

**DECISION of the SNOHOMISH  
COUNTY HEARING EXAMINER**

DATE OF DECISION: June 9, 2009

PLAT/PROJECT NAME: *Fernwood Elementary School Modernization*

APPLICANT/  
LANDOWNER: Northshore School District No. 417

FILE NO.: 08-109084-000-00-LU

**TYPE OF REQUEST:** Major Revision to a Conditional Use Permit (ZA 8611276) for a 4,805 sf classroom addition and 4,105 sf cafeteria commons in existing building B; and a landscaping modification pursuant to SCC 30.25.040.

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

**BASIC INFORMATION**

**GENERAL LOCATION:** 3933 Jewell Rd, Bothell, Washington  
Located in Section 16, Township 27 North, Range 5 East, W.M., Snohomish County, Washington.

**ACREAGE:** 12.38 acres

**ZONING:** R-7200 and R-9600

**COMPREHENSIVE PLAN DESIGNATION:**  
General Policy Plan Designation-Pub/Inst Use

**School District:** Northshore School District No. 417

**Fire District:** Fire District 7

**Water Source:** Alderwood Water District

**Sewer Service:** Septic Holding Tank

PDS STAFF RECOMMENDATION: Approve with precondition and conditions

## INTRODUCTION

The applicant filed the Master Application on October 2, 2008. (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 E4 (Affidavit of Mailing); Exhibit E5 (Affidavit of Notification by Publication); Exhibit E6 (Posting Verification). Although the Examiner noted on the site visit that one of the posted notices was down, testimony by Mr. Robert Foster of the Northshore School District at the open public hearing was persuasive that the sign was down for only a short period of time and that the District was very diligent about checking the signage to make sure that it remained up during the posting period. Testimony of Robert Foster. 9:10 a.m., June 2, 2009. There was also testimony that the District went beyond minimum notice requirements and sponsored public meetings to apprise the public of the changes proposed in this application. *Id.*

A Mitigated Determination of Nonsignificance was made by the School District on January 5, 2009. (Exhibit E2) The MDNS was not appealed.

The Examiner held an open record hearing on June 2, 2009. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

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

## FINDINGS OF FACT

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

### **A. Background**

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

The Northshore School District is proposing improvements to and modernization of the existing Fernwood Elementary School. The construction proposed includes expanding the existing Building B from 12,106 square feet to a total of 21,016 square feet, various modifications to other existing buildings, and improvements to the onsite circulation and parking areas. Enrollment is proposed to increase from 550 students and 35 staff members, to 650 students and 43 staff members. A detailed description of the improvements is found in Exhibit 3.

A conditional use permit for the original construction of the school was approved under file number ZA 8611276. The proposed expansion and modernization was determined to be a major revision. Pursuant to SCC 30.42C.110 (1) (b), the application "...shall be processed in the same manner as a new application using a Type 2 process."

3. Site Description:

The site slopes gently to the east and southeast, with the highest point of the property being approximately 380 feet above sea level. The majority of the property has been developed for the school, including buildings, parking areas, playgrounds, and sports fields. Large conifers are found along most of the school’s perimeter.

4. Adjacent Zoning/Uses:

The urban growth area boundary exists along the site’s north and east property lines. Existing uses in the area are primarily single-family residential, with larger, rural lots to the north and east, and smaller, urban lots to the west and south.

**B. Public Comment/Issues of Concern**

5. There are no issues of concern. No citizen comments were received for the project. The Examiner noted no issues of concern during her review of the project.

**C. Compliance with Performance Standards**

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 ZA 8611276.

6. Parks Mitigation:

The proposal 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 122.55 new average daily trips (ADT) and has a road system impact fee of \$24,019.80 based on \$196.00/ADT, the current fee rate for commercial developments inside the urban growth area, for TSA E. These figures include credit for on-site TDM measures. Consistent with SCC 30.66B.340, payment of this road system impact fee is required prior to building permit issuance. A condition has been included imposing this impact mitigation fee.

