

**DECISION of the SNOHOMISH
COUNTY HEARING EXAMINER**

DATE OF DECISION: September 19, 2008

PLAT/PROJECT NAME: **CASCADIA**

APPLICANT/
LANDOWNER: Fairview Ministries Northwest

FILE NO.: 07-101058-000-00-LU

TYPE OF REQUEST: Conditional Use Permit

DECISION (SUMMARY): **APPROVAL SUBJECT TO PRECONDITIONS AND CONDITIONS**

BASIC INFORMATION

GENERAL LOCATION: 19325 39th Ave. SE, situated in Section 16, Township 27 North, Range 5 East, W.M., Snohomish County, Washington.

ACREAGE: 17.19 acres

CURRENT ZONING: Rural 5 Acre (R-5)
VESTED ZONING: R-7200

COMPREHENSIVE PLAN DESIGNATION:

Current General Policy Plan Designation: Rural Residential (RR/basic)
Vested General Policy Plan Designation: Public/Institutional

UTILITIES:

Water: Alderwood Water & Waste Water District
Sewer: Alderwood Water & Waste Water District

SCHOOL DISTRICT: Northshore School District No. 417

FIRE DISTRICT: FPD NO.7

PDS STAFF RECOMMENDATION: Approve with preconditions and conditions

INTRODUCTION

The Applicant filed the Master Application on March 16, 2007. (Exhibit 1A)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibit 6A (Affidavit of Mailing); Exhibit 6B (Affidavit of Notification by Publication); Exhibit 6C and 39 (Posting Verification))

A SEPA determination was made on April 24, 2008. (Exhibit 5B) The Examiner held an open record hearing on June 4 and June 23, 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 hearing 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.

A. Background

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: The subject application requests a Conditional Use (CU) permit and landscape modification for a continuing care retirement community including 210 apartments located throughout two 3-story independent living buildings, 55 apartments for assisted living in one 3-story building, one 2-story office/common area building and five duplex cottages on a 17.19 acre site. Future grading is estimated to be approximately 50,000 cubic yards of cut and fill associated with construction of all project related improvements. The project includes construction of two half-roads through road establishment that will provide public right-of-way and new access to Jewell Road and 35th Avenue SE. This project also proposes low impact development techniques and features as required by Chapter 30.63C SCC for projects in the Little Bear Creek Basin.
3. Site Description: The site is a rectangular property of general flat and rolling grassland and scattered alder and fir overstory extending north from its southerly boundary with the Fernwood Elementary School. The site contains one Category 3 non-riparian wetland and a man-made pond that will be preserved and buffered under the proposed CU development.
4. Adjacent Zoning/Uses: Adjacent land to the north and east is zoned R-5. Land to the west is zoned R-9600. The adjacent land to the south is zoned R-7200. Land to the immediate north, west and east is currently developed as single-family large lot residential use or undeveloped. Land to the south is developed as an elementary school.

B. Public Comment/Issues of Concern

- 5. Citizen comments have been received indicating concerns associated with: Previous Snohomish County Council action to expand the urban growth boundary to include the subject property and providing R-7200 zoning; the subsequent Growth Management Hearings Board action on an appeal of that urban growth boundary extension; the Snohomish County Council's following decision to rescind the urban growth boundary extension and R-7200 zoning; the legitimacy of extending sewer service to a redesignated rural property within a rural area; and CU traffic impacts to the existing road conditions. Citizen comments are included in Exhibits 9A, 9B, 9C, PD, 9E, 9F, and 9G.

In summary: The CU application was deemed to be complete under an urban designation and the application vested prior to the Growth Management Hearings Board receipt of an appeal of the Council action extending the UGA boundary. Though annexation of the entire site into the Alderwood Sewer District sewer service boundaries was completed after Council action rescinding the earlier UGA expansion, PDS has determined that the CU application vested overall site development under county codes and such vesting included the extension of sewer service to an urban property.

C. Compliance with Codes and Policies.

- 6. Parks Mitigation. The proposal is within Park District No. 307 and is subject to Chapter 30.66A SCC, which requires payment of \$1,244.49 per each new single-family residential unit, to be paid either prior to plat recording or prior to building permit issuance for each unit. In the instant case, 220 units are subject to mitigation fees. Fifty-five units devoted to "assisted living" units (nursing home care) are not. Payment of mitigation fees in combination with on-site recreational opportunities is deemed to be acceptable mitigation for parks and recreation impacts in accordance with county policies. A recommended condition of CU approval will provide for such payment prior to building permit issuance.
- 7. Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC)

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

A development must mitigate its impact upon the future capacity of the road system by paying a road system impact fee reasonably related to the impacts of the development on arterial roads located in the same transportation service area as the development, at the rate identified in SCC 30.66B.330 for the type and location of the proposed development.

The impact fee for this proposal is based on the new average daily trips (ADT) generated by the following proposed uses: 10 senior adult detached housing units (five duplexes), 210 congregate care units/beds, 55 assisted care living units. The trip generation for those units varies by type according to the 7th Edition of the ITE Trip Generation Report and will be detailed below. A 5% credit for ADT and peak hour trips has been given to this project because a Transportation Demand Management (TDM) plan was submitted with the application and has been found acceptable by the Department of Public Works (DPW). Based on what the plans show for this review, the development will generate 605.35 new ADT and has a road system capacity impact fee of \$118,648.60, based on \$196.00/ADT. As a recommended condition of approval this impact fee must be paid prior to issuance of any building permit.

