DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: October 31, 2008

PLAT/PROJECT NAME: ***HERITAGE HAGEN I***

APPLICANT/
LANDOWNER: Bennett Hagen Development LLC

FILE NO.: 06-103099 SD

TYPE OF REQUEST: **REZONE** from Rural Conservation (RC) to Residential-7200 (R-7200) with concurrent 31-lot **SUBDIVISION** utilizing lot size averaging

DECISION (SUMMARY): **APPROVAL WITH PRECONDITION and CONDITIONS**

BASIC INFORMATION

GENERAL LOCATION: Located at the north end of 67th Ave. SE

Acreage:	7.16	**Avg. Lot Area:**	7,935 square feet	**Gross Density:**	4.33 du/ac
Lots:	31	**Smallest Lot Area:**	3,866 square feet	**Net Density:**	8.70 du/ac

Current Zoning: RC **Proposed Zoning:** R-7200

COMPREHENSIVE PLAN DESIGNATION:
General Policy Plan Designation: Urban Low Density Residential (4-6 du/ac)

UTILITIES:
Water: Cross Valley Water District
Sewer: Silver Lake Water and Sewer District
SCHOOL DISTRICT: Snohomish School District No. 201

FIRE DISTRICTS: 1 and 4

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

The applicant filed the Master Application on March 26, 2006. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. Exhibit 21 (Affidavit of Mailing); Exhibit 22 (Affidavit of Notification by Publication); Exhibit 23 (Posting Verification).

A SEPA determination was made on July 11, 2007. (Exhibit 20) No appeal was filed.

The Examiner held an open record hearing on October 10, 2007 and on June 11, 24, and 30, 2008. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

NOTE: The oral transcript is hereby made a part of the record in this matter. For a full and complete record, a verbatim recording of the hearings is available in the Office of the Hearing Examiner.

FINDINGS OF FACT

Based on all of the evidence of record, the following Findings of Fact are entered.

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.

2. Summary of Proposal:
Through five separate applications, the applicant proposes a rezone from RC (R-2.3 acres) to R-7200 and subdivide a total area of 46.09 acres. Heritage Hagen 1 (Hagen 1) is 31-lot subdivision of 7.16 acres utilizing lot size averaging (LSA) and concurrent rezone from RC to R-7200. The proposed single-family residential lots range in size from 3866 square feet to 7935 square feet.

   The Examiner issued an order remanding the projects on multiple issues, including lack of adequate critical areas analysis, lack of geotechnical analysis, and other miscellaneous issues. The order stated the following:

   > Pursuant to the Examiner's authority under SCC 30.72.060 and 2.02.155(2), the rezone and application for preliminary subdivision approval is hereby REMANDED to the Department of Planning and Development Services for further processing consistent with this order. The Examiner requests an additional written report addressing the remanded items in this order.

   On March 24, 2008, the Examiner issued an order that called for a new hearing, based on the fact that a new issue had been raised in the interim on drainage and new information had arisen on transportation issues, as well as the need for response on the remand issues. A new hearing date of June 11, 2008 was set. The hearing notice was published on April 30, 2008.

For ease of reference and at the Examiner's request, the applicant has provided that set of plans (Exhibits 140 & 141). In order to reduce the size of the files and not create unnecessary redundancy, the one set of plans showing all seven developments are found only in the Hagen 1 file (06 103099).

3. Site Description: The Hagen 1 site is an irregularly U shaped property that is 7.16 acres in size. The site borders 67th Ave. SE on the south and extends in a northerly direction down the hill, where it adjoins the Heritage Paterson 1 development. It then turns to the northwest where it terminates against the Heritage Paterson 2 development. The site slopes downward from the south to north. The site is currently undeveloped. Heritage Paterson 2 borders the site on the west and north, Heritage Hagen 3 borders to the east, Heritage Paterson 1 borders to the northeast and Heritage Hagen 2 borders to the north.

   The five developments as a whole are on a larger hillside that extends from 132nd Street SW to Lowell Larimer Road, known generally as the Lowell Larimer bluff.

4. Adjacent Zoning/Uses: The properties along the south side of Lowell Larimer Road are zoned RC and are acreage parcels ranging from medium to large in size and developed with single-family homes and out buildings. The area to the north of Lowell Larimer Road is zoned Agriculture-10 (Ag-10), designated Riverway Commercial Farmland under the comprehensive plan, in the floodplain, and is made up of large parcels with some agricultural buildings. Properties up the hill to the south are zoned PRD-9600, R-9600 and R-7200 and are made up mostly of developed lots with single-family homes. The plat of Snohomish Cascade Sector 3 (PFN 96-104139 SD) (phases 1 – 8) is made up of 385 residential lots, 80 condominium units, and 80 multi-family dwelling units, and was granted preliminary approval on November 22, 1996. Snohomish Cascade Sector 3 Phase 6 (aka The Highlands), a PRD plat of 153 lots, located up the hill and directly south of the proposed plat, was recorded on January 13, 1999.

5. Public Comment/Issues of Concern: The public issues of concern are in two distinct categories: 1) concern with the connection through to 67th and 68th Avenues SE, resulting in the first alternative road connection between Lowell Larimer Road and 132nd Street SE; and 2) use of a field in the agricultural resource land for a detention pond.

   A. Comments Regarding Road Connection Through Highlands Development
   Numerous comments were received in opposition to the connection through 67th and 68th Ave SE, although not to the project itself. (Exhibits 26-87 and 75-227) The concern was traffic and the connection of Lowell Larimer Road to 67th Ave. SE and 68th Ave. SE in the Highlands development.

   B. Issues Regarding Drainage
   One of the big issues at the re-opened hearing was drainage. The issue was addressed as a part of the remand hearing because the Examiner became aware, through correspondence between Marshland Flood Control District (Marshland), PDS, and the applicant that Marshland claimed it had not received adequate notice of the proposals and that it had concerns about the applicant's proposed method of drainage for the plats.

6. Parks Mitigation: The proposal is within Centennial Park Service Area No. 306 and is subject to Chapter 30.66A SCC, which requires payment of $1,364.22 per each new single-family residential unit, to be paid either prior to plat recording or prior to building permit issuance for each unit. Such payment or contribution of in-kind mitigation is acceptable mitigation for parks and recreation impacts in accordance with county policies.

.

7. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC):

A. Road System Capacity [SCC 30.66B.310]

The impact fee for this proposal is based on the new average daily trips (ADT) generated by 31 new lots at 9.57 ADT/lot. This rate comes from the 7th Edition of the ITE Trip Generation Report (Land Use Code 210). The development will generate 296.67 new ADT and has a road system capacity impact fee of $79,210.89 based on $267/ADT. This impact fee must be proportionally paid prior to obtaining building permits associated with this development.

Trips	Calculations	
ADT	(31 New SFR.) x (9.57 ADT/SFR) =	296.67
AM PHT	(31 New SFR) x (0.75 AM PHT/SFR) =	23.25
PM PHT	(31 New SFR) x (1.01 PM PHT/SFR) =	31.31

The per lot amount is $79,210.89/31 lots = $2,555.19 per lot.

B. Concurrency [SCC 30.66B.120]

The five Hagen subdivisions were each evaluated separately for concurrency purposes. The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and the Department of Public Works (DPW) has made a preliminary determination that the development is concurrent as of May 6, 2006.

A record of developer obligations documenting the concurrency determination will be prepared by DPW in accordance with the provisions of SCC 30.66B.070. The expiration date of the concurrency determination will be six years from May 6, 2006.

The development has been deemed concurrent on the following basis:

Small or Medium-Sized Development in TSA with one or more arterial unit in arrears, SCC 30.66B.160. The subject development is located in TSA D, which, as of the date of submittal, had the following arterial units in arrears; Seattle Hill Road from 132nd St. SE to 35th Ave SE and 35th Ave from Seattle Hill Road to 132nd Street SE. Based on peak-hour trip distributions, the subject development did NOT add three (3) or more peak-hour trips to any of the arterial units in arrears. Pursuant to SCC 30.66B.160(2)(a), the development is determined concurrent. The development generates 23.25 a.m. peak-hour trips and 31.31 p.m. peak-hour trips which is not more than the threshold of 50 peak-hour trips in which case the development would also have to be evaluated under SCC 30.66B.035.

C. Inadequate Road Condition (IRC) [SCC 30.66B.210]

Pursuant to concerns from the neighborhood to the south of the Hagen developments, the DPW conducted an IRC analysis (Exhibit 103) of the roads connecting the Highlands developments to 132nd Street SE (Cathcart Way). The roads studied in the analysis were Snohomish Cascade Drive (0.030 to 0.457 miles), 68th Ave SE, 124th Pl SE & 67th Ave SE (0.457 to 1.341 miles), 69th Dr SE (0.030 to 0.470 miles) and 69th Dr SE (0.470 to 0.985 miles).

The IRC study analyzed the projected traffic impacts from all seven developments i.e. Hagen 1, 2 & 3, Paterson 1 & 2, and Thomas 1 & 2, that would impact the Highlands development.

(Thomas 1 and 2 are also within the same two access roads) The study first factored in 40% of the traffic going through the Highlands and then factored in 100% of the proposed traffic entering and exiting through the Highlands.

The DPW has adopted a standard procedure that is followed when the IRC analysis is conducted that analyzes the following elements pertaining to the road system:

- Accidents
- Average Daily Trips (ADT)
- Sight Distance
- Speed Limit
- Lane Widths
- Level of Service (LOS)
- Pavement Condition
- Right of Way
- Shoulder Widths

In the 100% IRC study, it was assumed that all trips from the equivalent of 239 new dwelling units would be added to the road system heading south through the Highlands Development, i.e., 2287 Average Daily Trips from the new development would travel along 67th Ave SE and to 68th Ave SE. As planned, the five Hagen-Paterson plats under review, together with the adjoining two Thomas plats, contain a total of 211 lots (Exhibits 123, and 127A). Accordingly, the IRC analysis overestimated the number of trips from these projects that would travel into the Highlands development because it assumed more trips than expected from the subdivision, and that no trips would use the northern access to Lowell Larimer Road. Therefore, the analysis was conservative; thereby accounting for some potential regional commuter "cut-through" trips, and still did not result in a finding of Inadequate Road Conditions.

The results of each analysis were that no road segment or road location analyzed, reached the level of inadequacy that would determine it to be an IRC.