The estimates of trip generation for the development are based on the 7<sup>th</sup> Edition of the Institute of Transportation Engineers’ (ITE) Trip Generation as follows:

ITE Land Use Category:	Elementary School
ITE Land Use Code:	520
Applicable Measurement Unit (ITE Independent Variable):	Students
Number of applicable measurement units for this development:	100

*Trip Generation Calculations:*

	Calculations
ADT	100 students x 1.29 ADT/student x 0.95 for TDM credit = 122.55 ADT
AM PHT	100 students x 0.42 AM PHT/student x 0.95 TDM credit = 39.90 AM PHT
PM PHT	100 students x 0.28 PM PHT/student 0.95 TDM credit = 26.60 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 November 19, 2008. The expiration date of the concurrency determination is six years from this date. Consistent with DPW rule 4225.070 the point in time for which the concurrency analysis is based (the concurrency vesting date) is October 2, 2008.

The development has been deemed concurrent on the following basis:

Development generating 50 or fewer peak-hour trips in TSA with no arterial unit in arrears, SCC 30.66B.130 (4): The subject development is located in TSA E, which as of the date of this review had no arterial units in arrears. The subject development generates 39.90 AM peak hour trips and 26.60 PM 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.

It is noted that the Heffron Transportation traffic study dated September 26, 2008 showed that the proposed development would add more than 3 trips to the southbound direction of arterial unit #420 during the AM peak hour, and since unit #420 was an arterial unit in arrears (AUIA) at that time, the traffic study indicated that conditional concurrency per SCC 30.66B.167 would be required. However; the AUIA status of unit #420 was officially lifted by DPW on October 31, 2008. Therefore, no conditions or remedies related to the AUIA are required.

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

The subject proposal will not impact any IRC locations identified at this time within TSA E with three or more of its p.m. peak hour trips, nor will it create any. 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.

The IRC previously located at the intersection of York Road at Jewell Road was officially removed from that designation on August 7, 2008 by Owen Carter, Snohomish County Engineer.

D. Frontage Improvements [SCC 30.66B.410]:

All developments will be required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The required improvement shall be constructed in accordance with the EDDS, including correction of horizontal and vertical alignments, if applicable.

DPW Rule 4222.020(1) requires full urban frontage improvements along the subject property frontage on Jewell Road, and shall consist of:

- Asphalt concrete pavement, 18 feet wide from right-of-way centerline to the face of curb
- Cement concrete curb and gutter
- Planter strip with a width of 5 feet
- Cement concrete sidewalk with a width of 7 feet

EDDS deviation request approved by the county on November 20, 2008:

The following improvement measures have been modified through the EDDS deviation process as of the date of this memorandum:

The 5-foot planter strip will be reduced to a 1 or 2 foot width and the sidewalk will jog for about 45 feet in length (out of approximately 740 feet of frontage on Jewell Road) south of portable E, in order to avoid the sewage holding tank at that location. The request was approved with the condition that if the school is required to hook up to the sewer line and the holding tank is no longer needed, the frontage improvements would be constructed per EDDS requirements. It was determined that the deviation achieves the intended result of the standard design because the applicant will provide the standard pavement width of 18 feet from the right-of-way centerline, vertical curb, a 5-foot planter strip for most of the length of the improvements, and a 7-foot sidewalk width will be provided for the entire length. Therefore, it was determined that the deviation will not adversely affect traffic safety and operations, maintenance, or aesthetic appearance.

Jewell Road, on which the development's frontage improvements are required, is not in the impact fee cost basis (Appendix D of the Transportation Needs Report); therefore credits towards the applicant's impact fee for any frontage improvements that can be used in the ultimate build-out of the road are not applicable.

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

All developments are required to provide for access and transportation circulation in accordance with the comprehensive plan and SCC 30.66B.420, design and construct such access in accordance with the EDDS, and improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430.

Access into the school is provided by three existing commercial driveways off of Jewell Road. No change is proposed to the existing access with this revision. The existing driveways meet the width requirements of EDDS for commercial driveways on a non-arterial road. The main driveway in the west area of the frontage exceeds EDDS Plate 2-060 requirements for minimum corner clearance between the driveway and the future public road, 39<sup>th</sup> Avenue SE, to the west of the property. EDDS 2-02 allows one 2-way access point per 500 feet of property frontage. There is over 700 feet of frontage on Jewell Road, so a second access point is acceptable. The second driveway in the east area of the property frontage is one way in and one way out, serving a small area primarily for access for trucks pumping out the sewage holding tank, and also provides fire access to the east side of the school buildings.

The access points on Jewell Road meet the minimum requirements of EDDS, including sight distance.

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

A development shall be required to dedicate, establish, or deed right-of-way to the county for road purposes as a condition of approval of the development, when to do so is reasonably necessary as a direct result of a proposed development, for improvement, use or maintenance of the road system serving the development.

