



**DECISION of the
SNOHOMISH COUNTY HEARING EXAMINER**

Millie Judge
Hearing Examiner

M/S. 405
3000 Rockefeller Ave,
Everett, WA 98201

(425) 388-3538
FAX (425) 388-3201

DECISION DATE: June 15, 2011

PLAT/PROJECT NAME: **THE LODGE AT QUAIL PARK
SENIOR LIVING FACILITIES**

**APPLICANT/
LANDOWNER:** Quail Park at Lynnwood, LLC
2040 Westlake Avenue N #301
Seattle WA 98109

FILE NO.: 10-104280 LU

TYPE OF REQUEST(S): Conditional Use Permit (CUP)
Variance from Building Setback Requirement
Variance from Landscape Buffer Requirement

DECISION (SUMMARY): The CUP is **Granted, subject to a precondition and conditions**
The Variances are **Granted**

LOCATION: 4015 164th Street S.W., Lynnwood WA 98036

TAX PARCEL NOS.: 003-729-002-007-02, 003-729-002-006-01
003-729-002-006-03, 009-6000-690-3000
009-6000-690-3900

Current Zoning: LDMR and R-8,400

Comprehensive Plan: Urban High Density Residential

School District: Edmonds School District

Fire District: Snohomish County Fire District No. 1

Water and Sewer Service: Alderwood Water and Wastewater District

PDS STAFF RECOMMENDATION: Approve all requests, subject to conditions.

This matter having come before the Hearing Examiner on May 31, 2011, and the testimony of witnesses having been heard and all exhibits having been admitted into evidence and considered, the Hearing Examiner enters the following Findings of Fact, Conclusions of Law and Decision based on a preponderance of the evidence:

I. FINDINGS OF FACT

1. The Record. The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits A1 through L1), as well as the testimony of witnesses received at the open record hearing. The entire record was admitted into evidence and considered by the Examiner in reaching the decision herein.

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

2. Parties of Record. The Parties of Record are set forth in the Parties of Record Register and include interested parties who testified at the open record hearing.
3. Public Hearing. The Hearing Examiner held an open record appeal hearing on May 31, 2011. Witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Notice of the application and public hearing were made according to the provisions of SCC 30.70.050(5). (Exhibits F1, F2, and F3) Monica McLaughlin and Mark Brown appeared and testified on behalf of the Snohomish County Planning and Development Services Department (PDS). Thomas Mead, Irwin Partners Architects, and Mark Flury, Flury-Wyrick and Associates, Inc., consultants, appeared on behalf of the Applicant. Members of the public who testified included: Steve Sherman, Snohomish County Fire District No. 1, Sandra Ferchen, Joan Graham and Jack Jansen.

Appearance of Fairness Disclosure. At the start of the public hearing, the Examiner disclosed that she is currently an elected member of the Board of Commissioners of Snohomish County Fire District No. 1. She noted that the District had commented on the project and that Steve Sherman was present and likely to testify. However, the Examiner stated that the Commissioners had not been briefed about the project by staff nor had any prior discussions about it. The Examiner asked if anyone wanted to challenge her ability to conduct the hearing and render a decision based on the appearance of fairness doctrine. No challenge was presented and the parties consented to having the Examiner continue.

4. Application Request. Quail Park at Lynnwood, LLC (hereinafter the "Applicant"), is the owner of certain real property, consisting of five tax parcels: 003-729-002-007-02, 003-729-002-006-01, 003-729-002-006-03, 009-6000-690-3000, and 009-6000-690-3900 located at 3927 and 4015 164th Street SW in Lynnwood, Washington (hereinafter the "subject property"). The Applicant is seeking a CUP to develop a 254-unit senior living facility (which is a Level 2 Health and Social Services Facility under the County's regulations). The facility will be constructed in three phases. The Applicant is requesting a variance from the required building setback of 30 feet from all property lines. Additionally, the Applicant is requesting a variance from the required 20-foot-wide Type "A" landscape buffer around the perimeter boundary of the subject property. A complete application for a CUP was submitted by the Applicant to PDS on June 14, 2010. Two variance applications were submitted on January 19, 2011. As of the date of the public hearing on the application, 215 days of the 120 day review period had elapsed.
5. Site description. The subject property is currently split-zoned LDMR and R-8400. Its designation in the Comprehensive Plan is Urban High Density Residential. The 15.5-acre site is an assemblage of tax parcels and the zoning boundary line runs roughly through the middle of the site in a meandering north-south alignment. The eastern portion of the site (approximately 8.7 acres), is zoned R-8400. Most of the subject property is occupied by a

forested, steep slope area/ravine, the bottom of which contains a wetland and stream corridor. (By and large the stream/wetland corridor is located within the unopened right-of-way of Admiralty Way, which borders the southeast corner of the property.) The western portion of the site (approximately 6.8 acres), is zoned LDMR and was formerly occupied by a mobile home park.