DPW found that the subject proposal will not impact any IRC locations identified at this time within TSA D with three or more of its p.m. peak hour trips, nor will it create any. Therefore, DPW will not require mitigation with respect to inadequate road conditions and will not place restrictions to building permit issuance or certificate of occupancy/final inspection.

D. Frontage Improvements [SCC 30.66B.410]

All developments are required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. (SCC 30.66B.410) The improvement standard must be established by the Director of Public Works in accordance with SCC 30.66B.430 (Extent of improvements).

These developments front on 67th Ave SE, a street stubbed to the property by the plat of Snohomish Cascade Sector 3 (the Highlands development). Roadway A meets 67th, and is a subcollector, with a 36-foot width, including two ten-foot travel lanes and two eight-foot parking lanes, as well as a rolled curb and two five-foot sidewalks. Within the Highlands development, both 68th and 67th Avenues have 28 feet of pavement, including rolled curb and five foot

sidewalks along both sides of the roadway i.e. two 10-foot standard travel lanes exist the entire length with the addition of eight feet of parking.

Per the Engineering Design and Development Standards (EDDS) (§ 3-065), the travel lane standards for both residential and sub-collector roads call for two, 10 foot travel lanes. It also calls for 36 feet of right of way for urban streets carrying 1000-3000 ADT and 28 feet for urban streets carrying under 1000 ADT. It also notes that on 28-foot wide streets, parking must be restricted to one side. The table on right-of-way width does state that it may be reduced upon approval by the County Engineer, and it directs the reader to Text of Section 3-03B, which states:

> Wider or narrower right-of-way widths than the standard may be required as determined by the Engineer based on criteria contained in SCC 30.66B.520(2). Right-of-way width must accommodate the road section applicable for the particular road classification, as described further in this chapter. Any change to the applicable road section must be approved by deviation.

EDDS § 3-03(B).

Frontage improvements, beyond the connection to 67th Ave. SE, are not required by the DPW, although no analysis of the director's findings as required by SCC 30.66B.430 has been provided in the record. The Washington State Department of Transportation has required frontage improvements, as addressed below.

E. Access and Circulation (Internal) [SCC 30.66B.420 & .430]

(1) Overview. Under Chapter 30.66B SCC, all developments are required to: (a) provide for access and transportation circulation in accordance with the comprehensive plan and Chapter 30.66B SCC; (b) design and construct access in accordance with EDDS and county code; and (c) improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430.

In addition, and central to this case, all developments that take access via an existing public road for vehicle trips projected to use the road after full occupancy of the development not designed and constructed in accordance with the EDDS, will be required to improve such road to bring it into compliance with the EDDS when the director of the DPW determines it necessary to provide for the safety and the operational efficiency of the road. (SCC 30.66B.430(2))

In a nutshell, one of the main issues in this case is whether off-site improvements are required to 67th Ave and 68th Ave SE. The applicant's and DPW's position is that they are not necessary, because there are still two 10-foot lane widths available and the ADT is not large enough to warrant such improvements.

(2) Access. One access for the plats has been granted by Washington State Department of Transportation (WSDOT) off Lowell Larimer Road. The DPW required the applicant to design the five plats to open a connection between 67th Avenue SE, 68th Avenue SE and Lowell Larimer Road with the approval of the Heritage Paterson 1 and Heritage Hagen 1 & 3 developments. 67th and

68th Avenues SE connect with Snohomish Cascade Drive and eventually to 132nd Street SE. Providing the connection through the new subdivisions will allow for a second access for the plat of Heritage Paterson together with the plats of Heritage Paterson 2, Heritage Hagen 1, Heritage Hagen 2, Heritage Hagen 3, Heritage Thomas 1, and Heritage Thomas 2. The connection will also provide a second connection for approximately 460 units in the plats of The Highlands (Snohomish Cascade Sector 3 Phase 6), Snohomish Cascade Sector 3 Phase 1, Snohomish Cascade Sector 3 Phase 2 and Snohomish Cascade Phase 4.

Applicant has stated that the WSDOT would not grant a second access to Lowell Larimer; however, testimony indicated that applicant would have to apply for a deviation and had not attempted to do so.

Approval of this plat in its present form along with the other four subdivisions will establish a connection between 132nd Street SE and Lowell Larimer Road and a "cut-through" alternative to Seattle Hill Road between Lowell Larimer and 132nd Street SE. It has been a major point of contention in the hearing process and is addressed below.

(3) Deviations. The developments have received four deviations (Exhibit 225 p.4):

- Road A EDDS Section 3-07, Road grade limited to 10% and 12% for a collector and for residential street, respectively
  Plat Name: Heritage Hagen 1, Heritage Patterson 1
  Deviation approved: Increase road grade to15%, provided that traffic calming consisting of chokers and bulb outs at the intersections (Exhibit 225)
  Analysis of Justification for EDDS Deviation per EDDS 1-05: (Exhibits 234, 328)

- Road A EDDS Section 3-01(B)(2) Length of cul-de-sac, extension of road length of 800 feet to +/- 1825 feet.
  Plat Name: Heritage Patterson 1
  Deviation approved: Increase road grade to15%, provided that traffic calming consisting of chokers and bulb outs at the intersections (Exhibit 225)
  Analysis of Justification for EDDS Deviation per EDDS 1-05: (Exhibits 234, 328)

- Road B EDDS Section 3-07, Road grade limited to 12% for subcollector
  Plat Name: Heritage Patterson 1
  Deviation approved: Increase road grade to15%, in order to preserve the grade of the cul-de-sac at 6% and allowing Road D to be raised.
  Analysis of Justification for EDDS Deviation per EDDS 1-05: (Exhibit 328)

- Road E EDDS Section 3-03, Planter strips required on both sides and parking required on one side
  Plat Name: Thomas 2
  Deviation approved: to eliminate the parking and planter strips on both sides of the road through the wetland area
  Analysis of Justification: Narrowing of the road section will help provide traffic calming on the Collector Road. (Exhibit 328)

- Road E EDDS Section 3-07, Road grade limited to 12% for subcollector
  Plat Name: Thomas 2
  Deviation approved: Increase road grade to15%, in order to preserve the grade of the cul-de-sac at 6% and to minimize the impact to wetland (Exhibit 225)
  Analysis of Justification for EDDS Deviation per EDDS 1-05: (Exhibit 328)

- Roads B & D EDDS Section 3-01(b)(4), Road Serving More than 250 ADT shall be connected in at least two locations with another road or roads that meet the applicable standard(s) for the resulting traffic volume.
  Plat Name: Heritage Patterson 1 and Heritage Patterson 2
  Deviation approved: Road B cannot connect because of wetlands and Road D cannot connect because of wetlands and Road D cannot connect because WSDOT will not allow another access onto Lowell Larimer Road
  Analysis of Justification for EDDS Deviation per EDDS 1-05: (Exhibit 328)

The County Engineer reviewed the deviations collectively and approved them by memo on April 28, 2006. He also submitted a supplemental memo detailing the justifications under EDDS 1-05. (Exhibit 328) The DPW will also require the applicant to get a Haul Route Agreement with the DPW prior to receiving grading permits.

(3) Connection Between Lowell Larimer Road and 132nd Street SE/Cathcart Way.

A. Citizens' Testimony. The issue of connecting the stub roads has become a huge matter of contention between DPW and the existing Highlands neighborhood that will be the recipient of the traffic from the new subdivisions. Their community, as the Examiner heard from dozens of people who testified, is a close-knit neighborhood where neighbors look out for one another, kids play in the streets which are now quiet cul-de-sacs, and people treasure the lifestyle they have created. They feel that in buying homes in The Highlands, they bought into a neighborhood with amenities that they pay for and maintain, such as parks and expansive boulevards. Their homes are on small lots, but the tradeoff is that in a sense, the whole neighborhood is their yard.

These citizens have expressed great frustration with the administrative decision-making process requiring the connection. They feel it is unfair that the County, and specifically DPW, has required the connection because it is in the "rules" while they see the applicant asking for and receiving multiple deviations from the rules. (Exhibit 189) They feel that DPW is trying to destroy their neighborhood by burdening it with traffic that cannot be accommodated on existing arterials. (Exhibit 178) The concerns of the citizens are included in Exhibits 26-87 and 175-227. The overwhelming focus of the first public hearing, and certainly a major focus of the second public hearing, was testimony by citizens concerning the impacts to the existing neighborhood of The Highlands, as summarized below:

- Safety of children: The overwhelming concern by The Highlands neighborhood is that the streets were designed for small community use, with parking on both sides. The Highlands is a PRD, the premise of which is that each house is on a small individual lot, but the community homeowners' association pays for and maintains nice park areas for children in central locations throughout the planned community. Consequently, kids have no backyards or front yards to speak of in these homes, and are frequently running up and down the street to the parks that are at the intersections of the roads. (Exhibit 27)

- Poor surrogate for new arterials: Many citizens feel that the County's "policy" of road connections is a band-aid to fix traffic issues on other already overburdened arterials, in this case 132nd, Seattle Hill Road, and Highway 9. As one citizen stated, "FIX THE MAIN ROADS, DON'T DESTROY NEIGHBORHOODS. . .we picked this neighborhood because it is away from main roads and never would have chosen to live here knowing the county would opt to make it a 'cut through' neighborhood'." (Exhibit 178)

- Citizens have been extremely frustrated by what they perceive as a lack of responsiveness in county government on this issue. (Exhibit 189) (See attached power point exhibit "Disingenuous Behavior"). They assert that while The Highlands residents must comply with connectivity "requirements" in the EDDS, the developer has been granted multiple deviations.

- Initial traffic studies did not even account for the possibility of cut-through traffic. (Exhibit 189)

- Problems of neighborhood vandalism, burglary, and destruction of property will worsen. (Exhibit 198) The Homeowners' Association pays to maintain the median in the boulevard on Snohomish Cascade Drive as well as the parks, and feels that the new subdivisions will be using these amenities without paying for them. The new residents, in most citizens' opinion, will likely use the entrance of The Highlands, rather than the entrance on Lowell Larimer Road.

- Citizens feel the IRC conducted in this area was done improperly. Many citizens argued that the IRC was done at the wrong time of year. It was done in July, in the middle of the day. Citizens argued that was when people were on vacation and school was not in session. They argued the neighborhood is much busier during the school year. (Exhibit 203)

- The cut through will degrade The Highlands and the amenities, including the parks that the residents pay for as a community.

