (2021). See SCC 30.31A.220 (2003) ("All hearing examiner conditions of approval shall appear on the binding site plan . . ."). Ex. G.3 (requesting consolidated review).

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6. Any conclusion of law in this decision which should be deemed a finding of fact is hereby adopted as a finding of fact.

## **XIX. DECISION**

Based on the foregoing findings of fact and conclusions of law, the Hearing Examiner approves the preliminary Planned Community Business plan, binding site plan, and Urban Residential Design Standards administrative site plan subject to the following conditions:

### ***Conditions***

#### **A. General**

1. The Planned Community Business preliminary site plan,<sup>74</sup> binding site plan,<sup>75</sup> and Urban Residential Standards administrative site plan<sup>76</sup> shall be the approved site plans under chapters 30.23A, 30.41D, and 30.31A SCC.
2. Any discrepancy between the performance standards of title 30 SCC and the site plans shall be resolved in favor of title 30.
3. The landscape plan<sup>77</sup> received by PDS on April 15, 2022, shall be the approved landscape plan.
4. All dwelling units shall be provided with NFPA 13D automatic sprinklers.
5. The commercial mini-storage structure on Lot 2 shall be equipped with NFPA 13 automatic fire sprinkler systems and NFPA 72 monitored fire alarm system.
6. Prior to working within State right of way, Pacific Ridge must obtain a right-of-way use permit from WSDOT, fulfill any conditions, and process it to the satisfaction of the WSDOT.
7. No land may be used, no buildings may be occupied, and no lots may be sold except in accordance with the approved binding site plan.
8. Performance security devices provided by Pacific Ridge must comply with chap. 30.84 SCC.
9. All water, sewer, electrical and communication distribution and service lines shall be underground, except as may be allowed by SCC 30.23A.110(1) or (2).

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<sup>74</sup> Ex. B.1 (received by PDS on November 30, 2021).

<sup>75</sup> Ex. B.4 (received by PDS on April 15, 2022).

<sup>76</sup> Ex. B.2 (received by PDS on April 15, 2022).

<sup>77</sup> Ex. B.5.

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1 10. Trees planted to meet requirements of SCC 30.25.016 and shown in the approved landscape  
2 plan shall not be removed except when determined in writing by a certified arborist to constitute  
3 a hazard in accordance with SCC 30.25.016(11).

4 11. The project will comply with all local, state, and federal laws and regulations, including  
5 regulations and laws concerning wetlands and fish and wildlife habitat conservation areas

6 12. Nothing in this approval excuses Pacific Ridge, any owner, lessee, agent, successor or assigns  
7 from compliance with any other federal, state or local statutes, ordinances or regulations  
8 applicable to this project.

9 **B. Prior to Development Activity on Site**

10 13. Prior to any development activity on the site except surveying and marking, Pacific Ridge shall  
11 obtain one or more land disturbing activity permits.

12 14. Pacific Ridge shall obtain a right of way use permit for any work within a county road right of  
13 way.

14 15. To the extent required by SCC 30.43F.100, Pacific Ridge shall obtain a Forest Practices  
15 Activity Permit – Class IV General Conversion.

16 16. Pacific Ridge must temporarily mark the boundary of all Critical Area Protection Areas  
17 (CAPAs) and CAPA/Easements required by chapter 30.62A SCC and the limits of the  
18 proposed site disturbance outside of the CAPAs and CAPA/Es, using methods and materials  
19 acceptable to the county.

20 17. The application for land disturbing activity permit(s) shall include:

21 a. Drawings that properly label Critical Area Protection Areas within tract 999 and the  
22 CAPA/Easement within tract 998.

23 b. The design and proposed locations for CAPA signs.

24 c. Design and specifications for the rail fence. The fence design shall comply with SCC  
25 30.62A.320(1)(f)(ii).

26 d. A Final Mitigation Plan based on the approved Revised Conceptual Mitigation Plan –  
27 Cathcart Crossing dated January 7, 2022, by Soundview Consultants, LLC. The Mitigation  
28 Plan Appendix A shall be included as a plan sheet(s) in the land disturbing activity permit  
29 plan set

30 18. A landscape maintenance security may be required in accordance with SCC 30.84.150 if  
31 Pacific Ridge requests a planting delay and PDS concurs with the suitability of the delay.

32 19. Prior to issuance of the land disturbing activity permit, Pacific Ridge shall:

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- a. Pay the amount required by the county for the installation of signs and striping. SCC 13.10.180. (Transaction code 7330.)
- b. Pay a landscape site inspection fee. SCC 30.86.145(3).
- c. Provide mitigation performance security in accordance with the mitigation and warranty security requirements of chapter 30.84 SCC.
- d. Record a Critical Area Site Plan (CASP) with the Snohomish County Auditor in accordance with the requirements of SCC 30.62A.160 that designates critical areas and their buffers as Critical Area Protection Area (CAPA) and CAPA/Easements (CAPA/E) with the following restrictive language:

Except as provided herein All CRITICAL AREA PROTECTION AREAS and CRITICAL AREA PROTECTION AREA EASEMENTS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees.

20. Prior to issuance of any land disturbing activity permits, Pacific Ridge and the county shall have executed an agreement which provides an easement for construction of 148th Street SE on county property if the right of way has not already been created or established by Council action.

#### **C. Prior to Final Approval of Land Disturbing Activity Permits**

Prior to final approval land disturbing activity permit(s):

21. Split-rail fencing shall have been satisfactorily installed around the boundary of CAPA.
22. The Final Mitigation Plan shall have been satisfactorily implemented.
23. Mitigation monitoring and maintenance warranty security shall have been provided in accordance with the mitigation and warranty security requirements of chapter 30.84 SCC to ensure that the mitigation meets the performance requirement targets contained in the approved mitigation plan.
24. All CAPA boundaries shall have been permanently marked on the site prior to final inspection by the county, with both CAPA signs and adjacent markers which can be magnetically located (e.g., rebar, pipe, or 20 penny nails). Pacific Ridge may use other permanent methods and materials provided they are first approved by the county. Where a CAPA boundary crosses another boundary (e.g., lot, tract, plat, or road), a rebar marker with surveyors' cap and license number must be placed at the line crossing
25. CAPA signs shall have been placed no greater than 100 feet apart around the perimeter of the CAPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the CAPA, unless otherwise approved by the

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county biologist. The design and proposed locations for the CAPA signs shall be submitted to PDS Permitting for review and approval prior to installation.

**D. Binding Site Plan -- Content**

The following text shall be written on the face of the recorded binding site plan:<sup>78</sup>

26. The dwelling units within this binding site plan are subject to school impact mitigation fees for Snohomish School District No. 201. For building permit applications submitted on or before April 21, 2026, the mitigation fee shall be \$6,039.00. For building permits submitted on or after April 22, 2026, the amount shall be determined by the fee schedule in effect at the time the building permit application is submitted. Payment of these mitigation fees is required prior to building permit issuance except as provided for in SCC 30.66C.200(2). Credit shall be given for one existing lot. Unit 1 shall receive credit.
27. The dwelling units within this development are subject to park impact fees as mitigation for impacts to the Nakeeta Beach Park Service Area No. 307 of the County parks system in accordance with chapter 30.66A SCC. For building permit applications submitted on or before April 21, 2026, the impact fee shall be \$1,071.45 per dwelling unit. For building permits submitted on or after April 22, 2026, the amount shall be determined by the fee schedule in effect at the time the building permit application is submitted. Payment of these mitigation fees is required prior to building permit issuance except as provided for in SCC 30.66A.020(4).
28. Chapter 30.66B SCC requires new lot mitigation payment to the county for each dwelling unit (twice the amount for each duplex) of:
  - (a) \$255.81 for Transportation Demand Management for a total of \$73,160.75 and

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<sup>78</sup> Numbering and formatting of required text is for convenience only.



(b) \$3,674.64 for mitigation of impacts on county roads for a total of \$1,050,947.04. The impact fees will be distributed to Transportation Service Areas as follows:

Road System Impact Fee Allocation Table – Residential townhomes			
To TSA	Total Amount	Amount per dwelling unit	Transaction Code
TSA A	\$735.66	\$2.57	5207
TSA B	\$3,363.03	\$11.76	5208
TSA C	\$2,627.37	\$9.19	5209
TSA D	\$753,003.55	\$2,632.88	5210
TSA E	\$71,674.59	\$250.61	5211
TSA F	\$219,542.84	\$767.63	5212
Total Owed: \$1,050,947.04		Total per dwelling: \$3,674.64	

Payment of these fees is due prior to or at the time of building permit issuance for each single-family residence unless deferment is allowed pursuant to chapter 30.66B SCC.

29. Chapter 30.66B SCC requires payment to the county of \$306,954.30 to mitigate the fast-food restaurant's impact on the county road system. The impact fee shall be distributed to each Transportation Service Area in accordance with SCC 30.66B.340, as indicated in the allocation table below. Payment of these fees is due prior to or at the time of building permit issuance unless deferment is allowed pursuant to chapter 30.66B SCC.

Road System Impact Fee Allocation Table Fast-Food Restaurant		
To TSA	Total Amount	Transaction Code
TSA A	\$214.87	5207
TSA B	\$982.25	5208
TSA C	\$767.39	5209
TSA D	\$219,932.76	5210
TSA E	\$20,934.28	5211
TSA F	\$64,122.75	5212
Total: \$306,954.30		

30. Chapter 30.66B SCC requires payment to the county of \$60,338.64 to mitigate the mini warehouse's impact on the county road system. The impact fee shall be distributed to each Transportation Service Area in accordance with SCC 30.66B.340, as indicated in the allocation

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table below. Payment of these fees is due prior to or at the time of building permit issuance unless deferment is allowed pursuant to chapter 30.66B SCC.

Road System Impact Fee Allocation Table – Mini-Warehouse		
To TSA	Total Amount	Transaction Code
TSA A	\$42.24	5207
TSA B	\$193.08	5208
TSA C	\$150.85	5209
TSA D	\$43,232.63	5210
TSA E	\$4,115.10	5211
TSA F	\$12,604.74	5212
Total: \$60,338.64		

31. Pacific Ridge shall pay the city of Mill Creek \$351,171.60 (\$1,227.87 per dwelling unit) to mitigate impacts on traffic in the city of Mill Creek. Payment may be made proportionately with each building permit.
32. All CRITICAL AREA PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur.
33. All Critical Areas and buffers shall be designated Critical Area Protection Areas (CAPA's) and placed in open space tract 999 and within a CAPA/Easement within tract 998 with the following restrictive language:
- As otherwise provided herein, the CAPA (Critical Area Protection Areas) shall be left permanently undisturbed in a substantially natural state. Exceptions: The following are allowed in CAPAs: Non-ground disturbing interior or exterior building improvements; routine landscape, maintenance of established, ornamental landscaping; non-ground disturbing normal maintenance or repair; felling or topping of hazardous based on review by a qualified arborist; removal of noxious weeds conducted in accordance with chapter 16-750 WAC; maintenance or replacement that does not expand the affected area of the following existing facilities: (a) septic tanks and drain fields; (b) wells; (c) individual utility service connections; data collection by non-mechanical means, and non-mechanical survey and monument placement
34. All provisions, conditions, and requirements of the binding site plan shall be legally enforceable on the owner, purchaser, and any other person acquiring a possessory ownership, security, or other interest in any property subject to the binding site plan.

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35. All conditions and restrictions on development, use, maintenance, shared open space, parking, access, and other improvements identified on the recorded binding site plan shall be enforced by covenants, conditions, restrictions, easements, or other legal mechanisms.
36. Trees planted to meet requirements of SCC 30.25.016 and indicated in the approved landscape plan shall not be removed except when determined in writing by a certified arborist to constitute a hazard. Any replacement or significant trees removed without proper documentation from a certified arborist shall be subject to a fine as determined under chapter 30.85 SCC.
37. All dwelling units shall be provided with a NFPA 13-D fire suppression system.
38. Any development of the site shall conform to the approved binding site plan.
- The following shall be depicted on the binding site plan:
39. A right of way dedication along the property frontage with 148th Street SE at the southeast corner of the site adjacent to SR 9 to the satisfaction of Snohomish County.
40. Reciprocal parking and access easements. These easements shall include provisions for maintenance and enforcement.
41. A right of way dedication along the property frontage with 148th Street SE at the northeast corner of the site adjacent to SR 9 to the satisfaction of Snohomish County
42. Right of way as deeded (by instrument or recording number) along the property frontage with State Route 9 for a minimum total of 80.5 feet from the right of way center line, or as determined by Snohomish County and the WSDOT.

#### **E. Recording of the Binding Site Plan**

43. Prior to recording the binding site plan, the restrictive covenants described at SCC 30.31A.100(4) shall have been executed by the property owners and a copy provided to PDS.
44. After the PDS director has approved and signed the binding site plan and record of survey, Pacific Ridge shall record the approved original binding site plan and original record of survey as one recording document labeled "Binding Site Plan" with the Auditor in accordance with SCC 30.41D.110(6). The Auditor shall distribute copies of the recorded document to PDS, the department of Public Works, and the county Assessor. All distributed copies shall bear the Auditor's recording data. If a record of survey is not required because of RCW 58.09.090(1)(d)(iv) (2010), the applicable record of survey data shall be shown on the binding site plan to be recorded. SCC 30.41D.110(7) (2002).

#### **F. Prior to Issuance of Any Building Permit**

45. Prior to issuance of any building permit on lot 1 or lot 2, Pacific Ridge shall provide documentation of the proposed methods to address source control of pollution as described in Snohomish County Drainage Manual vol. IV (refer to Table 4.1 for preliminary guidance).

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- 1 Prior to the issuance of any building permit:
- 2 46. Pacific Ridge shall have recorded the binding site plan.
- 3 47. Pacific Ridge shall have submitted a final certificate of water availability to the county Fire  
4 Marshal verifying the fire hydrants have been installed, are charged and operational, and meet  
5 the minimum required fire flow after installation. Each fire hydrant shall be equipped with a 4-  
6 inch Storz steamer port and its bonnet and cap painted to reflect the level of fire service.
- 7 48. Building plans submitted for building permit review shall:
- 8 a. Include NFPA 13-D automatic fire suppression systems.
- 9 b. Comply with applicable bulk regulations of chap. 30.23 SCC
- 10 c. For townhouses in tract 998, building plans shall comply with the Urban Residential  
11 Design Standards outlined in chap. 30.23A SCC, including SCC 30.23A.050.
- 12 49. Pacific Ridge shall have paid the traffic impact mitigation fees described in conditions 28(b), 29,  
13 and 30.
- 14 50. Pacific Ridge shall have paid the Transportation Demand Management fee described in  
15 condition 28(a).
- 16 51. Pacific Ridge shall have paid the traffic impact mitigation fee to the city of Mill Creek described  
17 in condition 31.
- 18 52. Pacific Ridge shall have paid the park and recreation facility impact mitigation fee to the county  
19 described in condition 27.
- 20 53. Pacific Ridge shall have paid the school district impact mitigation fee described in condition 26.
- 21 54. Right of way shall have been deeded (or dedicated on the face of the binding site plan) along  
22 the property frontage on 148<sup>th</sup> Street SE at the southeast corner of the site adjacent to SR 9 to  
23 the satisfaction of Snohomish County.
- 24 55. Right of way shall have been deeded (or dedicated on the face of the binding site plan) along  
25 the property frontage on Cathcart Way at the northeast corner of the site adjacent to SR 9 to  
26 the satisfaction of Snohomish County.
- 27 56. Right of way shall have been deeded along the property frontage with State Route 9 for a  
28 minimum total of 80.5 feet from the right of way center line or as determined by Snohomish  
29 County and the WSDOT. Timing of this dedication may be different if approved by WSDOT.
- 30 57. The construction plans for the road establishment of the new north-south road (87<sup>th</sup> Ave SE)  
31 shall have been approved by the county.
- 32 58. The property on the south side of the existing 30-foot-wide unopened right of way of 148<sup>th</sup>  
33 Street SE along the southern property line of the site shall have either been established as right

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of way or an agreement between Pacific Ridge and Snohomish County shall have been completed to the satisfaction of Snohomish County to allow the construction of the new county road (148<sup>th</sup> Street SE) on county property if the right of way has not already been created or established by Council action.

**G. Prior to Any Certificate of Occupancy or Final Inspection**

Prior to the earlier of any certificate of occupancy or final inspection:<sup>79</sup>

59. Urban frontage improvements shall have been constructed along the parcel's frontage on the north and south side of Cathcart Way to the satisfaction of the county.

