

REPORT and DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

DATE OF DECISION: April 23, 2008

PLAT/PROJECT NAME: **HINDU TEMPLE AND CULTURAL CENTER**

APPLICANT/
LANDOWNER: Hindu Temple and Cultural Center

FILE NO.: 07-104201-000-00-LU

TYPE OF REQUEST: Major Modification of a Conditional Use Permit

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

BASIC INFORMATION

GENERAL LOCATION: 3818 212th St SE, located in Section 28, Township 27 North, Range 5 East, W.M., Snohomish County, Washington.

ACREAGE: 5.56 acres

ZONING: R-9,600

COMPREHENSIVE PLAN DESIGNATION:

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

UTILITIES:

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

SCHOOL DISTRICT: Northshore School District

FIRE DISTRICT: FPD NO.7

PDS STAFF RECOMMENDATION: Approve with conditions

INTRODUCTION

The applicant filed the Master Application on May 17, 2007. (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 16 (Affidavit of Mailing); Exhibit 17 (Affidavit of Notification by Publication); Exhibit 28 (Posting Verification).

A SEPA determination was made on September 26, 2007. Exhibit 15. The DNS was appealed, but the appeal was settled and ultimately withdrawn.

The Examiner held an open record hearing on March 13, 2008, the 254th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on March 13th at 9:10 a.m.

1. Representing PDS was Scott Whitcutt, Senior Planner.
2. The applicant was represented by Mr. John Bissell of Higa Burkeholder Design Group.

The hearing concluded at 11:07 a.m.

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 as major modification for an expansion of facility square footage, parking area, and property boundaries previously approved under CU PFN 95 105411.

The original CU approval contemplated four phases of site development:

Phase I included a 3,200 square foot assembly structure, on-site sewage disposal, paved parking for 80 cars, installation of stormwater facilities, deeding of frontage right-of-way, and grading associated with such improvements.

Phase II contemplated constructing a 5,000 square foot facility to accommodate ancillary services and administration and increasing paved parking area to accommodate 135 cars.

Phase III contemplated construction of a 9,700 square foot temple structure.

Phase IV contemplated expanding the cultural center with an addition of 4,000 square feet. Total facility approval constituted approximately 21,900 square feet of useable space on 4.55 acre site.

The subject modification proposes: adding a 1.37 acre lot with an existing single-family residence within the revised CU boundaries; constructing the original 1,200 square foot storage structure, increasing the size of the conceptually approved temple facility to 48,000 square feet of useable space (23,000 1st floor and 25,000 2nd floor); necessary stream re-location to accommodate revised site amenities and expanded parking area, revised access and storm water facilities/water quality measures to accommodate increased impervious areas, and extended landscape buffers for the expanded CU boundaries.

NOTE: The current proposal expands the approved facility floor space from approximately 22,000 square feet to approximately 52,000 square feet and property acreage from 4.55 acres to 5.92 acres. The existing residence within the expanded CU boundary substitutes for constructing the previously proposed residence. No additional modifications to the previously approved CU conditions are requested in the current action.

3. Site Description: The requested modification expands the original CU site boundaries by including a rectangular lot with 164 feet of frontage on 39th Ave. SE and extending east to west 386 feet along the southerly boundary of the original CU site. The existing residence of this additional property will be used as a temple residence rather than constructing a separate residence as contemplated in the original CU approval.

The existing CU boundaries are generally cleared except for vegetative screening that includes the southwest corner and stream corridor extending along the westerly boundaries of the property. The current CU boundaries have been improved through construction of the existing Assembly Place structure identified in Phase I of the existing CU approval as well as including site access, parking, and septic drainfield areas.

The proposed expansion property, adjacent to the southerly property line, can best be described as being developed with a residence on the westerly portion, possessing the extension of the stream corridor running north to south through the middle and southwest corner, and a driveway extending west to east (across the stream) accessing 39th Ave. SE. This proposed CU expansion area is generally wooded other than that area devoted to previous development for the single-family residence, drainfield, and access drive to 39th Ave. SE., and a more recently developed PW regional stormwater detention vault placed in the southeast corner adjacent to 39th Ave. SE.

4. Adjacent Zoning/Uses.

The subject site is zoned R-9,600. Surrounding zoning is generally Residential R-7,200. There are additional patches of R-9,600 zoning to the east and southeast. Previous and more recent plat activity has established single-family residential build-out of surrounding properties.

B. Public Comment/Issues of Concern.

5. There were no public comments submitted for the subject Major Modification prior to issuance of the SEPA Threshold Determination and scheduling of the public hearing.