Jewell Road is designated as a non-arterial road on the County's Arterial Circulation Map. A 7-foot sidewalk was required for the frontage improvements on Jewell Road due to the high pedestrian use concentrated around the school property. Normally a right-of-way width of 30 feet is required on each side of the right-of-way centerline, but due to the requirements of a 7-foot sidewalk width, 32 feet of right-of-way is needed in this case. Currently, 30 feet of right-of-way exists on the development's side of the right-of-way. Therefore, 2 feet of additional right-of-way is required along the property frontage with Jewell Road. This is must be shown on the construction plans, and the 2 feet of property must have been deeded prior to issuance of the building permit. The Hearing Examiner has included a condition requiring that the additional right-of-way be deeded prior to issuance of any building permit.

Deeding of additional right-of-way that is tangent to the ultimate right-of-way on Jewell Road and 39<sup>th</sup> Avenue SE sufficient for a 25-foot radius curb return is required, and has been shown on the plans. The Hearing Examiner has included a condition requiring that the additional right-of-way be deeded prior to issuance of any building permit.

Jewell Road is 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 the Interlocal Agreement (ILA) with the Washington State Department of Transportation (WSDOT)/County effective December 21, 1997, and as amended.

The September 26, 2008 traffic study by Heffron Transportation Inc. indicates that no WSDOT project on the Exhibit C list is impacted by three or more trips from the proposed development; therefore no impact fee is required. Comments dated October 31, 2008 have been received from WSDOT (Exhibit H6) that agree with that. No traffic mitigation fees will be required to WSDOT.

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 (ILA) between the County and the other jurisdictions.

The 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 applicant's traffic study indicates that none of the school's enrollment area lies within the Bothell city limits, and based on the AM peak hour trip assignment, only 7% of the project traffic (3 trips of the 42 total) would impact the City of Bothell roads. So at \$246.00 per student x 100 students x 7%, the traffic mitigation payment to Bothell would be \$1,722.00. A copy for an offer to pay that amount was included with the application. Comments dated January 29, 2009 were received from the City (Exhibit H2) indicating agreement with the traffic study, and accepting the offered amount. A copy of the executed offer, signed as approved by the City was attached. Payment of that amount will be a recommended condition of approval for this development.

The county has an ILA with the City of Mill Creek and this development is within the influence area that requires traffic mitigation be considered for the City. The applicant's traffic study indicates that none of the school's enrollment area lies within the Mill Creek city limits, and based on the trip assignments, no project trips would impact the City of Mill Creek roads. The traffic study concludes that no fee should be required for the City of Mill Creek. Comments dated February 11, 2009 were received from Mill Creek via e-mail indicating that the City agrees with the traffic study, and they do not request any traffic mitigation. Therefore; no traffic mitigation will be required to the City of Mill Creek.

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.

The applicant has submitted a TDM plan to fulfill this obligation that is acceptable. Note that a 5% TDM credit has been applied to the impact fee in part one above, and payment of a TDM fee has been waived per SCC 30.66B.670.

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

The project is not subject to fees associated with Chapter 30.66C SCC.

9. Drainage and grading:

A. Drainage

The site is approximately 12.05 acres with the majority being developed as a school site with wooded areas along the west, north, and east property lines. The site conveys storm water runoff through series of swales and underground pipes to direct storm water to the southeast corner of the site. Site soils are classified as Alderwood gravelly sandy loam.

The site is located over a USEPA Sole Source Aquifer (Critical Aquifer Recharge Area).

The development proposes in excess of 5,000 square feet of new impervious which meets the definition of major development activity per SCC 30.63A. A full drainage plan and report is therefore required. The project is located within the Southwest UGA expansion area approved on or after December 20, 2006. Per SCC 30.63C.025, when site conditions exist use of low impact development techniques to meet storm water management standards instead of conventional methods identified in 30.63A are required.

A full drainage and grading plan together with a storm water pollution prevention plan was submitted January 8, 2009 and is currently under review. The development also meets the redevelopment criteria as defined in SCC 30.63A.230. Water quality treatment is therefore required for the entire site.

Proposed grading is in excess of 100 cubic yards which triggers the need for a grading permit and Storm Water Pollution Prevention Plan per SCC 30.63B and PDS Rule 3044.