- Many citizens testified to the multiplicity of uses that will draw multiple users through the connection to 132nd Street above. According to testimony, there is a new elementary school, a new high school opening, a new Safeway, a YMCA, multiple childcare facilities, and parks that will draw drivers through this connection. Testimony also indicated that drivers would likely choose a circuitous route like this one in the winter because Seattle Hill Road can be dangerous in icy conditions.

The citizens did not hire a traffic engineer. They did the best they could to challenge methodology and numbers, but they are not engineers and did not have any professional determinations of how much cut-through traffic would come through the connection, the critical question in this case.

B. Professional Traffic Studies. The applicant's traffic engineer, Gibson Traffic Consultants, through the testimony of Mr. Edward Koltonowski, testified that only 163 ADT would be attributable to cut-through trips and there would only be 1156 ADT total using the connections through the development, due to the fact that he estimated only 40% of the ADT in the subdivisions would be using the connection to go through the neighborhood. (*See* Exhibit 240; Exhibit 149) The DPW agrees with the numbers presented by Gibson and there is no contrary professional engineers' evidence in the record, although most of The Highlands neighbors were quite skeptical of the numbers because they believe that far more than 40% of the trips from the Hagen subdivisions will be

using the route up the hill through The Highlands rather than going down to Lowell Larimer Road.

C. Purpose of Connectivity: Jim Bloodgood, DPW Engineer, testified that the goal in requiring connectivity was twofold: 1) to allow residents to use local roads for local trips; and 2) to discourage any cut-through trips by non-local drivers, through the provision of a variety of traffic calming devices. (Testimony of Jim Bloodgood, 10/10/07) However, other testimony by Norm Stone, also a DPW Engineer, indicated that the requirement to have the connection was in part based on the fact that presently the only connection between Lowell Larimer Road and 132nd is Seattle Hill Road. Mr. Stone explained how other developments also proposed by this applicant in the same area will be required by the DPW to provide connections so that there will be "multiple routes so no one subdivision will have to take the traffic." (Testimony of Norm Stone, 10/10/07) Clearly, the testimony of Mr. Stone reveals that one of the purposes of a connection is also to relieve traffic off arterials.

D. Width of the Road. 67th and 68th Avenues SE are only 28-foot rights-of-way. Even the IRC Traffic Analysis Technician's comments in the IRC Analysis on 67th and 68th Avenues SE indicated that "Roadway was designed for Local Access Only." (Exhibit 103) Roadway A in the new subdivision will be a 36-foot roadway, presumably because the seven subdivisions, plus cut-through traffic that will be served by Roadway A, put it well over 1000 ADT. Therefore, the proposed connection will pass through from a 36-foot road to a 28-foot road. One of the requirements of the EDDS in requiring a layout and design of a subdivision is that:

> A road serving more than 250 ADT shall be connected in at least two locations with another road or roads that meet the applicable standard(s) for the resulting traffic volume.
>
> EDDS 3-01 (B)(4).

With 67th/68th Avenues SE serving 1156 ADT, under EDDS, the normal requirement would be that those roads should be improved to a 36-foot standard (EDDS 3-02(B)(1)) because it would become a collector, just as Roadway A in the new subdivisions is a collector.

When the Examiner questioned Mr. Stone about the need to comply with EDDS 3-02(B)(4), Mr. Stone testified that DPW interprets a 28-foot right-of-way to be the same as a 36 foot right-of-way because the only difference is the amount of parking provided on the street. In other words, in DPW's opinion, they are the same because both a 36-foot and a 28-foot right-of-way have two 10-foot travel lanes. (Testimony of Norm Stone, 6/11/08) The only difference according to Mr. Stone is that in a 36-foot right-of-way, there are two eight-foot parking lanes, while on a 28-foot right-of-way, there is only one eight-foot parking lane.

While this may be technically true, it is not what the EDDS require, as indicated above in Finding 7(D). EDDS require that if the width requirements are changed, there should be a deviation, under 3-03(B). Mr. Stone's justification is also not true in practice, and it will not be true if the connection is approved. The Highlands neighborhood currently parks on both sides

of the street, resulting in only one travel lane. The citizen testimony at the hearing was that the neighborhood does not wish to give up that amenity. Testimony of the PDS and DPW staff was that it did not intend to require any changes in parking in The Highlands neighborhood due to the connection. The end result will be that if the connection goes through, Roadway A through the new subdivisions will be two lanes and 67th and 68th Streets SE will only have one functioning lane.

The Examiner only points out these inconsistencies, however, to indicate to DPW that it is important for the substance of even professional judgment to follow the standards set out in the code and in the EDDS. The Examiner is a professional, and yet, cannot simply make a decision that says, "Subdivision granted" or "Subdivision denied." There has to be a transparency, a logical path of reasoning that allows those who are affected by the decision to understand how the County Engineer or DPW arrived at its decision.

E. Council Motion 08-663. *In re North Sound Christian Schools* was a case concerning connectivity with facts quite similar to this one. There were similar ADT numbers being loaded onto pre-existing streets, and similar deficiencies in road width to accommodate the ADT. The Council reversed the Examiner's denial without prejudice of the project. The Examiner had based her decision in part on the determination that the Engineer should have required a deviation and a modification under the subdivision code pursuant to SCC 30.41A.215. In Motion 08-663, the Council stated

> 11. The Department of Public Works' interpretation of standards in the Engineering Design and Development Standards (EDDS) are reviewed under a standard of 'rebuttable presumption of validity'; that is, the interpretations could be overturned only if the reviewed authority found them to be 'clearly erroneous'; FURTHER, the Department of Public Works' professional judgment and expertise shall be entitled to substantial weight, and the party challenging the Department's interpretations shall have the burden of proof.
>
> 12. The Department of Public [sic] Work's interpretations of EDDS standard, particularly, EDDS 3-02, as applied to the proposed rezone and preliminary plat of Mill Creek Campus, are not found to be 'clearly erroneous'. The County Council accepts the Department of Public [sic] Works's interpretation that: (a) the connecting road (172nd Street SW and 6th Avenue W) will be constructed to a 'subcollector' standard pursuant to EDDS 3-02B.2.; (b) an EDDS deviation request was not required as the proposal did not deviate from the Department of Public Works' interpretation of 'typical' within the meaning of EDDS 3-02 B.2 with respect to Average Daily Traffic (ADT) volume; and (c) a request for modification of the design standards of the subdivision roads under SCC 30.41A.215 was also not required.

Based on this case, it is very clear that the determination of connectivity is an administrative

decision under the control of the County Engineer and the DPW. The Examiner may only disturb that decision on a finding that it is clearly erroneous, based on the *North Sound Christian Schools* case.

E. Traffic Calming Devices in the Highlands Development: On September 14, 2007 the Highlands Homeowners Association (HOA) and the developer entered into an agreement concerning traffic and construction impacts to The Highlands. (*See* Exhibit 89) As this agreement is a voluntary private agreement between the parties, the county is not a party to the agreement. The agreement states that the County will put up signs that say "Local Access Only". DPW refuses to acquiesce to that condition. (Oral testimony of Erik Olson 10:59 (10/10/07)) The HOA agreement has not mollified neighborhood opposition to the connection. The agreement states that the applicant agrees to install and pay for speed humps on 67th Avenue SE and 68th Avenue SE, as long as the HOA gets 60% of the residents in The Highlands to agree to them. *Id.* The agreement does not restrict individual homeowners from expressing their individual opinions about the application.

F. Dedication of Right-of-Way [SCC 30.66B.510 and 30.66B.520]

The DPW not requiring any additional right-of-way dedication except for that necessary for the creation of the road system in the plat.

G. State Highway Impacts [SCC 30.66B.710]

These developments are subject to the WSDOT/County Interlocal Agreement (ILA) which became effective on applications determined complete on or after December 21, 1997.

The impact mitigation measures under the ILA, Section IV(4.1)(b), may be accomplished through a) voluntary negotiated construction of improvements, b) voluntary negotiated payment in lieu of construction, c) transfer of land from the developer to the State, or d) a voluntary payment in the amount of $36.00 per ADT. Should the applicant choose the voluntary payment option to mitigate their impact to the state highway system, the payment is calculated at:

296.67 ADT x $36.00/ADT = $10,680.12

A voluntary offer, acceptable to the State, and signed by the applicant indicating their chosen method of fulfilling their mitigation requirement under the ILA, is required prior to providing a final recommendation. An offer from the applicant to WSDOT was received by PDS on December 20, 2005. Comments from WSDOT accepting the offer for 31 new lots was received by PDS on April 14, 2006,. (Exhibit 93)

The per lot amount is $10,680.12/31 lots = $344.52 per lot.

H. Other Streets and Roads [SCC 30.66B.720]

Pursuant to SCC 30.66B.720, the DPW is required to recommend mitigation measures of the development's direct traffic impact on the city, town or other county roads to the approving authority and the approving authority is required to impose such measures as a condition of approval of the development in conformance with the terms of any ILA referred to in SCC 30.61.230 between the county and the other agency.

The traffic impacts to the City of Mill Creek shown in Table 4 of the traffic study shows the directional PM peak hour trip (PHT) distribution within the City should be as follows:

Segment	# of Trips
Seattle Hill Road/ Mill Creek Road	3
164th Street SE	3
Dumas Road	0
Main Street	0
North Creek Drive	0
Mill Creek Boulevard	0
Trillium Boulevard	0
Village Green Drive	0
9th Avenue SE	1
Old Seattle Hill Road	0
148th Street SE	0
TOTAL	7

$996 per PHT, results in a Mill Creek traffic mitigation fee in the amount of $6,972.00. This amount distributed over 31 lots will be $6,972.00/31 = $224.90 per lot. Comments from Mill Creek have been received agreeing with the traffic impact analysis defining the development's traffic impact to Mill Creek.

I. Transportation Demand Management (TDM) [SCC 30.66B.630]

TDM is a strategy for reducing vehicular travel demand, especially by single occupant vehicles during commuter peak hours. SCC 30.66B.610(1). SCC 30.66B.630(1) succinctly states the basic requirements:

> All new developments in the urban growth area are required to provide sufficient TDM measures to indicate the potential for removing a minimum of five (5) percent of a development's P.M. peak hour trips from the road system. SCC 30.66B.630. This requirement may be met by:
> (a) Earning trip reduction credits for construction of onsite features pursuant to SCC 30.66B.640;
> (b) Construction of offsite TDM measures pursuant to SCC 30.66B.620; or
> (c) A voluntary payment into an account established for the purpose of contributing to the construction or purchase of specific TDM measures pursuant to SCC 30.66B.625.

