

**REPORT and DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER PRO TEM**

DATE OF DECISION: July 30, 2008

PLAT/PROJECT NAME: ***SNOHOMISH COUNTY PUD NO. 1  
KAYAK WATER TANK***

APPLICANT/  
LANDOWNER: Snohomish County PUD No. 1

FILE NO.: 07-108094 LU

TYPE OF REQUESTS: Conditional Use Permit, Zoning Code Variance and Landscape Modification

DECISION (SUMMARY):

The request for a Conditional Use Permit is **Approved with Conditions**.  
The request for a Zoning Code Variance from required Right-of-Way Setbacks is **Approved**.  
The requests for Landscape Modification are **Approved**.

**BASIC INFORMATION**

LOCATION: The subject property is located at 16315 66<sup>th</sup> Avenue NW, Stanwood, WA

ZONING: Rural-5 Acre (R-5)

GPP DESIGNATION: Rural Residential

UTILITIES: (Water/Sewer) Snohomish Public Utilities District No. 1

SCHOOL DISTRICT: Stanwood-Camano School District No. 401

FIRE DISTRICT: No. 14

SELECTED AGENCY RECOMMENDATIONS:

Department of Planning and Development Services: Approve, Subject to a precondition & conditions.

Department of Public Works: Approve.

## **INTRODUCTION**

The Applicant filed the Master Application on August 15, 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. (Exhibits 6A-6C)

A SEPA determination was made on February 15, 2008. (Exhibit 5A1) No appeal was filed.

The Examiner held an open record hearing on June 10, 2008, the 94<sup>th</sup> 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 June 10, 2008 at 9:07 a.m.

1. The Examiner indicated that she has read the PDS staff report, reviewed the file and viewed the area and therefore has a general idea of the particular requests involved.
2. The parties and witnesses were sworn in en masse.
3. Elbert Esparza and Jack Hurley appeared for PDS and Grant Wood and Karen Heneghan appeared on behalf of the Applicant, Snohomish PUD No 1.
4. No one appeared in opposition to the request.

**NOTE:** For a complete record, an electronic recording of this hearing is available in the Office of the Hearing Examiner.

## **FINDINGS, CONCLUSIONS AND DECISION**

### **FINDINGS OF FACT**

Based on all of the evidence of record, the following findings of fact are entered.

1. The master list of Exhibits and Witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file, as if set forth in full herein.
2. The PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Policy Act (SEPA). That report is hereby adopted by the Examiner as if set forth in full herein.
3. The County did not receive any letters in opposition to the request, nor did anyone appear at the hearing to oppose or contest the PUD's application.
4. The Applicant is requesting a Conditional Use Permit (CUP) to replace an existing concrete water tank with a taller, steel water tank (up to 110 feet in height), commonly known as the "Kayak Water Tank," along with a modification to the required landscaping (along the east,

west, and north property lines) and a variance to the required setback from the unopened right-of-way of 164<sup>th</sup> Street NW from the required 50 feet to 22 feet. The proposal will include grading, drainage and landscaping work both inside and outside the PUD's existing easement area and access easement area, with all above ground structures remaining within the easement area.