An adjacent property owner to the east of the subject modification boundaries, possessing an access easement across the expanded area of the proposed CU boundaries, filed combined CUP comments and SEPA appeal on October 22, 2007. The applicant and appellant agreed to seek a settlement agreement addressing the appellant's concerns. The parties proceeded to participate in three settlement conferences facilitated by the Office of the Hearing Examiner. The issues raised by the neighboring property owner were successfully resolved between the parties at time of preparing this staff report and upon request of the appellant, the Deputy Examiner dismissed the SEPA appeal. See Exhibit 43.

C. Compliance with Codes and Policies.

NOTE: As a major modification to the original conditional use permit application, this decision will supersede the original decision approving the conditional use permit under file number 95 105411.

6. Parks Mitigation. The proposal is Nakeeta Beach Park Service Area No. 307, but is not subject to Chapter 30.66A SCC since the proposal will not have any documented impacts upon the capacity of the county parks system.

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 development will generate 406.76 new average daily trips (ADT) and has a road system impact fee of \$79,725.25 (\$1.70/SF) based on \$196/ADT, the current fee rate for commercial developments inside the urban growth area, for TSA F. These figures include credit for on-site TDM measures. Consistent with SCC 30.66B.340, payment of this road system impact is required prior to building permit issuance.

The estimates of trip generation for the development are based on the 7th Edition of the Institute of ITE Trip Generation Report as follows:

ITE Land Use Category: Church

ITE Land Use Code: 560

	<i>Calculations</i>
ADT	$(47,000 \text{ SF} \times 9.11 \text{ ADT}/1000 \text{ SF} \times 0.95 \text{ TDM}) = 406.76 \text{ ADT}$
AM PHT	$(47,000 \text{ SF} \times 0.72 \text{ AM PHT}/1000 \text{ SF} \times 0.95 \text{ TDM}) = 32.15 \text{ AM PHT}$
PM PHT	$(47,000 \text{ SF} \times 0.66 \text{ PM PHT}/1000 \text{ SF} \times 0.95 \text{ TDM}) = 29.47 \text{ PM PHT}$

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 level-of-service A representing the best operating condition, and level-of-service 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.

The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and is concurrent as of September 18, 2007. The expiration date of the concurrency determination is six years from this date.

Development generating 50 or fewer peak-hour trips in TSA with one or more arterial unit in arrears, SCC 30.66B.160(2)(a). The subject development is located in TSA "F", which as of the date of submittal had the following arterial unit in arrears: AU#337. The subject development did NOT add three (3) or more peak-hour trips to the arterial unit in arrears. Pursuant to SCC30.66B.160(2)(a) the development is determined concurrent. The development generates 32.15 a.m. peak-hour trips and 29.47 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]
York Rd @ Jewel Rd is an identified IRC within TSA F. The applicant's traffic distribution as shown in the traffic study dated May 16, 2007 is adequate to determine PHT impacts on the above IRC.

The subject development proposal will not impact the IRC locations identified at this time within TSA "F" with three or more p.m. peak hour trips, nor will it create any. The applicant provided an acceptable TDM plan and received 5% TDM reduction, which reduced impacts to the above IRC to less than 3 peak hour trips. Therefore, it is anticipated that mitigation will not be required with respect to inadequate road conditions and no restrictions to building permit issuance or certificate of occupancy/final inspection will be imposed under this section of Chapter 30.66B SCC.

D. Frontage Improvements [SCC 30.66B.410]
Urban frontage improvements along the subject parcel's frontage on 39th Ave SE and 212th Street SE currently exist. Therefore, they are not required.

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

39th Avenue SE is a two-lane road with a 35 MPH posted speed limit. The stopping site distance and intersection site distance at 39th Avenue SE in the vicinity of the proposed 35 foot driveway are adequate.

212th Street SE is a two-lane road with a 35 MPH posted speed limit. The stopping site distance and intersection site distance at 212th Street SE in the vicinity of the existing 20 foot driveway are adequate.

Access to the development is proposed via a new 35 foot wide driveway off of a public road, 39th Avenue SE to the west boundary. A second access currently exists via a 25 foot wide driveway off of 212th Street SE to the north boundary.

Per the EDDS section 2-04 A(2), Where a property has frontage on both arterial and non-arterial roads, access shall be limited to the non-arterial road unless it can be demonstrated that an arterial road access will not negatively impact traffic flow.

The applicant submitted a deviation request on February 19, 2008 to allow a second access onto the arterial, 39th Ave SE.

