

II. Examiner's Decision

[AA.2](#) Decision of the Snohomish County Hearing Examiner dated July 7, 2022

[AA.3](#) Amended Decision of the Snohomish County Hearing Examiner dated August 8, 2022

Hearing Examiner List of Exhibits (*Exhibits available upon request at contact.council@snoco.org*)

Hearing Examiner Parties-of-Record



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

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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.¹ 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

¹ 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.² See
30 *State v. Margensen*, 148 Wn. App. 81, 91, 197 P.3d 715, 719 (2008), rev. denied 166 Wn.2d 1007
31 (2009).

² 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.³
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 emails⁴ 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.⁵ 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.⁶

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.,

³ Ex. I.19.

⁴ Exhibits Z.1 through Z.6.

⁵ Ex. H.13. *In Re Remington East*, 20-118949 PSD.

⁶ 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.⁷ 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).⁸ 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.⁹

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.

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

⁸ Ex. Z.6.

⁹ See discussion at page 5 above.

1 The movant incorporated her earlier request to continue the hearing.¹⁰ 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 Act¹¹ and Migratory Bird Treaty Act;¹² (5) disagreement with
7 characterization of wetlands; and (6) Tulalip Tribes allegedly have “strong concerns” about this
8 project.¹³ 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.¹⁴ 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.

¹⁰ Ex. I.13.

¹¹ 16 U.S.C. §668 (1964) *et seq.*

¹² 16 U.S.C. §703 (2004) *et seq.*

¹³ Ex. I.13.

¹⁴ 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.¹⁵ 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,¹⁶ and
15 concurrency and traffic impact fee determinations.¹⁷

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.¹⁸ PDS
23 recommended conditional approval of Planned Community Business preliminary site plan, binding
24 site plan, and Urban Residential Development Standards administrative site plan.

¹⁵ Ex. L.2.

¹⁶ Ex. E.1.

¹⁷ Exhibits F.1 through F.4.

¹⁸ 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;¹⁹ alleged conflict with laws such as the Growth Management Act;²⁰ traffic;²¹ insufficient notice to the public;²² impact on schools;²³ alleged concerns of regional fire authority and concern about lack of timely emergency response due to traffic;²⁴ impacts on critical areas such as wetlands;²⁵ impact on rural character;²⁶ unnecessary development;²⁷ increased theft, drug use, and light pollution from a future park and ride;²⁸ and potential impact on eagles, owls, and other birds.²⁹

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

¹⁹ Exhibits I.10, I.15, and I.17. Testimony of Gray.

²⁰ Exhibits I.5, I.11, I.15, and I.16.

²¹ Exhibits I.1, I.4, I.6, I.9, and I.19. Testimony of Gunderson.

²² Exhibits I.11 and I.15.

²³ Exhibits I.4 and I.19.

²⁴ Ex. I.5. Testimony of Gray.

²⁵ Exhibits I.8, I.15, and I.17. Testimony of Gray and Gunderson.

²⁶ Ex. I.3.

²⁷ Ex. I.15.

²⁸ Ex. I.18.

²⁹ 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.³⁰

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.³¹

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.³² Second, impacts to wetlands and buffers were minimized and

³⁰ See discussion below at page 21.

³¹ See discussion below at page 24.

³² See, e.g., wetland evaluation rating forms attached to Ex. C.5.

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1 mitigated as required by county code.³³ 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.³⁴ 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.³⁵ Members of the public asked for an environmental impact statement.³⁶ 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.

³³ See discussion below at page 14.

³⁴ Ex. C.5, PDF p. 23.

³⁵ Ex. E.1.

³⁶ 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.

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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.³⁷ 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

³⁷ Approximately 6,270 sq. ft. will be affected by grading.

soils that generally have poor infiltration ability.³⁸ 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. ³⁹
2	Stormwater Pollution Prevention Plan (SWPPP)	Pacific Ridge submitted an adequate SWPPP. ⁴⁰
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

³⁸ Ex. C.3, p. 13. (PDF p. 20).

³⁹ Exhibits B.3 and C.2.

⁴⁰ 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. ⁴¹

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.⁴²

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.⁴³ 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.

⁴¹ Ex. C.2, §9.

⁴² SCC 30.23A.050(3) (2017).

⁴³ 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 plan⁴⁴ and tree canopy calculations⁴⁵ comply with chap. 30.25 SCC.
3 County code requires a projected tree canopy of at least 202,543 sq. ft. in 20 years.⁴⁶ 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.⁴⁷

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.⁴⁸

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;

⁴⁴ Ex. B.5.

⁴⁵ Ex. C.9.

⁴⁶ 1,350,287 sq. ft. x 15% = 202,543 sq. ft.

⁴⁷ Extensions may be granted if allowed by SCC 30.70.140 (2017).