The ADT has been calculated as follows:

- 10 units senior adult detached housing (five duplexes); Land Use Code 251: 10 units x 3.71 ADT/unit x 95% for TDM credit = 35.25 ADT
- 210 units congregate care facility; Land Use Code 253: 210 units x 2.14 ADT/unit x 95% for TDM credit = 426.93 ADT
- 55 units (referred to as apartments on the plans) assisted living; Land Use Code 254: 55 units x 2.74 ADT/occupied bed x 95% for TDM credit = 143.17 ADT

Total ADT is 605.35

The AM PHT has been calculated as follows:

- 10 units senior adult detached housing (five duplexes); Land Use Code 251: 10 units x 0.20 AM peak hour trip/unit x 95% for TDM credit = 1.90 AM peak hour trips
- 210 units congregate care facility; Land Use Code 253: 210 units x 0.06 AM peak hour trip/unit x 95% for TDM credit = 11.97 AM peak hour trips
- 55 units (referred to as apartments on the plans) assisted living; Land Use Code 254: 55 units x 0.14 AM peak hour trip/occupied bed x 95% for TDM credit = 7.32 AM peak hour trips

Total AM PHT is 21.19

The PM PHT has been calculated as follows:

- 10 units senior adult detached housing (five duplexes); Land Use Code 251: 10 units x 0.26 PM peak hour trip/unit x 95% for TDM credit = 2.47 PM peak hour trip
- 210 units congregate care facility; Land Use Code 253: 210 units x 0.17 PM peak hour trip/unit x 95% for TDM credit = 33.92 PM peak hour trips
- 55 units (referred to as apartments on the plans) assisted living; Land Use Code 254: 55 units x 0.22 PM peak hour trip/occupied bed x 95% for TDM credit = 11.50 PM peak hour trips

Total PM PHT is 47.90

B. Concurrency [SCC 30.66B.120]

"Level-of-service" means a qualitative measure describing operational conditions within a traffic stream, and the perception thereof by road users. Level-of-service (LOS) standards may be evaluated in terms such as speed and travel time, freedom to maneuver, traffic interruptions, comfort, convenience, geographic accessibility, and safety. The Highway Capacity Manual defines six levels of service for each type of facility for which analysis procedures are available. They are given letter designations, from A to F, with LOS A representing the best operating condition, and LOS F the worst.

The County makes a concurrency determination for each development application to ensure that the development will not impact a county arterial unit in arrears.

There were initially some unresolved issues with the traffic study and the TDM plan that had to be addressed before a concurrency determination could be made. The TDM Plan was corrected, and the trip generation for assisted care living units was clarified.

DPW Traffic concluded that there is no other similar use in the area to compare the trip distribution with, but the distribution is similar to that of the adjacent residential development of

Carlson Addition PFN 06 126088; therefore, DPW accepted the traffic distribution for this development.

The traffic study dated March 2007 by LSA, Inc. shows that three or more peak hour trips will impact arterial unit #420, which is in arrears. According to the trip distribution provided by the Applicant's traffic engineer, 90% of the trips generated by the development would impact the arterial unit in arrears. A concurrency determination could not be made for this project until a letter, signed by the Applicant, offering a specific fix for unit #420 is submitted and approved by DPW. The letter was submitted for this review, and it was determined to be acceptable.

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and the DPW has made a preliminary determination that:

The development is concurrent as of February 21, 2008, which is the date that the letter from the Applicant was submitted offering to fix arterial unit #420 (York Rd / 35th Avenue SE from SR 524 to Grannis Road).

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 February 21, 2008.

The development was deemed concurrent on the following basis:

Small or Medium-Sized Development in TSA with one or more arterial unit in arrears, SCC 30.66.160(2)(b): The subject development is located in TSA E, which as of the date of submittal had the following arterial unit in arrears; #420. Based on peak-hour trip distributions, the subject development DID add three (3) or more peak-hour trips to arterial unit #420. However, the development has been deemed concurrent pursuant to SCC 30.66B.167 based on conditions detailed below. The development generates 21.19 a.m. peak-hour trips and 47.90 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]

The intersection of York Road/Jewell Road has since been determined to be inadequate. The development that prompted the investigation is Jewell Assembly, PFN 05 128235, which was submitted on January 19, 2006. The IRC board met on May 31, 2006 and made the finding that the intersection is inadequate. All projects submitted after January 19, 2006 are subject to the conditions of the IRC. 30.66B.210 states as follows:

(1) Regardless of the existing level of service, development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing inadequate road condition (IRC) at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC. To eliminate an inadequate road condition means to make sufficient changes to the road system to allow the county engineer to determine that the location no longer constitutes an inadequate road condition.