The deviation requests was reviewed and approved by the County Engineer on February 25, 2008. Exhibit 49. This approval was based on the following:

1. An arterial with a 35 mph posted speed, EDDS 2-050 requires a minimum access point spacing of 150 feet. The distance from curb line of the proposed driveway to the curb line at 212th St SE to the north is 580 feet. The distance from the curb line of the proposed driveway to the curb line of the nearest driveway to the south is 180 feet
2. The existing driveway for the church private residence will be demolished and removed.
3. A right in-right out configuration for the proposed driveway onto 39th Ave SE is required.
4. The subject development has approx. 800 feet of frontage on 39th Ave SE.
5. The proposed driveway shall be a minimum of 35 foot wide per the EDDS 2-025, and shall be aligned with 214th St SE centerline to the east.
6. The signalized intersection at 212th St SE & 39th Ave SE will create gaps in the traffic flow traveling southbound on 39th Ave SE.
7. Under the CUP that was approved in 1996 and modified in 2001, access onto 39th Ave SE was approved.
8. In addition to the proposed driveway on 39th Ave SE, an existing access (25 foot wide driveway) fronts 212th St SE and shall be utilized by the subject development.

Based on the above, the proposed access is acceptable to the DPW.

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

39th Avenue SE is designated as a Minor Arterial. This requires a right-of-way width of 40 feet on each side of the right-of-way centerline. 20 to 30 feet of right-of-way presently exists on the development's side of the right-of-way. Therefore, 10 to 20 feet of additional right-of-way is required. This is adequately shown on the site plan.

The additional right-of-way, parallel and adjacent to the right-of-way centerline of 39th Ave SE shall be deeded to the County along the development's frontage such that 40 feet of right-of-way exists from centerline of the 39th Ave SE right-of-way.

212th Street SE is designated as a non Arterial. This requires a right-of-way width of 30 feet on each side of the right-of-way centerline. 30 feet of right-of-way presently exists on the development's side of the right-of-way. Therefore, 0 feet of additional right-of-way is required. This is adequately shown on the site plan.

The roads, 39th Ave SE and 212th Street SE are not in the impact fee cost basis (Appendix D of the Transportation Needs Report). Therefore credit towards the applicant's impact fee for the right-of-way deeded that is more than 30 feet from centerline is not applicable.

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

When a development's road system includes a state highway, mitigation requirements will be established using the County's SEPA authority consistent with the terms of the interlocal agreement between the County and the WSDOT. This is consistent with the County's SEPA policy SCC 30.61.230(9), through which the county designates and adopts by reference the formally designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority.

This development is subject to SEPA and thus is subject to Interlocal Agreement (ILA) with the Washington State Department of Transportation (WSDOT)/County effective December 21, 1997, and as amended.

Pursuant to SCC 30.66B.055 a written proposal from the applicant proposing measures to mitigate impacts on state highways is required and has been received as of the date of this memorandum. The applicant's obligation to the State is as follows:

Payment of \$14,643.41 based on standard rate of \$36/ADT
 $\$36.00/\text{ADT} \times 428.17 \text{ ADT} \times 0.95 \text{ TDM} = \$14,643.41$

WSDOT was provided notice of application for this project and an opportunity to comment. Comments from WSDOT have been received by email on May 22, 2007. WSDOT does agree to the mitigation measures proposed by the applicant. The County has reviewed the WSDOT requested mitigation and written proposal for mitigation submitted by the applicant and has determined that the proposed mitigation measures are reasonably related to the impacts of the development and recommends that they be imposed on the development as a condition of approval.

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

Mitigation requirements for impacts on streets inside cities and roads in other Counties will be established consistent with the terms of interlocal agreements between the County and the other jurisdictions. The proposed development is subject to SEPA and thus is subject to interlocal agreements for impacts on City streets and is effected by the interlocal agreement (ILA) with the City of Bothell.

Snohomish County has an ILA with the City of Bothell and this development is within the influence area that requires traffic mitigation be considered for the City. The development is located within the CO-4 mitigation sub area, 50% of the development trips will pass through the City of Bothell.

The applicant submitted a traffic mitigation offer of \$32,371.25 to the City of Bothell for impacts on the capacity of the City street system.

$47,000 \text{ SF} \times \$1.45/\text{SF} \times 50\% \times 0.95 \text{ TDM} = \$32,371.25$

The City was provided notice of application for this project and an opportunity to comment. Comments from the City dated March 7, 2008 were received on March 7, 2008. The City does agree to the mitigation measures proposed by the applicant. The County has reviewed the City requested mitigation and written proposal for mitigation submitted by the applicant and has determined that the proposed mitigation measures are reasonably related to the impacts of the development and recommends that they be imposed on the development as a condition of approval.