60. Urban frontage improvements shall have been constructed along the parcel's frontage on State Route 9 (SR 9) to the satisfaction of the WSDOT.

61. The off-site bicycle facility/sidewalk improvement on the south side of Cathcart Way west of the new intersection with 87<sup>th</sup> Ave SE shall have been completed to the satisfaction of Snohomish County.

62. The road establishment and construction of 148<sup>th</sup> Street SE and 87<sup>th</sup> Ave SE between Cathcart Way and SR 9 shall have been completed and accepted to the satisfaction of Snohomish County.

63. An access connection permit shall have been obtained from WSDOT and processed to WSDOT's satisfaction.

64. Any improvements within the SR 9 right of way shall have been completed to the satisfaction of the WSDOT.

65. A right-in and right-out only access point at 148<sup>th</sup> Street SE and State Route 9 shall have been completed to the satisfaction of the WSDOT and Snohomish County.

66. The channelization of Cathcart Way, 87<sup>th</sup> Ave SE, and 148<sup>th</sup> Street SE shall have been completed to the satisfaction of Snohomish County.

67. The mid-block crossing consisting of a rapid rectangular flashing beacon (RRFB) on 148<sup>th</sup> Street SE across from the future park and ride shall have been installed to the satisfaction of Snohomish County.

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<sup>79</sup> The departmental report (ex. L.2) recommended these conditions be fulfilled prior to the earlier of (a) recording of the binding site plan or (b) certificate of occupancy or final inspection. The binding site plan must be recorded within six months of approval. SCC 30.70.140 (2020). It is not feasible to require the applicant to construct the frontage improvements, install a new traffic signal, establish new roads, etc., within six months of this decision's approval of the binding site plan. Therefore, these conditions must be fulfilled prior to the earlier of any certificate of occupancy or final inspection.

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68. The channelization of State Route 9 (SR 9) shall have been completed to the satisfaction of the WSDOT.

69. Illumination shall have been installed to the satisfaction of Snohomish County on Cathcart Way, 87<sup>th</sup> Ave SE and 148<sup>th</sup> Street SE adjoining the site.

70. A new signal shall have been installed at the intersection of 87<sup>th</sup> Ave SE and Cathcart Way to the satisfaction of Snohomish County.

71. The property on the south side of the existing 30-foot-wide unopened right of way of 148<sup>th</sup> Street SE along the southern property line of the site shall have been created or established as right of way by Council action, or as determined by Snohomish County.

#### **H. Prior to Approval for Occupancy**

Prior to approval for occupancy:

72. Required automatic fire sprinkler systems shall be operational.

73. All required landscaping shall have been installed in accordance with the approved landscape plan and a qualified landscape designer shall certify that the installation complies with the code and the approved plans unless a performance bond has been reviewed and accepted by the department. All landscaping review and inspection fees shall have been paid pursuant to chapter 30.86 SCC.

74. Pacific Ridge shall have installed all fire lane signage and pavement striping per the approved plans and coordinated on-site with the Snohomish County Fire Marshal's Office.

75. Blue street reflectors shall have been installed on the hydrant side of the center line to assist approaching emergency vehicle apparatus in locating the hydrant.

76. Mitigation maintenance and warranty security shall have been provided in accordance with the mitigation and warranty security requirements of Chapter 30.84 SCC to ensure that the mitigation meets the performance requirement targets contained in the approved mitigation plan.

#### **I. Expiration of Approvals**

77. A binding site plan approval pursuant to chap. 30.41D SCC expires unless the binding site plan is recorded within six months of approval.

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1 78. In accordance with SCC 30.70.140, an administrative site plan approval under chapter 30.23A  
2 SCC expires five years from the date of the approval if construction or use has not  
3 commenced. "Commence construction" is defined as the point in time when the breaking of  
4 ground for the construction of a development occurs.

Decision issued this 7<sup>th</sup> day of July, 2022.



Peter B. Camp  
Hearing Examiner

## 5 **EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES**

6 Any party of record may ask the Hearing Examiner to reconsider this decision. The decision may  
7 be appealed to the County Council irrespective of whether reconsideration is requested. The  
8 following paragraphs summarize the reconsideration and appeal processes. For more information  
9 about reconsideration and appeal procedures, please see chapter 30.72 SCC and the respective  
10 Hearing Examiner and Council Rules of Procedure.

### 11 ***Reconsideration***

12 Any party of record may request reconsideration by the Hearing Examiner by filing a petition for  
13 reconsideration **no later than July 18, 2022.**<sup>80</sup> A petition for reconsideration must be filed in writing  
14 with the Office of Hearings Administration, 2<sup>nd</sup> Floor, Robert J. Drewel Building, 3000 Rockefeller  
15 Avenue, Everett, Washington. The petition can be delivered in person, by mail to Office of  
16 Hearings Administration, M/S 405, 3000 Rockefeller Avenue, Everett WA 98201, or by email to  
17 Hearing.Examiner@snoco.org. Irrespective of method of delivery, a petition for reconsideration is  
18 deemed filed when it is delivered by the close of business on the deadline day or if the email is  
19 timestamped on or before the deadline. There is no fee for filing a petition for reconsideration. The  
20 petitioner for reconsideration shall mail or otherwise provide a copy of the petition for  
21 reconsideration to all parties of record on the date of filing. SCC 30.72.065.

22 A petition for reconsideration does not have to be in a special form but must: (a) contain the name,  
23 mailing address and daytime telephone number of the petitioner, the signature of the petitioner or  
24 of the petitioner's attorney, if any; (b) identify the specific findings, conclusions, actions or  
25 conditions for which reconsideration is requested; (c) state the relief requested; and if applicable,

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<sup>80</sup> The tenth day is not a business day. The deadline therefore extends to the next business day.



(d) identify the specific nature of any newly discovered evidence or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

(a) The Hearing Examiner exceeded his jurisdiction;

(b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;

(c) The Hearing Examiner committed an error of law;

(d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record;

(e) New evidence is discovered which could not reasonably have been produced at the hearing and which is material to the decision; or

(f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

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

## ***Appeal***

An appeal to the County Council may be filed by any aggrieved party of record **on or before July 21, 2022**. If the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been decided by the Hearing Examiner. An aggrieved party may file an appeal directly to the County Council without first filing a petition for reconsideration. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration.

Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S 604, 3000 Rockefeller Avenue, Everett, WA 98201), and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each appeal filed. A county department does not need to pay the filing fee. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

Appeals may be accepted electronically by the Planning and Development Services Department and paid for by credit card over the phone as follows:

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1. Scan the original manually signed (handwritten) copy of the appeal document;
2. Send your appeal as an email attachment to [epermittech@snoco.org](mailto:epermittech@snoco.org). Please include your phone number where you can be reliably reached.
3. Staff will call you to collect your credit card information and process your payment.
4. Mail the original to Snohomish County PDS, 3000 Rockefeller M/S 604, Everett, WA 98201.

An appeal must contain the following items in order to be complete: (a) a detailed statement of the grounds for appeal; (b) a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; (c) written arguments in support of the appeal, including all legal arguments on which the appeal is based; (d) the name, mailing address and daytime telephone number of each appellant or appellant's representative, together with the signature of at least one of the appellants or the appellant's representative; and (d) the required filing fee. SCC 30.72.080(1).

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record.

SCC 30.72.080(2). Appeals will be processed and considered by the County Council pursuant to the provisions of chapter 30.72 SCC. Please include the county file number in any correspondence regarding the case.

Staff Distribution:

Department of Planning and Development Services: Stacey Abbott

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.13

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**Snohomish County**

**Office of Hearings Administration**

3000 Rockefeller Ave., M/S 405

Everett, WA 98201

(425) 388-3538

[Hearing.Examiner@snoco.org](mailto:Hearing.Examiner@snoco.org)

[www.snoco.org](http://www.snoco.org)

**Peter Camp**

*Hearing Examiner*

## **AMENDED DECISION of the SNOHOMISH COUNTY HEARING EXAMINER**

### **I. SUMMARY**

<b>DATE OF ORIGINAL DECISION:</b>	July 7, 2022
<b>DATE OF AMENDED DECISION:</b>	August 8, 2022
<b>PROJECT:</b>	Cathcart Crossing Southwest corner of State Route 9 and Cathcart Way Snohomish, Washington 98296
<b>APPLICANT:</b>	Pacific Ridge – DRH, LLC 17921 Bothell-Everett Highway, Ste. 100 Bothell, Washington 98012
<b>OWNER:</b>	Snohomish County 3000 Rockefeller Ave. Everett, Washington 98201
<b>FILE NO.:</b>	21-107654 SPA/BSP
<b>TYPE OF REQUEST:</b>	Planned Community Business Preliminary Site Plan, Binding Site Plan, and Urban Residential Development Standards Administrative Site Plan for two commercial lots and one tract of 286 townhouses
<b>DECISION SUMMARY:</b>	Planned Community Business Preliminary Site Plan, Binding Site Plan, and Urban Residential Development Standards Administrative Site Plan for two commercial lots and one tract of 286 townhouses is approved with conditions

**Cathcart Crossing**  
**21-107654 SPA/BSP**

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1 **III. SITE INFORMATION**

LOCATION:	Southwest corner of State Route 9 and Cathcart Way Snohomish, Washington 98296
TAX PARCEL NO.:	280536-003-011-00
ACREAGE:	Approximately 31 acres
COMPREHENSIVE PLAN DESIGNATION:	Urban Commercial
ZONING:	Planned Community Business
UTILITIES:	
Water:	Silver Lake Water and Sewer District
Sewer:	Silver Lake Water and Sewer District
Electricity:	Snohomish County Public Utility District No. 1
SCHOOL DISTRICT:	Snohomish School District No. 201
FIRE DISTRICT:	Snohomish Regional Fire and Rescue Authority

2 Based on a preponderance of the evidence, the Hearing Examiner enters the following findings of  
3 fact, conclusions of law, and decision.

4 **IV. APPEARANCE OF FAIRNESS**

5 At the open record hearing, the Hearing Examiner announced that he had no financial or family  
6 interest in the applicant or proposal and that he had not had any pre-hearing contact with anyone  
7 regarding the proposal. He called for anyone who believed the Hearing Examiner had a conflict of  
8 interest to speak, but no one did.

9 After the hearing closed, the Office of Hearings Administration received an email raising an  
10 appearance of fairness concern.<sup>1</sup> The email's author stated that they learned the county currently  
11 owns the property which is the subject of the proposal. The author asserted that this is a potential  
12 conflict of interest and therefore potential violation of the appearance of fairness doctrine because  
13 the Hearing Examiner is an employee of the county, and the county is financially interested in the

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<sup>1</sup> Ex. Z.4.

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1 outcome of the proposal. They also claimed they were unable to raise the issue when the Hearing  
2 Examiner called for anyone with an objection to speak because they did not learn the county  
3 owned the property until later.

4 Employment by the county is not a conflict of interest as a matter of law and does not violate the  
5 appearance of fairness doctrine. *Valley View Convalescent Home v. Department of Social & Health*  
6 *Services*, 24 Wn. App. 192, 200–01, 599 P.2d 1313, 1318 (1979), rev. denied 93 Wn. 2d 1004  
7 (1980) (citations omitted) (the fact that a hearing examiner is an employee is insufficient to prove  
8 violation of the appearance of fairness doctrine). In addition, the Hearing Examiner is independent  
9 by law. SCC 2.02.060 (1980). He remains an employee irrespective of whether he approves or  
10 rejects the application. It is also very unlikely that the underlying transaction between the county  
11 and the applicant (of which the Hearing Examiner has no knowledge) is material or significant to  
12 the county's general fund or to the Office of Hearings Administration budget.

13 Further, both the Hearing Examiner and the *pro tem* Hearing Examiner are paid by the county—  
14 there is no alternative decision-maker that is not paid by the county. A decision could not be made  
15 if employment disqualifies the decision-maker. State law allows a decision-maker to proceed  
16 notwithstanding an appearance of fairness challenge if a decision could not be made because of  
17 the challenge. See RCW 42.36.090 (1982).

18 Third, application of this argument would mean that no judicial officer employed by a government  
19 could hear cases. A Superior Court judge is paid by the state and the county, yet decides criminal  
20 cases brought by the state, the judge's employer, and civil cases to which the employing  
21 government is a party. See *Van Harken v. City of Chicago*, 103 F.3d 1346, 1352–53 (7th Cir. 1997)  
22 (citation omitted) ("If [the fear that] a hearing officer lets off too many alleged parking violators, the  
23 Director of Revenue may get angry and fire him were enough to disqualify them on constitutional  
24 grounds, elected judges, who face significant pressure from the electorate to be 'tough' on crime,  
25 would be disqualified from presiding at criminal trials, especially in capital cases. They are not.")

26 Finally, the objection was not timely raised and therefore waived. The county's ownership of the  
27 parcel has been a matter of public record for years. Anyone can easily ascertain the title holder of  
28 any real estate parcel by using the tools on the Assessor's web page. Any objection could have,  
29 and should have, been raised when the Hearing Examiner called for objections, not after.<sup>2</sup> See  
30 *State v. Margensen*, 148 Wn. App. 81, 91, 197 P.3d 715, 719 (2008), rev. denied 166 Wn.2d 1007  
31 (2009).

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<sup>2</sup> A rule that allowed an appearance of fairness objection based on an untimely objection would discourage due diligence. In addition, such a rule would encourage laying behind the log and objecting later to create unnecessary delay.

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## **V. JURISDICTION**

The Hearing Examiner has subject matter jurisdiction where, as here, the site was rezoned by county initiative and is five acres or larger. SCC 30.31A.200(3) (2020). The site was rezoned at the county's initiative to Planned Community Business and is approximately 31 acres.

## **VI. REGULATORY REVIEW AND VESTING**

On April 21, 2021, Pacific Ridge – DRH, LLC applied for approval of: (1) a binding site plan to create two commercial lots and three tracts; (2) a Planned Community Business preliminary plan for two commercial buildings and 286 townhouse dwellings; and (3) an Urban Residential Design Standards administrative site plan. Snohomish County Planning and Development Services (PDS) determined the application was complete as of the date of submittal. Pacific Ridge submitted additional information to PDS on November 30, 2021, and April 15, 2022.

## **VII. OPEN RECORD HEARING**

An open record hearing began on June 14, 2022. The Hearing Examiner left the record open until the close of business on June 14, 2022, for emailed public comment for those who did not or could not comment during the live hearing.

## **VIII. THE RECORD**

### ***1. Evidence Considered***

The Hearing Examiner considered exhibits A.1 through L.2 and the testimony of the witnesses at the open record hearing. The recording of the hearing is available through the Office of Hearings Administration.

### ***2. Tardy Public Comments***

The Hearing Examiner only considered public comments sent to the county prior to the hearing, made during the open record hearing, or were received by the Office of Hearings Administration by 5 p.m. on the day of the hearing from people who attended the hearing but were unable to testify during the hearing due to technical problems.

No evidence submitted after the close of the hearing will be considered by the Examiner unless, at such hearing, the Examiner granted additional time to submit such material and stated on the record that the hearing record was left open for such receipt.

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1 H. Ex. R. of Proc. 5.6(j) (2021). The Hearing Examiner expressly left the record open until 5 p.m.  
2 that day only for members of the public who did not testify during the hearing because of  
3 technology problems. For example, the Hearing Examiner considered an emailed public comment  
4 from someone who had technical problems that prevented them from testifying during the hearing.<sup>3</sup>  
5 Their emailed comment fell within the limited parameters for which the record was left open and  
6 was therefore considered.

7 Two persons who testified nevertheless also sent emails<sup>4</sup> after the close of public comment; those  
8 emails were not considered because they testified during the open record hearing. Their comments  
9 did not fall within the parameters set in the hearing for submission of comments after the hearing.  
10 The Hearing Examiner therefore did not consider their substantive comments regarding the  
11 proposal.

### 12 **3. Mandatory Judicial Notice**

13 Marshland Flood Control District asked the Hearing Examiner to take “mandatory judicial notice” of  
14 documents it submitted in a different matter before the Hearing Examiner last year.<sup>5</sup> Marshland  
15 cited ER 201(d) as authority. Marshland also asked the Hearing Examiner “to specifically rule” on  
16 issues raised in its brief in the other matter.<sup>6</sup>

17 The Hearing Examiner declines to do so for several reasons. First, H. Ex. R. of Proc. 5.6(i) applies  
18 to these proceedings, not ER 201.