⁴⁸ 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."⁴⁹ "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.⁵⁰ The proposed

⁴⁹ SCC 30.66B.120(1) (2003).

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

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development will generate more than 50 peak hour trips.⁵¹ 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.”⁵² 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, 2022.⁵³ 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)⁵⁴ 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.⁵⁵ 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).

⁵¹ 202.43 new A.M. peak-hour trips and 225.11 new P.M. peak-hour trips.

⁵² 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).

⁵³ SCC 30.66B.160(2)(a).

⁵⁴ 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.

⁵⁵ 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.⁵⁶ The road system impact fee will be the product of the average daily trips (ADT)⁵⁷ 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.

	Townhouse ADT (Residential)	
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

	Self-Storage ADT (Commercial)	
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

	Fast-Food Restaurant⁵⁸ ADT (Commercial)	
1	Square footage	3,000

⁵⁶ SCC 30.66B.310 (2003).

⁵⁷ ADT is calculated using the Institute of Traffic Engineers' Trip Generation Report.

⁵⁸ 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 ⁵⁹	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 policy⁶⁰ 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).⁶¹

⁵⁹ 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.

⁶⁰ SCC 30.61.230(9) (2012).

⁶¹ $225.11 \text{ P.M. peak-hour trips} \times 40\% \times \$3,900/\text{PM peak-hour trip} = \$351,171.60 \div 286 \text{ dwelling units} = \$1,227.87/\text{dwelling unit}.$

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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 (87th Ave. SE) will intersect Cathcart Way at a signalized intersection and the east/west leg (148th St. SE) will intersect State Route 9. Access to State Route 9 will be limited to right in from southbound State Route 9 to 148th St. SE and right out from 148th 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 (87th Ave. SE) will run from Cathcart Way south, then turn east to link to State Route 9 (148th 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 148th St. SE needs 65 feet of right of way at the west end near the elbow to 87th 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 148th 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 148th 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 148th 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.⁶² Drive aisles will provide internal vehicular circulation and will be designated as fire lanes.

⁶² 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 87th 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;⁶³
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 87th Ave. SE and
9 Cathcart Way to the intersection of State Route 9 and Cathcart Way.⁶⁴

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.⁶⁵ 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 87th Ave. SE and 148th 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 87th Ave
28 SE, 148th Street SE, and Cathcart Way to enable the county to determine the appropriate amount.

⁶³ The width varies from approximately 29 feet to 33 feet.

⁶⁴ The width includes a shared use path.

⁶⁵ 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.⁶⁶ 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.⁶⁷

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.⁶⁸

⁶⁶ SCC 30.66C.100 (2014).

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

⁶⁸ 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 9.⁶⁹

3. Utilities

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

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,⁷² and Urban Residential Design Standards administrative site plans where, as here, the applicant requested consolidated review of the preliminary plan and administrative site plan.⁷³
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.

⁶⁹ Ex. H.3.

⁷⁰ Ex. H.1.

⁷¹ Ex. H.2.

⁷² SCC 30.41D.020 (2020).

⁷³ 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,⁷⁴ binding site plan,⁷⁵ and Urban Residential Standards administrative site plan⁷⁶ 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 plan⁷⁷ 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).

⁷⁴ Ex. B.1 (received by PDS on November 30, 2021).

⁷⁵ Ex. B.4 (received by PDS on April 15, 2022).

⁷⁶ Ex. B.2 (received by PDS on April 15, 2022).

⁷⁷ 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:⁷⁸

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

⁷⁸ 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 148th 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 (87th 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 148th
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 (148th 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:⁷⁹

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 87th Ave SE shall have been completed to the satisfaction of Snohomish County.

62. The road establishment and construction of 148th Street SE and 87th 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 148th 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, 87th Ave SE, and 148th 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 148th Street SE across from the future park and ride shall have been installed to the satisfaction of Snohomish County.

⁷⁹ 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, 87th Ave SE and 148th Street SE adjoining the site.

70. A new signal shall have been installed at the intersection of 87th 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 148th 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 7th day of July, 2022.



Peter B. Camp
Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

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

Reconsideration

Any party of record may request reconsideration by the Hearing Examiner by filing a petition for reconsideration no later than July 18, 2022.⁸⁰ A petition for reconsideration must be filed in writing with the Office of Hearings Administration, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington. The petition can be delivered in person, by mail to Office of Hearings Administration, M/S 405, 3000 Rockefeller Avenue, Everett WA 98201, or by email to Hearing.Examiner@snoco.org. Irrespective of method of delivery, a petition for reconsideration is deemed filed when it is delivered by the close of business on the deadline day or if the email is timestamped on or before the deadline. There is no fee for filing a petition for reconsideration. The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing. SCC 30.72.065.