5. The replacement of the existing concrete water tank is important and urgently needed for the protection of the public health, safety and welfare. There is broad public support in the community for the project based on the PUD's opinion survey. The PUD took over the Kayak water tank and water supply system from the prior water purveyor, which was a for-profit private company. It appears that prior to their ownership, the water system was not properly maintained or expanded over time to meet the needs of the community and the PUD is now attempting to improve the situation.
6. The current booster pumps that support the water supply system associated with the existing tank are deficient and cannot keep up with current demand. The system often breaks down and requires repairs. When the system fails, as has occurred several times in the past, the water supply becomes contaminated. Testing of the water has resulted in 30 bad sample results, which means that the water fails to meet public health standards for potable water. The residents that rely on the water tank for their domestic water supply are currently advised to boil the water to avoid contaminants. In addition, the current water supply system is deficient in terms of its adequacy for fire flow. The new system will increase water pressure for fire flow, save energy and will be more reliable for the PUD's customers.
7. The CUP, Modification, and Variance application were originally submitted to PDS on August 15, 2007, and the application packet was determined to be complete on September 12, 2007 for vesting purposes. The 120-day clock started on September 12, 2007. As of the hearing date, 94 days of the 120-day review period had elapsed.
8. The water tank at issue in this application is located within an easement established with the creation of the subdivisions served by the Kayak Water System (Exhibits 1B & 1F). The plat provided several locations for water facilities located on easements throughout the development. This particular site was described as Tank Site No. 2, with dimensions of 70 feet x 50 feet. The easement was expanded to a 100 x 100 foot square in 1986, when the lot was sold from Valky Inc/David Hudson to Glen and Marlene Watland (Exhibits 1B & 1F). The expanded easement also added a 30 foot-wide access along a driveway that is shared with the lot owner. This easement was included in a deed when the Watlands later sold the lot to Stan and Sherry Stebing (Exhibits 1B & 1F). The easements were further transferred to Snohomish County PUD No. 1 in October 2006, when the District became the owner of this water system (Exhibits 1B & 1F). A search of County records has determined that a CUP was not obtained with the creation of the subdivisions in the 1980s.
9. PUD #1 is currently negotiating an agreement with the property owner to allow the discharge of stormwater from the proposed detention system to an existing piped stormwater discharge system and to allow construction of the maintenance roadway and maintenance and improvements to the drainage discharge pipe outside the easement.
10. The water tank site easement is a 100' x 100' area currently occupied by the system's two concrete reservoirs and a small booster pump station in an above-grade utility vault. The majority of the easement area is cleared and currently encumbered with the existing facilities. The adjacent homeowner maintains the gravel access driveway and the grass on the west side of the driveway that is within the 100' x 100' easement.

11. The surrounding area is predominately zoned R-5 and is made up of single-family homes on large sized lots that are five acres or greater. The surrounding areas adjacent to the property lines are heavily forested with extensive existing undergrowth, which will screen and obscure any proposed work within the proposed easement and property.
12. Schools and Parks. The request will not generate impacts to any of the County's parks or to any school district.
13. Critical Areas. (Chapter 30.62 SCC) A PDS Biologist conducted a site visit on September 24, 2007. One Type 4 stream and associated Category 3 wetland were identified in the field. Steep slopes (greater than 33 percent) were observed adjacent to the stream. The critical areas were not flagged in the field for verification at the time of the initial site visit; however the site was re-visited on December 6, 2007 and all critical areas were found to have been properly flagged in the field as required. The Applicant is proposing to remove one of two existing water tanks and replace the removed tank with one that is larger. Snohomish County PUD #1 has an existing easement on the property where the existing tanks and new tank are to be placed. Portions of the on-site wetland and stream buffer extend across the existing single-family residence's access driveway and falls within the boundary of the easement. No new activities are proposed within the buffer on the easement except for some minor landscaping with native species.

One letter of concern was received from an interested citizen (Exhibit #9A), regarding the possibility that the project would result in the enlargement of the existing easement to accommodate Native Growth Protection Areas and Easements (NGPA/E), which would further encumber their private property. They are, however, advocating the approval of the requested CUP application. PDS staff has recommended approval of the proposed application without the need for any expansion of existing easements for critical areas protection. The small portion of buffer that falls within the easement that will be landscaped with natives is not required to be dedicated as NGPA/E because the proposed activity complies with SCC 30.62.075(6) and SCC 30.62.360.

The applicant is proposing two very minor actions within the standard buffers of a Type 4 stream for this project. Both of these actions, a minor modification to an existing stormwater outfall through the hand-placing of quarry spalls in a small area estimated at 35 square feet and minor landscaping with native vegetation within the outer portion of the buffer in an area of 680 square feet. Both of these actions are proposed pursuant to SCC 30.62.360(1) as BMP actions within existing utility corridors (easement). The Applicant has voluntarily submitted a Critical Areas Study and mitigation plan to show compliance with SCC 30.62.345, even though no plan was technically required to be submitted. Because these proposed actions are regulated pursuant to SCC 30.62.360, the Applicant is not required to record a binding site development plan or CASP per SCC 30.62.075(6).