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

Transportation demand management (TDM) is a strategy for reducing vehicular travel demand, especially by single occupant vehicles during commuter peak hours. TDM offers a means of increasing the ability of transportation facilities and services to accommodate greater travel demand without making expensive capital improvements. The County requires TDM of developments inside the 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 offsite TDM measures or voluntary payment in lieu of site design, in accordance with SCC 30.66B.620 and SCC 30.66B.625.

Since the applicant has submitted an acceptable TDM plan to fulfill this obligation, a 5% credit has been applied to the impact fee.

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. The subject CUP application is not subject to impact mitigation fees of amended Chapter 30.66C SCC.

9. Drainage and grading.

A. Drainage. The project site is 5.56 acres, and contains an existing Hindu Temple building and asphalt paved parking facilities. An existing stream runs through the property from north to south. There is a large drainage detention pond in the southeast corner. The property slopes approximately 5 percent (5 feet vertical to 100 feet horizontal) to the south. Soil Conservation Service maps indicate onsite soil is Alderwood gravelly sandy loam, hydrologic group C.

The proposal is to add a 36,000 square feet of building footprint and 2.8 acres of additional paved parking. An underground concrete storm water detention vault is sized to "redevelopment" criteria (i.e., assuming forested existing conditions), and will detain for both the proposed and existing impervious areas for the (Santa Barbara Urban Hydrograph method) 100-year, the 10-year, and the 2-year storm events. A factor of safety of 30 percent will be applied to the 100 year storm event live detention volume, as required by code.

Contech Stormfilters sized for the 6 month storm event, and dead storage in the bottom of the detention vault are proposed for water quality treatment of pollution generating surfaces.

The stream will be relocated to the east under an HPA permit. It will continue to convey the upstream drainage basin from the 24 inch culvert, and will be routed to flow around the onsite detention system.

Surface Water Management has stated that the existing ditch or stream has capacity issues due to poor maintenance. PDS opines that the stream relocation should correct any existing capacity problem.

The applicant has met the Targeted Drainage Plan requirements of the UDC with regard to conceptual drainage and grading. Final construction approvals will document consistency with adopted codes governing site build-out.

B. Grading. Grading quantities are anticipated to be approximately 30,000 cubic yards of cut and 32,000 cubic yards of fill, primarily to raise the elevation of the lot under the proposed parking and building to achieve detention and water quality treatment of new impervious areas. Water quality would be controlled during construction by use of such methods as silt fences and straw bales in accordance with a Temporary Erosion and Sedimentation Control Plan (TESCP) required by Chapter 30.63A SCC. Exhibit 4; Exhibit 8 at Part G.

10. Critical Areas Regulations (Chapter 30.62 SCC)

PDS staff visited the subject property on June 2, 2007 and verified that the on-site critical areas were properly flagged in the field, accurately categorized and depicted on the submitted site plans. The site contains a Type 5 stream in a degraded condition. The site contains an existing parking lot, buildings, lawn, blackberries ornamental trees and some willows. Exhibit 45.

The applicant is proposing a new temple and additional parking area with the relocation and enhancement of the on-site Type 5 stream and its associated buffer. All of the mitigated critical areas and buffers are proposed to be permanently protected as NGPA/Es.

A Type 5 stream flows across the site where it passes through multiple culverts. The condition of the stream and associated buffer is generally one of degradation. The applicant is proposing to move the stream resulting in approximately 567 ft. of enhanced stream channel and associated buffer. The applicant is applying to the state Department of Fish and Wildlife for a hydraulic permit to move the stream. The state has visited the site and has approved the project in concept. Exhibit 24. The standard buffer width for a Type 5 stream in an urban area per SCC 30.62.310 is ten ft. The applicant agreed to address the concerns of the property owner near the SW property corner such that no additional buffer would be imposed on the off-site properties in the SW corner through the relocation of the stream. The current site plan is vested under SCC Chapter 30.62 and the Type 5 stream is required to be protected with a 10 ft. buffer. Any new application by the adjoining property owner(s) would be subject to review under SCC 30.62A.230(1) which would alter the stream rating to Type Ns with a standard buffer of 50 ft. per SCC 30.62A.320(1)(f).