The traffic distribution submitted with the application shows that the development places more than 3 p.m. peak hour trips through the York Road/Jewell Road intersection IRC. This development is therefore subject to the conditions placed on it by SCC 30.66B.210. The Applicant must submit a letter per SCC 30.66B.170 (1); which states: *If a developer chooses to mitigate the development's impact by constructing offsite road improvements to remedy the arterial unit in arrears or inadequate road condition, the developer must investigate the impact, identify improvements, and offer a construction plan to the director for construction of the offsite*

improvements. DPW has been requiring that a letter (signed by the Applicant) offering a specific fix to the IRC be submitted prior to recommendation of the development.

It was determined by DPW that a letter offering to fix the IRC is not needed in this case. The recommended condition of approval will specify as follows: In accordance with SCC 30.66B.220, the conditions of approval for this development will specify that the construction to remedy the IRC at York Road and Jewell Road shall have been completed or under contract by the Applicant or others prior to the issuance of any building permits, and must be completed prior to approval for occupancy or final inspection.

D. Frontage Improvements [SCC 30.66B.410]

The subject property's frontage is located along 39th Avenue SE, currently a private gravel road. DPW will require that right-of-way for 39th Avenue SE is deeded as public between the north property line and Jewell Road and a "half" street constructed along the property's frontage of the development. The design standard for this is a 20-foot minimum pavement width with vertical curb, 5-foot planter strip, and 7-foot sidewalk along the west side.

The Applicant has initiated a Road Establishment process through Snohomish County DPW to convert the property to a public road.

E. Access and Circulation [SCC 30.66B.420]

The property line between parcels 27051600302600 and 27051600303000 in this development is aligned with 194th Street SE, which has been identified on the Snohomish County GMA Comprehensive Plan as a future collector arterial. DPW initially required that the right-of-way for 194th Street be dedicated and constructed along that general alignment. The Applicant submitted a deviation to EDDS 3-01 (B.4) on February 23, 2007 with the pre-application meeting (the Applicant scheduled both a pre-submittal meeting and a pre-application meeting that took place about a week apart) to request that a second constructed road connection to 39th Avenue SE not be required. The request was denied because 39th Avenue will have a high density of traffic from developments in the near future and will need a second constructed road for adequate circulation in the area. It was subsequently determined by DPW that right-of-way dedication and construction of 194th Street SE would not be required; and that DPW would instead accept a 40-foot reservation for future right-of-way along the south property line of the development. The reservation will be shown on the site development plan document along with a "will not protest conversion to public" statement.

In order to address the connection issue of EDDS 3-01 (B.4); the Applicant obtained a piece of property on the west side of 39th Avenue SE. The north property line of the new piece is aligned with the north property line of the proposed development plan, and a new public road is proposed (191st Street SE) that will connect 39th Avenue SE with 35th Avenue SE; thereby connecting 39th Avenue in two locations. A grading permit application has been submitted for construction of the road, and the Applicant must go through the Road Establishment process to convert the road to public in conjunction with the design and construction process. A deviation to EDDS 3-06A to request a deviation to design speed of the road was submitted and approved. The road would have been classified as an urban collector with a design speed of 35 mph because it has a potential of having more than 1,000 ADT. Instead; a design speed of 25 mph was approved by DPW.

The access points into the development are considered commercial driveways, so must meet EDDS requirements for commercial driveways; including number allowed, minimum and

maximum width, location, separation, spacing, and corner clearance from intersections. Horizontal and vertical alignment of access points and sight distance will also be reviewed.

The plans initially showed five access points on 39th Avenue SE. The property has approximately 1,100 feet of frontage on 39th Avenue, so is allowed to have two 2-way access points on the road per EDDS 2-02; which states: *One two-way access point or two one-way access points, exclusive of alleys, shall be allowed per 500 feet of total property frontage.* The plans were subsequently revised so that three access points are proposed on 39th Avenue SE instead of the original version of five access points. The Applicant's representative pointed out in the submittal cover letter that the property will front on the future arterial 194th Street SE along the south property line. Therefore, the number of access points is acceptable in this case.

Non-signalized access points, in areas requiring vertical curb and gutter frontage improvements, shall be constructed as drop curb driveways in accordance with Standard Drawings 2-020 (Residential) or 2-025 (Commercial/Industrial). The plans initially showed the access points as road intersections and include curb radius returns, which did not meet the design standards. The plans were subsequently revised to show drop curb intersections at the commercial driveways instead of curb radius returns, so this issue has been addressed.

Two-way commercial or industrial access points shall have minimum/maximum access widths as follows: For non-arterial road access, 25 feet is the minimum and 40 feet is the maximum width allowed. Accesses on an arterial road have a minimum width of 35 feet and a maximum width of 40 feet required. The central access point initially exceeded the maximum width permitted for a commercial driveway, which is 40 feet. The plans were revised to meet the driveway width standard required by EDDS for this review.

The required minimum access point spacing between the commercial driveways or from a road intersection off of 39th Avenue is 45 feet between adjacent access points (same side of the road), 75 feet from an access point across the road and north, and 35 feet from an access point across the road and to the south, or the access point must be aligned directly across from another access. The plans now show that the commercial driveways in the subject development meet the required amount of spacing from each other on the east side of 39th Avenue SE. The Carlson commercial driveway has been shown on the plans, and the central driveway for the subject development has been aligned directly across from that. The Perra road access point is shown on the plans and has a separation of 143 feet south of the south commercial driveway for this development, which meets the separation requirements.