An evaluation of the information submitted in the revised application coupled with an on-site investigation has resulted in a determination that the application is complete and in conformance 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.

14. Cultural Resources. The Stillaguamish Tribe was concerned with proximity of a known archeological site and possibility of the discovery of human remains or artifacts. Snohomish PUD #1 has entered into a private agreement to provide the construction schedule and allow Tribal observers on site to monitor for any finds, Exhibits 8C1 (describing concerns), 8C2

(proposing a private agreement), and 8E (describing agreement between PUD #1 and Tribe). PDS is recommending against inclusion of these agreements in the conditions of approval.

15. Fire Code. This application is vested to the version of Chapter 30.53A SCC in effect prior to September 21, 2007. The Snohomish County Fire Marshal's office has reviewed the project for compliance with SCC 30.53A and has no objection to the approval of this project. Additional reviews will be conducted during construction permit approval for the water tank permit.
16. Drainage and Grading (Chapters 30.63A and 30.63B SCC). The impervious surface created as a result of the project is below the 5,000 square foot threshold that requires a full drainage plan. However, the plans do show drainage facilities that will control the runoff from the site. Storm drainage is proposed to be collected in a system of swales, catch basins and pipes. The discharge from this system is proposed to be through an existing piped discharge to the west of the easement.

The plans also show construction of the maintenance roadway and maintenance and improvements to the drainage discharge pipe outside the easement. The Applicant has noted on the plans that Snohomish PUD #1 shall obtain permission from the property owner for this work or relocate into the easement area. PDS has recommended this be a Precondition of approval. 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. Water quality will 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.

17. GMA Comprehensive Plan (General Policy Plan, "GPP"). On December 21, 2005, effective February 1, 2006, the County 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 (UGA) and adopted area-wide rezones within the UGAs of the County respectively. This application has been evaluated for consistency with the version of the GMA Comprehensive Plan (GMACP) which became effective on February 1, 2006, through the completeness date of the application. This application is consistent with the GMACP.

Under GMA, the County is the coordinator of inter-jurisdictional infrastructure planning coordination for water supply. It has adopted goals and objectives related to the provision of utility service with which this project must be consistent. Those include:

- GOAL UT 1 - Enhance the efficiency and quality of service from utility providers through the review of utility, land use, transportation and natural environment planning documents. . . .
- Objective UT 1.B Achieve and maintain consistency between utility system expansion plans and planned land use patterns; [and] . . .
- GOAL UT 2 – Work with provider agencies of Snohomish County and *assist them in ensuring the availability of a reliable, high quality water supply for all households within the county* in a manner that is consistent with the comprehensive plan and protection of the natural environment.

Approval of the proposed new facilities will be in compliance with Goals UT 1 and 2, and objectives UT 1B of the Utilities Element of the General Policy Plan. In addition, the County's

GPP requires that the County support rural residential uses. Specific policies related to this issue include:

Rural Element LU Policies:

- 6.A.1 - Accommodate the portion of the 20-year growth not assigned to the urban growth areas at appropriate rural densities and using rural development standards;
- 6.A.2 - Establish rural infrastructure standards that are consistent with appropriate rural development patterns and densities.

The proposed development is consistent with these rural land use policies in that the project will provide improved water service and infrastructure improvements consistent with the County's design and construction standards and will accommodate rural residential development in the adjacent area.