It has been determined that the cost of removing one peak hour trip from the road system is approximately $1500. This is based on the average cost of one stall in a park and ride lot and the average cost of one "seat" in a 15-passenger van. For a development required to provide TDM, the development's TDM obligation will equal $1500 times the required trip reduction percentage times the development's peak hour trip generation. [SCC 30.66B.615]

The trip reduction percentage for this development is five percent. The TDM obligation for this development is therefore equivalent to 5% of the 31.31 new PM peak hour trips x $1500.00 which equals $2348.25. A written offer (Exhibit 24) for payment of this TDM obligation was included in an e-mail received by PDS on March 27, 2006.

The per lot amount is $2348.25/31 lots = $75.75 per lot.

8. Pedestrian Facilities [RCW 58.17.110]

One of the requirements of the state subdivision code is that the approving authority consider whether the development provides sidewalks and other planning features that assure safe walking conditions for students. (RCW 58.17.110(1)) The school district indicates that the school children will be provided bus service that will pick up children at 67th Ave SE and 124th Place SE. The sidewalks within the plat and the existing sidewalks on 67th Ave SE will provide safe walking conditions for the school children from this development.

9. Mitigation for Impacts to Schools [Chapter 30.66C SCC]

The Snohomish County Council amended Chapter 30.66C SCC by Amended Ordinance 97-095, adopted November 17, 1997, which became effective January 1, 1999, in accordance with Amended Ordinance 98-126, to provide for collection of school impact mitigation fees at the time of building permit issuance based upon certified amounts in effect at that time. The subject application was determined to be complete after the effective date of amended Chapter 30.66C SCC. Pursuant to Chapter 30.66C SCC, school impact mitigation fees will be determined according to the Base Fee Schedule in effect for the Snohomish School District No. 201, at the time of building permit submittal and collected at the time of building permit issuance for the proposed units. Credit is to be given for the one existing lot. PDS has included a recommended condition of approval for inclusion within the project decision to comply with the requirements of Chapter 30.66C SCC.

10. Drainage and grading.

A. Applicant's Proposal for Drainage

(1) The applicant has proposed an off-site detention area, known as the "Off-Site Hagen Farm Detention Area" to collect runoff from approximately 1200 acres of the basin area above. (*See* Exhibit 126, Hagen 1) The Hagen farm field is in the Riverway Commercial Farmland designation at the foot of the hillside, and is zoned Ag-10. It is also within the Rural Shoreline Environment under the Shoreline Management Act and the Density Fringe Area under the Special Flood Hazard Areas code.

(2) The detention proposal includes much more than the five subdivisions; it in fact includes all thirteen subdivisions the applicant plans to eventually develop on this hillside as well as the drainage from The Highlands and other subdivisions above that now simply drain into the creeks, some of which now have "direct discharge", meaning there is no detention in the plat to control the rate of discharge. (*See* SCC 30.63A.210(1)(b)(iii))

(3) The detention pond is based on what the applicants characterize as an

"existing natural detention pond", or detention that already exists on the farm field. (Testimony of Fred Herber˜ 11:00 a.m., 6/24/08) The applicant had originally hoped to simply direct discharge for these subdivisions (i.e., treating storm water for water quality, but not providing any detention), but PDS denied that request.

(4) When applicant was told by the County staff they would not be allowed to do direct discharge, they noticed that the farm field at the bottom of the hill from the five subdivisions was already "detaining" water by virtue of the fact that the berms surrounding the drainage ditches were creating a "bathtub effect." (Testimony of Mark Servici, 10:25 a.m., 6/24/2008) The drainage out of the bathtub was further controlled by a "squashed" culvert that had once been a 48" culvert, but was now bent down to approximately a 42" opening. Mr. Servici characterized this as an existing "natural detention pond."

(5) The volume of the detention area is about 45 acre feet, and is far in excess of what would normally be required for a project of this size (10 acre-feet). The right to flood would be secured by a flooding easement, a proposed copy of which is attached to Exhibit 169. The easement imposes an obligation on the future owner to maintain the detention control structure, as well as a right of access for the homeowner's association and the county. There was no prohibition on farming within the easement. The property is now owned by the applicant, but will be sold after the developments are complete. (Exhibit 126; Testimony of Fred Herber, June 24, 2008)

(6) Storm water from the development will be collected through a series of underground pipes and catch basins (Exhibits 13, 14 & 15) that will discharge down slope to the north into the Heritage Paterson 1 development and then continue through Heritage Paterson 1 down slope into a grass lined swale on the south side of Lowell Larimer Road for approximately 180 feet and then continue eastward through approximately 320 feet of underground conveyance pipe and discharge (approximately 500 feet east of the proposed plat entrance on Lowell Larimer Road) at the same point where the existing upstream stormwater discharges in a pipe under Lowell Larimer Road and into existing ditches to finally be released to Marsh Slough, which is controlled by the Marshland Flood Control District (Marshland). Water quality treatment is provided through the grass lined swale by the plats entrance from Lowell Larimer Road and the ditches and large grass lined depression, which also acts as a detention area. (Exhibit 13)

(7) The analysis provided by the applicant indicates that no work or construction is needed, or proposed, within the drainage system located within the agricultural area located on the north side of Lowell Larimer Road, with the exception of potential maintenance or repair of an existing ditch culvert. PDS Engineering has reviewed the concept offered, granted all modifications required for the project, and is recommending approval of the project, subject to conditions which would be imposed during full drainage plan review pursuant to Chapter 30.63A SCC. (Exhibit 126) PDS did not fill in any of the findings of fact

as in granting the drainage modification as required by code. (SCC 30.63A.250(2)) When queried by the Examiner about necessary permits under the zoning code, flood hazard code, and Shoreline Management Program, PDS and the applicant both responded that none were required. (Exhibit 337)

(8) The side of the detention ponds is formed by the "spoils" from the drainage ditches on the property. Mr. Servici testified that some of the berms could be graded out, as long as the northern berm remained, and the pond would still be functional. (Testimony of Mark Servici at June 24, 2008 hearing) At the hearing, Peter Alden, a farmer who has a farm lease on the Hagen farm field property until 2009, testified that he planned to plow under all of the berms.

(9) Randolph Sleight, PDS Engineer, testified that the "squashed" culvert could be replaced with a more formal control structure. (Testimony of Randolph Sleight at June 30, 2008 hearing) He also testified that the owner of the property could "maintain" the ditches under the Right to Plow ordinance. He also testified that from an engineering perspective, detention of storm water is sometimes at counter purposes with flood control:

> It was unfortunate in one sense that it was designated urban growth area. . . .
> The problem that we have with the detention pond on the site itself --- detention ponds this low in the Snohomish basin do not actually [not] serve the benefit of Marshland and they may or may not realize that, and the reason I say that is because the timing of the flood event would occur about the time you don't want to back the detention facility up, and time this so they would release this at the same time the flood events come down so it would be much worse.
> . . .
> It's called the time of concentration. Typically, within the drainage basin, the reason the Department of Ecology allows direct discharge to the river and to the sloughs on the river in the lower portions of the basin is because they want to get the storm event out of the system. They want to get it flushed out before the major flood, which on the Snohomish River system is about a one-day later time frame. If you look at the timing of the peak at the Gold Bar gauge, it'll come down the Snohomish about a day later. So, if you detain and hold that storm back in these bigger ponds, now we're talking some of these storms events that they are looking at are the two-day with the continuous runoff mode. If you have the bigger ponds stored back up on the lower portion of the basin, and then discharge that out the peak of that, discharge will occur at the same time as the peak of the flood event coming down, which is not what you want to do.

Testimony of Randolph Sleight, 9:45-11 a.m., 6/30/08.

(10) Drainage Engineer Dwayne Overholser also testified regarding the approval of the modification of the drainage code to allow for this detention facility. (Exhibit 126) When queried by the Examiner about whether this had ever been allowed previously, he testified that if water wasn't backing up downhill already, or in his words, if detention wasn't occurring already, PDS staff would not have allowed it. He stated that the situation was unusual because of the water backing up on the property. When asked by the Examiner why it was unusual, and why this wouldn't set a precedent to allow detention of urban stormwater in agricultural resource land, his answer was because of the squashed culvert. (Testimony of Dwayne Overholser, 4:45 p.m., 6/24//08) Erik Olson stated that the only reason they were allowing it is because it was only increasing the water on the parcel by a small amount. (Testimony of Erik Olson, 4:47 p.m., 6/24//08)

B. Analysis of Drainage Detention Issue

(1) There was much testimony about whether or not Marshland knew of the drainage design and had for all intents and purposes signed off on it when they had requested Bennett to include "conditional assessment" language in the plat conditions when the applicant consulted with them as requested by PDS.

(2) The Examiner makes the following finding of fact regarding the sequence of events over a space of three years involving interactions among Marshland, the applicant and PDS. The Examiner finds that as Mr. Brandstetter characterized it (3:13 pm, June 24, 2008), there were "good faith misunderstandings" between all the various parties about what motives, duties, and information was necessary to be shared. To make what was a very long story as short as possible:

- PDS recognized, as per its duty and normal course of business, that the applicant would need to work out arrangements with Marshland Flood Control District over its drainage proposal and directed the applicant to do so back in 2005;
- The applicant promptly initiated discussions with Marshland in 2005, and at the time it spoke with Marshland had proposed direct discharge. They worked out the conditional assessment language that would allow the district to charge the Home Owners Associations directly in the event that the County discontinued its interlocal agreement with Marshland;
- The applicant was under the impression it had performed its necessary duty with Marshland;
- Marshland was under the impression that the applicant was putting in one subdivision and doing direct discharge; and
- PDS was under the impression that the applicant had fulfilled its full disclosure duty with Marshland and that Marshland was completely "on board" with the proposal, as Mr. Olson testified in the hearing. (Testimony of Erik Olson, 4:45 p.m., June 24, 2008)

Mr. Brandstetter admits he "missed" the fact that Ms. Rogers (the applicant's attorney) indicated to him there were indeed thirteen subdivisions involved in the drainage proposal in August 2007, saying he was under the impression she meant thirteen lots. (3:10 p.m., June 24, 2008). The material fact, however, is that Marshland was unaware until February 2008 of the proposal to place the detention pond on the Hagen farmland piece which is physically located within the District. As the letter from the Flood Control District states,

1. For a number of years, Marshland has been advised regarding drainage plans for upland development well before developments went to hearing and has provided written comments regarding those plans;

2. As the transcription of Mr. Herber's comments at our February 11, 2008 meeting establish, until February this year, Marshland was never provided with any information regarding how Bennett Development proposed to handle drainage issues for its developments;

3. The Bennett proposal for drainage, which Bennett calls "detaining," involves conveying stormwater to the floodplain farmland without any upland detention;

4. Bennett's plats are the first development proposals involving a developer buying farmland in the floodplain in order to use it as a "natural detention pond";

5. As Mr. Herber's February 11, 2008 comments attest, Marshland had no idea prior to 2008 that Bennett had purchased floodplain farmland and was intending to use it as a natural detention pond; and

6. Marshland and its members believe that this method of stormwater regulation is directly contrary to Marshland's mission to drain the farmland and would appreciate the County's support to at least assure that such stormwater handling is never repeated so that this Bennett proposal does not become precedent, and would further appreciate consideration of greater upland detention of stromwater.