The applicant has now become the owner of the adjoining property (not included in the subject CU boundaries) and can choose to address these concerns in a detailed final mitigation plan during the construction review phase of this project. Possible avenues for addressing these concerns include additional buffer, additional enhancement of the buffer in the SW corner or elsewhere on site as may be necessary in order to meet the criteria found in SCC 30.62A.230(1) and 30.62A.320(1)(f). The project can be conditioned such that the final wetland mitigation plan can address the 50 ft. buffer required per 30.62A.320(1)(f) through averaging and/or enhancement.

PDS has evaluated the information submitted in the revised application and performed an on-site investigation, and has determined that the application is in conformance with Chapter 30.62 SCC (Critical Areas Regulation).

NOTE: WDFW has indicated their review and concurrence with the proposed stream relocation (Exhibit 24). Evidence of final project design compliance with WDFW requirements shall be required prior to future grant of PDS construction approvals.

11. Consistency with the GMA Comprehensive Plan.

Four elements of the Snohomish County GMA Comprehensive Plan (GMACP) were adopted pursuant to Ordinance 94-125, which became effective on July 10, 1995. These elements are: the General Policy Plan (GPP); the Transportation Element; the 1995-2000 Capital Plan; and the Comprehensive Park & Recreation Plan. The General Policy Plan has been revised since its initial adoption by a number of amendments. 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 Urban Growth Areas and adopted area-wide rezones within the Urban Growth Areas of the county respectively. This application was complete after the effective date of the Amended Ordinances. Therefore, the subject application has been evaluated for consistency with the version of the GMA Comprehensive Plan which became effective on February 1, 2006, and as revised through the completeness date of the application.

The subject property is designated Urban Low Density Residential (ULDR: 4-6 DU/Ac) on the GPP Future Land Use map, and is located within an Urban Growth Area (UGA). It is not located within a mapped Growth Phasing Overlay.

12. Zoning.

The site is currently an island of R-9,600 zoning within a surrounding area of R-7,200 zoning. Public services, including water, sewer, and power, can be provided to the proposed expansion of the current CUP approval. Providing places for worship is a recognized and necessary use within rural and urban areas. Providing such service facilities in residential areas is allowed under approval of a conditional use, to provide discretion to condition the facility to ensure compatibility with those uses that are permitted as a matter of right in the zone.

13. Utilities

- A. Water. Water is available from Alderwood Water & Waste Water District. Exhibit 22.
- B. Sewer. Sewer service is available Alderwood Water & Waste Water District. Exhibit 22.
- C. Electricity. The Snohomish County PUD submitted a letter stating that electricity is available. Exhibit 21.
- D. Snohomish Health District Approval- the SHD has no objections to the proposed modification of the conditional use permit but indicates that the Temple must connect to sewer and abandon any existing onsite septic systems as required by WAC 246-272-18501 prior to grading. The Examiner will incorporate this requirement as a condition of approval. Exhibit 20.

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

PDS issued a Determination of Nonsignificance (DNS) for the subject application on September 26, 2007 (Exhibit 15). The DNS was appealed, but the appeal was settled and ultimately withdrawn.

15. Conditional Use Permit Criteria

In considering the application, the Examiner must apply SCC 30.42C.100, which outline 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 applicant identifies relevant text from the General Policy Plan that speaks to the importance of cultural resources within the community:

- *Cultural resources contribute materially to the aesthetics of a community, fostering a sense of place and identity for all ages.*
- *The are important components of civic pride found in stable, successful communities.*

This area, as indicated in other findings, has continued to transition from a semi-rural area in 1995 to a nearly fully built out urban residential neighborhood. The temple currently serves as a cultural landmark in the neighborhood. That landmark status will be greatly enhanced with the addition of the new temple building.

Regarding criteria (1)(c): The applicant's representative pointed out that although churches and temples are community facilities and belong in neighborhoods, they can create impacts in the communities they serve. See Exhibit 47. The primary impacts are weekend traffic and larger buildings than are normally associated with a residential use.

The temple expansion will cause these impacts to occur. However, as applicant points out, the temple is situated on an arterial, 39th Avenue SE, and 212th Street SE. The corner is controlled by traffic signalization. The temple will have two access points: one on 39th and one on 212th. Therefore, the traffic impacts should be reduced by direct access to arterials and by traffic controls. The traffic should not impact any local access street.

As far as the larger scale of the proposed buildings, 39th Avenue SE is a four-lane street which has other nonresidential uses on it. While this use is still in the residential zone, it is on a street that is more appropriate for the larger scale type building used by religious uses.

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

The proposed modification increases the property boundaries of the site. The stream relocation and the larger property boundaries allow for a larger facility design than was previously contemplated under the original conditional use permit application.