- 18. Zoning (Chapter 30.2 SCC). Assuming that the proposed landscaping modification and variance are approved, the application meets the Zoning Code requirements for lot size and bulk regulations (e.g., setbacks, height and lot coverage and other zoning code requirements such as parking and landscaping). The proposed water tank may have a height of up to 110 feet and is exempt from the bulk regulation height restrictions pursuant to SCC 30.23.050(1).
- 19. SEPA (Chapter 30.61 SCC) The Snohomish County Public Utility District Number 1, being the lead agency for SEPA review, issued a Determination of Nonsignificance (DNS), for the subject development, on February 15, 2008 (Exhibit 5A1). The DNS was not appealed.
- 20. Landscaping -- Modification Request – Perimeter Buffer (Chapter 30.25.040) Pursuant to SCC 30.25.020(2), a 20-foot wide Type A landscaping buffer is required around the perimeter of the project site and 10 feet of Type B landscaping is required along the road frontage of 164<sup>th</sup> St. NW and 64<sup>th</sup> Ave. NW. However, the Applicant has applied for a Landscape Modification (Exhibit 1D) to allow the existing natural vegetation to the immediate west, east, north and south of the project site be considered adequate landscape buffer for these respective perimeters. These areas are fully vegetated with native growth trees and plants, are not visible from adjacent residences or rights-of-way, and will not be developed. PDS is recommending approval of this modification request.
- 21. Landscaping – Modification Request – Frontage (Chapter 30.25.040) The Applicant also requests that the landscape frontage requirement along the unopened right-of-ways of 164<sup>th</sup> St NW and 64<sup>th</sup> Ave. NW be modified. The applicant would like to allow the existing vegetation along 64<sup>th</sup> Ave NW to remain and to not landscape along the area of the 164<sup>th</sup> St. NW frontage, where a bioswale and rockery overlap the 10 foot area where Type B landscaping is required. The reasoning, alternative and justification are set forth in Exhibit 1D, which is incorporated herein by this reference. PDS is recommending approval of this modification request.
- 22. Landscaping – Modification Request – Approval Criteria. Landscaping modification requests are governed by SCC 30.25.040. The landscaping proposed must provide equal or better results than the Code requirements or fulfill the intended purpose of the landscaping required by the Code. (SCC 30.25.040(2)) In addition, the County favors: (a) the preservation of existing vegetation, particularly stands of mature trees standing 50 feet or more in height, or other groupings of natural vegetation in consolidated locations; (b) better accommodation of existing physical conditions on site, including incorporation of elements to provide for wind protection or improve solar access; (c) incorporation of elements to protect or improve water quality; (d)

increased landscaping width adjacent to residential uses or zones or in other strategic locations; and (e) the provision of a unique focal point of interest or better useable open space.

23. PDS has reviewed the PUD's two modification requests and is in agreement that the proposed alternative provides equal or better buffer around the site than the required 20-foot Type A landscaping. PDS also agrees that the proposed landscaping alternatives fulfill the intended purpose of screening the proposed project site from view by neighboring residential uses and recommends approval
24. Request for Variance to setbacks from unopened County right-of-way. The applicant is requesting a variance from the required setback from the existing unopened County right-of-way along 164<sup>th</sup> Street NW from 50 feet to a proposed setback of 22 feet. Variances are governed by Section 30.43B.100 SCC. In order to obtain a variance, the Hearing Examiner considers the following legal criteria and makes the following findings of fact:

- (a) There are special circumstances applicable to the subject property or to the intended use, such as size, shape, topography, location or surroundings, that do not apply generally to other properties or classes of use in the same vicinity and zone;

The subject property presents special circumstances because the water tank is an essential public facility, which is urgently needed to provide better potable water for domestic use. The site is located at 16315 66<sup>th</sup> Ave. NW. The lot is approximately 5 acres in size containing a single-family residence and accessory structures with an existing concrete water tank and accessory structures owned and maintained by Snohomish County Public Utility District No. 1, Water Services inside of an active easement. Applicant's proposal is to build within the existing easement as much as possible. The site is steeply sloped in various areas and heavily vegetated along the unopened right-of-way of 164<sup>th</sup> Street NW. Although properties adjacent to and in the immediate vicinity of the subject property have similar size, and shape, they do not contain the steep topography along the unopened right-of-way of the proposed site and do not contain an existing utilities facilities easement.

- (b) A variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other properties in the same vicinity and zone, but which because of special circumstances is denied to the property in question. In providing domestic water supply to the PUD's resident customers, the PUD is uniquely situated in that they must construct a large water tank – much larger than the uses on properties in the same vicinity, which are residential. If a variance is not granted, the PUD will not be able to site the large water tank on the site within the footprint of their existing easement. In addition, the location of the tank is needed within the setback area in order to provide the best location for water pressure, which is not a consideration for other properties in the area. Finally, if the variance is not granted, the PUD will be required to condemn additional land from adjoining properties, further reducing the useable area of land for those property owners and causing substantial delay in the project.
- (c) The granting of the variance will not be materially detrimental to the public welfare or injurious to the properties or improvements in the vicinity and zone in which the subject property is located. Here, the granting of the variance will not be materially detrimental to the public welfare but, instead, provides a material benefit to the residents in that it will facilitate the siting and construction of a new, larger water tank which better serves the residents with safe potable water and at a higher water pressure serving the public health, safety, and welfare. Utility facilities are allowed in the R-5 zone by SCC