In conclusion, Marshland does not wish to become, or appear to become, anti-development. Marshland does believe that, because Snohomish County has strong policies in favor of agriculture, floodplain "detention" of stormwater is not in the best interests of development, County agricultural policies and certainly not, the Marshlands.

Exhibit 296.

The Examiner finds that Marshland did not know that detention was proposed to occur within their District until after the first hearing, and therefore the "sign-off" on the proposal was made without that knowledge and therefore cannot be considered to be valid.

(3) Analysis of this issue must begin with the most basic questions. Is this detention control structure an allowed use in the Ag-10 zone? The original analysis received from staff and from the applicant was completely silent on this issue; indeed, the spoilage berms and the "squashed" culvert were

repeatedly referred to by both staff and the applicant as an "existing natural detention pond area". The Examiner does not know what that means—it is an oxymoron at best. A detention pond is not natural to begin with. This area only ponds because there are spoils or castings from drainage ditches that were not removed or worked back into the soil, thereby causing the ditches NOT to do their job. The problem is compounded by a squashed culvert that is further impeding the flow of water off the parcel. The drainage system is therefore not functioning properly; therefore water is ponding on the field. It is not "natural" by any stretch of the imagination.

(4) There is a major difference between a malfunctioning drainage system on a farm field that happens to create a pond and County approval of a major detention facility for thirteen urban subdivisions on a farm field. It is not a nonconforming use, and even if it were, it would be for agricultural purposes, and not for an urban development. As John Postema described it, it is a "happenstance". (Testimony of John Postema, 2:33 p.m., 6/24/08) Aside from the policy issue of whether this is a good use of agricultural resource land (which was discussed extensively at the hearing), the Examiner must resolve the basic issue of whether it is an allowed use in the Ag-10 zone.

(5) PDS and the applicant take the position that the use does not fall within the use matrix (Chapter 30.22 SCC) or the Shoreline Master Program. PDS stated the following:

> No ground disturbing activities are occurring and no development action is occurring. . . The interpretation is that the existing use (ponding of stormwater) is being continued. The only difference is it is coming from the developed hillside rather than an undeveloped hillside.

Exhibit 337.

Curiously, both applicant and PDS seem to be under the impression that the berms and other features of the drainage facility can be maintained without permits under the "right to plow" exemptions in the shoreline and grading codes. Their theory is that a farmer will purchase this land and maintain the facility as a part of his duties while farming the land. (Exhibit 338)

(6) The "use" of the malfunctioning drainage system is not a use which was ever permitted by the County or which ever received nonconforming status to the Examiner's knowledge. To allow this use on this property, whether or not the applicant intends to turn a shovel of dirt today, still needs to be an authorized use in this zone. Applicant intends to artificially collect water into a biofiltration swale and through a series of pipes, channel a point discharge of 14.60 cubic feet per second (cfs) in a two-year storm, as compared with 1.9 cfs pre-development rate. (Case No. 06 103099, Exhibit 14) This increase in point discharge will not be without consequences to Marshland and to the farms, as the testimony amply demonstrated.

The Examiner then turns to the zoning code to determine whether a detention pond is a permitted use in the Ag-10 zone. There is no listing for a detention pond, or detention control structure. While some may argue that the definition of "agricultural activities" encompasses "movement of water", the applicant is not proposing to use the detention pond for agricultural

activities under this application. It is proposing to detain storm water for thirteen urban subdivisions as required by Chapter 30.63A SCC. The "agricultural activities" definition applies only to a "condition or activity which occurs on a farm in connection with the commercial production of farm products . . ." (SCC 30.91A.090) It does not apply to urban storm water detention.

(7) This proposed drainage facility would appear to meet the definition of "utility facility-all other structures". (SCC 30.22.110) In the Ag-10 zone, this use requires a conditional use permit. Despite the applicant's protestations that they will be doing no physical work to this parcel, the use of this parcel for this purpose requires a conditional use permit. It does not matter whether or not they will be farming in the summer. They are using this parcel as a utility facility. (*See* SCC 30.91U.110 (definition of utility includes storm drainage)) This facility meets the definition of "drainage facility", SCC 30.91D.370, which includes natural drainage facilities, and also the definition of detention facility. SCC 30.91D.180.

(8) Maintenance of this facility may not occur under the "right to farm" exemption in the grading code because it is not an agricultural activity as indicated above. It is not a "condition or activity which occurs on a farm in connection with the commercial production of farm products . . ." (SCC 30.91A.090) It is grading that would fall under the normal grading code and potentially other codes, such as the flood hazard code.

(9) Turning to GMA, the Hagen farm field is designated agricultural resource land. Testimony from several farmers, including one with more than fifty years experience in farming, was that this land would be unfarmable if used for detention because it would be under water from late October to early June. Because water would be impacting the soil for eight months of the year, he testified, it would starve the soil of oxygen. Even in the summer months, the soil would be compacted, wet, and difficult to grow anything in. (Testimony of John Postema, 2:30 *et seq*., 6/24/08; Testimony of Peter Alden, 2:50 et seq., 6/24/08) The only people who testified on behalf of the applicant that it could continue to be farmed were not farmers.

Objective LU 7.B of the GMA Comprehensive Plan states: "Conserve designated farmland and limit the intrusion of non-agricultural uses into designated areas." Given the significant efforts that have gone on in this county to preserve farmland, see GPP LU 49-51, it is wholly inappropriate to set the precedent of allowing commercial farmland to be used for urban detention ponds, especially since the record indicates that the land would not remain viable for farming. The Examiner finds that the detention pond use is inconsistent with the comprehensive plan

(10) The parcel is also within the Rural Shoreline Environment under the jurisdiction of the Shoreline Management Program. In reviewing the management policies, the first policy states: "Protect prime agricultural lands from incompatible and preemptive patterns of development." There needs to be an analysis of whether this use is allowable in that area, given those policies.

(11) The Examiner cannot approve this detention pond facility unless it meets the appropriate zoning and associated code permit requirements. Given the fact that these developments have already been remanded once, the Examiner will

apply a precondition on the plats to provide detention, either on site or off site, on the south side of Lowell Larimer Road. Alternatively, if the applicant wishes to pursue detention on the Hagen farm field parcel, they must apply for a conditional use permit and any other use permits prior to lifting of the precondition.

Grading. Grading quantities are anticipated to be approximately 48,000 cubic yards of cut and 3800 cubic yards of fill, primarily for road, drainage facility, and home site construction. Water quality would be controlled during construction by use of silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC.

11. Critical Areas Regulations (Chapter 30.62 SCC)

The Examiner's Order dated November 20, 2007 for the Heritage Hagen 1 project requested additional information and analysis regarding critical areas. The Order also included comments for Heritage Hagen 2 (06-103204), Heritage Hagen 3 (06-103206), Heritage Paterson 1 (05-125681) and Heritage Paterson 2 (05-127877).

Justification for the 2:1 area ratio

A formalized administrative rule was approved by the director of PDS in June of 1998 to provide a consistent method for determining compliance with the requirement to replace the lost functions and values of the habitat that is being impacted as required under SCC 30.62.345(1)(c). This administrative rule states that by utilizing a set of prescribed replacement ratios, it will be assumed that all functions and values will be replaced and *thus will be assumed to comply* with SCC 30.62.345(1)(c). The replacement ratios are always expressed as replacement (creation) area to impact area, with emergent conditions requiring a replacement ratio of 1:1, scrub-shrub at 1.5:1, forest at 2:1 and bogs at 3:1.

The administrative rule has also been utilized by staff in the same manner for buffers because the assessment for vegetative habitat is comparable. In the case of mitigation for buffer impacts, these ratios are typically used for out-of kind mitigation. If a forested condition were created from an existing herbaceous area, then an area half the size of the area impacted would need to be planted into trees for the creation/establishment of a forest. Staff notes that the reverse ratio is also applicable, i.e. for example, you would need to provide 2,000 s.f. of herbaceous area for every 1,000 s.f. of forested area that was impacted.

The mitigation plans for Heritage Hagen 1, Heritage Hagen 2, Heritage Hagen 3, Heritage Paterson 1, and Heritage Paterson 2, which were prepared by Wetland Resources, propose mitigating for all buffer impacts, both permanent and temporary, at a 2:1 mitigation ratio with additional forested buffer. Mitigation ratios for impacts to emergent (lawn or pasture) or scrub-shrub buffers would be less than 1:1 if forested buffer was provided. By providing a 2:1 ratio of additional forested buffer for all buffer impacts, the applicant has provided the maximum required mitigation ratio for lost habitat functions and values.

In-Kind Mitigation for BMP Wetlands

The applicant has proposed to "fill" the BMP wetland located on Hagen 3. According to the Wetland and Buffer Mitigation Plan for Hagen 3 prepared by Wetland Resources revised December 12, 2007 (Exhibits 135 & 141 A & 141B), an additional 2,038 square feet of forested buffer is being provided as mitigation for the 2,029 square foot BMP wetland that is

proposed to be filled. The wetland is dominated by emergent species while the 2,038 square feet of buffer, which will be provided as mitigation, is forested. Therefore, the mitigation area exceeds PDS requirements for mitigation of lost functions and values associated with habitat. The mitigation plan also states that mitigation for the loss of stormwater storage will be provided in the site's proposed stormwater detention facility.