The proposed temple location allows for a greater building setback from that which was originally approved without reducing the previously approved setback line for the assembly building along the west line and stream boundary. In combination with the new stream corridor, landscape buffering, and the adjacent plat design incorporating an access road along the boundary, building bulk aesthetic and visual impacts to the adjoining property immediately to the west will be minimized.

The applicant has submitted an official site plan which PDS has determined meets the requirements of the code. See Exhibit 41a; hearing testimony. At the hearing, applicant provided for the record Exhibit 48 entitled "Program and Conceptual Design" of the Hindu Temple Phase II. The only indication in the record prior to the hearing of any building design was contained in Exhibit 14. In the Staff Recommendation, PDS staff had indicated concern over the appearance of the dome structure and asked for clarification of the design for the proposed spire. See Finding 6 at p.12, Exhibit 45. PDS staff also indicated that the dome depiction in Exhibit 14 did not meet the 25 foot height limitation.

At the hearing, applicant's representative argued that SCC 30.23.050 applies to except the spires and domes that appear on the design pictured in Exhibit 48, which includes a dome and multiple spires. The applicant's representative explained that the spires are an architectural expression of the Hindu religious belief in multiple deities. The dome also incorporates expression of Hindu religious beliefs.

Architects for the Phase 2 Buildings, Ms. Neetha Rao and Mr. Sanjeev Sharma, testified regarding the materials and colors that will be used in the new buildings. All buildings (new and old) will be painted complementary earth tone colors, similar to those shown on Exhibit 48. Despite the mass of the buildings, the architects have provided color and texture relief along with breaks in the façade to soften the appearance and break up the otherwise visually large structure.

In reviewing the building design at the hearing, PDS staff representative Scott Whitcutt agreed that Exhibit 48 served as appropriate building elevations that clearly depict design elements and architectural features. Given the testimony by the applicant's representatives, Mr. Whitcutt did not voice any objection to the conceptual design as presented.

17. Any finding of fact in this decision which should be deemed a conclusion 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. In considering the major modification, application of many of the decision criteria require the exercise of discretion. When considering a conditional use permit for a church, both constitutional concerns, as well as standards of the federal Religious Land Use and Institutionalized Persons Act come into play.
3. Under the First Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, a state or a political subdivision of that state (such as Snohomish County) may not prohibit the free exercise of religion. The Washington State Court of Appeals recently described the federal standard as follows:

In Employment Division, Dep't of Human Res. Of Oregon v. Smith, the United States Supreme Court held that neutral laws of general applicability are not subject to strict scrutiny even if they substantially burden free exercise. A successful challenge to such a law must allege that the law being applied is either not neutral or is not generally applicable. A law is not neutral if its covert

purpose is to restrict religious practices. A law is not generally applicable if it contains "a system of individualized exceptions," one involving inquiry into an applicant's particular circumstances.

Woodinville v. Northshore United Church of Christ, et al., 139 Wn.App. 639 (2007); review granted, Docket No. 80588-1 (2008). Thus, in the *Woodinville* case, the fact that the city's zoning laws and an enacted moratorium prevented a church from allowing a "tent city" or temporary encampment of homeless people on church property did not invoke application of strict scrutiny under the First Amendment. No evidence in the record indicated that there was an intent or purpose to restrict religious practices. *Id.*

4. Under the Washington State Constitution, the Washington Supreme Court has determined that CONST. art. I, § 11 absolutely protects the free exercise of religion, extending broader protection than the first amendment to the federal constitution." *Open Door Baptist Church, et al. v. Clark County*, 140 Wn.2d 143, 152, 995 P.2d 33 (1999). There are two prerequisites for any free exercise challenge: 1) existence of a sincere religious belief; and 2) a determination that the legislation or enactment at issue constitutes a burden on the free exercise of religion. Many of the Washington state cases have focused on what, from a land use context, constitutes a impermissible burden on the free exercise of religion. Most of those cases focused on historic preservation ordinances:

This decade has seen a trilogy of cases involving CONST. art. I, § 11 challenges concerning the imposition of municipal historic preservation ordinances upon churches. See *Munns*, 131 Wn.2d 192; *First United Methodist Church*, 129 Wn.2d 238; *First Covenant Church v. City of Seattle*, 114 Wn.2d 392, 787 P.2d 1352 (1990) (First Covenant I), vacated and remanded, 499 U.S. 901, 111 S. Ct. 1097, 113 L. Ed. 2d 208 (1991), judgment reinstated, *First Covenant II*, 120 Wn.2d 203. *First Covenant I* involved the application of the City of Seattle's Landmarks Preservation Ordinance to a church. In *First Covenant II* we noted that such "[p]reservation ordinances further cultural and aesthetic interests, but they do not protect public health or safety." *First Covenant II*, 120 Wn.2d at 222 (citing *Society of Jesus v. Boston Landmarks Comm'n*, 409 Mass. 38, 564 N.E.2d 571, 573 (1990); *Church of St. Paul & St. Andrew v. Barwick*, 67 N.Y.2d 510, 496 N.E.2d 183, 202, 505 N.Y.S.2d 24 (1986) (Meyer, J., dissenting)). We found that the effect of Seattle's ordinances was to "burden *First Covenant* financially, because they reduce the value of the church's property by almost half." *First Covenant II*, 120 Wn.2d at 219 (emphasis added). We held that under both the state and federal constitutions "[t]he City's interest in preservation of aesthetic and historic structures is not compelling and it does not justify the infringement of *First Covenant's* right to freely exercise religion. The possible loss of significant architectural elements is a price we must accept to guarantee the paramount right of religious freedom." *First Covenant II*, 120 Wn.2d at 223.

The same City of Seattle Landmarks Preservation Ordinance, under similar facts, was at issue in both *First Covenant* and *First United Methodist Church*. In *First United Methodist Church*, the financial burden was similarly onerous. There we wrote that "[w]hile not all financial burdens have a coercive effect . . . , gross financial burdens violate the right to free exercise." *First United Methodist Church*, 129 Wn.2d at 249 (citing *First Covenant II*, 120 Wn.2d at 219). The financial burden complained of there was the fact that "[l]andmark nomination . . . has prevented *United Methodist* from either remodeling its sanctuary or selling the church property." *First United Methodist Church*, 129 Wn.2d at 244-45.

Again, that burden was being imposed simply for aesthetic and cultural reasons, and, "[a]s a result of First Covenant I, landmark designation will be found unconstitutional once a religious institution demonstrates a burden on free exercise." *First United Methodist Church*, 129 Wn.2d at 247.

Open Door, at 156-57. Thus, these cases make clear that it is impermissible for the Examiner to impose requirements that are not grounded in public health and safety rationale, and are imposed for purely aesthetic or cultural reasons. However, as demonstrated in the *Open Door* case itself a burden that is simply speculative but unproven is insufficient to show an impermissible burden on free exercise. In that case, the church argued that the act of prospectively having to apply and go through the conditional use permit process itself, including a public hearing, was an impermissible burden on the free exercise of religion. The Supreme Court disagreed, finding that the church must comply with the land use application process. Only when a permit is actually denied could the church actually prevail on a free exercise claim. *Id.* at 171.

Thus, while content neutral land use regulation of churches is permitted under the Washington state constitution, the Examiner must be cognizant of the public health and safety rationale for any regulation. The Examiner must assure that no regulations are imposed for purely aesthetic or cultural reasons that impermissibly burden the free exercise of religion.

5. The Examiner finds as a matter of law that the conditional use permit should be granted pursuant to SCC 30.42C.100. Specifically, the Examiner finds as a matter of law that:
 - (a) The proposal is consistent with the comprehensive plan. The Hindu Temple represents an existing cultural resource which is valued by the community and which has grown over its years of existence in the community. The comprehensive plan specifically calls out the need for religious structures such as the Temple as stable components—landmarks—of the neighborhood.
 - (b) The proposal complies with applicable requirements of Title 30 SCC. The applicant has demonstrated compliance with the applicable provisions of Title 30 SCC.
 - (c) The proposal will not be materially detrimental to uses or property in the immediate vicinity. The main impact the Temple will have on the community is increased weekend traffic. The Temple is ideally located on a 4-lane arterial with a traffic control signal at the intersection, and two access points, so that traffic should be easily dissipated from the site.
 - (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. The new proposed temple location allows for a greater setback than the original CU approval without reducing the previously approved setback line for the assembly building along the west property line and stream boundary. In combination with the new stream corridor, landscape buffering, and the adjacent plat design incorporating an access road along the boundary, building bulk, aesthetic and visual impacts to the adjoining property to the west will be further minimized.

The Examiner finds that the new buildings—the temple and dome structure—are compatible with and incorporate specific features to respond to the surrounding area. All buildings (new and old) will be painted complementary earth tone colors, similar to those shown on Exhibit 48. Despite the mass of the buildings, the architects have provided color and texture relief along with breaks in the façade to soften the appearance and break up the otherwise visually large structures. The size of the structures are not unlike a school or other government structure, which are allowed by conditional use permit in the R 9,600 zone, as would a church of another denomination of this size. SCC 30.22.100. The spires and domes featured on the buildings are permitted under county code, and more importantly, are integral to the expression of the Hindu religion; the Examiner therefore finds that those features are also compatible with the surrounding area. SCC 30.23.050.