30.22.120. Water tanks with a height greater than 45 feet are exempt from the typical height restrictions that would apply in an R-5 zone pursuant to SCC 30.23.050. The existing perimeter vegetation and proposed landscaping will adequately screen the proposed tank from view by the surrounding properties, and it is unlikely that the unopened right-of-way of 164<sup>th</sup> NW will be opened due to topographical and critical area issues.

- (d) The granting of the variance will not adversely affect the comprehensive plan. The Utilities Element of the GPP policies call for the County to work with utility districts to provide safe, clean, potable water through the expansion of existing facilities and construction of new facilities to support existing and forecasted growth. Accordingly, the approval of a variance in the present case will support, rather than adversely affect, the County's GMACP.

25. Conditional Use Permit (Chapter 30.42 SCC) Snohomish County PUD #1, Water Resources, has applied for a CUP to replace an existing concrete water reservoir tank with a taller, 110 foot, steel reservoir tank with a modification to the required landscaping (along the east, west, and north property lines) and variance to the required setback from the right-of-way of 164<sup>th</sup> St. NW. The proposal will include construction of the tank, grading, drainage and landscaping work both inside and outside the easement area and access easement area with approval of the property owner, with all above ground structures remaining within the easement area. The applicant has provided an analysis of how the Applicant meets the decision criteria (Exhibit #1G). The Hearing Examiner may approve, approve with conditions, or deny a CUP only when all the following criteria are met:

- (a) The proposal is consistent with the comprehensive plan.

Public facilities and tank reservoirs are allowed in rural areas with a CUP. The facility will provide increased clean water outside of Urban Growth Areas (UGA) which are experiencing rapid growth and serves the residents of the area. The Utilities Element of the GPP policies call for the County to work with utility districts to provide safe, clean, potable water through the expansion of existing facilities and construction of new facilities to support existing and forecasted growth; the proposal is consistent with the adopted GPP.

- (b) The proposal complies with applicable requirements of Title 30 SCC.

This project, with the requested landscape modification, and variance, meets zoning code requirements for bulk regulations, parking, landscaping, lot coverage, height and other zoning code requirements.

- (c) The proposal will not be materially detrimental to uses or property in the immediate vicinity.

Water tanks and facilities are essential public facilities providing much needed domestic water supply to existing development in the area. Although the site is not within the UGA, water supply is needed to support existing and planned uses in this rural area. The new water tank and facilities will provide a public health benefit and will not be materially detrimental to uses or property in the immediate vicinity. The existing perimeter vegetation and proposed landscaping will adequately screen the proposed tank from view by the surrounding properties, and it is unlikely that the unopened right-of-way of 164<sup>th</sup> Street NW will ever be opened due to topographical and critical area issues.



- (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 tank reservoir and equipment buildings are being proposed on a site that only partially borders public right-of-way. The residential development to the north is protected by an existing slope and vegetation that act as a buffer. The proposed CUP area will have a larger than 20-foot wide buffer along the west and east sides. The perimeter buffers will incorporate as much of the existing vegetation and trees as possible. The combined buffers will adequately insure compatibility between the tank and the surrounding area. The PUD also stated at the public hearing that they are working with the adjacent property owner to select agreeable paint colors for the water tank to ensure that it is compatible with neighborhood desires.

26. The subject property is designated rural residential and zoned R-5, which designation and zone allow the proposed use. A CUP may be granted in this type of zone if the requirements for a CUP are met.
27. Any finding of fact in this decision which should be deemed a Conclusion is hereby adopted as such.