A geotechnical report has been prepared to specifically address the impacts from the development with relation to the USEPA aquifer per SCC 30.62C.320. The hydrogeologic assessment prepared by Krazan and Associates, Inc. and dated December 19, 2008 concludes that the glacial till soils underlying the site are nearly impermeable and that collected site storm water will not negatively affect groundwater quality or the water levels of nearby wells.

No downstream flooding was reported by the downstream drainage report in the preliminary storm water management report prepared by Stephen Porter P.E. Surface Water Management had no comment. (Exhibit H6)

Surface Water Management forwarded a drainage complaint from address 4220 Jewell Road. The applicant's Stormwater Report (Exhibit C2) responded "the runoff from the Fernwood Elementary site flows via closed conveyance on the north side of Jewell Road and is hydraulically isolated from the watershed and conveyance system on the south side of Jewell Road and does not converge with Fernwood Elementary runoff until well downstream of the property in question". Exhibit C2 at 2.

As the site is in the Little Bear Creek Watershed, the redevelopment occurring as a part of this major revision must use low impact development techniques to manage stormwater. SCC 30.63C.025(1). In the applicant's Stormwater Management Report, Exhibit C2, the applicant's consultant states:

All of the Basin A existing and proposed pollution-generating surfaces will be treated for water quality. Stormwater quality control in the new parking lot will be accomplished by a rain garden, all other areas will be treated with a storm filter vault. Storm water flow control will be accomplished with an underground detention tank upstream of the water quality vault. The rain garden discharge will bypass the detention facility and water quality vault. All disturbed area (any surface area taken down to sub grade), both new impervious area and re-graded pervious areas were modeled as replacing till forest. A break down of the proposed pervious and impervious areas can be found in the low control and water quality design calculations.

Exhibit C2 at 2. The applicant is using the 2005 DOE Stormwater Manual. Exhibit I at 7.

B. Grading

A grading permit will be required for the quantities of cut and fill proposed. Water quality will 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. The Hearing Examiner will require as a condition that a full drainage plan will be required before any permits are issued.

10. Critical Areas Regulations (Chapter 30.62 SCC):

There are no critical areas on site. There is a Type N stream located approximately 80 feet from the southeastern property corner, across Jewell Road. Neither the stream nor its 50-foot buffer would be impacted. The project complies with the critical areas regulations.

11. Consistency with the GMA Comprehensive Plan:

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.

The subject property is designated Public / Institutional Use 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. According to the GPP, the Public / Institutional Use designation is "...appropriate for existing or planned government owned and/or operated properties, including schools, parks, government buildings, utility plants, and other government operations or properties as requested. There are no specific implementing zones for this designation since zoning will vary from site to site."

The proposal is for the modernization of an existing elementary school, and the following policies from the GPP are applicable. The proposed major revision to an existing conditional use permit complies with each of them.

### Transportation Policies

#### TR 1.C.2:

Adequate access to and circulation within all developments shall be maintained for emergency service and public transportation vehicles.

#### TR Policies 3.B.1:

Adequate pedestrian access to and circulation within all developments shall be maintained.

#### TR Policies 4.A.1:

Pedestrian facilities shall be encouraged that maintain access between public facilities and residential areas, especially where they serve a safety purpose.

#### TR Policies 7.B.5:

Where proponents of land development commit to a feasible transportation demand management program, they shall receive credit for reductions in traffic impacts they generate.

### Capital Facilities Policies

#### GOAL CF 10:

Ensure that county growth and development anticipated under the comprehensive plan can be accommodated by present and future school facilities.

#### CF Policies 10.A.1:

The county shall monitor the rate of private residential development and demographic trends and assist the school districts in planning for the expansion of school facility capacity.

#### 12. Zoning:

This project meets zoning code requirements for lot size, setbacks, required parking stalls, landscaping, bulk regulations and other zoning code requirements.

#### 13. Utilities:

- A. Water. Water is available from Alderwood Water & Waste Water District. (Exhibit H5)
- B. Sewer. Sewage disposal will continue to occur through onsite septic. There is sufficient capacity in the existing system for the additional students and staff. (Exhibit I)
- C. Electricity. The Snohomish County PUD submitted a letter stating that electricity is available. (Exhibit H3)
- D. Snohomish Health District Approval. the SHD has no objections to the proposed revision of the conditional use permit. (Exhibit H4A)

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

The Northshore School District issued a Mitigated Determination of Nonsignificance (MDNS) for the subject application on December 29, 2008 (Exhibit E2). The Northshore School District did not receive any comments during the comment period and the MDNS was not appealed.