6. Adjacent uses. The immediate neighborhood is sandwiched between SR 99 to the west, SR 525 to the east, 164th Street SW to the south and 156th Street SW to the north and is comprised primarily of multi-family development, mobile homes, single-family condominiums and commercial uses. Specifically, the property is surrounded by multi-family developments to the north and southeast. To the southwest of the property, there is a single-family residential parcel and to the west, there is an existing mobile home park. East and northeast of the subject property is the Alderwood Water District facility.
7. State Environmental Policy Act Compliance. PDS identified significant adverse impacts of the development proposal on parks and recreation facilities in the Nakeeta Beach Park Service Area. However, PDS determined that these impacts can be mitigated through the payment of impact fees in the amount of \$1,244.49. Using its SEPA substantive authority, PDS has included a condition of approval to pay the identified park mitigation fees. As a result, PDS issued a Mitigated Determination of Nonsignificance (MDNS) on April 20, 2011. (Exhibit E2) Notice of the decision was made according to the County's regulations. (Exhibits F1, F2 and F3) No appeal of the SEPA determination was filed. Accordingly, the Examiner finds that compliance with the substantive and procedural requirements of SEPA have been met.
8. Issues of Concern

A. Public Agency Review:

Snohomish County Fire District No. 1. The District provided comments on the application related to fire apparatus access and turnarounds, fire hydrant requirements and building addresses. (Exhibit H7) In addition, Steve Sherman testified at the public hearing that their experience shows that the proposed development will have an impact on the number of calls received by the Fire District for fire and EMS response. However, at this time the District is not requesting the payment of impact fees or any specific mitigating condition(s).

City of Lynnwood. Comments were received from the City of Lynnwood (Exhibit H9), stating that the subject property is within their future annexation area and that the land use designation on the City's future land use map would not allow a senior housing facility to be placed on the site. (Snohomish County's Future Land Use Map shows the entire property to be designated as Urban High Density Residential). The City noted that their regulations would require more density and single-family residences, which is contrary to the proposed development. The City also desires that the project embody good building design and provide adequate recreational opportunities for the residents. The Applicant prepared a response to these concerns (see Exhibit J2), stating that the project is subject to the County's regulations, not the City's regulations. However, they assured the City that the proposal will meet good design principals and will be an attractive facility for the community. It is designed to resemble a Northwest lodge, with deep roof overhangs and trellises to grow plants on attached to the buildings. The buildings are designed to use colors and shape changes between floors and wings to prevent them from resembling monolithic structures. The plans for the project indicate that a golf putting area and bocce court are proposed, as

well as an indoor swimming pool, fitness center and outdoor courtyard gardens. Additionally, sidewalks throughout the site will provide walking opportunities for residents.

B. Citizens. The County received written comments from Sandra Ferchen, the property owner located immediately to the southwest, expressing support for the development but also stating concerns about traffic, potential application of herbicides, impacts to nearby streams and maintaining access into her property. (Exhibit I.1) Joan Graham also testified at the public hearing and asked questions about the project regarding the proposed street surfaces, traffic safety getting out onto 164th Street and landscaping. Jack Jansen, the manager of the mobile home park adjacent to the subject property, testified and asked whether the proposed fence or barrier between the project and their property will be a sufficient barrier. He also raised the question of traffic safety accessing 164th Street from the subject property.

The Applicant has provided a written response to these concerns. (Exhibit J1) Mark Brown, PDS traffic reviewer, testified that the County performed an Inadequate Road Condition (IRC) analysis as to the proposed access onto 164th Street. The review team determined that the access was not an IRC and that the project could provide for traffic safety. As to the other concerns raised, the Applicant responded that it has no plans to spray herbicides; and that there is an existing easement on the subject property which gives access rights to the concerned property owner. This easement will remain and a new driveway approach will be constructed at the same location that the property owner currently uses to provide improved access. Additionally, Mark Flury testified that the Applicant proposes to provide a tall, solid fence between the subject property and the neighboring mobile home park, with perimeter landscaping.

The Examiner finds that the Applicant and PDS have adequately addressed the concerns raised from agency and citizen comments.

9. Approval Criteria. The split zoning on the subject property requires a CUP for the proposed development. As such, the application is subject to the requirements of SCC 30.42C.100, the CUP criteria. Each criterion is analyzed below:

9.1 The proposal is consistent with the comprehensive plan;

This application has been evaluated for consistency with the version of the GMA Comprehensive Plan ("GMACP"), which became effective on December 12, 1996, as revised through the completeness date of the application.

The property is located within the Urban Growth Area (UGA) and is designated as *Urban High Density Residential* on the GPP's Future Land Use Map (FLUM). The split-zoning of the property, R-8400 and LDMR, are listed in the GPP as implementing zones for this designation. The proposed use will contribute to a mix of housing types and will increase densities within the UGA, as contemplated in the GPP. (LU 2.A.3, LU 2.A.4, LU 2.A.5, and LU 2.A.6) Additionally, the proposed Level 2 health and social services facility will provide further opportunities for senior citizens and others needing special housing support, to find adequate housing as contemplated in the County's GPP. (See, Goal HO 1)¹ The Hearing

¹ "Ensure that all county residents have the opportunity to obtain safe, sanitary and affordable housing." Goal HO 1, GPP

Examiner finds that the application is consistent with the GMACP designation for the subject property.

9.2 The proposal complies with applicable requirements of Title 30 SCC.

The application has been reviewed by PDS and the Department of Public Works (DPW) for compliance with the applicable provisions of Title 30 SCC and Engineering Design and Development Standards (EDDS). Subject to the recommended conditions of approval, PDS and DPW found that the development application met the County's regulations as follows:

9.2.1 Park and Recreation Impact Mitigation (Chapter 30.66A SCC)

PDS determined that the proposed development has a significant adverse environmental impact on the County's parks and recreation facilities located within the Nakeeta Beach Park Service Area because the development proposes to build 34 duplex units for independent living, which residents are deemed to utilize those park and recreation facilities. PDS determined that this impact can be adequately mitigated through the application of Chapter 30.66A SCC, requiring the payment of park impact fees. Accordingly, PDS issued an MDNS, requiring that park impact fees be paid by the Applicant in the amount of \$1,244.49 per each new duplex unit, prior to building permit issuance. (Exhibit E2) The Hearing Examiner finds that this condition should be included pursuant to SEPA. The impact fees are consistent with the MDNS and represent a determination by PDS that the amount requested represents the Applicant's proportionate share of mitigation that should be required.