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

⁸⁰ 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, 2nd 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. 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

www.snoco.org

Peter Camp

Hearing Examiner

AMENDED DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

I. SUMMARY

DATE OF ORIGINAL DECISION:	July 7, 2022
DATE OF AMENDED DECISION:	August 8, 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

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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.¹ 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

¹ 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.² See
30 *State v. Margensen*, 148 Wn. App. 81, 91, 197 P.3d 715, 719 (2008), rev. denied 166 Wn.2d 1007
31 (2009).

² 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.³
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 emails⁴ 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.⁵ 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.⁶

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.,

³ Ex. I.19.

⁴ Exhibits Z.1 through Z.6.

⁵ Ex. H.13. *In Re Remington East*, 20-118949 PSD.

⁶ 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.⁷ 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).⁸ 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.⁹

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.

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

⁸ Ex. Z.6.

⁹ See discussion at page 5 above.

1 The movant incorporated her earlier request to continue the hearing.¹⁰ 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 Act¹¹ and Migratory Bird Treaty Act;¹² (5) disagreement with
7 characterization of wetlands; and (6) Tulalip Tribes allegedly have “strong concerns” about this
8 project.¹³ 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.¹⁴ 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.

¹⁰ Ex. I.13.

¹¹ 16 U.S.C. §668 (1964) *et seq.*

¹² 16 U.S.C. §703 (2004) *et seq.*

¹³ Ex. I.13.

¹⁴ 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.¹⁵ 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,¹⁶ and
15 concurrency and traffic impact fee determinations.¹⁷

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.¹⁸ PDS
23 recommended conditional approval of Planned Community Business preliminary site plan, binding
24 site plan, and Urban Residential Development Standards administrative site plan.

¹⁵ Ex. L.2.

¹⁶ Ex. E.1.

¹⁷ Exhibits F.1 through F.4.

¹⁸ 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;¹⁹ alleged conflict with laws such as the Growth Management Act;²⁰ traffic;²¹ insufficient notice to the public;²² impact on schools;²³ alleged concerns of regional fire authority and concern about lack of timely emergency response due to traffic;²⁴ impacts on critical areas such as wetlands;²⁵ impact on rural character;²⁶ unnecessary development;²⁷ increased theft, drug use, and light pollution from a future park and ride;²⁸ and potential impact on eagles, owls, and other birds.²⁹

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

¹⁹ Exhibits I.10, I.15, and I.17. Testimony of Gray.

²⁰ Exhibits I.5, I.11, I.15, and I.16.

²¹ Exhibits I.1, I.4, I.6, I.9, and I.19. Testimony of Gunderson.

²² Exhibits I.11 and I.15.

²³ Exhibits I.4 and I.19.

²⁴ Ex. I.5. Testimony of Gray.

²⁵ Exhibits I.8, I.15, and I.17. Testimony of Gray and Gunderson.

²⁶ Ex. I.3.

²⁷ Ex. I.15.

²⁸ Ex. I.18.

²⁹ 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.³⁰

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.³¹

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

³⁰ See discussion below at page 21.

³¹ 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.³² Second, impacts to wetlands and buffers were minimized and mitigated as required by county code.³³ 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.³⁴ 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.³⁵ Members of the public asked for an environmental impact statement.³⁶ The Hearing

³² See, e.g., wetland evaluation rating forms attached to Ex. C.5.

³³ See discussion below at page 14.

³⁴ Ex. C.5, PDF p. 23.

³⁵ Ex. E.1.

³⁶ 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.³⁷ 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.

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

³⁷ 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.³⁸ 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. ³⁹
2	Stormwater Pollution Prevention Plan (SWPPP)	Pacific Ridge submitted an adequate SWPPP. ⁴⁰
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

³⁸ Ex. C.3, p. 13. (PDF p. 20).

³⁹ Exhibits B.3 and C.2.

⁴⁰ 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. ⁴¹

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.⁴²

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.⁴³ The proposed open space tracts exceed minimum code requirements for one location and active use.

⁴¹ Ex. C.2, §9.

⁴² SCC 30.23A.050(3) (2017).

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

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

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

5 The proposed landscape plan⁴⁴ and tree canopy calculations⁴⁵ comply with chap. 30.25 SCC.
6 County code requires a projected tree canopy of at least 202,543 sq. ft. in 20 years.⁴⁶ Pacific Ridge
7 proposes to retain 617,382 sq. ft. of existing canopy, satisfying code requirements.