6. Any conclusion 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 **CU Major Modification** is hereby **CONDITIONALLY APPROVED**, subject to the following precondition and conditions:

PRECONDITION

A record of developer's Chapter 30.66B SCC mitigation obligations shall have been recorded with the County Auditor.

CONDITIONS

- A. The CUP site plan, and landscape plans received by PDS on February 28, 2008 (Exhibits 39A and 39B), temple building floor plans received by PDS on June 4, 2007 (Exhibit 14), shall constitute the CUP official site plan. Any revisions to the CUP and/or development plan exhibits shall be in accordance with SCC 30.42C.110.
- B. Exhibit 48 shall constitute the official site plan exhibit indicating required design elements of temple building appearance.
- C. Prior to initiation of any further site work and/or prior to issuance of any development/construction permits by the county:
 - i. An updated Land Use Permit Binder shall be filed for the subject Decision under this file number.
 - ii. 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, and WDFW stream relocation approval, using methods and materials acceptable to the county.

- iii. A new Critical Areas Site Plan (CASP) shall be recorded with the county auditor for critical areas and buffers that will lie within a new Native Growth Protection Area (NGPA). The following NGPA restrictive language shall be reflected on the CASP: "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."
- iv. A final mitigation plan based on the conceptual Critical Areas Report and Mitigation Plan for Hindu Temple and Cultural Center prepared by S.R. Jay Consulting Inc. dated May 17, 2007 shall be submitted for review and approval during the construction review phase of this project.
- v. The CASP and final mitigation plan may be conditioned, depending on the applicant's decision regarding buffer mitigation, to clearly state and depict the relocated stream buffer mitigation area in the SW corner of the site to stop at the property boundary with no buffer extending across the property line consistent with the recently adopted sections of code found in SCC 30.62A.230(1) and SCC 30.62.320(1)(f).
- vi. All site development work shall comply with the requirements of the plans, variances, landscape modification, and permits approved pursuant to Condition A, above.

D. Prior to the issuance of any Building Permit:

- i. The applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area F in the amount of \$79,725.25 (\$1.70/SF). This payment may be made with the building permit.
- ii. The applicant shall make a payment to Snohomish County for the WSDOT in the amount of \$14,643.41 for mitigation of traffic impacts to State highways. This payment may be made with the building permit.
- iii. The amount of \$32,371.25 shall be paid to the City of Bothell for traffic impacts to projects within the City. Proof of payment shall be provided to the County. This payment may be made with the building permit.
- iv. Right-of-way, parallel and adjacent to the right-of-way centerline of 39th Ave SE shall be deeded to the County along the development's frontage such that 40 feet of right-of-way exists from centerline of the 39th Ave SE right-of-way.

E. Prior to any final inspection and/or Certificate of occupancy being issued:

- i. WDFW approved stream relocation measures shall have been implemented and accepted to the satisfaction of WDFW.
- ii. The Final Wetland Mitigation Plan, which shall be based upon the approved conceptual Critical Areas Report and Mitigation Plan for Hindu Temple and Cultural Center prepared by S.R. Jay Consulting Inc. dated May 17, 2007, shall be satisfactorily accepted and implemented to the satisfaction of PDS.

- iii. Frontage improvements for access onto 39th Ave. SE shall be completed and accepted per approved plans.
- iv. The features on the approved TDM plan shall be constructed and installed per the approved plan.
- v. The new driveway fronting 39th Ave SE shall be constructed to the standards of the approved deviation or any subsequent approved deviation to the Snohomish County design standards. The new driveway fronting 39th SE shall be a right in - right out.
- vi. The existing driveway fronting 39th Ave SE for the church private residence shall be demolished and removed.

F. In conformity with applicable standards and timing requirements:

- i. Storm water drainage measures shall be implemented.
- ii. Facility buffering and interior circulation area improvements and general site landscaping shall be implemented consistent with the official site plan exhibits.
- iii. 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 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.
- iv. 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 final plan approval.

THIS APPROVAL SUPERSEDES ALL PREVIOUS APPROVALS AND CONDITIONS GRANTED ON THIS PROPERTY, SPECIFICALLY HEARING EXAMINER DECISION 95-105411.

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 23rd day of April, 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 **MAY 5, 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 **MAY 7, 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 APRIL 23, 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)