9.2.2 Transportation and Road Design Standards (Chapter 30.66B SCC, Title 13 SCC, EDDS)

A. County road impacts (SCC 30.66B.330). The proposed development is located within TSA "D" and must mitigate its impacts on the future capacity of the County's road system by paying a road system impact fee related to impacts on arterial roads within area. The development will generate 471.05 average daily trips, with 17.52 morning peak-hour trips and 31.69 afternoon peak hour trips. The Applicant is to be given credit toward the impact fee for Transportation Demand measures it proposes on-site (such as the provision of a community bus for residents). PDS has determined that the Applicant is required to pay \$101,581.93 as mitigation for impacts to the County's road system in TSA "D."

B. Concurrency (SCC 30.66B.120) Based on peak-hour trip distributions, the subject development will not add three (3) or more directional peak-hour trips to any of the arterial units in arrears in the area. Pursuant to SCC 30.66B.160(2)(a) the development is determined concurrent as of August 23, 2010. The concurrency determination approval expires on August 23, 2016.

C. Inadequate Road Conditions (IRC). The IRCs have been analyzed according to the requirements of SCC 30.66B.210, and as a result, the Applicant is not required to make improvements to any IRC locations within TSA "D".

D. Frontage Improvements (SCC 30.66B.410) The Applicant must make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. The subject parcel fronts the end of an opened section of

the non-arterial portion of 164th St SW. The Applicant proposes to extend this street, improve it with an urban sidewalk and widen it. Currently this section of roadway is approximately 16 feet wide. It is proposed to widen it to 20 feet with a curb, gutter and sidewalk along the edge of the travel way. A deviation from the standard improvements was approved by DPW. (Exhibit G3) The section of 164th Street SW 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, no credit can be given toward the Applicant's impact fee for any frontage improvements that can be used in the ultimate build-out of the road. Construction of frontage improvements is required prior to issuance of a certificate of any occupancy.

The County's current adopted County Wide Bicycle Facility System Map became effect on February 1, 2006. The subject development does not border on a right-of-way that has been identified on the adopted Bicycle Facility System Map. A bicycle path is not required along the development's frontage on the non-arterial portion of 164th Street SW.

E. Access, Circulation and Right-of-Way Requirements (SCC 30.66B.420, Chapter 30.24 SCC, SCC 30.66B.510 and 30.66B.520) DPW considered the application in light of its proposed access and road circulation, the extent of existing facilities and right-of-way, sight-distances and any needed improvements to any of these items. Their analysis is shown on pages 5 through 7 of the PDS Staff Recommendation (Exhibit K), which is incorporated herein by this reference as if set forth in full. The Applicant requested deviations from the EDDS as described in Exhibit G3. In the present case, the deviations were granted by DPW. The County Engineer and DPW staff has determined that with the imposition of the conditions set forth in Exhibit K, the proposed development meets the requirements of SCC 30.66B.420 and Chapter 30.24 SCC.

In determining the extent of required improvements, the Director of DPW considers, among other relevant factors, the criteria set forth in SCC 30.66B.430(a) through (p). The Hearing Examiner has reviewed those factors and finds that the recommended extent of improvements are consistent with SCC 30.66B.430 and the facts set forth in the entire record. (Exhibit K)

The road serving this development, 164th Street SW, is designated as a non-arterial and requires a right-of-way width of 30 feet on each side of the right-of-way centerline. Currently, this road has 60 feet of total right-of-way. The subject development touches the end of this right-of-way and is proposing to extend it and construct an appropriate road end for a permanent urban cul-de-sac. A deviation was requested and approved to allow a hammerhead for the road end (see Exhibit G3). The additional right-of-way needed for the hammerhead road end has been adequately shown. The dedication of the required right-of-way shall be a condition of approval.

The site also touches the unopened right-of-way known as Admiralty Way. Due to the location of this right-of-way, within a stream, and associated wetland and the lack of development potential, it is not recommended that this right-of-way be constructed and opened.

F. Impacts to State Highways (SCC 30.66B.710) The proposed application has been reviewed by the Washington State Department of Transportation (WSDOT) and

PDS, and they have determined that the application does not impact any state highways. As such, no impact fees are required to mitigate impacts to state highways. (Exhibit H3)

G. Impacts to City Streets and Roads (SCC 30.66B.720) Mitigation requirements for impacts to streets within nearby cities must be established consistent with the terms of an interlocal agreement between the County and the other jurisdictions pursuant to the County's SEPA substantive authority. Here, the County has executed a Reciprocal Traffic Mitigation Interlocal Agreement with the City of Mukilteo. Comments were received from the City (Exhibits H1, H2 and H8) indicating that the City expects mitigation from the Applicant in the amount of \$44,564.06, as authorized through the ILA and SCC 30.66B.720. This is consistent with Section 2 on the worksheet for the City. An acceptable written offer to pay this amount has been received from the Applicant. The County has reviewed the City requested mitigation and written proposal for mitigation submitted by the Applicant and has determined that the proposed mitigation measures are reasonably related to the impacts of the development and recommends that they be imposed on the development as a condition of approval. Payment of impact fees to the City is a required condition of approval.