19         The Examiner may take official notice of judicially cognizable facts and in addition  
20         may take notice of general, technical, or scientific facts within her/his specialized  
21         knowledge. When any decision of the Examiner rests in whole or in part upon the  
22         taking of official notice of a material fact, not appearing in evidence of record, the  
23         Examiner shall so state in her/his decision. Appellate court decisions and adopted  
24         state and local laws, ordinances, motions, policies, plans and other similar  
25         documents in the public domain may be referenced, cited, quoted and/or relied upon  
26         by the Examiner or any Party of Record.

27 Second, even if ER 201 applied, it is not mandatory for the Hearing Examiner to take judicial notice  
28 because Marshland failed to supply the Hearing Examiner “with the necessary information,” i.e.,

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<sup>3</sup> Ex. I.19.

<sup>4</sup> Exhibits Z.1 through Z.6.

<sup>5</sup> Ex. H.13. *In Re Remington East*, 20-118949 PSD.

<sup>6</sup> Marshland lists: (a) drainage facility plan review (i.e., Marshland wants the right to be involved formally in the county’s review of the drainage facilities); (b) “conditional assessment covenant” [sic]; and (c) drainage facility maintenance covenant mandating enforcement by the county’s Surface Water Management division. Ex. H.13, p. 2.

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Marshland did not supply the documents which contained the information that it wanted the Hearing Examiner to notice.<sup>7</sup> Marshland asked for judicial notice of documents filed in a **different** proceeding; a judge would not take judicial notice of the substance of pleadings filed in a different action than the one before them. “However, we cannot, while deciding one case, take judicial notice of records of other independent and separate judicial proceedings even though they are between the same parties.” *Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 98, 117 P.3d 1117, 1122 (2005) quoting *In re Adoption of B.T.*, 150 Wn.2d 409, 415, 78 P.3d 634 (2003) (citations omitted).

#### **4. Request to Re-Open**

After the hearing closed, the Office of Hearings Administration received a request to reopen the record, citing H. Ex. R. of Proc. 6.3 (2021).<sup>8</sup> The Hearing Examiner denies the request to reopen because he is fully informed of the material facts necessary to decide whether to approve, reject, or remand the application.

The movant alleges she found out during the hearing that the county owns the property and contends ownership creates a conflict of interest and bias. This is an appearance of fairness concern and is ruled upon above.<sup>9</sup>

The movant noted that the Hearing Examiner inquired during the hearing whether he had subject matter jurisdiction. She inaccurately alleges, “[N]o representative from the proposed developer or PDS addressed your concerns, yet you went forward with the hearing anyway.” Counsel for the applicant explained the source of the Hearing Examiner’s jurisdiction and the hearing proceeded. There was no reason to postpone the hearing or reopen the record.

Movant notes that the Hearing Examiner could visit the site, did not mention whether he had, and therefore apparently asks the record to be reopened to allow the Hearing Examiner to visit the site. First, there is no reason to reopen the record when the Hearing Examiner decides to visit a site. Second, the Hearing Examiner is not required by law or rule to visit a site. H. Ex. R. of Proc. 1.9 (2021) (“Failure to conduct a visit shall not affect the validity of the Examiner’s decision.”). Third, the Hearing Examiner is well acquainted with the site and its location. A site visit is unnecessary to an informed decision by the Hearing Examiner.

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<sup>7</sup> “A court shall take judicial notice if requested by a party and supplied with the necessary information.” ER 201(d).

<sup>8</sup> Ex. Z.6.

<sup>9</sup> See discussion at page 5 above.



1 The movant incorporated her earlier request to continue the hearing.<sup>10</sup> The Hearing Examiner did  
2 not continue the hearing because the cited grounds were insufficient, and they are insufficient to  
3 reopen the hearing. The stated grounds were: (1) the current system “discriminates against the  
4 public and favors the developers;” (2) the county failed to require a traffic analysis; (3) the county  
5 did not consider the multiple developments in the area; (4) alleged failure to comply with the Bald  
6 and Gold Eagle Protection Act<sup>11</sup> and Migratory Bird Treaty Act;<sup>12</sup> (5) disagreement with  
7 characterization of wetlands; and (6) Tulalip Tribes allegedly have “strong concerns” about this  
8 project.<sup>13</sup> The Hearing Examiner declines to continue or re-open the hearing as requested.

9 First, the Hearing Examiner does not have the legal authority to determine whether the “current  
10 system discriminates against the public” or to fashion a remedy if it did. Second, the county  
11 required a traffic analysis, and it is part of the record considered by the Hearing Examiner.<sup>14</sup> Third,  
12 the county’s development regulations account for other developments in the area. With respect to  
13 stormwater and drainage, the development regulations comply with state standards and requires a  
14 development to discharge treated stormwater to historic flow paths at a rate and volume that  
15 mimics forested, undeveloped conditions. All current developments must meet this standard and  
16 therefore effectively accounts for multiple new developments in area by limiting the discharge of  
17 stormwater from new developments to that of forested, undeveloped conditions. With respect to  
18 traffic, developments generating more than 50 average daily trips (ADT) must evaluate their impact  
19 on arterial units using the “pipeline” of known projects, even if such projects have not yet been  
20 built. Multiple developments are therefore explicitly considered in the traffic analyses. Movant failed  
21 to demonstrate a potential violation of federal law regarding birds and therefore did not carry her  
22 burden of demonstrating that a continuance or re-opening was warranted. Both the applicant and  
23 PDS’ subject matter experts considered the characterization and delineation of the wetlands.  
24 Movant alleged the conclusion that the wetlands were not properly characterized but provided no  
25 detail or information on which the Hearing Examiner could potentially base a decision granting the  
26 relief requested. Finally, the statement that Tulalip Tribes “expressed strong concerns” is only true  
27 with respect to early versions of the proposed development. After those concerns were conveyed  
28 to the applicant, Pacific Ridge revised the project to leave the wetlands almost entirely untouched.  
29 The record does not demonstrate that Tulalip has the same concerns with site plan under  
30 consideration by the Hearing Examiner.

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<sup>10</sup> Ex. I.13.

<sup>11</sup> 16 U.S.C. §668 (1964) *et seq.*

<sup>12</sup> 16 U.S.C. §703 (2004) *et seq.*

<sup>13</sup> Ex. I.13.

<sup>14</sup> Ex. C.1.

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1 Movant also alleged that the hearing should be reopened because the Hearing Examiner allegedly  
2 said he was unprepared for the hearing. The movant mischaracterized the Hearing Examiner's  
3 comments. The Hearing Examiner noted that a revised departmental report had been filed the  
4 morning of the hearing and that he had not had the opportunity to review it. PDS staff then  
5 identified the changes to the departmental report in their testimony. The amended report also  
6 clearly identified the changes.<sup>15</sup> If the Hearing Examiner determined after the hearing that more  
7 evidence on a topic is needed to make an informed decision, he re-opens the record for that limited  
8 purpose. The Hearing Examiner has not been shy about doing that in other matters when he felt it  
9 appropriate. The Hearing Examiner studied the record and finds he was sufficiently informed to  
10 make a reasoned decision on the application.

11 The movant did not demonstrate good cause that the Hearing Examiner should exercise his  
12 discretion to reopen the record. The motion is therefore denied.

## 13 **IX. PUBLIC NOTICE**

14 PDS notified the public of the open record hearing, SEPA threshold determination,<sup>16</sup> and  
15 concurrency and traffic impact fee determinations.<sup>17</sup>

## 16 **X. BACKGROUND INFORMATION**

### 17 ***1. Proposal***

18 Pacific Ridge requests approval of a binding site plan to create two commercial lots and a tract for  
19 286 townhomes, a Planned Community Business (PCB) preliminary plan for two commercial  
20 buildings and 286 townhomes, and an Urban Residential Design Standards (URDS) administrative  
21 site plan. Pacific Ridge asked that the URDS administrative site plan be consolidated with the  
22 binding site plan and PCB preliminary plan for review by the Hearing Examiner.<sup>18</sup> PDS  
23 recommended conditional approval of Planned Community Business preliminary site plan, binding  
24 site plan, and Urban Residential Development Standards administrative site plan.

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<sup>15</sup> Ex. L.2.

<sup>16</sup> Ex. E.1.

<sup>17</sup> Exhibits F.1 through F.4.

<sup>18</sup> Ex. G.3. SCC 30.23A.100(2)(a) (2017)

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## **2. Site Description and Surrounding Uses**

The site of the proposed subdivision is a single undeveloped parcel of approximately 31 acres. The site has one stream (Garden Creek) and ten wetlands.

Property to the west and north is zoned Light Industrial and developed with a county maintenance facility. Property to the south and east is zoned R-5 and developed with residences. Property to the southwest is zoned R-9,600 and is developed with residences.

## **3. Public Concerns**

Public concerns raised by emails or testimony include: objection to SEPA threshold determination;<sup>19</sup> alleged conflict with laws such as the Growth Management Act;<sup>20</sup> traffic;<sup>21</sup> insufficient notice to the public;<sup>22</sup> impact on schools;<sup>23</sup> alleged concerns of regional fire authority and concern about lack of timely emergency response due to traffic;<sup>24</sup> impacts on critical areas such as wetlands;<sup>25</sup> impact on rural character;<sup>26</sup> unnecessary development;<sup>27</sup> increased theft, drug use, and light pollution from a future park and ride;<sup>28</sup> and potential impact on eagles, owls, and other birds.<sup>29</sup>

Although some objected to PDS' threshold SEPA determination of no significant impact, no one appealed the threshold determination. The time for appeal expired before the open record hearing. The Hearing Examiner does not have the legal authority to consider an untimely objection to a SEPA threshold determination.

An allegation that a proposed development otherwise allowed by county code conflicts with the Growth Management Act or other state law essentially challenges county code., i.e., county code

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<sup>19</sup> Exhibits I.10, I.15, and I.17. Testimony of Gray.

<sup>20</sup> Exhibits I.5, I.11, I.15, and I.16.

<sup>21</sup> Exhibits I.1, I.4, I.6, I.9, and I.19. Testimony of Gunderson.

<sup>22</sup> Exhibits I.11 and I.15.

<sup>23</sup> Exhibits I.4 and I.19.

<sup>24</sup> Ex. I.5. Testimony of Gray.

<sup>25</sup> Exhibits I.8, I.15, and I.17. Testimony of Gray and Gunderson.

<sup>26</sup> Ex. I.3.

<sup>27</sup> Ex. I.15.

<sup>28</sup> Ex. I.18.

<sup>29</sup> Ex. I.18.

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1 conflicts with state law. The Hearing Examiner does not have jurisdiction over allegations that  
2 county code conflicts with state laws.

3 Neighbors expressed concerns about traffic. County ordinances require approval of the site plan if  
4 a development's impact on traffic on arterial units (not intersections) causes the level of service to  
5 fall below the level of service that county code defines as acceptable. A project of this size must  
6 perform a traffic study, using required datasets, to model trip generation and distribution. County  
7 staff review the study and may require changes or additional work. The required study includes  
8 data for known projects that have not yet been built, thereby accounting for the cumulative impact  
9 of known, current projects. After reviewing the study, Public Works determined that the level of  
10 service on an arterial unit is not likely to fall below the lowest allowed level of service, even when  
11 considering other projects. Finally, new developments must mitigate their impact on county roads.  
12 Here, Pacific Ridge will pay over a \$1 million to mitigate its impact on county roads.<sup>30</sup>

13 Neighbors complained that notice to the public was insufficient because the posted signs were too  
14 small, and notices were only mailed to property owners within a radius of 1,000 feet. The public  
15 was notified as required by county code; disagreement with county code requirements is not within  
16 the Hearing Examiner's jurisdiction.

17 Regarding concerns on impacts to the public school system, PDS solicited comments from the  
18 Snohomish School District about the proposed project. The county's comprehensive plan includes  
19 the capital facilities plans of the school districts in the county. School districts submit proposed  
20 impact mitigation fees for the county's approval. [https://snohomish.county.codes/CompPlan/GPP-](https://snohomish.county.codes/CompPlan/GPP-AxF)  
21 [AxF](https://snohomish.county.codes/CompPlan/GPP-AxF) (The Hearing Examiner takes official notice of the county's comprehensive plan. H. Ex. R. of  
22 Proc. 5.6(i) (2021)). The development's impact on the public school system is mitigated by the  
23 payment of mitigation fees required by county code. Pacific Ridge must pay \$260 per dwelling unit  
24 for the development's impact on the Snohomish School District.<sup>31</sup>

25 The Hearing Examiner heard allegations that the Snohomish Regional Fire Authority had concerns  
26 about the development and its ability to respond in a timely way to emergencies. However, the fire  
27 authority did not identify any such concerns in its response to the county about the project. The  
28 Hearing Examiner does not give substantial weight to concerns raised several years ago about  
29 another project, especially when the fire authority omitted those concerns in its specific response to  
30 this project. The Fire Marshal's office reviewed, commented, and conditioned its approval of the  
31 project and considered the fire authority's comments about this specific project when it did so.

32 Neighbors complained that critical areas were mischaracterized and will be destroyed. First, county  
33 subject matter experts conducted an independent evaluation of the critical areas as part of their

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<sup>30</sup> See discussion below at page 21.

<sup>31</sup> See discussion below at page 24.

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review of Pacific Ridge's experts' evaluation. The conclusory allegation that the wetlands were mischaracterized does not outweigh the specific evidence of wetlands characterization that persuaded county experts.<sup>32</sup> Second, impacts to wetlands and buffers were minimized and mitigated as required by county code.<sup>33</sup> Approval is conditioned on implementation of the mitigation measures. With respect to critical areas, the proposal complies with county code and the Hearing Examiner lacks authority to override or contradict county code.

Concerns about the development's impact on rural character are also not a legal basis for rejection. The proposed uses (townhomes, mini-storage warehouse, and fast-food restaurant) are specifically allowed uses on land zoned Planned Community Business. The Hearing Examiner may not reject a project that proposes uses specifically allowed by law.

Similarly, objections to "unnecessary development" are legally insufficient. No law prohibits the proposed use of land because it is "unnecessary."

Objections to a perception of increased theft, drug use, and light pollution from a park and ride that has not been built are also insufficient reasons to reject an otherwise lawful project.

Finally, inchoate general concerns on the project's impact on eagles, owls, and other birds are also insufficient reasons at law to reject a project. The record contains no evidence that the proposed development would cause a taking of an endangered species. The record demonstrates that no priority species or their habitats are on the site.<sup>34</sup> There is insufficient evidence to reject the project because of concerns regarding birds and other wildlife.

## **XI. ENVIRONMENTAL REVIEW**

### **1. SEPA (Chapter 30.61 SCC)**

PDS issued a threshold determination of nonsignificance on May 11, 2022, from which no appeal was taken.<sup>35</sup> Members of the public asked for an environmental impact statement.<sup>36</sup> The Hearing

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<sup>32</sup> See, e.g., wetland evaluation rating forms attached to Ex. C.5.

<sup>33</sup> See discussion below at page 14.

<sup>34</sup> Ex. C.5, PDF p. 23.

<sup>35</sup> Ex. E.1.

<sup>36</sup> E.g., testimony of Gray, exhibits I.15 and I.17. Too, some complained that the SEPA checklist was inadequate or incorrectly filled out by the applicant. Such complaints misapprehend the SEPA threshold determination process, such as concerns regarding the accuracy of the initial checklist submitted by an applicant. The responsible official of the lead agency (in this case, PDS) does not accept an applicant's checklist at face value. Subject matter experts review the application, checklist, and available information such as publicly available databases and maps and information in the county's files. A subject matter expert in critical areas will visit the site to ascertain or confirm characterization and

Examiner does not have the legal authority to reverse the threshold determination of no significant impact and require an environmental impact statement in the absence of a timely SEPA appeal.

## **2. Critical Areas Regulations (Chapters 30.62, 30.62A, 30.62 B, and 32.62C SCC)**

The site contains critical areas, including a stream and ten wetlands. Garden Creek, a fish bearing stream, flows south to north in the western portion of the site. The buffers of off-site critical areas do not extend on to the site because their functions are interrupted by existing roads. The wetlands and stream require buffers that are 150-feet wide.

County code allows reduction of buffer widths by implementing authorized mitigation measures. Pacific Ridge proposes to reduce the standard 150-buffer of Garden Creek by using permanent fencing and placing the buffer and stream in permanent tracts. Code authorizes a reduction of the buffer on the east side of the stream to 112.5 feet and to 127.5 feet on the west side of the stream. SCC 30.62A.320(1)(f) (2015).

Buffers may also be reduced if required for safe public access. Here, impacts to buffers of the stream and some wetlands cannot be avoided; no other feasible alternative exists. If impacts are unavoidable, the project must be designed to minimize the impact. SCC 30.62A.320(2)(c) (2015). The Hearing Examiner finds the proposed road and frontage improvements cannot be relocated because of access safety issues and they have been designed to minimize buffer impacts to the maximum extent feasible.