Wetland Resources has provided revised mitigation plans for all five projects. Changes to the plans include avoidance analysis and a discussion of mitigation ratios as requested by the Examiner. Staff has reviewed these plans and found they are consistent with county code and the mitigation plan that was approved during preliminary review, with the exception of Heritage Hagen 3, which now proposes additional buffer as mitigation for BMP wetland fill. Staff has determined that the revisions meet the requirements of SCC 30.62. Based on the changes to the mitigation plans, staff has proposed the following revisions to the existing approval conditions for Heritage Hagen 1:

> A final mitigation plan based on the Wetland and Buffer Mitigation Plan for Hagen 1, prepared by Wetland Resources, Inc. revised December 6, 2007 (Exhibits 141A & 141B) shall be submitted for review and approval during the construction review phase of this project.

The Examiner will place this condition on the project.

No wetlands or streams are located within the boundary of Hagen 1. Larimer Creek and an associated wetland is located off-site to the west of the Hagen 1 project at the toe of a steep slope (>33%). The 25-foot buffer is extended from the top of the slope.

The applicant is proposing a 31-lot residential subdivision, including single-family residences, roads driveways, and utilities on the subject property. As part of this development proposal, grading will occur on the rear of lots 4 through 7 and 13 through 19, permanently impacting 5078 square feet of 7418 feet of buffer. Mitigation for all the proposed impacts will occur on-site or immediately off-site within the same drainage basin on one of the adjacent plats. There will be a 20-foot building setback on each of the impacted lots, and temporary (4,562 square feet) and indirect buffer impacts (7,148 square feet) will be mitigated by restoring all the impacted areas and providing 12,370 square feet of additional mitigation (2:1 ratio). (Exhibit 141A).

Steep Slopes. The Examiner's Order dated November 20, 2007 for the Heritage Hagen 1 project also requested additional information and analysis regarding steep slopes. The applicant provided Exhibit 32, Geotechnical Engineering Study for Heritage Hagen 1. It provides adequate analysis supporting the development, provided the geotechnical engineering recommendations made in the study are followed. The Examiner will condition the plat to require that the recommendations of the study be followed during the construction phase.

12. Consistency with the GMA Comprehensive Plan.

The vesting date for the Paterson 1 project is December 20, 2005. (Paterson 1 Staff Report at p.1) Accordingly, Paterson 1 is vested to the 1995 General Policy Plan (GPP), as amended through December 2005. The subject property is designated Urban Low Density Residential (ULDR: 4-6 dwelling units/acre). R-7200, which allows approximately six dwelling units per acre, is one of the implementing zones for ULDR. (*See* 1995 GPP at LU-65)

The Paterson 2, Hagen 1, Hagen 2, and Hagen 3 have vesting dates ranging from March 22, 2006 to March 27, 2006. (*See* Staff Reports at pg. 1) Accordingly, these four projects are vested to the post-Ten Year Update Comprehensive Plan, effective February 2006. These lands are also designated ULDR, and R-7200 is still an implementing zone. (*See* GPP at LU-89)

13. Consistency with Bulk and Performance Standards. [Subtitle 30.2 SCC]

According to the PDS staff report, this project meets zoning code requirements for lot size, including LSA provisions, bulk regulations and other zoning code requirements. (Exhibit 36 at 7-8)

PDS staff evaluated the proposal for compliance with the LSA provisions of SCC 30.23.210, which provides in pertinent part that:

> (1) A subdivision . . . . will meet the minimum lot area of the zone in which it is located if the area in lots plus critical areas and their buffers and areas designated as open space or recreational uses, if any, divided by the number of lots equals or exceeds the minimum lot area of the zone in which the property is located. is not less than the minimum lot area requirement. In no case shall the density achieved be greater than the gross site area divided by the underlying zoning.
> (2) This section shall only apply within zones having a minimum area requirement of 12, 500 square feet or less.
> (3) Each single lot must be at least 3,000 square feet in area.
> (4) Lots in subdivisions and short subdivisions created under the provisions of this section shall have a maximum lot coverage of 55%;
> (5) Lots with less than the prescribed minimum lot area for the zone in which they are located shall have a minimum lot width of at least 40 feet, and right-of-way setbacks of 15 feet, except that garages must be setback 18 feet from the right-of-way (with the exception of alleys) and corner lots may reduce one right-of-way setback to no less than 10 feet;
> (6) Preliminary subdivisions approved utilizing lot averaging shall not be recorded by divisions unless such divisions individually or together as cumulative, contiguous parcels, satisfy the requirements of this section.

The PDS Staff Report calculated lot size averaging as follows:

> Area in Lots (149,761 square feet) + Critical Areas and Buffers (90,775 square feet) + Open Space (5448 square feet) = (245,984 square feet) ÷ 31 lots proposed = 7,935 square foot average lot size.
>
> The minimum zoning requirement is 7,200 square feet. No lot is less than 3,000 square feet, and all lots comply with minimum lot width and setback requirements. Roadways and surface detention/retention facilities are not counted toward the LSA calculations. PDS concludes that the proposal is consistent with the LSA provisions of SCC 30.23.210.

14. Environmental Policy [Chapter 30.61 SCC]

Hagen 1 PDS issued a Determination of Nonsignificance (DNS) for the subject

application on July 11, 2007 (Exhibit 20). The DNS was not appealed.

Hagen 2 PDS issued a DNS for the subject application on July 10, 2007 (Exhibit 21). The DNS was not appealed.

Hagen 3 PDS issued a DNS for the subject application on July 10, 2007 (Exhibit 20). The DNS was not appealed.

Paterson 1 PDS issued a DNS for the subject application on July 11, 2007 (Exhibit 22). The DNS was not appealed.

Paterson 2 PDS issued a Determination of Nonsignificance (DNS) for the subject application on July 11, 2007 (Exhibit 19). The DNS was not appealed.

15. Utilities.

The Snohomish County Health District has no objection to these proposals provided that public water and sewer are furnished. (See Hagen 1 Exhibit 95) Electric power is available through the Snohomish PUD. (Hagen 1, Exhibit 99) A preliminary certificate of water availability has been provided by Cross Valley Water District, (Hagen 1, Exhibit 100) and sewer is available through the Silver Lake Sewer District. (Hagen 1, Exhibit 34) (*See* 30.41A.120)

16. Subdivision Code [Chapter 30.41A SCC]

A. Roads. The Examiner finds that as approved, the subdivisions meet the requirements of SCC 30.41A.210, as discussed in greater detail in other parts of this decision.

B. Flood Hazard. The Examiner finds that the lots as proposed are outside of all regulated flood hazard areas and that none of the lots are proposed in areas that are subject to flood, inundation or swamp conditions. *See* 30.41A.110.

C. Minimum Net Density. The Examiner finds that these subdivisions as designed now meets the minimum net density requirement, as may be modified by 30.41A.250. *See* SCC 30.41A.180; *see* SCC 30.23.020.

D. Density for Sloping Land. (SCC 30.41A.250)

Hagen 1 Mapping and calculations indicate that 31 lots are allowed on 7.16 acres due to the slopes on this property. (*See* Hagen 1, Exhibit 16)

Hagen 2 Mapping and calculations indicate that 31 lots are allowed on 10.27 acres due to the slopes on this property. (*See* Hagen 2, Exhibit 14)

Hagen 3 Mapping and calculations indicate that 31 lots are allowed on 6.42 acres due to the slopes on this property. (*See* Hagen 3, Exhibit 124)

Paterson 1 Mapping and calculations indicate that 33 lots are allowed on 9.12 acres due to the slopes on this property. (*See* Paterson 1, Exhibit 17)

Paterson 2 Mapping and calculations indicate that 32 lots are allowed on 13.12 acres due to the slopes on this property. (*See* Paterson 2, Exhibit 124)

E. Compliance with Fire Code.

Chapter 30.53A SCC was modified by the adoption of Amended Ordinance 07-087 on September 5, 2007, effective September 21, 2007. This application is subject to that version of Chapter 30.53A SCC in effect prior to September 21, 2007.

The roads within the Heritage Hagen 1, 2, 3, and Heritage Paterson 1 & 2 plats all meet the minimum requirements of Chapter 30.53A and the IFC for width and slope and turn around radii for the cul-de-sacs shown at the end of Roadway B in the Paterson 2 plat and Roadway G in the Hagen 3 plat. Fire hydrants are required per SCC 30.53A.300. The location and spacing of the hydrants for all of the Hagen, Paterson and Thomas plats as shown on the preliminary plat hydrant locations map, (Exhibit 140d) will be in compliance with the spacing requirements of SCC 30.53A.320. A Certificate of Water Availability from the Cross Valley Water District (Exhibit 100) has been provided indicating that an adequate water supply can be provided that meets the fire flow requirements of SCC 30.53A.300 and Appendix III-A of the IFC.

As of the date of application for all the Heritage Hagen plats the majority of the area was within Fire District 4, with a portion at the west side located with an area served by the Department of Natural Resources (DNR). The DNR area was annexed to Fire District 1 on October 16, 2007 so the comments submitted by Fire District 1 (Exhibit 136) supersede those of Fire District 4 for the annexed area.

The following is a breakdown of which plats or portions of plats[1]: are in which district:

Plat Name	# of Lots	District and/or lots within district
Heritage Hagen 1:	31	Lots 1-22 and 24–31 are in District 1
		Lot 23 is split between District 1 and 4
Heritage Hagen 2:	31	Lots 1-6 and 27–31 are in District 1
		Lots 7 & 26 are split between District 1 and 4
		Lots 8–25 are in District 4
Heritage Hagen 3:	31	Lots 7 & 8 are in District 1
		Lot 6 is split between District 1 and 4
		Lots 1–5 & 9 – 31 are in District 4
Heritage Paterson 1:	33	Lot 24 is in District 1
		Lot 23 is split between District 1 and 4
		Lots 1–22 & 25–33 are in District 4
Heritage Paterson 2:	32	Lots 1-11, 15–21 & 27–32 are in District 1
		Lots 14 & 22 are split between District 1 and 4
		Lots 12 and 23–26 are in District 4

For those lots split between districts, coverage issues will be resolved by the districts.

The area within District 1 will be accessed either through the extension of 67th or 68th Avenues SE or via Seattle Hill Road to Lowell Larimer Road then up in to the plats on the new internal plat road. Comments have been received from Fire District 1 on December 20, 2007 (Exhibit 136) concerning their area of the proposed developments and the placement of bollards at the connections of 67th and 68th Avenues SE.

The area within District 4 will be accessed from Snohomish via the Marsh Road to Lowell Larimer Road then into the plats via "Roadway A", the new internal plat road.

