



**FINAL DECISION of the
SNOHOMISH COUNTY HEARING EXAMINER**

Millie Judge
Hearing Examiner

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

(425) 388-3538
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DECISION DATE: August 30, 2012

PROJECT NAME: Stillaguamish Tribe Natural Resources Department
Headquarters Facility

**APPLICANT/
LANDOWNER:** Stillaguamish Tribe of Indians
P.O. Box 277, Arlington WA 98233

FILE NO.: 12-100218 LU

TYPE OF REQUEST: CONDITIONAL USE PERMIT

DECISION (SUMMARY): **APPROVED, SUBJECT TO CONDITIONS**

GENERAL LOCATION: 22712 Sixth Avenue NE, Arlington WA

ZONING: Rural-5 Acre (R-5)

**COMPREHENSIVE PLAN
DESIGNATION:** Incorporated Cities and Towns, Tribal Lands, Rights-of-Way,
and Other Jurisdictions

PDS RECOMMENDATION: *Approve, subject to conditions*

Based on a preponderance of the evidence of record, the following Findings of Fact, Conclusions of Law and Decision are entered:

I. FINDINGS OF FACT

A. BACKGROUND INFORMATION

- The Record. The official record for this proceeding consists of the exhibits entered into evidence (Exhibits A.1 through L.1), 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 and the Record. The Hearing Examiner held an Open Record Hearing on August 8, 2012 at 1:00 p.m. 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 F.1, F.2, F.3)

On August 8, 2012, Snohomish County Planning and Development Services Department (PDS), made a motion to supplement the record to include Exhibit H.7, which was inadvertently omitted from the pre-filed exhibits, but referred to in the Staff Recommendation (Exhibit K). (Exhibit L.1) On August 30, 2012, PDS filed a substituted cover page for Exhibit C.1, the Traffic Study, which contained the signed Engineer's stamp and date. (Exhibit C.1.A) Both items were added to the record by the Hearing Examiner, and the Exhibit List was updated to reflect the inclusion of these documents.

Tom Barnett appeared and testified on behalf of Snohomish County Planning and Development Services Department (PDS). For the Applicant, the following persons appeared and testified: Sean Yannity, Chairman of the Stillaguamish Tribe, John Dross, John Miller, Scott Spooner, Chris Webb, Brooks Middleton. No members of the public appeared or testified.

4. Application Request. The Applicant requests approval of a Conditional Use Permit (CUP) for construction of a government structure to house its Natural Resource Department and Water Quality Laboratory. The subject property is 67.4 acres of land along the Stillaguamish River in Arlington near Interstate-5 (I-5). The proposed structure is a one-story, 13,569 square-foot office building and laboratory. The project includes 37 parking stalls and a 59,500 gallon water tank for fire protection and suppression, and a 523 square foot building to be used to house water treatment equipment and a fire pump. (Exhibits A.2, K.1)
5. Site Description. The site consists of two areas that are relatively flat, with the lower area fronting on the Stillaguamish River. The lower area is approximately 40 feet in altitude, and the upper area at about 140 feet. A steep slope, greater than 33 percent, separates the two different areas. Agricultural use of the lowlands is limited to propagating native plant starts in the ground. All structures and infrastructure associated with the previous nursery operation have been removed from the site. The upper area is mainly second growth forest that includes a mixture of cedar, Douglas fir, and maple trees.
6. Adjacent uses. Zoning to the west and south of the project is primarily Agriculture 10-Acre (A-10), and zoning to the east and north is generally R-5. Uses in the area around the Stillaguamish River to the south and west are mostly agricultural, on very large parcels. I-5 is located near the property, just across 6th Avenue to the east. Properties east of I-5 are mostly 5 to 10 acres, and the uses are a mix of single-family residential and smaller farms.
7. State Environmental Policy Act (SEPA) Compliance. A SEPA Checklist was submitted by the Applicant on April 17, 2012. (Exhibit E.1) After reviewing the project and mitigation proposed, PDS issued a Determination of Nonsignificance (DNS) on June 26, 2012. (Exhibit E.2) Notice of the decision was made according to the County's regulations. (Exhibits F.1, F.2, and F.3) 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. There are no issues of concern raised by an agency.

B. Citizens. Two comment letters were received in response to the Notice of Application for the project from citizens. (Exhibits I.1 and I.2) The first letter expressed concern about whether the project would impact the citizen's existing well. The Applicant's civil engineer responded that the citizen's property is located across I-5 to the east, and found that the Tribe's proposed well will be "...hydraulically downgradient..." from the citizen's existing well. (Exhibit J.1) He concluded that due to this fact, there would be no impact to the existing well.