A cross section of 39th Avenue SE (Exhibit 2C) was provided for this review, and it was determined that the road grade and vertical curves are acceptable.

F. Right-of-Way Requirements [SCC 30.66B.510, SCC 30.66B.520]

DPW will require that right-of-way for 39th Avenue SE is deeded as public between the north property line and Jewell Road. 39th Avenue SE is designated as a non-arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. No right-of-way presently exists on the development's side of the right-of-way. Therefore, a minimum of 30 feet of additional right-of-way is required. Additional right-of-way is needed to fit the required improvements (a minimum of 20 feet of pavement, vertical curb, 5-foot planter strip, 7-foot wide sidewalk and 2.5 feet of right-of-way behind the sidewalk). There are negotiations with the school district over additional right-of-way for sidewalks and the approval will be conditioned accordingly. The plans show 35 feet of property for right-of-way establishment on 39th Avenue SE, which is adequate.

The Fernwood Elementary School and Northshore School District have requested that as the Applicants establish the intersection of Jewell Road and 39th Avenue SE, it be improved to include adequate turning radii to serve school buses and other large vehicles. Exhibit 34. A school bus requires a minimum outside turn radius of approximately 45 feet (to path of front overhang) to make a turn without encroaching on the opposing lane of traffic. The Applicants have committed to work with the School District in order to achieve the radius, and the Examiner directs PDS and DPW to ensure that this cooperation occurs during construction of improvements.

194th Street SE is designated as a future collector arterial on the County's Arterial Circulation Map. This requires a right-of-way width of 35 feet on each side of the right-of-way centerline. No right-of-way presently exists on the development's side of the right-of-way. Therefore, 35 feet of right-of-way is required. The plans show a 40-foot right-of-way reservation, which is acceptable to the County Engineer.

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

This development is subject to the Washington State Department of Transportation (WSDOT)/County Inter-local Agreement (ILA) which became effective on applications determined complete on or after December 21, 1997, since the subject development will go through the SEPA review process.

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. The Applicant has chosen option "d". An offer of \$2,211.48 (based on 614.3 ADT x \$36.00) was submitted with the application. The calculation was in error. Since the TDM Plan is approved and the 5% reduction can be applied to the ADT, then the correct amount would be \$22,114.80. The offer must be corrected and signed by the Applicant. Please note that the person that signed the offer is not identified as the Applicant on the notarized Master Permit Application. Either the person that signed the Master Permit Application must sign the offer, or the person that signed the offer must submit documentation that he has power of attorney for the Applicant.

A revised offer to pay WSDOT was submitted for this review. (Exhibit 8B) The number of different types of units was revised for this review, which resulted in the number of ADT changing slightly. The TDM Plan was approved, so a 5% reduction will be used for the total ADT number. The new ADT total is 605.35 ADT. The new offer is \$21,790.80, based on 605.3 ADT (due to rounding by the Applicant) x \$36.00. Comments dated November 30, 2007 have been received from WSDOT verifying agreement with the offered amount. Payment of that amount will be a recommended condition of approval for this development.

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

The project falls within the interlocal agreement area designated by the City of Mill Creek and by the City of Bothell for traffic mitigation. The traffic study by LSA, Inc. indicates that the development would owe Mill Creek \$2,534.82 for traffic mitigation based on the number of trips that the traffic distribution shows would go through City collection projects. Comments dated April 9, 2007 (Exhibit 8A2) have been received from the city indicating agreement with that amount. Subsequently LSA, Inc. revised the amount to \$2,509.92 to match the adjusted number of units proposed in the development.

This project falls within the interlocal agreement area designated by the City of Bothell for traffic mitigation. A revised offer to pay Bothell was submitted for this review. The number of different types of units was revised for this review, so that resulted in the trip generation numbers changing slightly; and a TDM credit is included in the final numbers. The total traffic mitigation amount that was previously offered to Bothell was \$25,765.71. The following is a summary of the current traffic mitigation fee offered to Bothell:

This project falls within the interlocal agreement area designated by the City of Bothell for traffic mitigation. The traffic study by LSA, Inc. calculates that the development would owe the City \$25,567.35 based on the area averages method (the project is located in an area where it is estimated that 30% of the project's trips impact the City's street system) as follows:

\$448.00 per Senior Housing dwelling x 10 units x 30% =	\$1,344.00
\$332.00 per Congregate Care bed x 210 units x 30% =	\$20,916.00
\$282.00 per Assisted Living dwelling x 55 units x 30% =	\$4,653.00
Less 5% for TDM credit reduction	<u>(\$1,345.65)</u>
	Total: \$25,567.35

Comments dated January 8, 2008 (Exhibit 8A1) have been received from the City of Bothell verifying agreement with the offered amount. Payment of that amount will be a recommended condition of approval for this development.

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. TDM offers a means of increasing the ability of transportation facilities and services to accommodate greater travel demand without making expensive capital improvements. The County requires TDM of developments inside Urban Growth Areas (UGA) and developments that impact arterial units designated as ultimate capacity.