Code also allows buffers where no feasible alternative exists and impacts are minimized.<sup>37</sup> No feasible alternative exists for the water and sewer line alignments. SCC 30.62A.340(3) (2015). The location, design, and proposed construction techniques minimize the impact to the minimum necessary. SCC 30.62A.310 (2015).

Pacific Ridge will mitigate critical area impacts by creating 21,215 sq. ft. of wetland, creating 76,004 sq. ft. of buffer, enhancing 51,912 sq. ft. of buffer, and restoring 20,717 sq. ft. of buffer. A permanent habitat corridor connection will be created through wetland creation adjacent to wetlands M and J. The combination of wetland creation, buffer creation, buffer enhancement, and buffer restoration will not result in any net loss of ecological functions or values but will instead provide a net increase in functions over the existing baseline.

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delineation of critical areas. Errors in a checklist become moot due to the review, evaluation, and investigation process of the lead agency.

<sup>37</sup> Approximately 6,270 sq. ft. will be affected by grading.

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### 3. Drainage and Grading (Chapters 30.63A, 30.63B, and 30.63C SCC)

Infiltration is not feasible at the site. Subsurface exploration revealed shallow depth to bedrock in several test pits, shallow perched groundwater seepage, and predominately fine-grained native soils that generally have poor infiltration ability.<sup>38</sup> Pockets and layers of permeable soil were variable and not extensive enough to render infiltration feasible. Stormwater from the new public roads will be fully dispersed and stormwater falling on the remainder of the project will be collected, conveyed to detention facilities, treated for water quality, and discharged to the east in historic flow paths at a rate and volume that mimics forested conditions.

	Description	How Fulfilled?
1	Stormwater Site Plan	The drainage report and preliminary civil drawings satisfy this requirement. <sup>39</sup>
2	Stormwater Pollution Prevention Plan (SWPPP)	Pacific Ridge submitted an adequate SWPPP. <sup>40</sup>
3	Water pollution source control for new development or redevelopment	Residential projects do not have to address water pollution source control after the project is completed. Future development of the commercial lots (lots 1 and 2) may require source control when they are developed; source controls will be reviewed as part of those future development applications.
4	Preservation of natural drainage systems	The proposal discharges to the historic discharge of the site's flowpath. No impact to downstream drainage is expected based upon analysis of downstream conditions.
5	On-site stormwater management	As conditioned, the on-site stormwater management can comply with the county's stormwater regulations. Lawn and landscaped areas will implement BMP T5.13 for post-construction soil quality and depth. Runoff from the new north/south public road will be fully dispersed. BMP T5.30. Stormwater from a portion of the roofs

<sup>38</sup> Ex. C.3, p. 13. (PDF p. 20).

<sup>39</sup> Exhibits B.3 and C.2.

<sup>40</sup> Exhibits B.3 and C.8.

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		in the northwest corner will be fully dispersed. BMP T5.10B.
6	Runoff treatment	Enhanced treatment units will provide water quality treatment. Oil control facilities will be included upstream of flow control and water quality treatment for the fast-food restaurant.
7	Flow control requirements for new development or redevelopment	Flow control will be provided by full dispersion for the new north/south road and by detention vaults with control structures for discharge for the remainder of the project.
8	Detention or treatment in wetlands or wetland buffers	There will be no detention or treatment in wetlands or wetland buffers.
9	Inspection, operation, and maintenance requirements	Operation and maintenance information is contained in the drainage report. <sup>41</sup>

## **XII. URBAN RESIDENTIAL DESIGN STANDARDS (CHAPTER 30.23A SCC)**

### ***1. Urban Residential Design Standards (Chapter 30.23A.SCC)***

Approval will be conditioned on Pacific Ridge demonstrating that proposed buildings comply with chap. 30.23A SCC (Urban Residential Design Standards) before building permits may be issued. As conditioned and proposed, the site plan complies with urban residential design requirements that must be met at this stage, including setbacks, density, lot coverage, and building heights. Approval will be conditioned upon compliance with standards for architectural design elements.<sup>42</sup>

### ***2. On-Site Recreation Space (SCC 30.23A.080)***

Pacific Ridge proposes approximately 32,134 square feet of on-site recreation space, more than the minimum requirement of 28,600 sq. ft.<sup>43</sup> The proposed open space tracts exceed minimum code requirements for one location and active use.

<sup>41</sup> Ex. C.2, §9.

<sup>42</sup> SCC 30.23A.050(3) (2017).

<sup>43</sup> SCC 30.23A.080(2) (2013) requires 100 sq. ft. per dwelling unit.  $286 \times 100 = 28,600$  sq. ft.

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The proposed basketball court is oriented from west to east with the hoop at the east end on SR 9. The Hearing Examiner asks Pacific Ridge to consider carefully measures to prevent balls from any sport flying into the SR 9 right of way and posing a danger to traffic.

### **3. Landscaping (SCC 30.23A.090)**

The proposed landscape plan<sup>44</sup> and tree canopy calculations<sup>45</sup> comply with chap. 30.25 SCC. County code requires a projected tree canopy of at least 202,543 sq. ft. in 20 years.<sup>46</sup> Pacific Ridge proposes to retain 617,382 sq. ft. of existing canopy, satisfying code requirements.

### **4. Expiration of Site Plan Approval (SCC 30.23A.100)**

If construction does not commence within five years, approval of the administrative site plan will expire.<sup>47</sup>

### **5. Utilities (SCC 30.23A.110)**

Approval will be conditioned on the installation underground of all distribution and service lines for water, sewer, electricity, and communication.<sup>48</sup>

### **6. Parking (SCC 30.26.030)**

Pacific Ridge complies with the county code requirements by providing 572 parking stalls for the townhomes, 21 parking stalls for the restaurant, 15 stalls for the storage site, and 57 off-street parking stalls.

## **XIII. BINDING SITE PLANS (CHAP 30.41D SCC)**

The Hearing Examiner finds and concludes that the newly created lots function and operate as one site and that the binding site plan and record of survey comply and are consistent with chap. 30.41D SCC. The proposal is consistent and can comply with requirements for: noise control in that the uses are residential and minimal noise producing commercial uses (chap. 10.01 SCC), public or private roads, right of way establishment and permits, access, and other applicable road

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<sup>44</sup> Ex. B.5.

<sup>45</sup> Ex. C.9.

<sup>46</sup> 1,350,287 sq. ft. x 15% = 202,543 sq. ft.

<sup>47</sup> Extensions may be granted if allowed by SCC 30.70.140 (2017).

<sup>48</sup> SCC 30.23A.110 (2009)

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and traffic requirements; fire lane, emergency access, fire-related construction, hydrants and fire flow and other requirements of chap. 30.53 SCC; applicable use and development standards; environmental policies and procedures, and critical areas; drainage requirements; and sanitary sewer and adequate water supply. SCC 30.41D.100 (2012)

#### **XIV. PLANNED COMMUNITY BUSINESS PRELIMINARY SITE PLAN (CHAP. 30.31A SCC)**

Pacific Ridge’s proposal complies with the performance standards required for a planned community business. SCC 30.31A.100 (2012). Townhomes, mini-storage, and a fast-food restaurant will not generate offensive odors, dust, smoke, gas, or electronic interference. The site will be developed in three phases, as is shown on the preliminary site plan. Buildings will be designed to comply with Urban Residential Design Standards and will therefore be compatible with their surroundings. Restrictive covenants will be required to ensure long-term maintenance and upkeep of landscaping, storm drainage facility, other private property improvements, and open space areas and improvements. The proposed parking complies with chap. 30.26 SCC. Signs have not been proposed at the time of hearing, but they are anticipated and will require separate permits. Noise levels will be typical of, and consistent with, residential neighborhoods and light commercial uses (fast food restaurant with drive through and storage mini warehouse). Proposed landscaping complies with chap. 30.25 SCC.

#### **XV. TRANSPORTATION**

##### ***1. Area Transportation***

##### **a. Concurrency Determination (SCC 30.66B.120)**

A proposal cannot be approved unless it is “concurrent.”<sup>49</sup> “Concurrency” refers to whether a local transportation facility such as a road has enough capacity to handle the proposed project’s impact. If the transportation infrastructure has sufficient capacity to handle the proposed development’s impact without the level of service falling below the minimum set in the comprehensive plan, the project is deemed “concurrent.” See RCW 36.70A.070 (6)(b) (2021). County ordinances and rules adopted by Public Works prescribe the measures and tests to determine concurrency. If a development proposal complies with the county’s concurrency standards, the proposal may not be rejected based upon its impact on traffic.

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<sup>49</sup> SCC 30.66B.120(1) (2003).

As of the date of the development application, Transportation Service Area (TSA) D had no arterial units in arrears and one arterial unit designated to be at ultimate capacity.<sup>50</sup> The proposed development will generate more than 50 peak hour trips.<sup>51</sup> Level of service conditions on arterial units were projected based on the trip generation of this development plus known future development projects in the “pipeline.”<sup>52</sup> The development will not add three or more directional peak-hour trips to any arterial unit at ultimate capacity or cause any arterial unit to be in arrears by adding three or more peak-hour trips. Public Works therefore deemed the development concurrent as of March 2, 2022.<sup>53</sup> The development proposal therefore may not be rejected because of its impact on traffic.

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

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)<sup>54</sup> must eliminate the IRC to be approved. The development will not affect any IRCs in TSA D with three or more evening peak hour trips, nor will it create an IRC. Therefore, it is expected that mitigation will not be required with respect to IRC and no restrictions to issuance of building permits, certificates of occupancy, or final inspection will be imposed under SCC 30.66B.210.

**c. Transportation Demand Management (SCC 30.66B.630)**

Transportation demand management (TDM) is a strategy for reducing vehicular travel demand, especially by single occupant vehicles during commuter peak hours. TDM offers a means of increasing the ability of transportation facilities and services to accommodate greater travel demand without making expensive capital improvements. New developments like this within an urban growth area must comply with county code’s TDM requirements. Pacific Ridge must either incorporate features into its design that have the potential for removing five percent of the

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<sup>50</sup> Arterial unit 218/219 – 164<sup>th</sup> Street SE/SW is at ultimate capacity.

<sup>51</sup> 202.43 new A.M. peak-hour trips and 225.11 new P.M. peak-hour trips.

<sup>52</sup> SCC 30.66B.035 (2010) requires concurrency for this development to be determined based upon a traffic study. DPW Rule 4220.030 (2016) establishes the requirements for traffic studies, including projected level of service that includes trip generation of the proposed development and those in the pipeline inventory. Department of Public Works Rule 4225.090 (2016). The Hearing Examiner takes official notice of the publicly available rules of the departments of Public Works and PDS. H. Ex. R. Proc. 5.6(i) (2021).

<sup>53</sup> SCC 30.66B.160(2)(a).

<sup>54</sup> An IRC is “any road condition, whether existing on the road system or created by a new development’s access or impact on the road system, which jeopardizes the safety of road users, including non-automotive users, as determined by the county engineer.” SCC 30.911.020 (2003) “Road condition” refers to a physical condition, such as sight obstructions and does not refer to traffic congestion, which is evaluated by the concurrency determination.

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development's evening peak hour trips from the road system or voluntarily pay.<sup>55</sup> Pacific Ridge did not submit an acceptable TDM plan with its application. Approval will therefore be conditioned on payment of \$73,160.75 (\$255.81/dwelling unit).

#### **d. Impact Fees**

##### ***i. County***

The proposed development must mitigate its impact upon the future capacity of the Snohomish County road system by paying a road system impact fee.<sup>56</sup> The road system impact fee will be the product of the average daily trips (ADT)<sup>57</sup> created by the development multiplied by the trip amount per trip for TSA D identified in SCC 30.66B.330. Based on the average daily trips projected for the project, Pacific Ridge must pay \$1,418,239.98 for impacts to the county road system.

	<b>Townhouse ADT (Residential)</b>	
1	Number of Townhouse Dwelling Units (DU)	286
2	ADT per DU	7.32
3	New DU ADT (line 1 x line 2)	2,093.52
4	TSA D mitigation fee per ADT	\$502.00
5	Total Road System Impact Fee (line 3 x line 4)	\$ 1,050,947.04
6	Amount per Dwelling Unit (line 5 ÷ line 1)	\$ 3,674.64

	<b>Self-Storage ADT (Commercial)</b>	
1	Square footage	93,800
2	ADT per 1,00 sq. ft.	1.51
3	New Self-Storage ADT ((line 1 ÷ 1,000) x line 2)	141.64
4	TSA D mitigation fee per ADT	\$426.00
5	Total Road System Impact Fee (line 3 x line 4)	\$ 60,338.64
6	Amount per Square Foot (line 5 ÷ line 1)	\$ 0.64

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<sup>55</sup> SCC 30.66B.625(1) (2010).

<sup>56</sup> SCC 30.66B.310 (2003).

<sup>57</sup> ADT is calculated using the Institute of Traffic Engineers' Trip Generation Report.

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	<b>Fast-Food Restaurant<sup>58</sup> ADT (Commercial)</b>	
1	Square footage	3,000
2	ADT per 1,00 sq. ft.	470.95
3	New Fast-Food ADT ((line 1 ÷ 1,000) x line 2)	1,412.85
4	Pass-by reduction rate <sup>59</sup>	49%
5	Pass-by reduction (line 3 x line 4)	692.30
6	Net New ADT (line 3 – line 5)	720.55
7	TSA D mitigation fee per ADT	\$426.00
8	Total Road System Impact Fee (line 6 x line 7)	\$306,954.30
9	Amount per Square Foot (line 8 ÷ line 1)	\$ 102.32

2

## ***ii. Other Jurisdictions***

3

### **a. State Highway Impacts (SCC 30.66B.710)**

4

When a development's road system includes a state highway, mitigation requirements will be established using the county's SEPA authority consistent with the terms of the interlocal agreement between the county and the WSDOT. This is consistent with the county's SEPA policy<sup>60</sup> through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the county's SEPA authority.

9

Credits for the value of frontage improvements, additional right of way, and channelization exceed the amount of monetary mitigation. Therefore, monetary mitigation to WSDOT will not be required.

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<sup>58</sup> Including drive-through window.

<sup>59</sup> Dept. of Public Works Rule 4220.050. Pass-by refers to trips that are not generated by the site. For example, a vehicle traveling from Silver Firs to SR 9 that stops at the new fast-food restaurant for a snack and then continues its way is not a trip generated by the proposed restaurant. In other words, it was a trip that would have occurred without the new restaurant.

<sup>60</sup> SCC 30.61.230(9) (2012).

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1            b. Other Jurisdictions (SCC 30.66B.710)

2    The proposed project will affect the road network of the city of Mill Creek, with which the county  
3    has a reciprocal traffic impact mitigation interlocal agreement with the county. Approval will be  
4    conditioned on Pacific Ridge paying Mill Creek \$1,227.87 per dwelling unit (\$351,171.60 total).<sup>61</sup>

5    **2. Project Site**

6    **a. Access**

7    Pacific Ridge will create two new public roads in the shape of an L. The north/south leg (87<sup>th</sup> Ave.  
8    SE) will intersect Cathcart Way at a signalized intersection and the east/west leg (148<sup>th</sup> St. SE) will  
9    intersect State Route 9. Access to State Route 9 will be limited to right in from southbound State  
10   Route 9 to 148<sup>th</sup> St. SE and right out from 148<sup>th</sup> St. SE to southbound State Route 9. Drive aisles  
11   will extend from the new public roads to the interior of the development. Stopping and intersection  
12   sight distances at the access point meets the minimum requirements of EDDS §3-08.

13   **b. Right of Way**

14   The site fronts on Cathcart Way and State Route 9 and a new public road (87<sup>th</sup> Ave. SE) will run  
15   from Cathcart Way south, then turn east to link to State Route 9 (148<sup>th</sup> St. SE). Cathcart Way is a  
16   principal arterial with 50 feet of right of way on each side of the center line. New public road 148<sup>th</sup>  
17   St. SE needs 65 feet of right of way at the west end near the elbow to 87<sup>th</sup> Ave. SE and 79 feet of  
18   right of way at the east end near its intersection with State Route 9. The existing unopened right of  
19   way is 30 feet wide. Approval will be conditioned upon the creation of the two new public roads. If  
20   the public process for creation of 148<sup>th</sup> St. SE has not been completed in time, Pacific Ridge must  
21   obtain a construction easement or other agreement from the county before installation of  
22   improvements on the south side of 148<sup>th</sup> St. SE.