H. Transportation Demand Management (TDM) (SCC 30.66B.630) The County requires TDM for developments inside the UGA and developments that impact arterial units designated as ultimate capacity. A TDM Plan was submitted with the application for this development, and was determined to meet the minimum code requirements for acceptance. Therefore the TDM obligation fee has been waived, and a 5% reduction credit on the number of ADT generated by this project has been given by PDS. Accordingly, the Examiner finds that the requirements of SCC 30.66B.630 have been met.

9.2.3 School Impact Mitigation (Chapter 30.66C SCC) – Most of the development is not subject to school impact fees associated with Chapter 30.66C SCC because memory care and assisted living components of the project do not meet the definition of "development" as per SCC 30.91D.220. However, the 34 independent living duplex units do meet the definition. However, according to SCC 30.66C.010(2)(d), these units can be considered "Housing for Older Persons," as defined by 42 U.S.C 3607(2). Such units are exempt from school impact mitigation when the use as housing for older persons is guaranteed by a restrictive covenant. PDS included a recommended condition of approval for inclusion within the project decision to comply with the requirements of Chapter SCC 30.66C SCC. The Hearing Examiner finds that the independent living units may be considered housing units for older persons and, therefore, the entirety of the development is excluded from the application of impact fees for schools.

9.2.4 Drainage and Grading (Chapters 30.63A, 30.63B, and 30.63C SCC) The Surface Water Management Division of DPW reviewed its files and found no comments or drainage complaints reported within ¼ mile downstream of the subject property. The record shows that the west half of this 15 acre site was formerly occupied by a mobile home park. The rest of the site is forested with a non-fish bearing stream (Type "NS" stream), in the eastern half, which flows in a southerly direction and naturally conveys all site stormwater runoff. The drainage flows to the property boundary and crosses 164th Street S.W. in an existing stormwater drainage system.

Slopes on the subject property vary from 1.5 percent in the former mobile home park portion to 44 percent in the forested eastern undeveloped portion. The Natural Resources Conservation Service (NRCS) identifies the on-site soils as Alderwood Urban Land Complex and Alderwood Gravelly Sandy Loam, 15 to 25 percent. The proposed catch basin and stormwater collection and conveyance system will discharge at the existing location in the stream at the southern end of the property. Stormwater detention will be provided by an underground vault and a storm detention pipe designed according to the applicable 1992 Department of Ecology Stormwater Management Manual for the Puget Sound Basin. Likewise, water quality treatment will be provided by two separate underground storm filter structures downstream of the detention system. Runoff from a portion of the southern driveway into the site will bypass detention but will be treated to remove pollutants through water quality best management practices (BMPs). It was determined that because of the relatively shallow, dense glacial till present on the site, infiltration is not feasible.

Because more than 5,000 square feet of existing impervious surface area will be redeveloped, redevelopment criteria apply, and existing conditions have been assumed to be forested for the stormwater detention calculations. Because a portion of the driveway stormwater runoff will bypass the detention system, the Applicant is required to construct an oversized stormwater detention vault that releases runoff at a slower rate, so that the total peak rate of discharge from the developed site will be no greater than existing conditions.

Prior to site development, a full drainage plan must be approved pursuant to Chapter 30.63A SCC. Additionally, a Land Disturbing Activity (LDA) permit, including submittal of a Storm Water Pollution Prevention Plan (SWPPP), consistent with regulatory provisions of Title 30.63B SCC and Chapter 33 SCC, must be obtained for any grading outside of the county right-of-way. Grading to accommodate site development is estimated at 10,730 cubic yards excavation and 10,020 cubic yards fill. PDS reviewed the targeted drainage plan (Exhibit B3) and supplementary drainage report (Exhibit C2) submitted with the land use application to be in conformance with the regulatory provisions of Chapter 30.63A SCC.

- 9.2.5 Fire Code (Chapter 30.53A SCC) Fire apparatus access as depicted in the plan set has been found to meet the minimum requirements of SCC 30.53A.150. During the construction plan review stage, detailed plans will be reviewed by the Fire Marshall's Office to determine the appropriate placement of any new fire hydrants and any required signage or pavement striping denoting fire lanes to ensure access by emergency vehicles is not impeded. PDS inspection staff will ensure that prior to the start of combustible construction, fire hydrants are installed and operational and that approved addresses are placed on the building as required. A condition of approval of the EDDS deviation submitted for the project (Exhibit G3) was that the extended public roadway and hammerhead be marked "No Parking – Fire Lane" and that all proposed buildings within the project be provided with fire sprinkler systems. A condition of approval was included by the Fire Marshall to assure that the aforementioned fire requirement is implemented. The project must also comply with the requirements outlined in the comments received from Snohomish County Fire District 1. (Exhibit H7)
- 9.2.6 Utilities As indicated in correspondence received from the Alderwood Water and Wastewater District, water and sewer will be available to serve this development (see Exhibit H6). Electrical service is available from the Snohomish County PUD No.

1 (see Exhibit H5). The Snohomish Health District indicates it has no objections to approval of the CUP (see Exhibit H4).