All new developments in the urban area shall provide TDM measures. Sufficient TDM measures shall be provided to indicate the potential for removing a minimum of five (5) percent of the development's p.m. peak hour trips from the road system. This requirement shall be met by the provisions of site design requirements under SCC 30.66B.640, as applicable, except where the development proposes construction or purchase of specific off-site TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.620 and SCC 30.66B.625.

A revised TDM plan (Exhibit 2B5) has been approved for this project. Therefore the TDM obligation fee has been waived, and a 5% reduction credit on the number of ADT generated by this project has been given in item 1 above. A recommended condition of approval provides for implementation of the TDM plan.

8. 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. Chapter 30.66C.010(2)(d) provides an exception for "Housing for Older Persons," as defined by 42 U.S.C. Section 3607(2), when guaranteed by a restrictive covenant. The subject CU application is deemed to be such an exception under Chapter 30.66C SCC. A recommended condition of approval will provide for recording of an appropriate restrictive covenant as a precondition of CU approval.

9. Drainage and grading.

A. Drainage. The CU application has been reviewed for compliance with the Unified Development Code by the engineering section of PDS, and is approved conceptually for drainage/grading. The review was based upon the following submitted information:

- Preliminary Targeted Drainage/LID Report dated January 15, 2008
- Cascadia Environmental Checklist dated March 2007
- Geotechnical Engineering Study ES-0705.01 dated September 7, 2007
- Targeted Drainage Plan dated February 21, 2008
- Memo: Drainage Findings dated January 31, 2005
- Response letter from James Egge & Associates dated February 21, 2008

B. Existing site attributes: The 17.26 acre site development located at 19325 39th Avenue SE in Bothell, Washington is currently a combination of mostly open pasture with some forested areas, and two apparently natural ponds with wetlands. Drainage is gradual towards the east property line and the ponds, and to the southeast corner of the site. There is at least one smaller natural depression area that apparently stores or infiltrates existing runoff.

Please see the drainage report (Exhibit 3A) for further details on existing conditions.

C. Proposed development measures: At the time the CU application was deemed complete the project was required under SCC 30.63C.025 to use low impact development drainage techniques, and the plans reflect compliance with this requirement. Numerous rain gardens for infiltration and water quality treatment of surface runoff are proposed. The rain gardens will act as small retention systems, holding runoff back and infiltrating some runoff, while also treating runoff similarly to wet ponds. Any failed rain gardens will have emergency overflow systems that protect buildings and roads. A large detention pond is proposed at the southeast corner of the site to detain and treat the remaining runoff not infiltrated by the rain gardens. Dead storage in the vault will be designed to compensate for any existing lost depression storage. A 400 foot long biofiltration swale is proposed for treating 39th Avenue SE runoff.

Covenants and restrictions will be placed upon the property owner to maintain and protect the design intent and function of the rain gardens and the drainage system in perpetuity. A standard drainage facility maintenance covenant agreement that is binding upon the property will be required at construction review.

- D. Analysis: Surface Water Management has made comments only regarding the drainage system design. At this time there is no known documentation of flooding of roads or structures within ¼ mile downstream. Citizen comments of concern have all been satisfactorily addressed.

The final layout of proposed drainage features may need to be modified to address outstanding construction-related drainage comments.

Based upon the preliminary documents provided, PDS Engineering has concluded this project can meet the requirements of the UDC with regard to drainage and grading.

The Northshore School District is concerned regarding water quality treatment of drainage flowing from 39th Avenue SE toward the Fernwood Elementary School property and the increase in impervious surfaces impacting the existing ditch and piped conveyance system along Jewell Road. The Applicant has committed to working with the District on these issues through the final drainage review and construction process. The Examiner directs PDS to assure that these issues are addressed by the Applicant.

PDS (Engineering) has reviewed the concept offered 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. Grading quantities are anticipated to be approximately 50,000 cubic yards of cut and 50,000 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.

10. Critical Areas Regulations (Chapter 30.62 SCC)

County staff has visited the subject property on several different occasions dating back to 2004. Refer to the Revised January 8, 2008 Critical Area Study (Exhibit 3F) by Wetland Resources, Inc. for an accurate history of site evaluations. In brief, the subject property contains two Category 3 wetlands. One wetland was excavated into a pond more than 40 years ago. The property is primarily composed of existing pasture with scattered large firs throughout.

No wetland impacts are proposed. A 20-foot wide permeable LID fire lane is proposed as part of this development. A small portion of the fire land falls within the 15-foot building setback of the wetland buffer. There are four trees within the NGPA within 15 feet of the proposed fire lane. As mitigation, the project proponent proposes compensation for these trees by adding additional buffer to the required buffer in the amount of 383 square feet. Nine trees are located within this additional area. Split-rail fencing is proposed to be placed along the NGPA perimeter along with NGPA signage for an added degree of protection.

An evaluation of the information submitted in the revised application coupled with several on-site investigations has resulted in a determination that the application complies with Chapter 30.62 SCC (Critical Areas Regulation) and is consistent with the purpose and objectives of the Chapter in regulation of development activities in Critical Areas to safeguard the public health, safety and welfare. Recommended conditions of CU approval will assure compliance with this determination.