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

9 If construction does not commence within five years, approval of the administrative site plan will
10 expire.⁴⁷

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

12 Approval will be conditioned on the installation underground of all distribution and service lines for
13 water, sewer, electricity, and communication.⁴⁸

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

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

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

19 The Hearing Examiner finds and concludes that the newly created lots function and operate as one
20 site and that the binding site plan and record of survey comply and are consistent with chap.
21 30.41D SCC. The proposal is consistent and can comply with requirements for: noise control in
22 that the uses are residential and minimal noise producing commercial uses (chap. 10.01 SCC),
23 public or private roads, right of way establishment and permits, access, and other applicable road

⁴⁴ Ex. B.5.

⁴⁵ Ex. C.9.

⁴⁶ 1,350,287 sq. ft. x 15% = 202,543 sq. ft.

⁴⁷ Extensions may be granted if allowed by SCC 30.70.140 (2017).

⁴⁸ 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.”⁴⁹ “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.

⁴⁹ 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.⁵⁰ The proposed development will generate more than 50 peak hour trips.⁵¹ 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.”⁵² 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, 2022.⁵³ 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)⁵⁴ 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

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

⁵¹ 202.43 new A.M. peak-hour trips and 225.11 new P.M. peak-hour trips.

⁵² 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).

⁵³ SCC 30.66B.160(2)(a).

⁵⁴ 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.⁵⁵ 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.⁵⁶ The road system impact fee will be the product of the average daily trips (ADT)⁵⁷ 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.

	Townhouse ADT (Residential)	
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

	Self-Storage ADT (Commercial)	
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

⁵⁵ SCC 30.66B.625(1) (2010).

⁵⁶ SCC 30.66B.310 (2003).

⁵⁷ ADT is calculated using the Institute of Traffic Engineers' Trip Generation Report.

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1

	Fast-Food Restaurant⁵⁸ ADT (Commercial)	
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 ⁵⁹	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 policy⁶⁰ 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.

10

⁵⁸ Including drive-through window.

⁵⁹ 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.

⁶⁰ 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).⁶¹

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 (87th Ave.
8 SE) will intersect Cathcart Way at a signalized intersection and the east/west leg (148th 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 148th St. SE and right out from 148th 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 (87th Ave. SE) will run
15 from Cathcart Way south, then turn east to link to State Route 9 (148th 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 148th
17 St. SE needs 65 feet of right of way at the west end near the elbow to 87th 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 148th 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 148th 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 148th St. SE; the additional right
28 of way therefore cannot be credited against the county's impact mitigation fee.

⁶¹ 225.11 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.⁶² 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 87th 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;⁶³
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 87th Ave. SE and
12 Cathcart Way to the intersection of State Route 9 and Cathcart Way.⁶⁴

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.⁶⁵ 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 87th Ave. SE and 148th 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

⁶² 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).

⁶³ The width varies from approximately 29 feet to 33 feet.

⁶⁴ The width includes a shared use path.

⁶⁵ 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 87th Ave
6 SE, 148th 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.⁶⁶ 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.⁶⁷

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

⁶⁶ SCC 30.66C.100 (2014).

⁶⁷ 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.⁶⁸

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 9.⁶⁹

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.⁷⁰ Snohomish County PUD has the capacity to
9 provide electrical service.⁷¹

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,⁷² 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.⁷³
- 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.

⁶⁸ 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.

⁶⁹ Ex. H.3.

⁷⁰ Ex. H.1.

⁷¹ Ex. H.2.

⁷² SCC 30.41D.020 (2020).

⁷³ 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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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.
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,⁷⁴ binding site plan,⁷⁵ and Urban Residential Standards administrative site plan⁷⁶ 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 plan⁷⁷ 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.

⁷⁴ Ex. B.1 (received by PDS on November 30, 2021).

⁷⁵ Ex. B.4 (received by PDS on April 15, 2022).

⁷⁶ Ex. B.2 (received by PDS on April 15, 2022).

⁷⁷ 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:⁷⁸

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

⁷⁸ 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.

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

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).

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

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 148th 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 (87th 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 148th
33 Street SE along the southern property line of the site shall have either been established as right

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

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 (148th 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:⁷⁹

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 87th Ave SE shall have been completed to the satisfaction of Snohomish County.

62. The road establishment and construction of 148th Street SE and 87th 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 148th 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, 87th Ave SE, and 148th 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 148th Street SE across from the future park and ride shall have been installed to the satisfaction of Snohomish County.

⁷⁹ 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.

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

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, 87th Ave SE and 148th Street SE adjoining the site.

70. A new signal shall have been installed at the intersection of 87th 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 148th 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.

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

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 8th 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, 2nd 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.