The mitigating conditions placed on the MDNS are:

1. An EDDS deviation has been submitted and conditionally approved by Snohomish County, allowing a reduction in the planter strip width in the area adjacent to the sewage holding tank that is used to serve the school. The proposed design will reduce the planter strip width from five feet to one to two for approximately 45 feet along the 110-foot frontage improvements section south of Portable E. Construction will be built as approved by the County and as outlined in the approved EDDS deviation.

2. The District shall pay Snohomish County \$24,019.80 (12.55 trips x \$196 per trip) as mitigation for traffic impacts to the road system in accordance with Chapter 30.66B SCC. The District shall also pay the City of Bothell (per an ILA) \$1,722. Should these amounts vary based on additional information; the District will provide the mitigation amounts as approved by the County and Chapter 30.66B SCC.

3. Per the requirements of the Transportation Demand Management, if exercised, the District will be required to incorporate bicycling parking racks, preferred carpool and vanpool parking stalls, and pedestrian facilities along Jewell Road as approved by Snohomish County.

15. Landscape Modification: A minimum of a 20-foot Type A perimeter landscaping is required for any development that is permitted as a conditional use (SCC 30.25.020(2)). SCC 30.25.040 allows landscape modifications. The applicant applied for a landscape modification (Exhibit A4) on January 8, 2009, as a part of the application for the major revision to the CUP.

SCC 30.25.040(2) stipulates that the decision maker (either the department or 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 this chapter or, when applicable, Chapter 30.42B SCC.

20 foot Type A Perimeter Landscaping: Type A landscaping requires planting of a mixture of evergreen and deciduous trees at 25 feet on center in a triangular pattern, evergreen and deciduous shrubs at 3 feet on center in a triangular pattern, and evergreen groundcover at 12 inches on center in a triangular or offset pattern (SCC 30.25.017(1)). The intent of this section is to "... significantly separate residential uses and zones from nonresidential uses and zones, and to buffer single family development from multifamily development."

The existing landscaping at the school includes numerous large conifers. The original conditional use permit (ZA 8611276) included a condition that regarding these trees: "Desirable overstory vegetation shall be retained during site development to the maximum extent feasible consistent with construction requirements and ultimate building and life safety considerations." The trees have been retained as intended to this day.

The applicant has requested to relax the landscaping requirements along the north and east property lines by relying on existing mature evergreen and deciduous vegetation to meet the intended purpose of the perimeter landscaping requirement. The proposed building additions are interior to the site, and existing buildings are between the proposed additions and most of the property lines. The parking lot landscaping will be significantly upgraded compared to that which is existing. Frontage landscaping will be enhanced as part of the modernization.

The applicant has also requested that the 10 foot wide Type B landscaping along 39<sup>th</sup> Avenue to the west be delayed until an upgraded road is constructed as part of the adjacent "Cascadia" assisted living project. The department concurs with this request. The Hearing Examiner will include a condition to implement the request, as well as the exemption to Type A landscaping with the retention of the existing landscaping.

16. 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.

Exhibit A4 supplied by the applicant's representative is relevant to various criteria for the conditional use permit. The following information is taken from that exhibit.

**Regarding criteria (1)(a):**

The applicant identifies relevant text from the General Policy Plan that speaks to consistency with various portions of the comprehensive plan:

- *LU Policy 5.B.13 New development, excluding single-family residential building permits, proposed within any portion of a Southwest UGA expansion area approved on or after December 20, 2006, located in the Little Bear Creek Watershed shall, when site conditions allow, use low-impact development techniques consistent with the Puget Sound Action Team's Low Impact Development Technical Guidance Manual for Puget Sound to meet storm water management standards instead of conventional methods.*

Stormwater quality treatment for all existing and proposed pollution generating impervious surfaces in the redeveloped areas would be accomplished by utilizing a combination of rain gardens and a media cartridge filter vault. The rain garden is being utilized to treat a new parking area as well as some existing paved areas. The rain garden is a Best Management Practice approved by the Snohomish County Code, Department of Ecology Stormwater Management Manual for the Puget Sound Region (2005) and Low Impact Development (LID) Technical Guidance Manual for Puget Sound. Stormwater flow control would likely be provided by an underground pipe or vault prior to discharging to the existing on-site closed conveyance system.