9.2.7 Critical Areas Regulations (Chapters 30.62, 30.62A, 30.62 B, and 32.62C SCC)

a. Landslide Hazard Areas. The applicant's geotechnical engineer made a determination there are no slopes on the site that meet the county code definition of a Landslide Hazard Area (see Exhibit C4). However, there are steep slopes on the east side of the site near where the duplex cottages are to be constructed. A condition of approval relating to setbacks of these structures from the steep slope, as recommended by the applicant's geotechnical engineer (Exhibit C3) is included at the end of this report.

b. Fish and Wildlife Habitat Conservation Areas and Wetlands. A site assessment was conducted by Wetland Resources. They identified and categorized the stream as a non fish-bearing seasonal stream (NS) and the wetland as a Category II riverine wetland. The stream and wetland complex are the headwaters to Scriber Creek. The wetland complex is classified as a Category II wetland, requiring the establishment of 100-foot protective buffers adjacent to high intensity land uses pursuant to SCC 30.62A.230 (Table 1). Type NS streams require the establishment of 50-foot protective buffers. Stream and wetland buffers that extend onto steep slopes are required to extend 25-feet beyond the top of the slope, pursuant to SCC 30.62A.320(2)(b)(ii). The project proponent has submitted a mitigation plan prepared by Wetland Resources, Inc. for unavoidable impacts. (Exhibit C5) Wetland buffer alterations are proposed for this project as follows: buffer reduction, buffer averaging, permanent buffer impacts and temporary buffer impacts.

i. Buffer Reduction. A fifteen percent buffer reduction is proposed with installation of a fence pursuant to SCC 30.62A.320(1)(e) at the top of the bluff to accommodate building footprints. For this project 15 percent of the standard 100-foot buffer width is 15-feet. This will reduce the required 25-foot buffer that extends beyond the top of the slope to 10-feet. In order to maintain 15-foot building setback requirements along portions of the buffer at the top of the slope, buffer averaging pursuant to SCC 30.62A.320(1)(f)(i) is proposed. A total of 1,198 square feet of buffer shall be reduced along portions of the top of slope buffer with 1,198 square feet of additional buffer added to the buffer along the top of slope buffer between the development and critical area.

ii. Permanent Buffer Impacts. The existing access road requires improvements to meet minimum site access requirements. The road requires widening and construction of a hammerhead turnaround for fire apparatus. Road improvements will result in permanent buffer impacts to existing vegetation in the amount of 552 square feet. Transportation structures are allowed in such buffers when no other feasible alternative exists pursuant to SCC 30.62A.320.2(a) and when impacts are minimized pursuant to SCC 30.36A.310. Mitigation at a 2:1 replacement ratio has been proposed by the Applicant as required by SCC 30.62A.320(3) (Table 3).

iii. Temporary wetland buffer impacts. Road improvements will result in temporary wetland buffer impacts from re-grading of the sloped wetland buffer in

order to make the required road improvements. The proposed re-contouring will impact approximately 10,140 square feet of buffer area. Mitigation is proposed at a 4:1 ratio pursuant to SCC 30.62A.320(3) (Table 3). The 10,140 square feet area of the disturbed, sloped, wetland buffer will be re-vegetated, an additional 30,420 square feet of wetland buffer will be enhanced, and 10,140 square feet of upland area shall be designated as buffer area.

The wetland, stream and the steep slope area, along with their required buffers, will be preserved and designated as a Critical Area Protection Areas (CAPA). Conditions of approval have been included at the end of this report to assure compliance with the requirements of the Critical Areas Regulations (CAR). PDS has reviewed the Critical Areas Study and mitigation plan submitted with the application (Exhibit C5) and has determined that the project complies with county CAR.

9.2.8 Zoning and General Development Standards (Subtitle 30.2 SCC) This project must meet all Zoning Code requirements for building setbacks, height, bulk, lot coverage (Ch. 30.23 SCC), landscaping (Ch. 30.25 SCC) and parking (30.26). PDS evaluated each applicable condition and found that, except for the two proposed variances from building setbacks and landscaping, the proposal meets the County's regulations. The variances are addressed separately in Section 9.2.9, below.

a. Uses Allowed In Zones. The proposed use, a "Health and Social Service Facilities, Level II" is allowed as a Conditional Use in both the LDMR and R-8,400 zones (SCC 30.22.100).

b. Building Setbacks. SCC 30.23.110(10) requires that Level II Health and Social Service Facility buildings must be set back at least 30 feet from all external property lines. The "Lodge" building to be constructed during phase I and II will be setback at least 54 feet from the nearest property lines. The applicant has submitted a variance application to reduce the building setback for the duplex cottages located on the northeast side of the developed site. This is addressed below.

c. Building Height. Per Table 30.23.030(1) Bulk Matrix, the maximum height limit in the R-8,400 zoned portion of the property is 30 feet and the maximum is 45 feet in the LDMR zoned portion of the site. The three story portion of the "Lodge" building will be approximately 38 feet high and complies with the required minimum building height setback of 25 feet. The cottages are to be approximately 15 feet tall one story buildings.

d. Lot Coverage. The proposed lot coverage for the LDMR-zoned portion of the site is 27 percent, which is below the 30 percent maximum coverage allowed as stipulated by SCC 30.23.030(1). The lot coverage maximum allowed in the R-8,400 zone is 35 percent. Lot coverage proposed for the R-8,400 zoned portion of the site is 14 percent, well below the maximum amount allowed.

e. Landscaping. Landscaping requirements are outlined in Chapter 30.25 SCC. Table SCC 30.25.020(1) indicates that a 20-foot wide Type A landscape buffer is required along the property perimeter, apart from the portion of the site abutting public road frontage, where a 10-foot wide Type B buffer is required per SCC 30.25.020(4). The applicant has submitted a variance request to reduce the width of the 20 foot wide Type A buffer to a 10 foot wide Type A buffer in conjunction with a 6 foot high privacy fence, which is discussed below. The 10-foot Type B road frontage landscaping is to be installed immediately adjacent to the new right of way to be

deeded for the public road extension. Existing native vegetation within the designated critical areas fulfills landscape buffer requirements. The parking lot will be landscaped and solid fencing will be provided to block headlight glare in accordance with SCC 30.25.022.