11. Consistency with the GMA Comprehensive Plan.

This application was complete on March 16, 2007. On December 21, 2005, effective February 1, 2006, the Council adopted Amended Ordinances 05-069 through 05-079, 05-081 through 05-085, 05-090 which amended the map and text of the Snohomish County GMA Comprehensive Plan, added rural lands to UGAs and adopted area-wide rezones within the UGAs of the county respectively. The subject property was designated Public/Institutional on the GPP Future Land Use map, and was located within a UGA. The CU application vested to these designations at the time of filing. The site was not, and is not, located within a mapped Growth Phasing Overlay.

The Public/Institutional designation allows for a Level II Health and Social Services Facility served by public sewer under a CU permit approval. The subject CU proposal is consistent with Level II Health and Social Services Facility use. PDS has reviewed and analyzed the subject CU and finds that if approved with conditions, will implement an allowed use on the subject site that is consistent with the vested designation.

The following discussion addresses CU project consistency with key GPP goals, objectives, and policies. The discussion and analysis includes impacts associated with traffic, storm drainage, parks and recreation, public schools, and zoning code provisions addressing compatibility with surrounding properties (bulk regulations and landscape buffers). CU conditions of approval will assure construction permits are consistent with such evaluation and official site plan approval and thus will substantiate GMA code compliance prior to construction permit issuance. Such approvals will sufficiently mitigate for future impacts associated with development patterns, site design and sensitively integrating site development into the immediate community.

Land Use Goal LU 2 - "Establish development patterns that use urban land more efficiently"

Land Use Objective LU 2.A - "Increase residential densities within UGAs by concentrating and intensifying development in appropriate locations"

LU Policy 2.A.4 - "Any UGA shall provide opportunities for a mix of affordable housing types... within medium density residential areas."

Housing Opportunity Objective HO1.B - "Ensure that a broad range of housing types is available in urban and rural areas."

Transportation Policy TR 1.C.2 - "Adequate access to and circulation within all developments shall be maintained for emergency service..."

Capital Facilities Policy CF 7.1 - "The County shall utilize impact fees as authorized under the GMA to help fund the cost of parkland and facilities expansion and as required to serve new development."

Natural Environment Objective NE 1.A - "Balance the protection of the natural environment with economic growth, housing needs and the protection of property rights."

Natural Environment Objective NE 1.B - "Accommodate population growth in a manner that maintains and protects elements of the natural environment."

Natural Environment Objective NE 1.C - "Protect and enhance natural watershed processes, wetlands, fish and wildlife habitat conservation areas, shorelines, and water resources with the long-term objective of protecting ecological function and values."

Natural Environment Policy NE 1.C2 - "The County shall continue to protect and enhance wetlands and fish and wildlife habitat conservation areas through the use of a variety of strategies..."

Natural Environment Objective NE 3.B - "Designate and protect fish and wildlife habitat conservation areas and wetlands pursuant to the Growth Management Act." (Including: NE Policies 3.B.1, 4, 5, and 10)

Approval of the current CU permit and subsequent construction permit approvals can be the mechanism for implementing the GPP elements, goals, objectives and policies. In addition, specific GMA adopted development regulations will address specific design criteria including density, landscape buffering, storm water facilities, public utilities, critical areas protection, emergency access, and impacts associated with transportation needs.

12. Zoning.

This project meets zoning code requirements for lot size, including lot size averaging provisions, bulk regulations and other zoning code requirements. Pursuant to Chapter 30.25.040, PDS has determined that the proposed landscape modification represents an equal or better result and that proposed landscaping fulfills its intended purpose as described in Chapter 30.25 SCC. PDS has reviewed the Applicant's parking program (Exhibit 3D) and pursuant to SCC 30.26.030(1) and 30.26.035, finds it sufficient for the proposed development.

13. Utilities

- A. Water. Water is available from Alderwood Water & Waste Water District. (Exhibit 8E1)
- B. Sewer. Sewer service is available Alderwood Water & Waste Water District. (Exhibit 8E1)
- C. Electricity. The Snohomish County PUD submitted a letter stating that electricity is available. (Exhibit 8D)

14. State Environmental Policy Act Determination (Chapter 30.61 SCC)

PDS issued a Determination of Nonsignificance (DNS) for the subject application on April 24, 2008 (Exhibit 5B). The DNS was not appealed.

15. Conditional Use Permit Criteria

In considering the application, the Examiner must apply SCC 30.42C.100, which outlines the decision criteria for a conditional use permit as follows:

- 1. The hearing examiner may approve, approve with conditions, or deny a conditional use permit only when all the following criteria are met:
 - (a) The proposal is consistent with the comprehensive plan;
 - (b) The proposal complies with applicable requirements of this title;
 - (c) The proposal will not be materially detrimental to uses or property in the immediate vicinity; and
 - (d) The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended

character, appearance, quality of development, and physical characteristics of the site and surrounding property.