- *TR Policy 1.B.5: Future roadways and improvements of existing roads shall be planned to enhance multi-modal traffic flow and the connectivity of countywide arterial roadways.*

Fernwood Elementary School is located at 3933 Jewell Road within Snohomish County Transportation Area (TSA) E. Jewell Road is a two-lane County non-arterial collector that connects 35<sup>th</sup> Avenue SE (York Road) with residential communities east of the site, where this roadway continues as 196<sup>th</sup> Street SE. West of the site, 35<sup>th</sup> Avenue SE (York Road) is a north-south roadway designated by the County as an urban minor-collector arterial. 35<sup>th</sup> Avenue SE (York Road) provides north-south access between the City of Everett, the City of Mill Creek, and south of the City of Bothell where the roadway bends to become 39<sup>th</sup> Avenue SE.

Vehicle access to the school would remain the same as currently exists with a primary ingress/egress driveway on Jewell Road. The project would include changes to the on-site parking configuration. The District proposed to construct several on-site design features that would reduce overall vehicle travel demand in the site vicinity. These features include: the construction of a new sidewalk on its frontage along Jewell Road; bicycle parking spaces would be located near the front entrance of the school; and signed preferential parking spaces for carpools or vanpools.

These physical improvements would enhance the attractiveness and effectiveness of non automobile and carpool modes of travel to and from the elementary school. They would meet the County's outlined requirements for a basic circulation system that provides continuity of pedestrian systems related to the primary road network.

- *Objective TR 1.C: Establish access and on-site circulation standards to maintain the safety and integrity of the arterial roadway system.*

The proposal would include minor site improvements including revisions to the bus and automobile loading /unloading areas and added parking. The location and configuration of the site access driveway would remain the same as the existing conditions. It is expected that the site access driveway would continue operating at Level of Service (LOS) B during both AM peak and PM peak periods. Pedestrian access to the school would remain the same; however, frontage improvements along Jewell Road would improve the safety along Jewell Road by including a sidewalk and planter strip.

- *TR Policy 1.C.2: Adequate access to and circulation within all developments shall be maintained for emergency service and public transportation vehicles.*

The existing fire lane area to the west of Building A-1 and south of Building B would be reconfigured to allow for improved fire access and a parent drop-off/pick-up area. The bus loop area west of Building A-1 would be enlarged for better on-site maneuverability and separation from the parent drop-off/pick-up area.

- *TR Policy 1.C.4: Local residential streets shall be designed that link neighborhoods and complementary land uses for efficient circulation and discourage high speed vehicular traffic.*

The proposed plan would incorporate half-street frontage improvements, a 7-foot sidewalk and a 5-foot planter strip along Jewell Road to improve pedestrian and vehicle safety and complement the surrounding neighborhood. The 5-foot planter strip and the 7-foot sidewalk provide separation between the pedestrian walkway and Jewell Road. These elements would be designed to improve the existing non-arterial street and provide safety features that currently do not exist.

- *TR Policy 1.C.9: Existing roadways shall be improved to meet adopted design standards in order to enhance the safety and mobility of pedestrians, transit users, bicyclists and motorized traffic as part of construction of frontage improvements by developments and by the county as funding allows within the county's capital improvement program.*

The frontage along Jewell Road would be improved to incorporate curb, gutter, sidewalk and storm drainage facilities along the County right-of-way. These enhancements would improve pedestrian, bicyclists and motorized traffic safety along Jewell Road.

Due to the location of the existing sewage holding tank the school utilizes for sanitary sewer facilities, an EDDS deviation request was submitted and conditionally approved by Snohomish County. The request would reduce the planter strip width from five feet to one to two feet for approximately 45 feet along the 110-foot frontage improvements section south of Portable E. The development would also “jog” the sidewalk around the existing sewage holding tank. The sidewalk would maintain a width of seven feet while the planter strip width would be reduced. Therefore, the deviation would not adversely affect safety and operations, maintenance or aesthetic appearances.

- *TR Policy: 4.D/On-site traffic circulation shall be designed in a way that allows safe and efficient storage and movement of driveway traffic.*

The existing bus loop area would be enlarged to accommodate seven bus stalls and 13 staff parking stalls on the west side of the bus loop. The east side of the bus loop would also be striped to accommodate a total of 28 stalls that could be used after hours. The central visitor and parent drop-off/pick-up parking area, located north of the bus loop and south of Building B, would be expanded to allow better emergency vehicle access, and parent drop-off/pick-up. These minor reconfigurations and adjustments to the site would increase the on-site parking from 64 to 76 stalls, including three handicapped stalls.