f. Parking According to SCC 30.26.030(1) and SCC 30.26.035, the number of parking spaces required for "Health and Social Services Facilities, Level II and III" is to be determined by the department on a case by case basis, and the determination shall be based upon parking requirements for comparable uses and comparative data as may be available to staff. The department may also require the applicant to submit a parking study. The applicant submitted a parking study (Exhibit C6) prepared by the project architect. PDS conducted an independent review, analyzing among other things, parking requirements from other Puget Sound jurisdictions and data from the Parking Generation report produced by the Institute of Transportation Engineers (ITE) and concluded, that while the applicant's rationale for determining the amount of parking required was different than what PDS used, the amount of parking proposed will be adequate for the project.

PDS recommends the inclusions of a condition to assure that the features on the site and landscape plans are installed as per the approved plans prior to final occupancy of the building to assure that zoning regulations are implemented in accordance with code.

9.2.9 Variances (Chapter 30.43B.100 SCC) The applicant has submitted two variance requests. According to SCC 30.43B.020(2), variance submitted with another application requiring a predecision hearing by the Hearing Examiner must be processed concurrently before the Hearing Examiner as a Type 2 decision. A variance must meet the following four criteria:

(1) 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;

(2) 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;

(3) 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; and

(4) The granting of the variance will not adversely affect the comprehensive plan."

a. Building Setback Variance SCC 30.23.110(10) requires building setbacks for "Health and Social Service Facilities, Level II" of at least 30 feet from all external property boundaries. While the proposed "Lodge" building, which will accommodate 45 memory care units and 175 assisted living units, will comply with the setback requirement, four of the 17 duplex units earmarked for independent living will not. The applicant has submitted a variance request to reduce the building setback for the duplex cottages located on the northeast side of the developed site. The setback

along the north side of buildings K, L, M and N would be reduced from 30 feet to 20 feet and the setback from the east side of building K would be reduced from 30 feet to 15 feet. As noted above, the variance request can only be approved if it meets the criteria of SCC 30.43B.100. The Examiner considers each criterion in turn:

(1) 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.

Unlike other commercial or institutional uses, the portion of the development on which the setback variance is requested is for senior living facilities (cottage duplexes), more closely resemble typical detached residential housing than an institutional building. The site is substantially encumbered by critical areas and steep slopes which greatly reduce the developable portion of the site. Reducing the required setback would allow the units to be sited in the most effective locations with regard to vehicular circulation/driveway access. (Exhibits G2 and K)

(2) 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.

The granting of the variance will allow the applicant to achieve the densities that would be otherwise lost due to the existence and protection of critical areas on the site. Reducing the setbacks on four cottages is a minimal change to the overall footprint of the site, but it results in the preservation of a substantial property right (achieving urban densities) which is enjoyed by other properties in the immediate vicinity where critical areas are not present. (Exhibits G2 and K)

(3) 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.

The nearest structure to the duplexes is an apartment building located approximately 75 feet away and there is also a thick vegetative buffer on the adjoining property. The comprehensive plan will be supported by the addition of new residential development. (Exhibit G2) PDS agrees with the applicant's assessment. While not technically part of a residential project, they noted that the proposed senior housing independent living residences (cottage duplexes), unlike a commercial development, will not produce the noise or visual blight which might otherwise require increased setbacks from adjacent property lines with residential zoning. A building setback of five feet would only be required for duplexes in a residential development, and the proposed setbacks for the duplexes far exceed that. Additionally, the east property line adjoining building K is adjacent to a heavily forested portion of an Alderwood Water District facility and should have no impact whatsoever on the adjoining use. Installation of the proposed Type A landscape buffer in conjunction with the six foot high fence along the developed property perimeter will further assure compatibility with adjacent uses. No comments from neighborhood residents in opposition to the variance were received by PDS. Those neighboring residents attending the public spoke in favor of the application. Finally, PDS recommends granting the proposed building setback variance, having reviewed the request and finding no materially detrimental impacts resulting from the granting of the variance. (Exhibits G2 and K)

(4) The granting of the variance will not adversely affect the comprehensive plan.

The Comprehensive Plan does not speak to the achievement of building setbacks. Instead, it calls for the achievement of urban densities within the Urban Growth Area. Granting the proposed variance for four duplex cottages on the subject property is consistent with the goals and policies in the Land Use Element of the Comprehensive Plan. (Exhibits G2 and K)

Based on the foregoing, the Hearing Examiner finds that the requested variance to the building setback requirements for four duplex cottages on the subject property meets the criteria of SCC 30.43B.100 and, therefore, the variance can be approved under the facts of this specific application.

b. Landscape Buffer Variance. Landscaping requirements are outlined in SCC 30.25. Table SCC 30.25.020(1)), under CUPs, indicates that a 20 foot wide Type A landscape buffer is required along the property perimeter. The applicant requests a reduction of the buffer width to 10 feet, but proposes to supplement it with a 6-foot high solid privacy fence adjacent to the property line and more dense plantings within the 10-foot buffer area. As noted above, the variance request can only be approved if it meets the criteria of SCC 30.43B.100. (Exhibit B1) The Examiner considers each criterion in turn:

(1) 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 site is substantially encumbered by critical areas and steep slopes which greatly reduce the developable portion of the site. The variance will allow better use of the developable portion of the site that is not encumbered by critical areas. The reduced buffer width in conjunction with a solid fence will provide an equal or greater screening from adjoining parcels.