2. As a condition of approval, the hearing examiner may:
 - (a) Increase requirements in the standards, criteria, or policies established by this title;
 - (b) Stipulate the exact location as a means of minimizing hazards to life, limb, property damage, erosion, landslides, or traffic;
 - (c) Require structural features or equipment essential to serve the same purpose set forth in 30.42C.100 (2)(b);
 - (d) Impose conditions similar to those set forth in items 30.42C.100 (2)(b) and 30.42C.100 (2)(c) as may be deemed necessary to establish parity with uses permitted in the same zone in their freedom from nuisance generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters. The hearing examiner may not in connection with action on a conditional use permit, reduce the requirements specified by this title as pertaining to any use nor otherwise reduce the requirements of this title in matters for which a variance is the remedy provided;
 - (e) Assure that the degree of compatibility with the purpose of this title shall be maintained with respect to the particular use on the particular site and in consideration of other existing and potential uses, within the general area in which the use is proposed to be located;
 - (f) Recognize and compensate for variations and degree of technological processes and equipment as related to the factors of noise, smoke, dust, fumes, vibration, odors, and hazard or public need;
 - (g) Require the posting of construction and maintenance bonds or other security sufficient to secure to the county the estimated cost of construction and/or installation and maintenance of required improvements; and
 - (h) Impose any requirement that will protect the public health, safety, and welfare.

16. Testimony from the Applicant's representative is relevant to various criteria for the conditional use permit.

Regarding criteria (1)(a): The Examiner adopts by reference the Applicant's prepared narrative regarding the project's consistency with numerous GPP policies. (Exhibit 18 at 2-6) The Examiner finds that with the adopted preconditions and conditions, the project is consistent with the comprehensive plan.

Regarding criteria (1)(b): The Applicant has demonstrated that the proposal meets the applicable requirements of this title.

Regarding criteria (1)(c): There is no evidence in the record to indicate the proposal will be materially detrimental to uses or property in the immediate vicinity.

Regarding criteria (1)(d): The Applicant's representative made a presentation regarding the site plan and the proposed design of the building.

1. The CU, with recommended preconditions and conditions of approval, will respond to as well as maintain compatibility with surrounding uses and incorporate specific features, conditions, or revisions that ensure it responds appropriately to the character, appearance, quality of development, and physical characteristics of the site and surrounding properties.
 2. Under the requested landscape modification prescriptive buffering has been increased to address required CU buffers by providing increased density of plantings along the north property boundary so as to provide similar sight-obscuring treatment associated with placement of the emergency vehicle drive.
 3. Right-of-way buffering and parking area landscaping increases plantings that contribute to visual amenities from public roadways.
 4. Voluntary construction of a connecting public road between 39th Avenue SE and 35th Avenue SE, provides for alternative traffic patterns associated with proposed development and neighboring properties.
 5. Reservation of right of way for the eventual opening of a public road on 194th St SE will help provide connections and alternative traffic patterns within the area.
 6. The proposed use of LID measures is consistent with regulatory provisions addressing storm water impacts to Little Bear Creek.
 7. The Applicant is providing offsite walkways for children and pedestrians to safely travel along roadways, providing a great benefit and public safety feature to the neighborhood.
17. Any Finding of Fact in this decision which should be deemed a Conclusions of Law is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over conditional use permit applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. The Examiner concludes that the conditional use permit should be granted, subject to preconditions and conditions, as set out below.
3. 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 a **CONDITIONAL USE PERMIT** is hereby **CONDITIONALLY APPROVED**, subject to the following **PRECONDITIONS** and **CONDITIONS**:

PRECONDITIONS

- A. A record of developer obligations shall have been recorded with the County Auditor against the real property on which the development is proposed.
- B. A restrictive covenant that runs with the land consistent with Chapter 30.66C.010 (2) (d) shall be recorded which provides an exception for "Housing for Older Persons," as defined by 42 U.S.C. Section 3607(2). The covenant shall be in place as long as the conditional use permit remains valid.
- C. The submitted site plan (Exhibit 2B1, 2B2, 2B3, 2B4, and 2B5) shall be modified as indicated in paragraph 2 of Exhibit 34 to require the Applicant provide a separated walkway of five feet on the north side of 191st Street SE between 35th and 39th Avenues SE; and on 39th Avenue SE from the site to Jewell Road (as agreed by DPW, the School District, and the Applicant) and to show the 40-foot reservation of right-of-way for the eventual opening of 194th Street SE as a public road, along with the statement "will not protest conversion to public road", clearly indicating that the holder of the conditional use permit will not object to deeding the right of way to the public when it becomes feasible to open a public road at that location.

CONDITIONS

- A. The CU official site plan shall be the plan approved pursuant to Precondition C. SCC 30.42B.220 governs changes to the official site plan;
- B. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the County:
 - i. A Land Use Permit Binder shall be recorded binding site development to the approved plan.
 - ii. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
 - iii. A final mitigation plan based on the *Critical Areas Study and Buffer Mitigation Plan* prepared by Wetland Resources dated January 8, 2008 (Exhibit 3F) shall be submitted for review and approval during the construction review phase of this project.
 - iv. The Applicant 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.