- *CT 10.A.1: The county shall monitor the rate of private residential development and demographic trends and assist the school districts in planning for the expansion of school facility capacity.*

The minor site improvements and building additions would provide better site circulation and increase the school's building capacity from 550 students to 650 students. These improvements would all the District to serve additional students as well as provide a new cafeteria area.

#### **Regarding Criteria (1)(b) of the Conditional Use Permit Criteria.**

- *(b) The proposal complies with the applicable requirements of this title:*

The proposal complies with the applicable requirements such as setbacks and height restrictions. The tallest portion of the proposed addition would be approximately 31-feet 3-inches in height, which would comply with the maximum height allowed in SCC 30.23.030(1) and the additions would be setback a minimum of 100 feet from all property lines.

The proposal also includes a request for modification to the landscaping requirements for a CUP as provided in SCC 30.25.040(2). The request is to relax the landscaping requirement along the north and east property lines by relying on existing mature evergreen and deciduous vegetation to meet the intended purpose of the perimeter landscaping requirement. The two additions would be located on the west and east sides of an existing building which is located in the most central portion of the site. These additions would be approximately 330 feet from the north property line and 235 feet from the east property line.

The second part of the request is to delay the installation of the Type B frontage landscaping along the west side of the site until after the 39<sup>th</sup> Avenue SE has been established as a public road. Public road establishment is a condition of approval for the Cascadia project (Snohomish County File Number 07-101058-LU). The District plans to rely on the existing significant evergreen and deciduous trees along the west side of the site until after 39<sup>th</sup> Avenue SE has been established as a public road. The District would work with the Cascadia development to provide 10-feet of Type B frontage along the west side of the site and would support a condition to the CUP that requires installation of this landscaping treatment at such time this road is established as a County road. If for some reason the Cascadia project is abandoned, PDS shall require the School District to install Type B landscaping without further delay.

**Regarding Criteria (1)(c) of the Conditional Use Permit Criteria.**

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

The proposed elementary school renovations will not adversely affect the existing or potential uses in the general area. The proposed building additions would be located at a height (less than 45 feet) that is below the maximum height allowed within the R-9,600 and R-7,200 zone for a Conditional Use Permit. The biofiltration swale proposed to control stormwater quality is an approved Best Management Practice (BMP) by Snohomish County Code and as Low Impact Development (LID) technique to handle stormwater from the increased impervious area associated with the modernizations. On-site infiltration is encouraged by Snohomish County as a LID technique. Frontage improvements are proposed along Jewell Road. These improvements would provide pedestrian, bicyclist and motorist improvements in the immediate vicinity.

**Regarding Criteria (1)(d) of the Conditional Use Permit Criteria.**

- *(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 proposal will not be materially detrimental to uses or property in the immediate vicinity and would be compatible with the character, appearance, quality of development and physical characteristics of the site and surrounding area. Fernwood Elementary School is an established school in the neighborhood and was originally built through a CUP approval process. Any conditions from that approval which will apply would be carried forward through this process. The approved site plan for the proposal would replace the previous official site plan.

In addition, the proposal is consistent with Title 30 of the SCC, which is the Unified Development Code (UDC). Applicable UDC zoning and construction codes that must be met for final construction plan approvals include:

- SCC 30.25 *Landscaping*
- SCC 30.26 *Parking*
- SCC 30.62 *Critical Areas*
- SCC 30.63A *Drainage*
- SCC 30.63B *Grading*
- SCC 30.52A *Building*

- SCC 30.53A *Fire*

After the project achieves land use approval, all nonstructural and code compliant aspects of the project would be designed in accordance to the following codes:

- 2006 International Building Code
- 2006 International Fire Code
- 2006 International Mechanical Code
- 2006 Uniform Plumbing Code
- 2003 International Code Council A117.1
- 2006 Washington State Energy Code
- 2006 Washington State Ventilation and Indoor Air Quality Code

The proposed modernization was identified in the District's Capital Facilities Plan (CFP) and is consistent with the District's DFP. Snohomish County has adopted the District's CFP.