Cathcart Crossing

21-107654 SPA/BSP

Decision Approving Planned Community Business Preliminary Site Plan, Binding Site Plan, and Urban
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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. 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

Cathcart Crossing

21-107654 SPA/BSP

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

Before the
HEARING EXAMINER
Snohomish County, Washington

LIST OF EXHIBITS & WITNESSES

Applicant: Pacific Ridge – DRH, LLC

Case No.: 21 107654 SPA/BSP

Project Name: Cathcart Crossing

EXHIBITS: Submitted for the June 14, 2022, open record hearing:

A. APPLICATION:

- [A.1](#) Master Permit Application filed April 21, 2022
- [A.2](#) Project Narrative and email clarification from Cornell, William, regarding SCC 30.41D.010
- [A.3](#) 120 Day Waiver
- [A.4](#) Signing Authority and Corporation Information

B. PLANS:

- [B.1](#) PCB Zone Preliminary Site Plan dated received November 30, 2021
- [B.2](#) Urban Residential Design Standards Plan received April 15, 2022
- [B.3](#) Preliminary Civil Drawings, received April 15, 2022
- [B.4](#) Binding Site Plan received April 15, 2022
- [B.5](#) Landscape Plans received April 15, 2022
- [B.6](#) Building elevation received April 15, 2022
- [B.7](#) Traffic Signal and Illumination Design received February 4, 2022

C. REPORTS:

- [C.1](#) Traffic Report received April 20, 2021, and Arterial Analysis received February 4, 2022
- [C.2](#) Targeted Drainage Report, dated April 7, 2021
- [C.3](#) Geotechnical Report and Technical Memorandum received April 19, 2021
- [C.4](#) Conceptual Mitigation Plan revised January 7, 2022
- [C.5](#) Technical Memorandum dated May 7, 2021
- [C.6](#) Supplemental Critical Areas Report and Engineering discussion from Core Design Received February 4, 2022
- [C.7](#) Draft Declaration of Covenants, Conditions, Restrictions and Reservations for Cathcart Crossing received November 30, 2021
- [C.8](#) Stormwater Pollution Prevention Plan received February 4, 2022
- [C.9](#) Tree Canopy Calculation Sheet received April 15, 2022
- [C.10](#) Conceptual Mitigation Plan dated February 14, 2022

D. PROPERTY:

- [D.1](#) Ownership – Zoning Map
- [D.2](#) Aerial Map

E. ENVIRONMENTAL:

- [E.1](#) Determination of Nonsignificance with Environmental Checklist

Before the

HEARING EXAMINER

Snohomish County, Washington

LIST OF EXHIBITS & WITNESSES

Applicant: John Mirante

Case No.: 21 107654 SPA/BSP

Project Name: Cathcart Crossing

EXHIBITS: Submitted for the June 14, 2022 open record hearing:

F. NOTICE AND ROUTING DOCUMENTS:

- [F.1](#) Affidavit of Mailing – Notice of Open Record Hearing, Threshold Determination, and Concurrency and Traffic Impact Fee Determinations
- [F.2](#) Affidavit of Mailing – Issued Determination of Nonsignificance
- [F.3](#) Affidavit of Notification (publication) – Notice of Open Record Hearing, Threshold Determination, and Concurrency and Traffic Impact Fee Determinations
- [F.4](#) Posting Verification – Notice of Open Record Hearing, Threshold Determination, and Concurrency and Traffic Impact Fee Determinations

G. OTHER SUBMITTAL ITEMS:

- [G.1](#) EDDS Deviation Request and Approval 21-107654 WMD
- [G.2](#) Applicant's Hearing Presentation, received June 14, 2022
- [G.3](#) Applicant's Request for Consolidated Review, June 13, 2022

H. CITY / AGENCY COMMENTS:

- [H.1](#) Silver Lake Water and Sewer Availability Certificate date June 17, 2022
- [H.2](#) Snohomish P.U.D. comments dated May 14, 2021
- [H.3](#) Snohomish School Districts Preliminary Certification dated April 27, 2021
- [H.4](#) Snohomish Regional Fire and Rescue comments dated April 26, 2021
- [H.5](#) Washington State Department of Transportation comments dated April 12, 2022
- [H.6](#) U.S. Army Corps of Engineers comments dated February 15, 2022
- [H.7](#) Department of Ecology comment letter dated May 17, 2021
- [H.8](#) City of Mill Creek comments dated August 4, 2021
- [H.9](#) Tulalip Tribes, email from Enick, Gene dated May 5, 2021
- [H.10](#) Tulalip Tribes, email from Gray, Todd dated May 19, 2021
- [H.11](#) Silver Lake Water and Sewer letter regarding critical area buffer impacts dated September 30, 2021
- [H.12](#) Marshland Flood Control District, Settlement Agreement, June 13, 2022
- [H.13](#) Marshland Flood Control District, Statement to Hearing Examiner, June 13, 2022
- [H.14](#) Marshland Response to Applicant RE H.13, June 14, 2022
- [H.15](#) Army Corps of Engineers email RE Tulalip Tribe Comments, March 8, 2022
- [H.16](#) Army Corps of Engineers email RE Tulalip Tribe Comments, May 9, 2022