(2) 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.

The granting of the variance will allow the applicant to achieve the densities that would be otherwise lost due to the existence and protection of critical areas on the site. Reducing the landscaping buffer by 10 feet, with the addition of proposed mitigation, is a minimal change to the overall footprint of the site, but it results in the preservation of a substantial property right (achieving urban densities) which is enjoyed by other properties in the immediate vicinity where critical areas are not present.

(3) 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.

Adjacent properties are occupied by an apartment complex to the north, a single family home to the southwest, an Alderwood Water District facility to the northeast and a mobile home park to the west. The nearest structure to the north is an

apartment building located approximately 75 feet away. Also, there is a thick vegetative buffer on the adjoining property which separates the proposed project from the apartment building. The single-family residence is setback approximately 50 feet from the common property line and there also is a vegetative buffer on the adjoining property. A heavily forested portion of an Alderwood Water District facility is located to the northeast and the project should have no impact whatsoever on the adjoining use. The "Lodge" building will be setback approximately 64 feet from the residences in the mobile home park. No comments from neighborhood residents in opposition to the variance were received by PDS. Those neighboring residents attending the public spoke in favor of the application. Finally, PDS recommends granting the proposed landscaping variance. Having reviewed the request, the Examiner finds that there are no materially detrimental impacts resulting from the granting of the variance.

(4) The granting of the variance will not adversely affect the comprehensive plan.

The Comprehensive Plan does not directly address landscaping designs in urban developments. It does, however, generally call for the improvement of existing areas through encouragement of well-maintained landscaping and other design features. (LU 4.A.2(e)) Additionally, the Plan encourages the preservation of mobile home parks within the UGA, such as the one found adjacent to the subject property. (LU 2.C) Here, the proposed construction of a fence and dense landscaping will be consistent with both of those policies according to the plans set forth in the record. (Exhibits B1, A3, G1) The reduced buffer width in conjunction with a solid fence will provide an equal or greater screening from adjoining parcels.

Based on the foregoing, the Hearing Examiner finds that the requested variance to the building setback requirements for four duplex cottages on the subject property meets the criteria of SCC 30.43B.100 and, therefore, the variance can be approved under the facts of this specific application.

The Examiner further finds that the application meets the requirements of Title 30 SCC, and therefore, the requirement of SCC 30.42C.100(b) has been met.

9.3 The proposal will not be materially detrimental to uses or property in the immediate vicinity;

The architectural design of the proposed buildings will be attractive (see Exhibit B4). Installation of ornamental landscaping provided throughout the parking lot and along the road frontage will enhance the project's curb appeal. The proposed building setbacks, landscape buffer and fencing will buffer the proposal from adjacent uses. The building mechanical system of the "Lodge" will be housed in the attic. Any other equipment proposed would comply with Snohomish County noise regulations. The project is designed to have minimal impact to adjacent critical areas. Per SCC 30.26.075, parking lot lighting shall be arranged or shielded so as to reflect the light away from any dwelling units and the public right-of-way.

Adherence to county development regulations and special conditions of approval attached to the CUP will ensure that the development will not be detrimental to the immediate vicinity. The applicant states he anticipates that development of all three phases would be

accomplished within 10 years. If this does not occur a condition is recommended that a new application be filed and reviewed to codes in effect at the time of new application.

- 9.4 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 Examiner finds that based on the Findings of Fact set forth in Paragraphs 9.2 and 9.3, herein above, the proposal is consistent with the provisions of SCC 30.28A and 30.42C. The Examiner further finds that the proposal is compatible with and incorporates specific features, conditions, or revisions, as demonstrated in the record, that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.

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

II. CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over the rezone application pursuant to Ch. 2.02 SCC and SCC 30.72.020.
2. The proposal is consistent with the GMACP; GMA-based county codes, the type and character of land use permitted on the project site, the permitted density and applicable design and development standards.
3. Adequate public services exist to serve the proposal.
4. If approved with the recommended conditions, the proposal would make adequate provisions for the public health, safety and general welfare.
5. Based on the Findings of Fact, the Hearing Examiner concludes that the proposed development meets the requirements of SCC 30.42C.100 and, therefore, the CUP should be approved.
6. Based on the Findings of Fact, the Hearing Examiner further concludes that the proposed variance to the building setback requirements for four cottage duplex structures on the site meets the requirements of SCC 30.43B.100 and, therefore, should be granted.
7. Based on the Findings of Fact, the Hearing Examiner further concludes that the proposed variance to the landscaping buffer width requirement on the site meets the requirements of SCC 30.43B.100 and, therefore, should be granted.
8. Any Conclusion of Law in this Decision which should be deemed a Finding of Fact, is hereby adopted as such.