23   State Route 9 is also a principal arterial and under the jurisdiction of the Washington State  
24   Department of Transportation (WSDOT). In addition to additional right of way, WSDOT requires  
25   frontage improvements and channelization. Approval will be conditioned on providing these and  
26   any other mitigation required by WSDOT.

27   The impact fee cost basis does not include either Cathcart Way or 148<sup>th</sup> St. SE; the additional right  
28   of way therefore cannot be credited against the county's impact mitigation fee.

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<sup>61</sup> 225.11 P.M. peak-hour trips x 40% x \$3,900/PM peak-hour trip) = \$351,171.60 ÷ 286 dwelling units =  
\$1,227.87/dwelling unit.

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1 **c. Internal Road System**

2 No new public roads will be created within the development.<sup>62</sup> Drive aisles will provide internal  
3 vehicular circulation and will be designated as fire lanes.

4 **d. Frontage Improvements (SCC 30.66B.410)**

5 Full urban frontage improvements are usually required where the project abuts a public road. The  
6 project abuts two public roads: Cathcart Way and State Route 9. New public road 87<sup>th</sup> Ave. SE will  
7 intersect Cathcart Way. Approval will be conditioned on installation of a traffic signal to the county's  
8 satisfaction. Approval will be conditioned on full urban frontage improvements on Cathcart Way,  
9 consisting of: asphalt concrete pavement from the roadway center line to the face of the curb;<sup>63</sup>  
10 cement concrete curb and gutter; five-foot-wide planter strip; and a ten-foot-wide cement concrete  
11 sidewalk on both sides of Cathcart Way from the new signalized intersection at 87<sup>th</sup> Ave. SE and  
12 Cathcart Way to the intersection of State Route 9 and Cathcart Way.<sup>64</sup>

13 ADA ramps at the intersections of all the public roads must comply with minimum ADA standard  
14 requirements for grades and landings as detailed in the current EDDS §4-05 D and WSDOT  
15 Standard Plans F-40 series. A detail of each ADA ramp will be required in the construction plans.

16 A horizontal clear/control zone is required along the parcel's frontages.<sup>65</sup> Existing or proposed fixed  
17 object obstructions must be removed or relocated from this buffer for motorist safety, including  
18 utility poles. The clear zone must be established as part of the frontage improvements. The clear  
19 zone will be addressed during construction plan review.

20 Approval will also be conditioned on illuminating 87<sup>th</sup> Ave. SE and 148<sup>th</sup> St. SE. EDDS §7-02.

21 The impact fee cost basis does not include Cathcart Way; the improvements will not be credited  
22 against the mitigation impact fee.

23 **e. Bicycle**

24 The development site borders Cathcart Way, which is identified as a bicycle path on the county's  
25 bicycle system map. Approval will be conditioned on providing a bicycle path on the north and

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<sup>62</sup> Private road network elements are allowed for access to townhouse unit lots in lieu of a public road. SCC 30.24.055(1)(a) (2013).

<sup>63</sup> The width varies from approximately 29 feet to 33 feet.

<sup>64</sup> The width includes a shared use path.

<sup>65</sup> EDDS §§4-15, 8-03; WSDOT Utility Manual.

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1 south sides of Cathcart Way. The required frontage improvements, including the proposed shared  
2 use facilities, will provide the necessary bicycle facility.

3 **f. Signing and Striping**

4 Approval will be conditioned on Pacific Ridge paying the county for signing and striping installed or  
5 applied by county forces. Pacific Ridge must submit an acceptable channelization plan on 87<sup>th</sup> Ave  
6 SE, 148<sup>th</sup> Street SE, and Cathcart Way to enable the county to determine the appropriate amount.

7 **XVI. MITIGATION**

8 ***1. School Impact Mitigation (Chapter 30.66C SCC)***

9 Approval of the development will be conditioned upon the payment of school impact fees.<sup>66</sup> The  
10 amount will be \$260.00 per dwelling unit according to the base fee schedule in effect for the  
11 Snohomish School District on April 21, 2021, when Pacific Ridge submitted a complete  
12 development application. For building permits submitted on or after April 22, 2026, the mitigation  
13 fee will be determined by the fee schedule in effect when building permits are submitted. Mitigation  
14 fees will be collected at the time of building permit issuance for the proposed new dwellings. Credit  
15 shall be given for one existing lot.

16 ***2. Park and Recreation Impact Mitigation (Chapter 30.66A SCC)***

17 Approval of the development will be conditioned upon the payment of park and recreation facility  
18 impact fees. The fee schedule in effect when Pacific Ridge filed a complete development  
19 application determines the amount of the impact fee. The fee schedule in effect on April 21, 2021,  
20 established an impact fee of \$1,071.45 per dwelling unit. Pacific Ridge must pay the fee when  
21 building permits are issued for the townhouse units.<sup>67</sup>

22 **XVII. PUBLIC SAFETY AND HEALTH**

23 ***1. Fire***

24 The Fire Marshal's Office reviewed the proposal and does not object to approval if its  
25 recommended conditions are required. Approval will be conditioned on satisfaction of the Fire

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<sup>66</sup> SCC 30.66C.100 (2014).

<sup>67</sup> SCC 30.66A.020 (2017). The project site lies in the Nakeeta Beach park service area. SCC 30.66A.040(1) (2017).



1 Marshal's recommendations, including equipping all dwelling units and the commercial storage  
2 building with NFPA 13D automatic sprinkler systems.<sup>68</sup>

## 3 **2. Pedestrian Facilities and Schoolchildren**

4 Snohomish School District advised that students will meet their buses on the new public roads  
5 connecting Cathcart Way and State Route 9.<sup>69</sup>

## 6 **3. Utilities**

7 Adequate provisions have been made for utilities. Sanitary sewers and domestic water will be  
8 supplied by Silver Lake Water and Sewer District.<sup>70</sup> Snohomish County PUD has the capacity to  
9 provide electrical service.<sup>71</sup>

## 10 **XVIII. CONCLUSIONS**

- 11 1. The Hearing Examiner also has authority to approve a preliminary Planned Community  
12 Business plan in parcels larger than 5 acres zoned by the county for Planned Community  
13 Business, binding site plan when proposed with another type 2 application,<sup>72</sup> and Urban  
14 Residential Design Standards administrative site plans where, as here, the applicant requested  
15 consolidated review of the preliminary plan and administrative site plan.<sup>73</sup>
- 16 2. The Hearing Examiner concludes that Pacific Ridge met its burden of proof and demonstrated  
17 that its proposal either does or can comply with county development regulations. The  
18 development proposal is consistent with the comprehensive plan, county code, the type and  
19 character of land use permitted on the project site, the permitted density and applicable design  
20 and development standards.
- 21 3. The Hearing Examiner concludes that adequate public services exist to serve the proposed  
22 project.

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<sup>68</sup> Ex. G.1. EDDS usually requires turnarounds if a fire lane exceeds 150 feet. Two fire lanes exceeding 150 feet are proposed: one of 156 feet and another of 163 feet. A deviation was approved to allow these fire lanes, conditioned upon installation of automatic fire sprinklers in the dwellings.

<sup>69</sup> Ex. H.3.

<sup>70</sup> Ex. H.1.

<sup>71</sup> Ex. H.2.

<sup>72</sup> SCC 30.41D.020 (2020).

<sup>73</sup> SCC 30.23A.100(2)(a) (2017); SCC 30.31A.200(3) (2020); and SCC 30.70.025 (2021). See SCC 30.31A.220 (2003) ("All hearing examiner conditions of approval shall appear on the binding site plan . . ."). Ex. G.3 (requesting consolidated review).

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- 1 4. As conditioned, the proposed project makes adequate provisions for public health, safety, and  
2 the general welfare.
- 3 5. Any finding of fact in this decision which should be deemed a conclusion of law is hereby  
4 adopted as a conclusion of law.
- 5 6. Any conclusion of law in this decision which should be deemed a finding of fact is hereby  
6 adopted as a finding of fact.

## 7 **XIX. DECISION**

8 Based on the foregoing findings of fact and conclusions of law, the Hearing Examiner approves the  
9 preliminary Planned Community Business plan, binding site plan, and Urban Residential Design  
10 Standards administrative site plan subject to the following conditions:

### 11 ***Conditions***

#### 12 **A. General**

- 13 1. The Planned Community Business preliminary site plan,<sup>74</sup> binding site plan,<sup>75</sup> and Urban  
14 Residential Standards administrative site plan<sup>76</sup> shall be the approved site plans under  
15 chapters 30.23A, 30.41D, and 30.31A SCC.
- 16 2. Any discrepancy between the performance standards of title 30 SCC and the site plans shall be  
17 resolved in favor of title 30.
- 18 3. The landscape plan<sup>77</sup> received by PDS on April 15, 2022, shall be the approved landscape  
19 plan.
- 20 4. All dwelling units shall be provided with NFPA 13D automatic sprinklers.
- 21 5. The commercial mini-storage structure on Lot 2 shall be equipped with NFPA 13 automatic fire  
22 sprinkler systems and NFPA 72 monitored fire alarm system.
- 23 6. Prior to working within State right of way, Pacific Ridge must obtain a right-of-way use permit  
24 from WSDOT, fulfill any conditions, and process it to the satisfaction of the WSDOT.
- 25 7. No land may be used, no buildings may be occupied, and no lots may be sold except in  
26 accordance with the approved binding site plan.

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<sup>74</sup> Ex. B.1 (received by PDS on November 30, 2021).

<sup>75</sup> Ex. B.4 (received by PDS on April 15, 2022).

<sup>76</sup> Ex. B.2 (received by PDS on April 15, 2022).

<sup>77</sup> Ex. B.5.

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8. Performance security devices provided by Pacific Ridge must comply with chap. 30.84 SCC.
9. All water, sewer, electrical and communication distribution and service lines shall be underground, except as may be allowed by SCC 30.23A.110(1) or (2).
10. Trees planted to meet requirements of SCC 30.25.016 and shown in the approved landscape plan shall not be removed except when determined in writing by a certified arborist to constitute a hazard in accordance with SCC 30.25.016(11).
11. The project will comply with all local, state, and federal laws and regulations, including regulations and laws concerning wetlands and fish and wildlife habitat conservation areas
12. Nothing in this approval excuses Pacific Ridge, any owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

**B. Prior to Development Activity on Site**

13. Prior to any development activity on the site except surveying and marking, Pacific Ridge shall obtain one or more land disturbing activity permits.
14. Pacific Ridge shall obtain a right of way use permit for any work within a county road right of way.
15. To the extent required by SCC 30.43F.100, Pacific Ridge shall obtain a Forest Practices Activity Permit – Class IV General Conversion.
16. Pacific Ridge must temporarily mark the boundary of all Critical Area Protection Areas (CAPAs) and CAPA/Easements required by chapter 30.62A SCC and the limits of the proposed site disturbance outside of the CAPAs and CAPA/Es, using methods and materials acceptable to the county.
17. The application for land disturbing activity permit(s) shall include:
  - a. Drawings that properly label Critical Area Protection Areas within tract 999 and the CAPA/Easement within tract 998.
  - b. The design and proposed locations for CAPA signs.
  - c. Design and specifications for the rail fence. The fence design shall comply with SCC 30.62A.320(1)(f)(ii).
  - d. A Final Mitigation Plan based on the approved Revised Conceptual Mitigation Plan – Cathcart Crossing dated January 7, 2022, by Soundview Consultants, LLC. The Mitigation Plan Appendix A shall be included as a plan sheet(s) in the land disturbing activity permit plan set

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1 18. A landscape maintenance security may be required in accordance with SCC 30.84.150 if  
2 Pacific Ridge requests a planting delay and PDS concurs with the suitability of the delay.

3 19. Prior to issuance of the land disturbing activity permit, Pacific Ridge shall:

- 4 a. Pay the amount required by the county for the installation of signs and striping. SCC  
5 13.10.180. (Transaction code 7330.)
- 6 b. Pay a landscape site inspection fee. SCC 30.86.145(3).
- 7 c. Provide mitigation performance security in accordance with the mitigation and warranty  
8 security requirements of chapter 30.84 SCC.
- 9 d. Record a Critical Area Site Plan (CASP) with the Snohomish County Auditor in accordance  
10 with the requirements of SCC 30.62A.160 that designates critical areas and their buffers as  
11 Critical Area Protection Area (CAPA) and CAPA/Easements (CAPA/E) with the following  
12 restrictive language:

13 Except as provided herein All CRITICAL AREA PROTECTION AREAS and  
14 CRITICAL AREA PROTECTION AREA EASEMENTS shall be left permanently  
15 undisturbed in a substantially natural state. No clearing, grading, filling, building  
16 construction or placement, or road construction of any kind shall occur, except  
17 removal of hazardous trees.

18 20. Prior to issuance of any land disturbing activity permits, Pacific Ridge and the county shall have  
19 executed an agreement which provides an easement for construction of 148th Street SE on  
20 county property if the right of way has not already been created or established by Council  
21 action.

22 **C. Prior to Final Approval of Land Disturbing Activity Permits**

23 Prior to final approval land disturbing activity permit(s):

24 21. Split-rail fencing shall have been satisfactorily installed around the boundary of CAPA.

25 22. The Final Mitigation Plan shall have been satisfactorily implemented.

26 23. Mitigation monitoring and maintenance warranty security shall have been provided in  
27 accordance with the mitigation and warranty security requirements of chapter 30.84 SCC to  
28 ensure that the mitigation meets the performance requirement targets contained in the  
29 approved mitigation plan.

30 24. All CAPA boundaries shall have been permanently marked on the site prior to final inspection  
31 by the county, with both CAPA signs and adjacent markers which can be magnetically located  
32 (e.g., rebar, pipe, or 20 penny nails). Pacific Ridge may use other permanent methods and  
33 materials provided they are first approved by the county. Where a CAPA boundary crosses  
34 another boundary (e.g., lot, tract, plat, or road), a rebar marker with surveyors' cap and license  
35 number must be placed at the line crossing

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25. CAPA signs shall have been placed no greater than 100 feet apart around the perimeter of the CAPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the CAPA, unless otherwise approved by the county biologist. The design and proposed locations for the CAPA signs shall be submitted to PDS Permitting for review and approval prior to installation.

#### **D. Binding Site Plan -- Content**

The following text shall be written on the face of the recorded binding site plan:<sup>78</sup>

26. The dwelling units within this binding site plan are subject to school impact mitigation fees for Snohomish School District No. 201. For building permit applications submitted on or before April 21, 2026, the mitigation fee shall be \$260.00. For building permits submitted on or after April 22, 2026, the amount shall be determined by the fee schedule in effect at the time the building permit application is submitted. Payment of these mitigation fees is required prior to building permit issuance except as provided for in SCC 30.66C.200(2). Credit shall be given for one existing lot. Unit 1 shall receive credit.

27. The dwelling units within this development are subject to park impact fees as mitigation for impacts to the Nakeeta Beach Park Service Area No. 307 of the County parks system in accordance with chapter 30.66A SCC. For building permit applications submitted on or before April 21, 2026, the impact fee shall be \$1,071.45 per dwelling unit. For building permits submitted on or after April 22, 2026, the amount shall be determined by the fee schedule in effect at the time the building permit application is submitted. Payment of these mitigation fees is required prior to building permit issuance except as provided for in SCC 30.66A.020(4).

28. Chapter 30.66B SCC requires new lot mitigation payment to the county for each dwelling unit (twice the amount for each duplex) of:

(a) \$255.81 for Transportation Demand Management for a total of \$73,160.75 and

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<sup>78</sup> Numbering and formatting of required text is for convenience only.

(b) \$3,674.64 for mitigation of impacts on county roads for a total of \$1,050,947.04. The impact fees will be distributed to Transportation Service Areas as follows:

Road System Impact Fee Allocation Table – Residential townhomes			
To TSA	Total Amount	Amount per dwelling unit	Transaction Code
TSA A	\$735.66	\$2.57	5207
TSA B	\$3,363.03	\$11.76	5208
TSA C	\$2,627.37	\$9.19	5209
TSA D	\$753,003.55	\$2,632.88	5210
TSA E	\$71,674.59	\$250.61	5211
TSA F	\$219,542.84	\$767.63	5212
Total Owed: \$1,050,947.04		Total per dwelling: \$3,674.64	

Payment of these fees is due prior to or at the time of building permit issuance for each single-family residence unless deferment is allowed pursuant to chapter 30.66B SCC.

29. Chapter 30.66B SCC requires payment to the county of \$306,954.30 to mitigate the fast-food restaurant's impact on the county road system. The impact fee shall be distributed to each Transportation Service Area in accordance with SCC 30.66B.340, as indicated in the allocation table below. Payment of these fees is due prior to or at the time of building permit issuance unless deferment is allowed pursuant to chapter 30.66B SCC.