I. PUBLIC COMMENTS:

- [I.1](#) Email from Burns, Carter, sent May 25, 2022
- [I.2](#) Email from Billing, Mike, sent June 2, 2021
- [I.3](#) Email from Burns, Mary Lou, sent May 16, 2022
- [I.4](#) Email from Glover, Laron, sent May 25, 2022,
- [I.5](#) Emails from Gray, Linda sent October 29, 2021, and November 10, 2021
- [I.6](#) Email from Harwood, Craig, sent October 29, 2021
- [I.7](#) Letter from Marshland Flood Control dated April 30, 2021
- [I.8](#) Email from Monte Vista HOA, Healey, Taylor, sent June 22, 2021
- [I.9](#) Email from Tucker, Rob, sent September 15, 2021

Before the

HEARING EXAMINER

Snohomish County, Washington

LIST OF EXHIBITS & WITNESSES

Applicant: John Mirante

Case No.: 21 107654 SPA/BSP

Project Name: Cathcart Crossing

- [I.10](#) Emails from Wetzel, Debbie, sent September 17, 2021, November 22, 2021, two emails May 23, 2022, and May 31, 2022
- [I.11](#) Petition from Concerned Citizens of Clearview received July 26, 2021
- [I.12](#) Deborah Wetzel Submittal - Garden Creek Health Report, June 14, 2022
- [I.13](#) Deborah Wetzel Submittal - Hearing Comments, June 14, 2022
- [I.14](#) Deborah Wetzel Email, May 31, 2022 – June 13, 2022
- [I.15](#) Linda Gray Email, June 14, 2022
- [I.16](#) Linda Gray Email, June 14, 2022
- [I.17](#) Katrina Stewart Email, June 14, 2022
- [I.18](#) Nicole Donovan Email, June 14, 2022
- [I.19](#) Laron Glover Email, June 14, 2022

K. RESPONSE TO AGENCY / PUBLIC COMMENTS:

- [K.1](#) Applicant response to Tulalip Tribes comments from Soundview Consultants dated February 15, 2022
- [K.2](#) Applicant response to public comments dated November 12, 2021
- [K.3](#) Applicant Response to H.13, Marshland Statement, received June 13, 2022
- [K.4](#) Applicant Submittal, Email from Marshland, dated June 2, 2022

L. STAFF RECOMMENDATION - Department of Planning and Development Services

- [L.1](#) Staff Recommendation
- [L.2](#) Updated Staff Recommendation, June 14, 2022

M. RECONSIDERATION

- [M.1](#) PDS Request for Reconsideration, July 11, 2022
- [M.2](#) PDS Request for Reconsideration Affidavit
- [M.3](#) Wetzel Petition for Reconsideration (Exhibits to Petition below, Ex.1-9)
 - [M.3 Ex.1](#) Cathcart South PSA
 - [M.3 Ex.2](#) Motion 22-259
 - [M.3 Ex.3](#) Wetzel, Dobesh Email
 - [M.3 Ex.4](#) Gibson Traffic, Lincoln, Irwin Email
 - [M.3 Ex.5](#) Wetzel, Phillips Email
 - [M.3 Ex.6](#) Wetzel, Abbott Email
 - [M.3 Ex.7](#) Cathcart Property FAQ
 - [M.3 Ex.8](#) Council Motion, Proposed Use
 - [M.3 Ex.9](#) Transcript
- [M.4](#) Miller Petition for Reconsideration
- [M.5](#) Stewart Declaration
- [M.6](#) Gundersen Declaration
- [M.7](#) Stewart Response to Order Regarding Reconsideration, August 10, 2022
- [M.8](#) M. Joan Bjornson Declaration, August 10, 2022
- [M.9](#) Ron Jeffs Declaration, August 11, 2022
- [M.10](#) Wendy Jeffs Declaration, August 11, 2022
- [M.11](#) Stewart Motion to Accept Late Filed Motion for Reconsideration and Order Renoticing SEPA Procedures and Public Hearing, August 15, 2022