DECISION

Based on the Findings of Fact and Conclusions of Law entered above, the request for a **CONDITIONAL USE PERMIT AND PROPOSED VARIANCES ARE** hereby **APPROVED**, subject to the following PRECONDITION AND CONDITIONS:

PRECONDITION

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

CONDITIONS

- A. The zoning code variances granted hereby are limited solely to that requested in association with the CUP application 10-104280 LU (no other zoning code relaxation is authorized by these variances). Namely:
- Allowance of a 20 foot property line setback along the north side of buildings K, L, M and N and a 15 foot property line setback from the east side of building K (as depicted on Exhibit B1).
 - Installation of a 10 foot wide Type A landscape buffer in conjunction with a 6 foot solid fence along the perimeter of the site where indicated on the plans (as depicted on Exhibit B1).
- B. A Land Use Permit Binder for the variances, on a form provided by PDS, shall be executed by the applicant and recorded with the County Auditor.
- C. The site plan received by PDS on May 20, 2011 (Exhibit B1) shall constitute the official site plan. Any discrepancy between the content of the official site development plan and the performance standards of Title 30 SCC shall be resolved in favor of Title 30. SCC 30.42C.110 governs revisions to CUP.
- D. Per SCC 30.26.075, parking lot lighting shall be arranged or shielded so as to reflect the light away from any dwelling units and the public right-of-way.
- E. Construction structure setbacks recommended by the geotechnical report prepared by Associated Earth Sciences, Inc., dated June 10, 2010 (Exhibit C3) shall be complied with.
- F. The extended public roadway into the development with hammerhead turnaround shall be marked "No Parking – Fire Lane." All proposed buildings within the project shall be provided with fire sprinkler systems.
- G. Prior to issuance of the Land Disturbing Activities (LDA) permit:
- i. The applicant shall mark with temporary markers in the field the boundary of all Critical Area Protection Areas (CAPA) required by Chapter 30.62A SCC, or the limits of the proposed site disturbance outside of the CAPA, using methods and materials acceptable to PDS.

- ii. A Critical Areas Site Plan shall be recorded with the County in accordance with section 30.62A.160 SCC containing the following restrictive language;

"All CRITICAL AREA PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees. The activities as set forth in SCC 30.91N.010 are allowed when approved by the County."

H. Prior to building permit issuance:

- i. The applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area D in the amount of \$101,581.93. This payment may be made proportionately with each building permit. Credit for certain expenditures may be allowed against said payments to the extent authorized by County Code.
 - ii. The applicant shall make a payment to Snohomish County for Transportation Demand Management measures within Transportation Service Area D in the amount of \$10,229.25. This payment may be made proportionately with each building permit.
 - iii. The amount of \$44,564.06 shall be paid to the City of Mukilteo for traffic impacts to projects within the City. Proof of payment of the above amount shall be provided to the County. This payment may be made proportionately with each building permit.
 - iv. Right-of-way shown on the site plan for the road end shall have been deeded.
 - v. A Land Use Permit Binder for the CUP, on a form provided by PDS, shall be executed by the applicant and recorded with the County Auditor.
 - vi. Prior to issuance of a building permit for a duplex cottage, the applicant shall have made a payment of \$1,244.49 per duplex unit (\$2,488.98 per duplex building) as mitigation for impacts to the Nakeeta Beach Park service area of the County parks system, provided that the building permit is issued by June 14, 2015 (5 years after the completeness date of the subject application). After this date, park impact fees shall be based upon the rate in effect at the time of building permit issuance.
 - vii. A restrictive covenant consistent with Chapter 30.66C.010(2)(d) regarding waiver of school mitigation fees for "Housing for Older Persons," as defined by 42 U.S.C. Section 3607(2), shall be executed by the applicant and recorded with the County Auditor for the independent living units.
- I. Prior to the issuance of certificate of occupancy:
- i. The features on the approved TDM plan (Exhibit B5) shall be constructed/installed to the satisfaction of the County.

- ii. Urban improvements to 164th Street SW as shown on the construction plans shall be constructed to the satisfaction of the County.
- iii. Critical Area Protection Area boundaries (CAPA) shall have been permanently marked on the site prior to final inspection by the county, with both CAPA signs and adjacent markers which can be magnetically located (e.g. rebar, pipe, 20 penny nails, etc.). The platlor may use other permanent methods and materials provided they are first approved by the county. Where a CAPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

CAPA signs shall have been placed no greater than 100 feet apart around the perimeter of the CAPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the CAPA, unless otherwise approved by the county biologist. The design and proposed locations for the CAPA signs shall be submitted to PDS for review and approval prior to installation.

- iv. The April 7, 2011 Wetland Mitigation Plan by Wetland Resources, Inc. (Exhibit C5) shall have been installed and approved by Planning and Development Services.
 - v. A performance bond for critical areas mitigation shall have been posted to ensure that the mitigation is completed as designed, including fulfillment of the monitoring program and any contingency measures should any portion of the project fail within five years of implementation. The warranty security shall be at 55 percent the cost of materials.
 - vi. Site improvements and landscaping depicted on the approved construction plans shall be installed, inspected and approved.
- J. If any of the three phases of development have not commenced within 10 years from the date of CUP approval, a revised CUP application for the remaining development shall be filed and will be subject to the codes in effect at the time of the new application.

Nothing in this permit shall excuse the applicant, owner, lessee, agent, successor or assigns from full compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project. In particular, no clearing, grading, filling, construction or other physical alteration of the site may be undertaken prior to the issuance of the necessary permits for such activities.

Dated this 15th day of June, 2011.



Millie M. Judge, 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 **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before JUNE 27, 2011**. 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 **within 14 days from the date of this decision**. 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 at the Public Assistance Counter of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: 3000 Rockefeller Avenue M/S 604, Everett, WA 98201) **on or before JUNE 29, 2011**, and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

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

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

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

Staff Distribution: Department of Planning and Development Services: Monica McLaughlin

<p>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.</p>

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 15, 2012.

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 PRECONDITION

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) _____