Road System Impact Fee Allocation Table Fast-Food Restaurant		
To TSA	Total Amount	Transaction Code
TSA A	\$214.87	5207
TSA B	\$982.25	5208
TSA C	\$767.39	5209
TSA D	\$219,932.76	5210
TSA E	\$20,934.28	5211
TSA F	\$64,122.75	5212
Total: \$306,954.30		

30. Chapter 30.66B SCC requires payment to the county of \$60,338.64 to mitigate the mini warehouse's impact on the county road system. The impact fee shall be distributed to each Transportation Service Area in accordance with SCC 30.66B.340, as indicated in the allocation

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table below. Payment of these fees is due prior to or at the time of building permit issuance unless deferment is allowed pursuant to chapter 30.66B SCC.

Road System Impact Fee Allocation Table – Mini-Warehouse		
To TSA	Total Amount	Transaction Code
TSA A	\$42.24	5207
TSA B	\$193.08	5208
TSA C	\$150.85	5209
TSA D	\$43,232.63	5210
TSA E	\$4,115.10	5211
TSA F	\$12,604.74	5212
Total: \$60,338.64		

31. Pacific Ridge shall pay the city of Mill Creek \$351,171.60 (\$1,227.87 per dwelling unit) to mitigate impacts on traffic in the city of Mill Creek. Payment may be made proportionately with each building permit.

32. All CRITICAL AREA PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur.

33. All Critical Areas and buffers shall be designated Critical Area Protection Areas (CAPA's) and placed in open space tract 999 and within a CAPA/Easement within tract 998 with the following restrictive language:

As otherwise provided herein, the CAPA (Critical Area Protection Areas) shall be left permanently undisturbed in a substantially natural state. Exceptions: The following are allowed in CAPAs: Non-ground disturbing interior or exterior building improvements; routine landscape, maintenance of established, ornamental landscaping; non-ground disturbing normal maintenance or repair; felling or topping of hazardous based on review by a qualified arborist; removal of noxious weeds conducted in accordance with chapter 16-750 WAC; maintenance or replacement that does not expand the affected area of the following existing facilities: (a) septic tanks and drain fields; (b) wells; (c) individual utility service connections; data collection by non-mechanical means, and non-mechanical survey and monument placement

34. All provisions, conditions, and requirements of the binding site plan shall be legally enforceable on the owner, purchaser, and any other person acquiring a possessory ownership, security, or other interest in any property subject to the binding site plan.

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35. All conditions and restrictions on development, use, maintenance, shared open space, parking, access, and other improvements identified on the recorded binding site plan shall be enforced by covenants, conditions, restrictions, easements, or other legal mechanisms.
36. Trees planted to meet requirements of SCC 30.25.016 and indicated in the approved landscape plan shall not be removed except when determined in writing by a certified arborist to constitute a hazard. Any replacement or significant trees removed without proper documentation from a certified arborist shall be subject to a fine as determined under chapter 30.85 SCC.
37. All dwelling units shall be provided with a NFPA 13-D fire suppression system.
38. Any development of the site shall conform to the approved binding site plan.
- The following shall be depicted on the binding site plan:
39. A right of way dedication along the property frontage with 148th Street SE at the southeast corner of the site adjacent to SR 9 to the satisfaction of Snohomish County.
40. Reciprocal parking and access easements. These easements shall include provisions for maintenance and enforcement.
41. A right of way dedication along the property frontage with 148th Street SE at the northeast corner of the site adjacent to SR 9 to the satisfaction of Snohomish County
42. Right of way as deeded (by instrument or recording number) along the property frontage with State Route 9 for a minimum total of 80.5 feet from the right of way center line, or as determined by Snohomish County and the WSDOT.

#### **E. Recording of the Binding Site Plan**

43. Prior to recording the binding site plan, the restrictive covenants described at SCC 30.31A.100(4) shall have been executed by the property owners and a copy provided to PDS.
44. After the PDS director has approved and signed the binding site plan and record of survey, Pacific Ridge shall record the approved original binding site plan and original record of survey as one recording document labeled "Binding Site Plan" with the Auditor in accordance with SCC 30.41D.110(6). The Auditor shall distribute copies of the recorded document to PDS, the department of Public Works, and the county Assessor. All distributed copies shall bear the Auditor's recording data. If a record of survey is not required because of RCW 58.09.090(1)(d)(iv) (2010), the applicable record of survey data shall be shown on the binding site plan to be recorded. SCC 30.41D.110(7) (2002).

#### **F. Prior to Issuance of Any Building Permit**

45. Prior to issuance of any building permit on lot 1 or lot 2, Pacific Ridge shall provide documentation of the proposed methods to address source control of pollution as described in Snohomish County Drainage Manual vol. IV (refer to Table 4.1 for preliminary guidance).

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1 Prior to the issuance of any building permit:

2 46. Pacific Ridge shall have recorded the binding site plan.

3 47. Pacific Ridge shall have submitted a final certificate of water availability to the county Fire  
4 Marshal verifying the fire hydrants have been installed, are charged and operational, and meet  
5 the minimum required fire flow after installation. Each fire hydrant shall be equipped with a 4-  
6 inch Storz steamer port and its bonnet and cap painted to reflect the level of fire service.

7 48. Building plans submitted for building permit review shall:

8 a. Include NFPA 13-D automatic fire suppression systems.

9 b. Comply with applicable bulk regulations of chap. 30.23 SCC

10 c. For townhouses in tract 998, building plans shall comply with the Urban Residential  
11 Design Standards outlined in chap. 30.23A SCC, including SCC 30.23A.050.

12 49. Pacific Ridge shall have paid the traffic impact mitigation fees described in conditions 28(b), 29,  
13 and 30.

14 50. Pacific Ridge shall have paid the Transportation Demand Management fee described in  
15 condition 28(a).

16 51. Pacific Ridge shall have paid the traffic impact mitigation fee to the city of Mill Creek described  
17 in condition 31.

18 52. Pacific Ridge shall have paid the park and recreation facility impact mitigation fee to the county  
19 described in condition 27.

20 53. Pacific Ridge shall have paid the school district impact mitigation fee described in condition 26.

21 54. Right of way shall have been deeded (or dedicated on the face of the binding site plan) along  
22 the property frontage on 148<sup>th</sup> Street SE at the southeast corner of the site adjacent to SR 9 to  
23 the satisfaction of Snohomish County.

24 55. Right of way shall have been deeded (or dedicated on the face of the binding site plan) along  
25 the property frontage on Cathcart Way at the northeast corner of the site adjacent to SR 9 to  
26 the satisfaction of Snohomish County.

27 56. Right of way shall have been deeded along the property frontage with State Route 9 for a  
28 minimum total of 80.5 feet from the right of way center line or as determined by Snohomish  
29 County and the WSDOT. Timing of this dedication may be different if approved by WSDOT.

30 57. The construction plans for the road establishment of the new north-south road (87<sup>th</sup> Ave SE)  
31 shall have been approved by the county.

32 58. The property on the south side of the existing 30-foot-wide unopened right of way of 148<sup>th</sup>  
33 Street SE along the southern property line of the site shall have either been established as right

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of way or an agreement between Pacific Ridge and Snohomish County shall have been completed to the satisfaction of Snohomish County to allow the construction of the new county road (148<sup>th</sup> Street SE) on county property if the right of way has not already been created or established by Council action.

**G. Prior to Any Certificate of Occupancy or Final Inspection**

Prior to the earlier of any certificate of occupancy or final inspection:<sup>79</sup>

59. Urban frontage improvements shall have been constructed along the parcel's frontage on the north and south side of Cathcart Way to the satisfaction of the county.

60. Urban frontage improvements shall have been constructed along the parcel's frontage on State Route 9 (SR 9) to the satisfaction of the WSDOT.

61. The off-site bicycle facility/sidewalk improvement on the south side of Cathcart Way west of the new intersection with 87<sup>th</sup> Ave SE shall have been completed to the satisfaction of Snohomish County.

62. The road establishment and construction of 148<sup>th</sup> Street SE and 87<sup>th</sup> Ave SE between Cathcart Way and SR 9 shall have been completed and accepted to the satisfaction of Snohomish County.

63. An access connection permit shall have been obtained from WSDOT and processed to WSDOT's satisfaction.

64. Any improvements within the SR 9 right of way shall have been completed to the satisfaction of the WSDOT.

65. A right-in and right-out only access point at 148<sup>th</sup> Street SE and State Route 9 shall have been completed to the satisfaction of the WSDOT and Snohomish County.

66. The channelization of Cathcart Way, 87<sup>th</sup> Ave SE, and 148<sup>th</sup> Street SE shall have been completed to the satisfaction of Snohomish County.

67. The mid-block crossing consisting of a rapid rectangular flashing beacon (RRFB) on 148<sup>th</sup> Street SE across from the future park and ride shall have been installed to the satisfaction of Snohomish County.

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<sup>79</sup> The departmental report (ex. L.2) recommended these conditions be fulfilled prior to the earlier of (a) recording of the binding site plan or (b) certificate of occupancy or final inspection. The binding site plan must be recorded within six months of approval. SCC 30.70.140 (2020). It is not feasible to require the applicant to construct the frontage improvements, install a new traffic signal, establish new roads, etc., within six months of this decision's approval of the binding site plan. Therefore, these conditions must be fulfilled prior to the earlier of any certificate of occupancy or final inspection.

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68. The channelization of State Route 9 (SR 9) shall have been completed to the satisfaction of the WSDOT.

69. Illumination shall have been installed to the satisfaction of Snohomish County on Cathcart Way, 87<sup>th</sup> Ave SE and 148<sup>th</sup> Street SE adjoining the site.

70. A new signal shall have been installed at the intersection of 87<sup>th</sup> Ave SE and Cathcart Way to the satisfaction of Snohomish County.

71. The property on the south side of the existing 30-foot-wide unopened right of way of 148<sup>th</sup> Street SE along the southern property line of the site shall have been created or established as right of way by Council action, or as determined by Snohomish County.

#### **H. Prior to Approval for Occupancy**

Prior to approval for occupancy:

72. Required automatic fire sprinkler systems shall be operational.

73. All required landscaping shall have been installed in accordance with the approved landscape plan and a qualified landscape designer shall certify that the installation complies with the code and the approved plans unless a performance bond has been reviewed and accepted by the department. All landscaping review and inspection fees shall have been paid pursuant to chapter 30.86 SCC.

74. Pacific Ridge shall have installed all fire lane signage and pavement striping per the approved plans and coordinated on-site with the Snohomish County Fire Marshal's Office.

75. Blue street reflectors shall have been installed on the hydrant side of the center line to assist approaching emergency vehicle apparatus in locating the hydrant.

76. Mitigation maintenance and warranty security shall have been provided in accordance with the mitigation and warranty security requirements of Chapter 30.84 SCC to ensure that the mitigation meets the performance requirement targets contained in the approved mitigation plan.

#### **I. Expiration of Approvals**

77. A binding site plan approval pursuant to chap. 30.41D SCC expires unless the binding site plan is recorded within six months of approval.

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1 78. In accordance with SCC 30.70.140, an administrative site plan approval under chapter 30.23A  
2 SCC expires five years from the date of the approval if construction or use has not  
3 commenced. "Commence construction" is defined as the point in time when the breaking of  
4 ground for the construction of a development occurs.

Original decision issued July 7, 2022 and this amended decision issued this 8<sup>th</sup> day of August, 2022.

*Peter B. Camp*  
Peter B. Camp  
Hearing Examiner

## 5 **EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES**

6 For more information about reconsideration and appeal procedures, please see chapter 30.72  
7 SCC and the respective Hearing Examiner and Council Rules of Procedure.

### 8 ***Reconsideration***

9 Further motions for reconsideration will not be considered because county code allows only one  
10 motion for reconsideration. SCC 30.72.065(5) (2013).

### 11 ***Appeal***

12 An appeal to the County Council may be filed by any aggrieved party of record **on or before**  
13 **August 22, 2022**. If the reconsideration process of SCC 30.72.065 has been invoked, no appeal  
14 may be filed until the reconsideration petition has been decided by the Hearing Examiner. An  
15 aggrieved party may file an appeal directly to the County Council without first filing a petition for  
16 reconsideration. If a petition for reconsideration is filed, issues subsequently raised by that party on  
17 appeal to the County Council shall be limited to those issues raised in the petition for  
18 reconsideration.

19 Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the  
20 Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East  
21 Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S 604, 3000  
22 Rockefeller Avenue, Everett, WA 98201), and shall be accompanied by a filing fee in the amount  
23 of five hundred dollars (\$500.00) for each appeal filed. A county department does not need to pay  
24 the filing fee. The filing fee shall be refunded in any case where an appeal is summarily dismissed  
25 in whole without hearing under SCC 30.72.075.

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Appeals may be accepted electronically by the Planning and Development Services Department and paid for by credit card over the phone as follows:

1. Scan the original manually signed (handwritten) copy of the appeal document;
2. Send your appeal as an email attachment to [epermittech@snoco.org](mailto:epermittech@snoco.org). Please include your phone number where you can be reliably reached.
3. Staff will call you to collect your credit card information and process your payment.
4. Mail the original to Snohomish County PDS, 3000 Rockefeller M/S 604, Everett, WA 98201.

An appeal must contain the following items in order to be complete: (a) a detailed statement of the grounds for appeal; (b) a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; (c) written arguments in support of the appeal, including all legal arguments on which the appeal is based; (d) the name, mailing address and daytime telephone number of each appellant or appellant's representative, together with the signature of at least one of the appellants or the appellant's representative; and (d) the required filing fee. SCC 30.72.080(1).

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record.

SCC 30.72.080(2). Appeals will be processed and considered by the County Council pursuant to the provisions of chapter 30.72 SCC. Please include the county file number in any correspondence regarding the case.

Staff Distribution:

Department of Planning and Development Services: Stacey Abbott

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.13

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BEFORE THE HEARING EXAMINER  
IN AND FOR THE COUNTY OF SNOHOMISH

In Re Cathcart Crossing,

No. 21-107654 SPA/BSP

Order Granting and Denying Petitions for  
Reconsideration

Pacific Ridge—DRH, LLC,

Applicant.

## SUMMARY

The Office of Hearings Examination received three petitions for reconsideration, which are consolidated to facilitate procedural efficiency.<sup>1</sup>

Petitioner	Disposition	Reason <sup>2</sup>
Snohomish County Planning and Development Services department (PDS) <sup>3</sup>	Granted and amended decision issued	Error of law regarding school impact mitigation.
Deborah Wetzel <sup>4</sup>	Denied	Evidence could reasonably have been produced at the hearing.
Janet Miller <sup>5</sup>	Denied	No error of law regarding notice.

<sup>1</sup> SCC 30.72.065(6) (2013).

<sup>2</sup> The summary briefly describes the principal bases for disposition and does not supplant the reasons stated *infra*.

<sup>3</sup> Ex. M.1.

<sup>4</sup> Ex. M.3 and M.3 Exhibits 1-9.

<sup>5</sup> Ex. M.4.

## PDS

PDS petitioned for reconsideration of the Hearing Examiner's decision of July 7, 2022. PDS represented that the applicable Snohomish School District impact mitigation fee is \$6,039/dwelling unit, but the correct amount is \$260/dwelling unit. The incorrect amount is an error of law because SCC 30.66C.100(1) table 1 lists \$260.00, not \$6,039.00, as the appropriate impact fee for a townhouse in Snohomish School District No. 201.<sup>6</sup> The Hearing Examiner grants the petition for reconsideration and concurrently issues a decision amended as described below.

The decision stated:<sup>7</sup>

The development's impact on the public school system is mitigated by the payment of mitigation fees required by county code. Pacific Ridge must pay more than \$6,000 per dwelling unit for the development's impact on the Snohomish School District.

The paragraph is amended to read as follows:<sup>8</sup>

Regarding concerns on impacts to the public school system, PDS solicited comments from the Snohomish School District about the proposed project. The county's comprehensive plan includes the capital facilities plans of the school districts in the county. School districts submit proposed impact mitigation fees for the county's approval.  
<https://snohomish.county.codes/CompPlan/GPP-AxF> (The Hearing Examiner takes official notice of the county's comprehensive plan. H. Ex. R. of Proc. 5.6(i) (2021)). The development's impact on the public school system is mitigated by the payment of mitigation fees required by county code. Pacific Ridge must pay ~~more than \$6,000~~ \$260 per dwelling unit for the development's impact on the Snohomish School District.