### **CONCLUSIONS OF LAW**

1. The Examiner has original jurisdiction over CUP applications pursuant to Chapter 30.72 SCC and Chapter 2.02 SCC.
2. In considering the major revision, application of many of the decision criteria require the exercise of discretion.
3. The proposal is consistent with the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, and the applicable design and development standards.
4. Wastewater from the school is handled using an onsite septic holding tank. The current onsite septic system was designed to handle the proposed expansion. The school district would connect to the Alderwood Water and Sewer District system in the future when it becomes available. Adequate public services exist to serve the proposal.
5. If approved with the recommended conditions, the proposal would make adequate provisions for the public health, safety and general welfare.
6. The proposed major revision of the CUP with recommended preconditions and conditions of approval will be consistent with the comprehensive plan and comply with the applicable requirements of Title 30 SCC.
7. The major revision of the CUP, with recommended conditions of approval, will not be materially detrimental to uses or properties in the immediate vicinity.
8. The major revision of the CUP, with recommended preconditions and conditions of approval, will respond to as well as maintain compatibility with surrounding uses and incorporate specific features, conditions, or revisions that ensure it responds appropriately to the character, appearance, quality of development, and physical characteristics of the site and surrounding properties.
9. 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 and the Certificate of Concurrency shall have been recorded with the County Auditor.

### CONDITIONS

- A. This conditional use permit supersedes and replaces the conditional use permit approved under county planning file number ZA 8611276.
- B. The CUP site and landscape plan received by PDS on January 8, 2009 (Exhibit B1) shall be the approved site configuration. Changes to the approved site plan are governed by SCC 30.42C.110.
- C. Desirable overstory vegetation shall be retained during site development to the maximum extent feasible consistent with construction requirements and ultimate building and life safety considerations.
- D. A ten-foot wide Type B frontage landscaping strip shall be installed along the west property line prior to occupancy of the first building in the adjacent "Cascadia" assisted living project (PDS file number 07-101058 LU). In the event the Cascadia project is abandoned, the landscaping strip will be installed without further delay.
- E. Prior to initiation of any further site work and/or prior to issuance of any development/construction permits by the county:
  - i. A Land Use Permit Binder shall have been completed, signed, and recorded with the county Auditor's Office.
  - ii. A grading permit, to include a Storm Water Pollution Prevention Plan (SWPPP), issued pursuant to the SCC Chapter 30.63B shall have been obtained for any on-site grading.
  - iii. A full drainage plan shall have been submitted and approved pursuant to the SCC Chapter 30.63A.
  - iv. All site development work shall comply with the requirements of the plans, landscape modification, and permits approved pursuant to Condition B, above.

- F. Prior to the issuance of any building permit:
- i. The applicant shall have paid an impact fee to Snohomish County for traffic impacts to Transportation Service Area "E" totaling \$24,019.80. [SCC 30.66B.310]
  - ii. The sum of \$1,722.00 shall have been paid to the City of Bothell for mitigation of impacts on City streets. Proof of payment must be provided to the County. [SCC 30.66B.720]
  - iii. Right-of-way that is tangent to the ultimate right-of-way on Jewell Road and 39<sup>th</sup> Avenue SE sufficient for a 25-foot radius curb return shall be deeded to the County.
  - iv. Additional right-of-way, parallel and adjacent to the right-of-way centerline of Jewell Road shall be deeded to the County along the development's frontage such that 32 feet of right-of-way exists from the centerline of the Jewell Road right-of-way.
- G. Prior to approval for occupancy or final inspection:
- i. Urban standard frontage improvements shall be completed and accepted per approved plans along the property frontage with Jewell Road to the satisfaction of the County.
  - ii. The landscape plan (Exhibit B1) shall be implemented.
- H. In conformance with applicable standards and timing requirements:
- i. Storm water drainage measures shall be implemented.
  - ii. Interior circulation area improvements and any general site landscaping shall be implemented consistent with the official site plan and exhibits.

**THIS APPROVAL SUPERSEDES ALL PREVIOUS APPROVALS AND CONDITIONS GRANTED ON THIS PROPERTY, SPECIFICALLY HEARING EXAMINER DECISION ZA 8611276.**

Nothing in this 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 9th day of June, 2009.



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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, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **JUNE 22, 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 **JUNE 23, 2009** 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.

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Staff Distribution:

Department of Planning and Development Services: Tom Barnett

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 JUNE 9, 2010.**

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.

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**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)

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