- v. A Critical Area Site Plan (CASP) shall be recorded with the Snohomish County Auditor that depicts the wetland and buffer area in a Native Growth Protection Area (NGPA) with the restrictive language as follows:

"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."

- vi. Per SCC 30.66B.170(6), prior to the issuance of building permits, improvements necessary to remove the Arterial Unit in Arrears (AUIA) at the intersection of York Road/SR 524 must, to the satisfaction of Public Works, be completed or under contract. Prior to approval for occupancy or final inspection the improvements must be completed.
- vii. In accordance with SCC 30.66B.220, construction to remedy the Inadequate Road Condition (IRC) at York Road and Jewell Road shall have been completed or under contract prior to the issuance of any building permits, and must be complete prior to approval for occupancy or final inspection.
- viii. The Applicant shall have paid an impact fee to Snohomish County for traffic impacts to Transportation Service Area "E" in the amount of \$118,648.60 total or:
 - \$1,381.80 per each duplex building (buildings E, F, G, H and I) for senior adult detached housing
 - \$55,785.52 for Building A; for the 140 unit congregate care facility (\$392.37 per unit)
 - \$27,892.76 for Building C; for the 70 unit congregate care facility (\$392.37 per unit)
 - \$28,061.32 for Building D; for the 55 unit assisted care facility (\$510.21 per unit)
- ix. The Applicant shall have made a payment to the County for WSDOT in the amount of \$21,790.80 total for mitigation of traffic impacts to state highways. The breakdown is as follows:
 - \$253.80 per each duplex building (buildings E, F, G, H and I) for senior adult detached housing
 - \$10,246.32 for Building A; for the 140 unit congregate care facility
 - \$5,123.16 for Building C; for the 70 unit congregate care facility
 - \$5,154.12 for Building D; for the 55 unit assisted care facility
- x. The Applicant shall have made a payment to the City of Bothell in the amount of \$25,567.35 total for mitigation of traffic impacts to state highways. The breakdown is as follows:
 - \$297.76 per each duplex building (buildings E, F, G, H and I) for senior adult detached housing
 - \$12,021.10 for Building A; for the 140 unit congregate care facility

\$6,010.55 for Building C; for the 70 unit congregate care facility

\$6,046.88 for Building D; for the 55 unit assisted care facility

- xi. The Applicant shall have made a payment to the City of Mill Creek in the amount of \$2,509.92 total for mitigation of traffic impacts to city streets. The breakdown is as follows:

\$29.23 per each duplex building (buildings E, F, G, H and I) for senior adult detached housing

\$1,180.10 for Building A; for the 140 unit congregate care facility

\$590.05 for Building C; for the 70 unit congregate care facility

\$593.62 for Building D; for the 55 unit assisted care facility

- xii. The Applicant shall have made a payment of \$1,244.49 per duplex unit and \$491.05 per retirement unit for Parks and Recreation impacts under Chapter 30.66A SCC. Assisted living units shall be exempt from such payment.

C. Conditions relating to the construction process:

- i. Temporary access improvements within the west 30 feet of the private access easement shall be constructed prior to improvements within the easterly 30-foot panhandle required for road establishment (39th Avenue SE).
- ii. The Applicant shall refrain from using the access on 39th Avenue SE for construction traffic during the hours of 8:15-9:15 a.m. and 2:30-3:30 p.m. on days that school is in session, to the extent feasible.

D. Prior to issuance of any certificate of occupancy for any building:

- i. The final wetland mitigation plan shall be completely implemented.
- ii. Native Growth Protection Area boundaries (NGPA) 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 Applicant/owner 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.

- iii. All storm water detention and LID measures shall have been implemented per the approved grading and drainage plans.

- iii. Sanitary sewers shall serve the site.
- iv. Urban collector non-arterial "half" public road improvements with a minimum 20-foot pavement width, vertical curb, planter strip and sidewalk on the east side conforming to EDDS shall be constructed along 39th Avenue SE between Jewell Road and the north property line of the development. [SCC 30.66B.410]
- v. 35 feet of property shall have been established as right-of-way for 39th Avenue SE between Jewell Road and the north property line of the development, to total 35 feet from the centerline of the right-of-way, or as approved by the Department of Public Works.
- vi. A public non-arterial urban collector road (191st Street SE) conforming to EDDS (per letter to Owen Carter dated August 3, 2007, Exhibit 7B1) and the approved deviation requests, shall have been established, constructed, and accepted between 39th Avenue SE and 35th Avenue SE.
- vii. Provision for a future road connection to the north at 39th Avenue SE shall have been made to the satisfaction of DPW.
- viii. The elements shown on the TDM Plan shall have been constructed on the site.

E. In conformity with applicable standards and timing requirements:

- i. All landscape buffers shall be completed per approved plan.
- ii. All parking and parking area landscaping associated with the building being occupied shall be completed per the approved plan.
- iii. All required detention facility landscaping shall be installed in accordance with the approved landscape plan.

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.

Decision issued this 19th day of September, 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 **SEPTEMBER 29, 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 **OCTOBER 3, 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.

The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by the department. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

Staff Distribution:

Department of Planning and Development Services: Scott Whitcutt

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 SEPTEMBER 19, 2009.

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)