Section XVI(1) of the July 7 decision states:<sup>9</sup>

Approval of the development will be conditioned upon the payment of school impact fees.<sup>10</sup> The amount will be \$6,039.00 per dwelling unit according to the base fee schedule in effect for the Snohomish School District on April 21, 2021, when Pacific Ridge submitted a complete development application. For building permits submitted on or after April 22, 2026, the mitigation fee will be determined by the fee schedule in effect when building permits are submitted.

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<sup>6</sup> The Hearing Examiner does not set the amounts stated in county code, nor does he have the legal authority to modify them.

<sup>7</sup> July 7 decision, section X(3), p. 13, ll. 17-19.

<sup>8</sup> Additions underscored and deletions ~~struck through~~.

<sup>9</sup> July 7 decision, p. 25, ll. 2-9.

<sup>10</sup> SCC 30.66C.100 (2014).

1 Mitigation fees will be collected at the time of building permit issuance for the  
2 proposed new dwellings. Credit shall be given for one existing lot.

3 It is amended as follows:

4 Approval of the development will be conditioned upon the payment of school  
5 impact fees.<sup>11</sup> The amount will be ~~\$6,039.00~~ \$260.00 per dwelling unit  
6 according to the base fee schedule in effect for the Snohomish School District  
7 on April 21, 2021, when Pacific Ridge submitted a complete development  
8 application. For building permits submitted on or after April 22, 2026, the  
9 mitigation fee will be determined by the fee schedule in effect when building  
10 permits are submitted. Mitigation fees will be collected at the time of building  
11 permit issuance for the proposed new dwellings. Credit shall be given for one  
12 existing lot.

13 Condition 26 requires:<sup>12</sup>

14 The dwelling units within this binding site plan are subject to school impact  
15 mitigation fees for Snohomish School District No. 201. For building permit  
16 applications submitted on or before April 21, 2026, the mitigation fee shall be  
17 \$6,039.00. For building permits submitted on or after April 22, 2026, the  
18 amount shall be determined by the fee schedule in effect at the time the  
19 building permit application is submitted. Payment of these mitigation fees is  
20 required prior to building permit issuance except as provided for in SCC  
21 30.66C.200(2). Credit shall be given for one existing lot. Unit 1 shall receive  
22 credit.

23 Condition 26 is amended to read:

24 The dwelling units within this binding site plan are subject to school impact  
25 mitigation fees for Snohomish School District No. 201. For building permit  
26 applications submitted on or before April 21, 2026, the mitigation fee shall be  
27 ~~\$6,039.00~~ \$260.00. For building permits submitted on or after April 22, 2026,  
28 the amount shall be determined by the fee schedule in effect at the time the  
29 building permit application is submitted. Payment of these mitigation fees is  
30 required prior to building permit issuance except as provided for in SCC  
31 30.66C.200(2). Credit shall be given for one existing lot. Unit 1 shall receive  
32 credit.

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<sup>11</sup> SCC 30.66C.100 (2014).

<sup>12</sup> July 7 decision, p. 30, ll. 5-11.



## WETZEL

Petitioner Wetzel seeks reconsideration for four reasons:

1. Alleged conflict of interest (appearance of fairness);
2. "Whether . . . the Examiner . . . followed the rules and procedures and Washington State law essential to a fair hearing;
3. Material facts were withheld.
4. The decision does not comply with chap. 36.70A (the Growth Management Act), SCC 30.10.060, "and all Washington State and Snohomish County codes, ordinances and regulations."<sup>13</sup>

For the purposes of analysis, the first two alleged errors (conflict of interest and appearance of fairness) are discussed together because they are founded on the same facts.

### **1. CONFLICT/APPEARANCE OF FAIRNESS**

Petitioner Wetzel summarizes her argument: "Because the County is the Examiner's employer, as well as the County employees, they have an outsized interest in a successful outcome of the hearing. This serves as the basis for an appearance of fairness of concern."<sup>14</sup> This argument is not new; she raised the argument prior to issuance of the July 7 decision and the Hearing Examiner considered her argument, researched the law, and ruled on it.<sup>15</sup> The petitioner cites no authority contradicting the published Washington Court of Appeals decision holding that an agency's employment of an administrative law judge does not create an appearance of fairness concern under Washington state law.<sup>16</sup> Petitioner did not demonstrate an error of law justifying reconsideration. SCC 30.72.065(2)(c) (2013).

### **2. FAILURE TO COMPLY WITH LAWS**

Petitioner Wetzel argues for reconsideration claiming procedural errors: (1) the applicant and PDS submitted additional documents for the record at the time of hearing; (2) the Hearing Examiner refused to consider any documents submitted after the close of the hearing; (3) attendees with technical problems that could not speak during the hearing only had one hour to submit their comments by email; (4) the Hearing Examiner should have examined an unidentified witness after the testimony of Linda Gray; (5) the Hearing Examiner interrupted, intimidated, belittled, and prevented petitioner from continuing to

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<sup>13</sup> Ex. M.3, p.2.

<sup>14</sup> *Id.*

<sup>15</sup> July 7 decision, IV, pp. 5-6.

<sup>16</sup> *Valley View Convalescent Home v. Department of Social & Health Services*, 24 Wn. App. 192, 200-01, 599 P.2d 1313, 1318 (1979), rev. denied 93 Wn. 2d 1004 (1980) (citations omitted)

1 testify; (6) the Hearing Examiner was not fully informed and should have continued the  
2 hearing; and (7) the public was not properly notified.

3 Submission of exhibits at the open record hearing is not a procedural error; it is an "open  
4 record" hearing, after all. Petitioner did not show an adequate basis for reopening the record  
5 to consider documents that were publicly available prior to the hearing. Attendees who  
6 desired to speak at the hearing but did not due to technical problems were not prejudiced by  
7 having an hour to submit their intended comments by email. Presumably they were already  
8 prepared to speak and had adequate time to type and send their comments by email. No  
9 attendee who submitted a later email claimed they needed more time. The Hearing  
10 Examiner did not need to call any additional witnesses after the testimony of Ms. Gray, nor  
11 could he call unidentified witnesses. The Hearing Examiner regrets that petitioner felt a lack  
12 of respect. The record speaks for itself, however, and he believes it demonstrates that  
13 petitioner was not prevented from continuing to testify and that she was neither belittled nor  
14 intimidated. She clearly finished her comments. The Hearing Examiner was fully informed  
15 and did not need to continue the hearing. Petitioner did not demonstrate that county code  
16 notice requirements were not satisfied. She objects that notice beyond that required by law  
17 was not given. There is no legal requirement to exceed the notice requirements required by  
18 county code.

### 19 **3. MATERIAL FACTS**

20 Petitioner Wetzel also claims, "Material facts were not disclosed until the hearing was  
21 underway," and such facts were "not readily ascertainable" and the parties of record did not  
22 have reasonable time to review them and participate in the hearing.<sup>17</sup> Petitioner conceded  
23 that she moved to re-open the record for these same reasons, but the Hearing Examiner  
24 denied her motion.<sup>18</sup> More specifically, she complains the purchase and sale agreement for  
25 the property was not included in the record and that a park and ride is contemplated  
26 adjacent to the site. However, these facts and associated documents were publicly  
27 available prior to the hearing. That the petitioner did not learn of them until during or after  
28 the hearing is not a legal basis for reconsideration.

### 29 **4. COMPLIANCE WITH THE GROWTH MANAGEMENT ACT**

30 Petitioner Wetzel asserts the goals of the Growth Management Act and the county's  
31 comprehensive plan were violated. The Hearing Examiner has jurisdiction to determine  
32 whether a proposed project complies with county code; he has no authority to determine  
33 whether county code complies and is consistent with state law.

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<sup>17</sup> Ex. M.3, p.4.

<sup>18</sup> *Id.*

1                   **5. CONCLUSION**

2     Petitioner Wetzel repeats the arguments she made in her motion to reopen. The Hearing  
3     Examiner denied that motion in the July 7 decision. She does not present a legally  
4     cognizable basis for reconsideration. Her petition is denied.

5     **MILLER**

6     Petitioner Janet Miller petitioned for reconsideration on the grounds that: (1) the project is  
7     “within the boundaries of our CITY of CLEARVIEW [sic];” (2) the county “acquired the  
8     property under erroneous conditions;” and (3) parties of record were not notified about the  
9     hearings and proceedings.<sup>19</sup>

10    There is no municipal corporation of Clearview. Whether an antecedent property owner and  
11    local milk farmer preferred to sell to a church rather than the county is not relevant to the  
12    decision. Finally, PDS provided notice to the public as required by county code.<sup>20</sup> Petitioner  
13    does not identify any code section requiring notice with which PDS and the applicant did not  
14    comply. The Hearing Examiner does not credit vague, conclusory claims of failure to comply  
15    with notice requirements without specific facts demonstrating who was legally required to  
16    receive notice but did not.

17    **ORDER**

- 18    1.     PDS' petition for reconsideration is granted and the July 7, 2022 decision vacated.  
19         An amended decision consistent with this decision is issued contemporaneously.
- 20    2.     Petitioner Wetzel's petition for reconsideration is denied for the reasons stated  
21         above.
- 22    3.     Petitioner Miller's petition is denied for the reasons stated above.

23                                 DATED this 8<sup>th</sup> day of August, 2022.

24   Peter B. Camp

25   Peter B. Camp

26   Snohomish County Hearing Examiner

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<sup>19</sup> Ex. M.4.

<sup>20</sup> Exhibits F.1, F.2, F.3, and F.4.

## RECONSIDERATION AND APPEAL

Further petitions for reconsideration are not authorized. SCC 30.72.065(3) (2013).  
Information on how to appeal the amended decision is contained at the foot of the amended decision.

Staff Distribution: Stacey Abbott

BEFORE THE HEARING EXAMINER  
IN AND FOR THE COUNTY OF SNOHOMISH

In Re Cathcart Crossing,

No. 21-107654 SPA/BSP

Order Denying Further Petitions for  
Reconsideration and Motion to File Late  
Reconsideration Petition

Pacific Ridge—DRH, LLC,

Applicant.

## SUMMARY

After consideration of three petitions for reconsideration, the Hearing Examiner issued an amended decision on August 8, 2022. The Office of Hearings Administration subsequently received documents from several persons requesting “proper issuance/notification of determination of nonsignificance” and a motion to allow late filing of a petition for reconsideration. This order relates to these procedurally unusual belated petitions for reconsideration.

Persons requesting “proper issuance/notification of determination of nonsignificance” argue that they signed a petition that expressly asked they be made parties of record, but were not treated by PDS as parties of record, were not provided timely notice of the SEPA threshold determination of nonsignificance, and were therefore deprived of an opportunity to appeal it. These requests are functionally petitions for reconsideration. County code does not allow petitions for reconsideration after the 10-day deadline or multiple rounds of reconsideration. Further, county code explicitly defines “party of record” as a person who **individually** comments or testifies and excludes from the definition those who only sign petitions. Even if the Hearing Examiner had authority at this late date to grant their request, he declines to do so because they are not parties of record.

Ms. Stewart’s motion to allow late filing of her petition for reconsideration is denied because good cause was not shown for the late filing, even if the Hearing Examiner has such authority. Ms. Stewart argues that she did not file the petition because the Hearing Examiner was not listed as a party of record in the party of record list provided to her by the Office of Hearings Administration. The Hearing Examiner is not a party of record; county code defines Hearing Examiner and party of record separately. Even if the Hearing Examiner had authority to grant it, the underlying petition lacks merit and would have been denied.

**In Re Cathcart Crossing**

21-107654 SPA/BSP

Order Denying Further Petitions for Reconsideration and Motion to File Late Reconsideration Petition

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## 1 REQUESTS TO REISSUE DNS

2 After the Hearing Examiner issued his amended decision on August 8, 2022, M. Joan  
3 Bjornson, Ronald Jeffs, Wendy Jeffs, and Nicole Donovan<sup>1</sup> (Requesters) requested “proper  
4 issuance/notification of determination of nonsignificance.” The gravamen of Requesters’  
5 complaint is that they were not treated as parties of record, though they signed a petition  
6 that stated, *inter alia*, “All signees below Request to become Party of Record . . . .”<sup>2</sup> They  
7 complain the county was obliged to notify them of the threshold SEPA determination of no  
8 significant impact, but did not, and thereby denied them an opportunity to appeal it. They  
9 ask the Hearing Examiner to order reissuance of the DNS and a new hearing.

10 The Hearing Examiner denies the request for several reasons. First, these requests are  
11 petitions for reconsideration. County code does not allow multiple rounds of reconsideration.  
12 “A decision which has been subjected to the reconsideration process shall not again be  
13 subject to reconsideration.” SCC 30.72.065(5) (2013).

14 Second, Requesters did not timely file their request. The DNS was issued on May 11,  
15 2022.<sup>3</sup> The open record hearing occurred on June 14, 2022. The Hearing Examiner issued  
16 an amended decision on August 8, 2022. Requesters tarried until after issuance of the  
17 amended decision before seeking any relief, with no explanation for their delay.

18 Third, the Hearing Examiner only has jurisdiction explicitly granted him by county code and  
19 does not have jurisdiction over untimely SEPA appeals. *Chaussee v. Snohomish County*  
20 *Council*, 38 Wn. App. 630, 636, 689 P.2d 1084, 1090-91 (1984). For SEPA appeals, he only  
21 has subject matter jurisdiction if a notice of appeal from a threshold determination is filed  
22 **within 14 days of issuance of the threshold determination, and** a sworn statement is  
23 filed within seven days of filing the notice of appeal. SCC 30.61.300 (2010); SCC 30.61.305  
24 (2003); and SCC 30.71.050 (2020). Their requests are far beyond those deadlines. The  
25 Hearing Examiner cannot provide them with relief.

26 Finally, Requesters are not parties of record and PDS was not required to notify them of the  
27 threshold SEPA determination.<sup>4</sup> The county code definition of “party of record” includes only  
28 those who individually comment or testify and explicitly excludes those who sign petitions.

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<sup>1</sup> Exhibits M.8, M.9, M.10, and M.17. Three requests (M.8, M.9, and M.10) are identical except for the names and the fourth (M.17) is substantially similar.

<sup>2</sup> Ex. I.11.

<sup>3</sup> Ex. E.1.

<sup>4</sup> Further, only parties of record may petition for reconsideration. SCC 30.72.065(1) (2013) (“**Any aggrieved party of record** may file a written petition for reconsideration . . . .”) (emphasis added).

**In Re Cathcart Crossing**

21-107654 SPA/BSP

Order Denying Further Petitions for Reconsideration and Motion to File Late Reconsideration Petition

Page 2 of 7

"Party of record" means the following persons in an application or appeal:

- (1) The applicant and any appellant;
- (2) Any person who submitted written comments to the department prior to a Type 1 decision or Type 2 recommendation;
- (3) **Any person**, county department and/or public agency who **individually submitted written comments** or testified at the open record hearing (**excluding persons who have only signed petitions** or mechanically produced form letters); and
- (4) Any person, county departments and/or public agency who specifically request notice of decision by entering their name and mailing address on a register provided for such purpose at the open record hearing.

**A party of record does not include a person who has only signed a petition** or mechanically produced form letters. A party of record to an application/appeal shall remain such through subsequent county proceedings involving the same application/appeal. The county may cease mailing material to any party of record whose mail is returned by the postal service as undeliverable.

SCC 30.91P.110 (2003) (emphasis added). Requesters did not individually comment or testify. They signed a petition and petitioners are not parties of record.

The petition expressly asked, however, that the signers be considered parties of record. "All signees below Request to become Party of Record . . . " <sup>5</sup> Petitioners are excluded from the definition of "party of record," but does the petition's explicit request make a difference and remove the petition from county code's exclusion?

The Hearing Examiner attempts to ascertain and carry out county code's intent. If the code section meaning is plain on its face, the Hearing Examiner must give effect to that plain meaning. The plain meaning is derived from the language of the code as a whole and related sections that reveal the intent about the specific section. See *Robertson v. Washington State Parks & Recreation Commission*, 135 Wn. App. 1, 5, 145 P.3d 379, 381 (2005), rev. denied 158 Wn.2d. 1011 (2006).

County code explicitly excludes petition signers, not once, but twice. Most importantly, county code limits party of record status only to those who individually comment or testify. *Id.* at (3). To be a party of record as defined by county code, a person must take the affirmative action of individually commenting or testifying. The county code definition of party of record explicitly excludes collective commenters.

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<sup>5</sup> Ex. I.11.