17. Any Finding of Fact in this Decision, which should be deemed a Conclusion, is hereby adopted as such.

CONCLUSIONS OF LAW- REZONE

1. The Examiner has original jurisdiction over the rezone application pursuant to SCC 30.42A.020 and 30.72.020(2).

2. Rezones are not presumed valid. The proponent of a rezone has the burden of proof of showing (1) that conditions have changed since the original zoning, or that the proposed rezone implements policies of the comprehensive plan; and (2) that the rezone bears a substantial relationship to the health, safety, morals or welfare. (*Woods v. Kittitas County,* 130 Wn. App. 573, 584, 123 P.3d 883 (2005); *see Citizens of Mount Vernon v. Mount Vernon,* 133 Wn.2d 861, 875, 947 P.2d 1208 (1997)) The county's regulations are a direct expression of the criteria expressed by case law.

[1] The analysis of what portions of the plats are within what district only refers to the lots and does not include the areas that are not lots i.e. NGPAs or Open Spaces which may still require emergency service such as aid cars.

3. Chapter 30.42A SCC covers rezoning requests and applies to site specific rezone proposals that conform to the Comprehensive Plan. The decision criteria under SCC 30.42A.100 provides as follows:

> The hearing examiner may approve a rezone only when all the following criteria are met:
>
> (1) The proposal is consistent with the comprehensive plan;
> (2) The proposal bears a substantial relationship to the public health, safety, and welfare; and
> (3) Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.[2]

4. In the context of the Growth Management Act, development regulations and therefore rezones must be consistent with and implement the comprehensive plan. (RCW 36.70.040) But, in the context of site-specific rezones, the inquiry goes beyond mere consistency with the map designation of the comprehensive plan—as the Snohomish County Council explained in Motion 07-447 *A Motion Vacating and Remanding the Hearing Examiner's Decision of the Brookstone Investments, LLC (Hearing Examiner File No. 06-135148 LU) back to the Examiner to Supplement the Record at 3* (August 8, 2007), "The Comprehensive Plan is the most direct expression of public policy in the area of land use. In determining that a proposed rezone is consistent with the Comprehensive Plan, the proposal must be consistent with the policies as well as the map designation." The Examiner interprets this language, as well as the law applicable to rezones, to mean that the burden is upon the applicant to demonstrate to the Examiner that the proposed rezone meets the applicable comprehensive plan policies.

5. This rezone is a request to up-zone these properties in the Urban Low Density Residential (ULDR) Designation from Rural Conservation to R-7200 to allow a total of 158 units on this 46.09 acre site. Although it is clear that this request fits within the ULDR designation (which allows up to 6 units per acre), as stated above, the analysis of consistency must go well beyond the designation and identify how the project is consistent with the policies in the plan.

6. The Land Use Element of the General Policy Plan (GPP) introduces the way in which Urban Growth Areas (UGAs)are planned for and how densities are to be determined:

> The GMA requires that urban growth areas (UGAs) be designated through the county's plan. UGAs are to include areas and densities sufficient to permit the urban growth that is projected to occur in the county over the next twenty years. Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas.
>
> Planning for growth in this way accomplishes two GMA goals: 1) the efficient provision and utilization of public facilities and services, including public

[2] This criterion is not applicable in this case as it only applies to performance standard zones, resource land zones, and overlays.

transportation; and 2) reduced conversion of undeveloped land into sprawling, low-density development.

General Policy Plan at LU-1.

This rezone application invokes consideration most directly of Goal LU 2 and its policies. The introduction to that Goal states:

> To promote efficient utilization of land within unincorporated UGAs, the county will encourage well-designed, more pedestrian-friendly urban development patterns with a greater mix of uses and a more efficient, creative use of land. By improving land use efficiency in UGAs, several GMA objectives can be accomplished:
>
> - reduced dependence on the automobile;
> - increased support for public transportation;
> - improved air quality;
> - increased choice of housing types;
> - improved efficiency of infrastructure provision and usage; and
> - reduced consumption of rural lands.
>
> To improve the efficiency of urban residential land utilization, planning within UGAs and development regulations will ensure that future residential subdivisions will achieve a minimum net density of 4 to 6 dwelling units per acre except in areas within or near critical areas that are large in scope, with a high rank order value, and are complex in structure and function. In addition, the county will provide for higher density and mixed use housing types around and within centers and along major transportation corridors; encourage infill and intensification of areas at existing residential densities; and also broaden the variety of housing types within both traditional single-family and multi-family neighborhoods while respecting the vitality and character of established residential neighborhoods. A mix of housing types with a range of densities will be encouraged throughout UGAs, as long as they are carefully sited, well designed, and sensitively integrated into existing communities.
>
> General Policy Plan at LU-15.

Goal LU 2 of the GPP requires that the County "[e]stablish development patterns that use urban land more efficiently", although Objective LU 2.A qualifies that statement by requiring the County to "[i]ncrease residential densities within UGAs by concentrating and intensifying development in appropriate locations." (GPP at LU-16 (emphasis added)) The ULDR designation allows mostly detached housing developments on larger lot sizes. (GPP at LU-89)

Specific policies under Goal LU 2 that are relevant to this development are:

> 2.A.3 Any UGA shall provide for a variety of residential densities identifying minimum and maximum allowable. Density ranges shall consider the presence of critical areas.

7. The Examiner will provide applicants and planning staff with a number of questions to analyze in a typical urban rezone. These questions simply provide factors to consider and discussion points derived from the language of the GPP; no one factor is exclusive and not all questions have to be answered in a particular way. An analysis of each of these points taken from the policy language of the GPP will provide a thorough discussion of the issues intended by the

Council in the adoption of the proposed plan and provide the Examiner a reasonable basis on which to analyze urban rezone proposals.

A. Is this area already characterized by urban growth that has adequate existing facility and service capacities to serve such development for the following types of public facilities and services? Please demonstrate. (See LU-1)

i. Streets, roads and highways (including but not limited local access and circulation, arterial systems and road systems capacity, concurrency, state highway impacts);
ii. Sidewalks;
iii. Street and road lighting systems;
iv. Traffic signals;
v. Domestic water systems;
vi. Sanitary sewer systems;
vii. Public parks and recreational facilities, or useable open space, common areas, or other recreational facilities within the development ;
viii. Storm and sanitary sewer disposal system;
ix. Fire and police protection suppression;
x. Law enforcement;
xi. Public health;
xii. Education; and
xiii. Other services.[3]

B. Will the rezone help to establish development patterns that use urban land more efficiently? How? (See Goal LU-2)
Does the development concentrate and intensify development at an appropriate location? Why? (Objective LU-2.A)

i. Is the development carefully sited?
(a) Critical areas/shorelines.
(i) Please describe the type and location of any critical areas on or in close proximity to the site (if any). **(Policy LU 2.A.3)**
(ii) Describe how impacts to critical areas will be avoided. **(Policy LU 2.A.3)**
(iii) Please describe any shoreline environment that the proposed rezone/development is located within and how the rezone complies with goals and policies of the Snohomish County Shoreline Master Program.[4]

(b) Is the rezone or development proposed in an area within walking distance of transit access or designated transit corridor, medical facility urban centers, parks, and recreational amenities**? (Policy LU 2.A.5)**
(c). How will the development made possible by the requested rezone tend to lessen dependence on private automobiles and promote the use of alternative forms of transportation? **(Page LU-15)**

[3] Taken from the GMA definitions of public facilities and services. (RCW 36.70A.030(12) &(13))
[4] Since the goals and policies of the Snohomish County Shoreline Master Program (SCSMP) are considered an element of the county's GMA Comprehensive Plan, the rezone must be consistent with the SCSMP. (*See* RCW 36.70A.480)

ii. Is the rezone proposal/development sensitively integrated into the existing community? (See LU-15)

(a) What is the character of the existing neighborhood? How would the requested rezone or development proposal be appropriate in the context of the existing neighborhood, keeping in mind that the GPP calls for a mix of housing types in medium density areas? **(LU-15, Policy 2.A.4)**

(b) Does the rezone/development proposal help to provide a mix or variety of affordable housing types, if the area is a medium density area? **(Policy LU 2.A.4)**

(c) Is the requested rezone/development close to a city that is likely to annex it in the future? If so, what comments, if any are in the record regarding the proposed rezone/development? (**See Policy I.C.2)**

iii. If known at the time of submittal of the rezone, is the development well designed? (See LU-15)

(a) Even if density is at a higher level are efforts made to have the character fit into the existing community? If so, what is the character of the existing community and how will the development maintain it? **(See LU-15)**

(b) How specifically will the building design integrate into the existing neighborhood? Are structures of a size, height, mass, and separation to be consistent with vicinity homes and the surrounding neighborhood? Describe in detail. Will the development be at the same elevation as the rest of the existing neighborhood? How will the elevation affect the perception of the development? **(LU-15)**

(c) If applicable, what selective and innovative land use measures will be used to preserve the character of the stable residential neighborhood? **(See Policy HO 2.A.4)**

(d) If the proposed rezone/development will have negative impacts on the character of the surrounding neighborhood, describe whether the developer plans on using features such as landscaping, fencing, setbacks, or other design features to soften or eliminate those impacts. **(LU-15)**

(e) Will the development be designed to provide for adequate fire and medical emergency access through the provision of adequate resident and guest parking, cul-de-sac radii, and building separation? Has the opinion of both the County Fire Marshall and any local Fire District been placed in the record? **(LU-15)**

(f) Is the public health, safety and welfare adequately provided for (examples are safe pedestrian access, safe place for children to wait for school bus, adequate off street parking so that a fire truck can access development)? **(See LU-15)** (See also discussion of public health, safety and welfare criteria, below).

8. The applicant has already submitted a thorough analysis addressing the issues regarding the rezone. The Examiner adopts and incorporates that analysis, except with respect to any comments made regarding drainage. (Exhibit 129)

9. The Examiner cannot find that the applicant's proposal is adequately served by urban services for drainage. As stated above in the subdivision portion of the decision, the proposal to detain stormwater in the farm field is contrary to the comprehensive plan in Objective LU 7.B to

preserve agricultural resource land from inconsistent uses and the Shoreline Master Program's similar policies, which is part of the comprehensive plan. Therefore, the Examiner cannot approve the rezone because it does not implement the comprehensive plan,

10. Reviewing the criteria, the Examiner finds that the proposal otherwise meets the criteria for the rezone. It will otherwise provide for adequate urban services for the development as required by Section A of the analysis. Under Section B, it is providing housing at a lower urban density, which is appropriate, given the location on the UGA border and on the hillside. In reviewing the criteria under Section B, it may end up lessening dependence on the automobile because the spine road (Roadway A) of the subdivision is classified as a "collector" (Exhibit 287), which according to EDDS may accommodate public transit. (EDDS 3-02(B)(1)) No other transit service is nearby.