### **CONCLUSIONS OF LAW**

The Examiner having fully reviewed the entire record and testimony provided at the public hearing and being fully informed hereby enters the following conclusions of law:

1. The Department of Public Works has reviewed the project and proposed modifications and variance requests and recommends that the requests be approved as to traffic use subject to specific conditions and has waived any objection to the proposed variance to the setback requirements from the unopened right-of-way of 164<sup>th</sup> Street.
2. The PUD's request for a CUP to construct a new water tank is consistent with the GMACP, GMA-based County Codes, and the type and character of land use permitted on the site, the permitted density and the applicable design and development standards. The development application meets the requirements of SCC 30.70.100.
3. The application meets the requirements for the issuance of a CUP pursuant to the decision criteria set forth in SCC 30.42C.100. No adverse affects will be made to the area as a result of allowing a new water tank to be constructed on the proposed PUD #1 easement site. The Hearing Examiner concludes that no additional conditions should be imposed beyond those requirements set forth in the Snohomish County Code.
4. An applicant may request modification of landscaping requirements as part of project review. The Hearing Examiner may approve a request for modification when (a) the proposed landscaping represents an equal or better result than would be achieved by strictly following the requirements of the code; or (b) the proposed landscaping fulfills its intended purpose as described in SCC 30.25.040.

5. The request for a landscaping modification to the perimeter buffer is governed by SCC 30.25.040. The Hearing Examiner concludes that the proposed modification to allow the existing natural vegetation to the immediate west, east, north and south of the project site to serve as an adequate landscape buffer for these respective perimeters, meets the requirements of SCC 30.25.040(2) and (5)(a). These areas are fully vegetated with native growth trees and plants, are not visible from adjacent residences or rights-of-way, and will not be developed. The proposed landscaping is equal to or better than the landscaping which is required by the County Code.
6. The request for a landscaping modification to the frontage along the unopened rights-of-way of 164<sup>th</sup> St NW and 64<sup>th</sup> Ave. NW is governed by SCC 30.25.040. The Hearing Examiner concludes that the proposed modification to allow the existing vegetation to remain and not provide additional landscaping meets the requirements of SCC 30.25.040(2) and (5). The proposed landscaping is equal to or better than the landscaping which is required by the County Code.
7. Variances are governed by Section 30.43B.100 SCC. The PUD's request for a variance from the required right-of-way setback of 50 feet meets the criteria set forth in SCC 30.43B.100.
8. The Snohomish County Public Utility District, No. 1 is a public agency and as such is not required to post bonds.
9. Any Conclusion in this report and 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 **LANDSCAPE MODIFICATION** to the frontage along the unopened rights-of-way of 164<sup>th</sup> Street NW and 64<sup>th</sup> Avenue NW is **APPROVED**.

The request for a **LANDSCAPE MODIFICATION** to the perimeter buffer of the site is **APPROVED**.

The request for a **VARIANCE** from right-of-way setback requirements on 164<sup>th</sup> Street NW is **APPROVED**.

The request for a **CONDITIONAL USE PERMIT** to construct a water tank up to 110 feet in height is **CONDITIONALLY APPROVED**.

### **PRECONDITION**

The Applicant shall provide documentation showing that Snohomish PUD #1 has obtained permission from the property owner for the facilities that are located outside of the easement or the PUD shall relocate those facilities within the PUD's existing easement site.

## CONDITIONS

- A. The official site plan received by PDS on February 27, 2008 (Exhibit 2B4) shall be the official site plan. SCC 30.42C.110 governs changes to the official site plan.
- B. A Land Use Permit Binder, (enclosed with the applicant's copy of this decision), shall be recorded prior to construction permitting. The PUD shall file a land use permit binder on a form provided by PDS with the County Auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the County, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The binder shall serve both as acknowledgement of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. (SCC 30.42C.200)
- C. The Applicant shall comply with best management practices as required per SCC 30.62.360(1) through the implementation of the mitigation plan consistent with the voluntary Critical Area Study and Habitat Management Plan – Snohomish County PUD #1 – Kayak Water Tank revised on February 27, 2008.

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 30<sup>th</sup> day of July, 2008.

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Millie Judge, Hearing Examiner Pro Tem

## **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, 2<sup>nd</sup> Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **August 11, 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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **August 13, 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.

**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 July 30, 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)

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.

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Staff Distribution:

Department of Planning and Development Services: Elbert Esparza

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.