1 Thus, even if the Hearing Examiner had the residual authority to grant their request after  
2 issuing his final decision, their request would fail on the merits because a petition's  
3 collective request that the signatories be deemed parties of record does not satisfy county  
4 code's requirement that a party of record individually submit comments or testify.

5 Their requests for reconsideration are denied because multiple rounds of reconsideration  
6 are not allowed, and they are not parties of record.

## 7 **STEWART RECONSIDERATION**

8 On August 8, 2022, the Hearing Examiner decided three petitions for reconsideration<sup>6</sup> filed  
9 with the Office of Hearings Administration and issued an amended decision. The Office of  
10 Hearings Administration received inquiries on August 9 regarding an alleged fourth petition  
11 for reconsideration. The Hearing Examiner issued an order to learn whether such a petition  
12 existed and whether the petition had been misfiled by the Office of Hearings  
13 Administration.<sup>7</sup>

### 14 **1. FAILURE TO TIMELY FILE**

15 Ms. Katrina Stewart intended to file a petition for reconsideration by the deadline of July 29,  
16 but the petition was not filed with the Office of Hearings Administration. The petition and a  
17 request to allow its late filing were not filed until August 15, 17 days after the  
18 reconsideration deadline. It is untimely and the request for late filing is denied.

### 19 **2. SUBSEQUENT RECONSIDERATION NOT ALLOWED**

20 Multiple rounds of reconsideration are not allowed by county code. "A decision which has  
21 been subjected to the reconsideration process shall not again be subject to  
22 reconsideration." SCC 30.72.065(5) (2013). The July 7 decision was subject to the  
23 reconsideration process once. It cannot be subject to reconsideration again.

### 24 **3. REQUEST TO ALLOW LATE FILING**

#### 25 **A. Hearing Examiner is Not a Party of Record**

26 Ms. Stewart asks that the late filing be accepted, arguing that her failure to file was due the  
27 Office of Hearings Administration's failure to include the Hearing Examiner on the list of

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<sup>6</sup> Ex.N.3.

<sup>7</sup> Ex. N.4.



1 parties of record.<sup>8</sup> The Hearing Examiner is not a party of record and therefore was not  
2 included in the party of record list.

3 County code defines both party of record and Hearing Examiner. The party of record  
4 definition is reproduced above and does not mention the Hearing Examiner. County code  
5 defines Hearing Examiner separately: "*Hearing examiner*" or "*examiner*" means the hearing  
6 examiner or a deputy hearing examiner or pro tem hearing examiner appointed in  
7 accordance with chapter 2.02 SCC." SCC 30.91H.100 (2013). "When the legislature uses  
8 two different terms in the same statute, we presume the legislature intends the terms to  
9 have different meanings." *City of Seattle v. Long*, 198 Wn.2d 136, 150, 493 P.3d 94, 102  
10 (2021). County code differentiates between party of record and Hearing Examiner. The  
11 Hearing Examiner is not a party of record and is therefore not listed in the party of record  
12 registry.

### 13 B. Rules Do Not Supplant County Code

14 Ms. Stewart also asks the Hearing Examiner to exercise "his discretion and authority, as  
15 provided in Rule 1.7 Exceptions to Rules, to address an unanticipated situation \* \* \* and  
16 permit the filing of Ms. Stewart's Motion for Reconsideration." H. Ex. R. of Proc. 1.7 (2021)  
17 states:

18 These Rules are designed to address most normal circumstances that arise when  
19 dealing with matters before the Hearing Examiner. However, in the event that an  
20 unanticipated situation arises which does not lend itself to the full, literal compliance  
21 with a Rule, the Examiner reserves the right to exercise discretion to address such  
22 circumstances.

23 First, the situation of filing a petition for reconsideration is not "unanticipated." Country code  
24 explicitly provides the procedures for filing petitions for reconsideration, including deadlines.

25 The rules supplement county code only where it is silent and does not supplant or overrule  
26 county code:

27 These Rules shall govern the procedures to be used in quasi-judicial proceedings  
28 before the Hearing Examiner, except where otherwise provided in the Snohomish  
29 County Code. **For land use matters** (including Type 1 appeals under Chapter 30.71  
30 SCC, **Type 2 proceedings under Chapter 30.72 SCC** and code enforcement matters  
31 under Chapter 30.85 SCC), **the applicable administrative procedures specified in**  
32 **Title 30 SCC shall govern.** Where those regulations are silent as to administrative

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<sup>8</sup> "It was not until the August 8, 2022 Order Granting and Denying Petitions for Reconsideration was emailed to me personally that I discovered a 'scrivener's error' based upon [the Office of Administrative Hearings' clerks'] party of record list and that my motion for reconsideration was delivered to all parties of record with the exception of the Hearing Examiner." Ex. M.7, ¶13 (emphasis added). "Through inadvertence, this office did not realize that the Examiner's office was not included in the July 29, 2022 parties of record list and filing/service was not made on the Examiner." Ex.M.11, p. 2.

procedures, these Rules shall apply to supplement the administrative procedures set forth in Title 30 SCC.

H. Ex. R. of Proc. 1.10 (2021) (emphasis added). County code is not silent and explicitly allows only parties of record to seek reconsideration and only if they “**file** a written petition for reconsideration **with the hearing examiner within 10 calendar days** following the date of the hearing examiner’s written decision.” SCC 30.72.065 (2013) (emphasis added). Ms. Stewart did not file a written petition with the Hearing Examiner within 10 calendar days. The “applicable administrative procedures [i.e., SCC 30.72.065] . . . shall govern.” The rules do not and cannot overrule county code.

#### **4. “SUPPLEMENTAL MOTION RE NOTICE”**

Ms. Stewart’s late petition for reconsideration contains a “supplemental motion re notice” that repeats the argument that persons who signed a petition were parties of record but were not provided with notice of the threshold SEPA decision.<sup>9</sup> Ms. Stewart contends that party of record status of the petition signers was evidenced by the clerk’s mistaken and temporary internal action of adding some of them to the party of record register (an action of which none of them were aware). The clerk also called several to offer them links to the hearing. However, county code as described above defines who is, and who is not, a party of record entitled to notice. County code excludes petition signatories from party of record status, and they are therefore not entitled to notice.<sup>10</sup> Offering links to the hearing some of them and taking internal action of adding and then removing their names to the party of record register does not change their status defined by code. The “supplemental motion” is also denied for the additional reasons the other requests to reissue the SEPA notice are denied.

It is ORDERED that:

1. The petitions for reconsideration by M. Joan Bjornson, Ronald Jeffs, Wendy Jeffs, and Nicole Donovan Summary are denied.
2. The request to accept the late filed motion for reconsideration is denied.
3. The petition for reconsideration by Ms. Stewart to re-notice the threshold SEPA determination and re-open the open record hearing is denied.

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<sup>9</sup> Ex. M.11, pp.2-8.

<sup>10</sup> There is no demonstrated reliance on the temporary internal action regarding the registry or even that any were aware that it happened until well after the issuance of the decision.

1 This decision does not change the appeal deadline stated in the August 8, 2022 decision.  
2 DATED this 18<sup>th</sup> day of August, 2022.

3 Peter B. Camp  
4 Peter B. Camp  
5 Snohomish County Hearing Examiner

## 6 RECONSIDERATION AND APPEAL

7 Subsequent petitions for reconsideration are not allowed. SCC 30.72.065(5) (2013). This is  
8 order merges with the amended decision and is not separately appealable. Information  
9 regarding appealing the August 8, 2022 amended decision, including the deadline, is at the  
10 foot of the amended decision.

11 Staff Distribution: Stacey Abbott

7-26-2021

12:05 pm

Snohomish Planning Dept.  
c/o Stacy Abbott and planning dept.  
3000 Rockefeller Ave.  
Everett, Washington.  
425-885-7877  
Staceyabbott@sno.co.org

*Stacy Abbott*

RE; Project # 21-107654-BSP

Cathcart Crossing, Developer Pacific Ridge.  
286 Townhomes  
Possible, Urban Park & Ride.



**Concerned Citizens of Clearview**

Request to become Party of Record to the  
Above Project known as Cathcart Crossing.

Request a meeting with county to describe said  
Project to community and the impacts to it.

#1 Improperly notified about project to surrounding  
Properties. Sign Postings FAILED to adequately be seen.  
Postings were small and unable to stop on Cathcart way  
To be able to be read. The same applies to Highway 9.  
Where a Huge sign should have been visible. Speeds are  
Too high to see small sign.

#2 Zoned as Urban Industrial. Inappropriately zoned for  
Urban Housing. Title 30 UDC. States to not impact surrounding  
Properties. Clearly the project will impact our roads, schools and  
Our Rural Community.

#3 RCW 36.70 a . Urban developments must remain contiguous.  
This is not the case with these proposals. 83<sup>rd</sup> Ave SE. lies in between  
A urban development, It is zoned RURAL. The Growth management  
Act specifically identifies this as uncontained urban sprawl. The act prevents  
Counties from not following the proper CONTIGUOUS lines between Rural and  
Urban properties.

#4 Snohomish county 30. 21. 025. Intent of Zones. Clearly (T) Zones are not  
Listed in Urban Industrial allowances.

All Signees below Request to become Party of Record to Project # 21- 107654- BSP  
Known as Cathcart Crossing and any other projects on property.

Printed Name:                      Signature:                      Phone#                      Address:

Project # 21 - 107654- BSP, Cathcart Crossing.  
 Concerned Citizens of Clearview. Party of Record Request.

Printed Name: Signature: Phone# Address:

- 1 Janet Miller Janet Miller 425-232-7169 7904-152nd St SE Clearview
- 2 Austin Lynn Miller Austin Miller 425-343-2609 7904-152nd St SE Clearview
- 3 Vanessa Lopez Vanessa Lopez 425-286-3103 8010 152nd St SE Snohomish WA 98296
- 4 Heather Cook Heather Cook 425-776-9721 14929 83rd Ave SE 98296
- 5 Daniel Garvin Daniel Garvin 425-971-9374 15011 83rd Ave SE Snohomish WA 98296
- 6 Phyllis Hopkins Phyllis Hopkins 425/471-0265 8408 152nd St SE Snohomish WA 98296
- 7 M. Joan Bjornson M. Joan Bjornson 360-668-2510 8531-152nd St SE 98296
- 8 Peter Stepanchenko Peter Stepanchenko 425-3122-6339 8819 152nd St SE 98296
- 9 Ronald Jeffs Ronald Jeffs 425-418-2660 8911 152nd St SE 98296
- 10 Wendy S. Jeffs Wendy S. Jeffs 206-979-7098 8911-152nd St SE 98296
- 11 David Green David Green 425-231-9531 8818 152nd St SE Snohomish WA 98296
- 12 Allie Bayer Allie Bayer 509-641-0600 8528 152nd St SE Snohomish WA 98296
- 13 Morgan Bauer Morgan Bauer 425-770-7737 8528 152nd St SE Snohomish WA 98296
- 14 Leona E Allen Leona E Allen (360) 668-2719 7916-152nd St SE 98296

- 15 \_\_\_\_\_
- 16 \_\_\_\_\_
- 17 \_\_\_\_\_
- 18 \_\_\_\_\_
- 19 \_\_\_\_\_
- 20 \_\_\_\_\_
- 21 \_\_\_\_\_

was properly submitted

BEFORE THE COUNCIL  
OF THE COUNTY OF SNOHOMISH

In Re the APPEAL of  KATRINA STEWART and DEBORAH WETZEL,  Appellants,  of the Hearing Examiner Decision for the CATHCART CROSSING Project Application  Applicant: Pacific Ridge–DRH, LLC	Snohomish County File No.: 21-107654 SPA/BSP  DECLARATION OF SERVICE
--	--

I am an employee in the Law Offices of J. Richard Aramburu, PLLC, over eighteen years of age and competent to be a witness herein.

On the date below I e-mailed copies of the APPEAL OF LAND USE DECISION BY KATRINA STEWART AND DEBORAH WETZEL (SCC chap. 30.72.070) and its six attachments to parties of record as shown below<sup>1</sup>:

TO: Hearing Examiner at Hearing.Examiner@co.snohomish.wa.us

CC: kolouskova@jmmlaw.com; JVMirante@drhorton.com; LBS@coredesigninc.com; Abbott,

---

<sup>1</sup>Kelly Wernick (Kelly.M.Werdick@usace.army.mil) and Steven Tease of Snohomish County (Steven.Tease@co.snohomish.wa.us) have been removed from service per their requests.

Stacey <stacey.abbott@co.snohomish.wa.us>; Dragoo, Paul  
<Paul.Dragoo@co.snohomish.wa.us>; Swaim, Emily  
<Emily.Swaim@co.snohomish.wa.us>; Irwin, David  
<David.Irwin@co.snohomish.wa.us>; Burke, Lori <Lori.Burke@snoco.org>; Dobesh,  
Michael <Michael.Dobesh@snoco.org>; Blair, Randy  
<Randy.Blair@co.snohomish.wa.us>; McCormick, Douglas  
<DMcCormick@co.snohomish.wa.us>; ssmith@slwsd.com; jbowen@snofire7.org;  
Laufmann, Tom <tom.laufmann@sno.wednet.edu>; MLWicklund@snoPUD.com;  
todddgray@tulaliptribes-nsn.gov; Alm, Peter <almp@wsdot.wa.gov>;  
doug.gresham@ecy.wa.gov; nmmdonovan@gmail.com; Craig-n-Jodie@msn.com;  
debbieleewetzel@gmail.com; lgn899a@gmail.com; cbandml@yahoo.com;  
mlb\_1943@yahoo.com; mac32691@comcast.net; robt6781@aol.com;  
clearviewcottageinc@msn.com; toddntaylorhealey@gmail.com; statcook2@comcast.net;  
laron@campglover.com; mkaytucker@aol.com; Gary Brandstetter  
<marshlandfloodcontrol@gmail.com>; genick@tulaliptribes-nsn.gov; rjeffs5@msn.com;  
peter\_step@comcast.net; dangarvin58@msn.com; hilltop.locust@frontier.com;  
tstewart@nsuch.com; Rick Aramburu <Rick@aramburulaw.com>;  
carol@aramburulaw.com; dingler@jmmklaw.com

See also the August 22, 2022 declaration of service by Debbie Wetzel for hand-delivery to  
the following parties of record:

Janet Miller 7904 152nd St. SE, Snohomish, WA 98296  
Austin Miller 7904 152nd St. SE, Snohomish, WA 98296  
Vanessa Lopez 8010 152nd St. SE, Snohomish, WA 98296  
Phyllis Hopkins 8408 152nd St. SE, Snohomish, WA 98296  
M. Joan Bjornson 8531 152nd St. SE, Snohomish, WA 98296  
David Green 8818 152nd St. SE, Snohomish, WA 98296  
Morgan Gower 8528 152nd St. SE, Snohomish, WA 98296  
Leona Allen 7916 152nd St. SE, Snohomish, WA 98296  
Allie Boyer 8528 152<sup>nd</sup> St SE, Snohomish WA 98296

I declare under penalty of perjury under the laws of the State of Washington that the  
foregoing is true and correct to the best of my knowledge and belief.

Respectfully submitted this 22<sup>nd</sup> day of August, 2022.

Law Offices of J. Richard Aramburu, PLLC

/s/  
\_\_\_\_\_  
Carol Cohoe, Legal Assistant



**BEFORE THE COUNCIL  
OF THE COUNTY OF SNOHOMISH**

In Re the APPEAL of	)
	)
KATRINA STEWART AND	) SNOHOMISH COUNTY FILE
DEBORAH WETZEL	) NO. 21-107654 SPA/BSP
	)
Appellants,	) DECLARATION OF SERVICE
	)
Of the Hearing Examiner Decision for	)
The CATHCART CROSSING Project	)
Application	)
	)
Applicant: Pacific Ridge-DRH, LLC	)
_____	)

Deborah L. Wetzel certifies and declares as follows:

On August 22, 2022, I hand-delivered a copy of the APPEAL OF LAND USE DECISION BY KATRINA STEWART AND DEBORAH WETZEL, which is filed concurrently with this declaration and also paid the \$500.00 appeal fee.

I also hand-delivered a copy to the following parties of record:

Austin & Lynn [sic] Miller

Janet Miller

M. Joan Bjornson

\*Vanessa Lopez

\*Phyllis Hopkins

\*David Green

\*Morgan Glover

\*Leona Allen

\* Allie Boyer

\*The current list received from the Hearing Examiner's office provided on August 22, 2022 omitted these names as parties of record.

I certify and declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 22nd day of August, 2022 in Snohomish County, Washington.

  
Deborah L. Wetzel

9715 162<sup>nd</sup> St. SE Snohomish, WA 98296