11. Turning to criteria C, the proposal will fit well with its closest neighbor, The Highlands, in that the housing will consist of large single-family homes on relatively small lots, very similar if not identical to those in The Highlands neighborhood. The issue of the perceived negative impact of the development, the connection, has been thoroughly discussed in this decision. There will be positive impacts, including the fact that the connection will provide for better response time of emergency vehicles. As other connections open up, there will be better overall circulation and less chance of "cut-through" traffic. The proposal provides for wide streets, plenty of parking, sidewalks, safe pedestrian access, and a safe place for children to wait for the school bus. The Examiner concludes that the applicant has met all the necessary requirements for the rezone, except with respect to implementing the comprehensive plan by providing urban services with respect to drainage..

CONCLUSIONS OF LAW-SUBDIVISION

1. The Examiner has original jurisdiction over preliminary subdivision applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.

2 The legal standard to which the Examiner must review a preliminary subdivision under the state subdivision code, Chapter 58.17 RCW, is:

> whether the proposed subdivision complies with the established criteria therein and makes the appropriate provisions for public, health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and other planning features including safe walking conditions for students . . . .
>
> RCW 58.17.110.

3. Given the information provided in the record and the Findings of Fact made above, the Examiner concludes that the applicant has met its burden in showing that the preliminary subdivision application should be approved, with the exception of drainage.

4. The Council has determined as a matter of law in a case factually very similar to this that the DPW was not clearly erroneous in administratively requiring a connection under the EDDS, and that a deviation or subdivision modification was not required. Accordingly, the Examiner

must find that the connection is required, despite the apparent discrepancies between the text of the EDDS and the stated rationale for the connection. Although the Examiner understands the frustrations of the residents of The Highlands development, the County Council has determined that road connectivity is an administrative decision that can only be overturned if it is clearly erroneous. The Examiner cannot find the County Engineer was clearly erroneous under the EDDS.

5. The Examiner does find that the determination to allow the detention pond in the Ag-10 zone in the absence of a conditional use permit was in error and the applicant must provide a new targeted drainage plan, or in the alternative, go through the conditional use permit process to obtain a permit to allow this use on the property.

6. The Examiner concludes that the rezone to R-7200 may be approved if the applicant provides alternative drainage facilities for the subdivision that include detention, onsite or offsite, but south of Lowell Larimer Road.

7. Any Conclusion of Law in this Decision, which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

Based on the Findings of Fact and Conclusions of Law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for the **REZONE is CONDITIONALLY APPROVED, SUBJECT TO** the **PRECONDITION,** below. The request for the subdivision is hereby **CONDITIONALLY APPROVED**, **SUBJECT TO** the following **PRECONDITION** and **CONDITIONS**:

PRECONDITION:

The applicant will provide a modified targeted drainage plan providing detention onsite or offsite, but south of Lowell Larimer Road. The applicant must supply a new preliminary plat map. Alternatively, if the applicant chooses to go through the permit process to seek a conditional use permit to allow the detention facility use on the Hagen farm field parcel, the conditional use and any associated use permits (shorelines and flood hazard) must be approved prior to lifting of the pre-condition.

CONDITIONS:

A. The preliminary plat satisfying the precondition shall be the approved plat configuration. SCC 30.41A.330 governs changes to the approved plat.

B. Based on the approved EDDS deviations that eliminated the requirement of a temporary turnaround cul-de-sac at the south end of proposed access Roadway A for Heritage Paterson 1, where both the Heritage Paterson 1 and Heritage Hagen 1 plats adjoin, both the Heritage Paterson 1 and Heritage Hagen 1 plats shall be constructed and recorded concurrently.

C. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:

i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.

ii. The plattor shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.

iii. A final mitigation plan based on the Wetland and Buffer Mitigation Plan prepared by Wetland Resources Inc., revised December 6, 2007, (Exhibits 141A & 141B) shall be submitted for review and approval during the construction review phase of this project.

iv. The Boundary Line Adjustments and Record of Survey being processed under PFN 05-125681 BA shall have been approved and recorded.

v. Prior to initiating work within or taking access from the state right-of-way, the applicant shall have obtained approval and permits from the WSDOT for all work to be completed within the Lowell Larimer (SR 96) right-of-way.

vi. The applicant shall apply to DPW for a Haul Route Agreement.

vii. The recommendations of the geotechnical report (Exhibit 327) shall be implemented in full as a part of the engineering plans and other documents and followed during construction phase, unless changed by the authors of the report.

D. The following additional restrictions and/or items shall be indicated on the face of the final plat:

i. "The lots within this subdivision will be subject to school impact mitigation fees for the Snohomish School District No. 201 to be determined by the certified amount within the Base Fee Schedule in effect at the time of building permit application, and to be collected prior to building permit issuance, in accordance with the provisions of SCC 30.66C.010. Credit shall be given for 1 existing parcel. Lot 1 shall receive the credit."

ii. Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for each single-family residential building permit:

- $2,555.19 per lot for mitigation of impacts on county roads paid to the county,
- $344.52 per lot for mitigation of impacts on state highways paid to the county,
- $75.75 per lot for Transportation Demand Management paid to the county
- $224.90 per lot for mitigation of impacts on city streets for the City of Mill Creek, paid to the City of Mill Creek. Proof of payment is required.

Notice of these mitigation payment obligations shall be stated on the face of the final plat. Once a building permit has been issued all traffic mitigation payments for that lot shall be deemed paid.

iii. All Critical Areas shall be designated Native Growth Protection Areas (NGPA) (unless other agreements have been made) with the following language on the face of the plat;

"All NATIVE GROWTH 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, except removal of hazardous trees. The activities as set forth in SCC 30.91N.010 are allowed when approved by the County."

iv. The dwelling units within this development are subject to park impact fees in the amount of $1,364.22 per newly approved dwelling unit, as mitigation for impacts to the Centennial Park Service Area No. 306 of the County parks system in accordance with SCC 30.66A. Payment of these mitigation fees is required prior to building permit issuance, provided the building permit is issued by March 28, 2011 (5 years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance.

v. Each lot may be subject to periodic assessments or charges levied by the Board for the benefit of Marshland Flood Control District ("Marshland") to offset any increase in Marshland's operating costs and expenses attributable to increased surface water runoff, increased siltations, or increased electricity costs of pumping water caused by acceptance of surface water runoff generated by the Project. The amount to be assessed against each lot shall be determined by Marshland in accordance with applicable law; provided, however, that any such assessment shall be in an amount equal to any surface water assessment then levied against such lot by Snohomish County, less the normal administrative costs of levying and collecting the assessment; and provided further, that Marshland shall not be entitled to any assessment from any lot or owner unless and until Snohomish County has ceased making payments to Marshland for Marshland's management of surface water runoff from the project, as such payments are currently made pursuant to an interlocal agreement between Marshland and Snohomish County, as authorized by RCW Chapter 39.34.

E. Prior to recording of the final plat:

i. NGPA boundaries shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The plattor may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. 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 NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

ii. The final wetland mitigation plan shall be completely implemented.

iii. The developer shall be required to install traffic calming devices on both, or either of, 67th or 68th Avenues SE within The Highlands subdivision, if The Highlands Home Owners Association (HOA) provides proof to Snohomish County Public Works that a

minimum of 60% of the residents of The Highlands approve of the installation of said traffic calming devices. The type of traffic calming devices must be approved by the Department of Public Works and shall consist of, or be similar to, speed humps or speed cushions and/or no parking signs. In the event the HOA's submittal of their residents' request for the County's approval of the traffic calming devices, would delay the recording of the final plat, the approval and installation of the traffic calming devices may be delayed and shall be completed prior to the final approval of the building permit authorizing occupancy of the first residence. If, prior to the recording of the final plat, the HOA has not obtained the required 60% residents' approval and submitted their request to Snohomish County Public Works, the developer shall have no further obligation to install traffic calming devices on both, or either of, 67th or 68th Avenues SE.

iv. Covenants, deeds and homeowners association bylaws and other documents as appropriate, to be recorded prior to, or simultaneously with final plat recording, shall have been approved as to substance and completeness by the Department of Planning and Development Services, and shall, at a minimum, establish a Homeowner's Association, guaranteeing maintenance of the drainage facility.

v. Pursuant to SCC 30.63A.300(2), the developer is required to prepare an Operations and Maintenance Manual for stormwater facilities. The developer shall adopt and record with the project's CC&Rs an Operations and Maintenance Manual addressing the project's stormwater facilities, including the water quality and detention facilities, that includes a specific schedule for regular inspection and maintenance of all facilities at least once each year.

vi. Frontage improvements conforming to WSDOT standards shall have been constructed along the development's frontage along Lowell Larimer Road.

vii. Additional right-of-way, parallel and adjacent to the right-of-way centerline of Lowell Larimer Road shall be deeded to the WSDOT along the development's frontage such that 40 feet of right-of-way exists from centerline of the Lowell Larimer Road right-of-way unless the WSDOT desires a different amount of right-of-way.

F. All development activity shall conform to the requirements of Chapter 30.63A SCC, except as expressly modified by approvals in Exhibit 126, or in documents fulfilling the precondition.

G. Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

H. Preliminary plats which are approved by the county are valid for five (5) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300.

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

Preliminary plats which are approved by the county are valid for five (5) years from the date of approval and must be recorded within that time period unless an extension has been properly requested and granted pursuant to SCC 30.41A.300.

Decision issued this 31st day of October, 2008.

_____
Barbara Dykes, Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. 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 Examiner and Council Rules of Procedure.

Reconsideration

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **NOVEMBER 10, 2008**. 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: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner's attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

(a) The Hearing Examiner exceeded the Hearing Examiner's jurisdiction;

(b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner's 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 which could not reasonably have been produced and which is material to the decision is discovered; 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. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. 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) on or before **NOVEMBER 14, 2008** and shall be accompanied by a filing fee in the amount of five hundred dollars ($500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

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

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]

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: Erik Olson

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.130.

This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than <u>OCTOBER 31, 2009</u>.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).

2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.

3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:

   A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and

   B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant decision is effective as of _____, _____.

Certified by:

_____

(Name)

_____

(Title)