Before the

HEARING EXAMINER

Snohomish County, Washington

LIST OF EXHIBITS & WITNESSES

Applicant: John Mirante

Case No.: 21 107654 SPA/BSP

Project Name: Cathcart Crossing

- [M.12](#) Stewart Motion Attachment 1, Stewart Motion For Reconsideration, July 29, 2022
- [M.13](#) Stewart Motion Attachment 2, Order Re Reconsideration, August 9, 2022
- [M.14](#) Stewart Motion Attachment 3, Declarations of Bjornson, Jeffs, Jeffs, August 10-11, 2022
- [M.15](#) Stewart Motion Attachment 4, Declarations of Green, Hopkins, August 14, 2022
- [M.16](#) Stewart Motion Attachment 5, Abbott-Arnett Emails Re Parties, June 10, 2022
- [M.17](#) Nicole Donovan Declaration, August 15, 2022
- [M.18](#) Declaration of Service, Aramburu: Stewart Motion to Accept Late Filed Motion for Reconsideration and Order Renoticing SEPA Procedures and Public Hearing, August 15, 2022
- [M.19](#) Declaration of Service, Wetzel: Stewart Motion to Accept Late Filed Motion for Reconsideration and Order Renoticing SEPA Procedures and Public Hearing, August 15, 2022

N. ORDERS & ADMINISTRATIVE

- [N.1](#) Order Regarding Parties of Record, July 19, 2022
- [N.2](#) Emailed Decision & Reconsideration Documents per Order, July 19, 2022
- [N.3](#) Order Granting & Denying Petitions for Reconsideration, August 8, 2022
- [N.4](#) Order Regarding Reconsideration, August 9, 2022
- [N.5](#) Order Granting Continuance, August 11, 2022
- [N.6](#) Order Denying Further Petitions for Reconsideration and Motion to File Late Reconsideration Petition, August 18, 2022

Z. COMMENTS RECEIVED AFTER RECORD CLOSED – NOT CONSIDERED:

- Z.1 Deborah Wetzel Email, June 14, 2022
- Z.2 Linda Gray Email, June 14, 2022
- Z.3 Deborah Wetzel Email, June 14, 2022
- Z.4 Deborah Wetzel Email, June 15, 2022
- Z.5 Deborah Wetzel Email, June 15, 2022
- Z.6 Deborah Wetzel Reopen Hearing Request, June 27, 2022

WITNESSES

Application team:

Lindsey Solario, Core Design, Inc.
Matt Decaro, Soundview Consultants
Brad Lincoln, P.E., Kimley-Horn
Henry Wright, P.E., Earth Solutions NW
Matt Stefannson, P.E., Core Design, Inc.
Duana Kolouskova, Counsel for DR Horton
Travis McDanold, Architect for Wattenbarger Architects
John Mirante, DR Horton

County Staff:

Stacey Abbott, PDS
Lori Burke, PDS

Before the
HEARING EXAMINER
Snohomish County, Washington
LIST OF EXHIBITS & WITNESSES
Applicant: John Mirante
Case No.: 21 107654 SPA/BSP
Project Name: Cathcart Crossing

David Irwin, PDS
Emily Swaim, PDS

Public Comment:

Linda Gray
Deborah Wetzel
Mickie Gundersen

RECORDING

https://zoom.us/rec/share/G4Yqw6UvSy6Bfo-Jkc1xdjUizheNcc3QD6gHceV5NiaTAPthbWHX4vGXt_UUYEgZ.HDHhz89EaybXJR3L

DECISION ISSUED 7/7/22

AMENDED DECISION ISSUED 8/8/22

Organization	Name	Address	City	State	Zip	
POR/AGENCY REGISTER	21-107654-SPA/BSP	Cathcart Crossing	Hearing: June 14, 2022 at 2:00 p.m.			
PACIFIC RIDGE-DRH, LLC	JOHN MIRANTE	17921 BOTHELL-EVRT HWY, STE 100	BOTHELL	WA	98012	JVMirante@drhorton.com
CORE DESIGN INC.	LINSEY SOLORIO	12100 NE 195TH STREET STE. 300	BOTHELL	WA	98011	LBS@coredesigninc.com
PACIFIC RIDGE COUNSEL	DUANA KOLOUSKOVA					kolouskova@jmmklaw.com
PACIFIC RIDGE COUNSEL	MARY JOY DINGLER					dingler@jmmklaw.com
SNO CO PROP MGMT		3000 ROCKEFELLER AVE #404	EVERETT	WA	98201	Interoffice Mail
SNO CO PLAN & DEV/LAND USE	STACEY ABBOTT	3000 ROCKEFELLER AVE #604	EVERETT	WA	98201	stacey.abbott@snoco.org
SNO CO PLAN & DEV/LAND USE	Paul Dragoo	3000 ROCKEFELLER AVE #604	EVERETT	WA	98201	paul.dragoo@snoco.org
SNO CO PLAN & DEV/LAND USE	Emily Swaim	3000 ROCKEFELLER AVE #604	EVERETT	WA	98201	Emily.swaim@snoco.org
SNO CO PLAN & DEV/LAND USE	David Irwin	3000 ROCKEFELLER AVE #604	EVERETT	WA	98201	David.irwin@snoco.org
SNO CO PLAN & DEV/LAND USE	Lori Burke	3000 ROCKEFELLER AVE #604	EVERETT	WA	98201	Lori.burke@snoco.org
SNO CO PLAN & DEV/LAND USE	Michael Dobesh	3000 ROCKEFELLER AVE #604	EVERETT	WA	98201	michael.dobesh@snoco.org
	Randy Blair	3000 ROCKEFELLER AVE #604	EVERETT	WA	98201	randy.blair@snoco.org
SNO CO DEPT OF PUBLIC WORKS	DOUG MCCORMICK	3000 ROCKEFELLER AVE #607	EVERETT	WA	98201	DMcCormick@co.snohomish.wa.us
SILVER LAKE WATER & SEWER DIST.	SCOTT SMITH	15205-41ST AVENUE SE	BOTHELL	WA	98012	ssmith@slwsd.com
SNOHOMISH REGIONAL FIRE & RESCUE	JASON BOWEN, DEPUTY FM	163 VILLAGE COURT	MONROE	WA	98272	jbowen@snofire7.org
SNOHOMISH SD #201	TOM LAUFMANN	1604 AVENUE D	SNOHOMISH	WA	98290	tom.laufmann@sno.wednet.edu
SNO CO PUD NO 1	MARK FLURY	email only				MLWicklund@snoPUD.com
TULALIP TRIBES - ENVIRON	TODD GRAY	6406 Marine Drive	TULALIP	WA	98271	toddgray@tulaliptribes-nsn.gov
WA STATE OF TRANSPORTATION	PETER ALM	PO BOX 330310	SEATTLE	WA	98133-9710	almp@wsdot.wa.gov
US ARMY CORPS OF ENGINEERS	KELLY M WERDICK	email only				Kelly.M.Werdick@usace.army.mil
WS DOE	DOUG GRESHAM	PO BOX 47703	OLYMPIA	WA	98504-7703	doug.gresham@ecy.wa.gov
PARTIES OF RECORD	Nicole & Jesse Donovan	none given				nmmdonovan@gmail.com
	Craig Harwood	19807 98th Ave SE	Snohomish	WA	98296	Craig-n-Jodie@msn.com
	Deborah L Wetzal	none given				debbieleewetzel@gmail.com
	Linda Gray	22629 78th Ave SE	Woodinville	WA	98072	lgn899a@gmail.com
	Carter Burns	none given				cbandml@yahoo.com
	Mary Lou Burns	none given				mlb_1943@yahoo.com
	MC Billing	none given				mac32691@comcast.net
	Rob Tucker	none given				robt6781@aol.com
	Carol Foss	none given				clearviewcottageinc@msn.com
Monte Vista HOA	Taylor Healey	none given				toddntaylorhealey@gmail.com
	Austin & Lynn Miller	7905 152nd St SE	Snohomish	WA	98296	US Mail
	Janet Miller	7904 152nd St SE	Snohomish	WA	98296	US Mail
	Heather Cook	none given				statcook2@comcast.net
	Laron Glover	none given				laron@campglover.com
	Mary Tucker	none given				mkaytucker@aol.com
Marshland Flood Control Dist.	Gary W Brandstetter	PO Box 85	Snohomish	WA	98291	marshlandfloodcontrol@gmail.com
TULALIP TRIBES-CULTURAL	Gene Enick	6419 23rd Avenue N.E.	Tulalip	WA	98271	genick@tulaliptribes-nsn.gov
	Ronald Jeffs					rjeffs5@msn.com
	Peter Stepanchenko					peter_step@comcast.net
	Daniel Garvin	15011 83rd AVE SE	Snohomish	WA	98271	dangarvin58@msn.com
Hilltop Locust Community Group	Mickie Gundersen					hilltop.locust@frontier.com
	Katrina Stewart					tstewart@nsuch.com
	M. Joan Bjornson	8531 152nd ST SE	Snohomish	WA	98271	US Mail
	Vanessa Lopez	8010 152nd ST SE	Snohomish	WA	98271	none given
	Phyllis Hopkins	8408 152nd ST SE	Snohomish	WA	98271	none given
	Wendy Jeffs					same as Ron Jeffs
	David Green	8818 152nd ST SE	Snohomish	WA	98271	none given
	Allie Boyer					asked to be removed from this list
	Morgan Glover	8528 152nd ST SE	Snohomish	WA	98271	none given
	Leona E Allen	7916 152nd ST SE	Snohomish	WA	98271	none given

added per req. 8/9/22

added per req. 8/9/22

requested decision 7-5-22

Asked to be removed 8/9/22

Discovered these omissions 7/18/22-AC

Called 7/18, asked to be included
HE Clerk note: These parties had been added by clerk mistake. When the mistake was discovered, they were stricken from the POR list.
SCC 30.91P.110