The second comment letter from the property owner to the south expressed concern that the project would negatively affect the property owner's agricultural status, and noted that there are bald eagles in the area. The Applicant's SEPA Checklist specifically identifies that there are two known perch trees used regularly by bald eagles, and the Tribe will preserve those trees. (See Exhibit E.1 at item 5.d) The Executive Director of the Stillaguamish Tribe also provided a detailed response to the comment letter, which is in the record. (Exhibit H.5)

B. APPLICABLE REGULATIONS

9. Approval Criteria. In order to obtain a conditional use permit (CUP), the Applicant must meet the requirements of the CUP regulations found in SCC 30.42C.100, as well as any required mitigation imposed pursuant to SEPA. The Hearing Examiner enters the following Findings of Fact as to the Applicant's compliance with the applicable regulations.

10. Conditional Use Permit. SCC 30.42C.100 provides that the Hearing Examiner may approve, or approve with conditions, a CUP only when all the following criteria are met:

- The proposal is consistent with the comprehensive plan;
- The proposal complies with applicable requirements of [Title 30 SCC];
- The proposal will not be materially detrimental to uses or property in the immediate vicinity; and
- 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 Hearing Examiner considers each applicable criterion in turn.

11. Consistency with the Comprehensive Plan (SCC 30.42C.100(1))

Four elements of the Snohomish County GMA Comprehensive Plan (GMACP) were adopted pursuant to Ordinance 94-125, which became effective on July 10, 1995. These elements are: the General Policy Plan (GPP); the Transportation Element; the 1995-2000 Capital Facilities Plan; and the Comprehensive Parks & Recreation Plan. On November 27, 1996, effective December 12, 1996, the Council adopted Amended Ordinances 96-074, and

96-071 which amended the map and text of the Snohomish County GMACP, and adopted an area-wide rezone within the Urban Growth Areas (UGA) of the County respectively. This application was complete on March 28, 2011, after the effective date of Amended Ordinances 96-074 and 96-071. This application has been evaluated for consistency with the version of the GMACP, which became effective on December 12, 1996, as revised through the completeness date of the application.

The subject property is designated "Incorporated Cities and Towns, Tribal Lands, Rights-of-Way, and Other Jurisdictions" on the GPP Future Land Use map, and is located outside of an UGA. The GPP is essentially silent on this designation; one is left to infer that planning for these areas is to be the responsibility of the non-county entity with jurisdiction, in this case the Stillaguamish Tribe of Indians. However, this property is not held in tribal trust at this time, therefore Snohomish County's comprehensive plan is the reference planning document. The GPP's policies that appear to be relevant to this proposal are:

- Capital Facilities Policy 3.D.6 – "Habitat restoration projects adjacent to agricultural resource lands should be undertaken in a manner to prevent, if possible, net loss to the agricultural resource lands of the county."
- Natural Environment Policy 5.A.2 – "The county shall support efforts to maintain and restore natural stream bank conditions and achieve improved stream bank functions in each sub-basin while protecting critical facilities and infra-structure."
- Interjurisdictional Coordination Objective IC.1.D – "Promote interjurisdictional planning and implementation of capital facilities."

The project will construct a new office building and water quality testing laboratory for the Stillaguamish Tribe. It will replace two existing buildings that are located within the floodplain of the river, and will move the offices up and out of the floodplain. The project will restore a degraded site by replanting and protecting of critical areas, and will use low impact development techniques including rain gardens, pervious pavement and other techniques to treat stormwater runoff. The project as a whole will provide a benefit to the surrounding area, including habitat and stream bank functions. The project will implement capital facilities needs of the Tribe, and has no impact on surrounding agricultural resource lands, given its distance from those lands, its low impact and compatible architectural design features. Accordingly, the Hearing Examiner finds that the project is consistent with the GPP policies listed above.

Finally, the state Growth Management Act (GMA) Chapter 36.70A RCW, requires that the County's development regulations be consistent with its comprehensive plan. The plans submitted for the project have been deemed to be in compliance with County GMA development regulations relating to fire safety, traffic, drainage, and zoning, subject to conditions of approval.

The Hearing Examiner finds that the proposal is therefore consistent with the County's GMACP.

12. Compliance with Chapter 30.42C.100(2) The proposal has been found to comply with the applicable provisions of Title 30 SCC, as described below.

A. Zoning Regulations. (Chapter 30.21.030) Section 30.21.030 states, in part, the following:

30.21.030 Zoning maps and boundaries. Official zoning maps designating the exact boundaries of each zone, as adopted by the hearing examiner and/or county council, shall be available for public review at the department during business hours. The location and boundaries of the zones shall be shown on the official zoning maps and subject to the following rules of interpretation: "(a) Any property not zoned by map shall be classified as R-5 outside of the UGAs, and R-9,600 within the UGAs;

PDS researched the zoning for the subject parcel and found that it is zoned as "Tribes." (Exhibits G.2, G.3) The County's use zones are established and categorized pursuant to SCC Table 30.21.020. (SCC 30.21.020) According to Table 30.21.020, "Tribes" are not shown as a zoning category. According to SCC 30.21.030(a), when a property is not zoned by map it shall be classified as R-5 outside of the UGAs, and R-9600 within the UGAs. Accordingly, the property is classified as R-5 for zoning purposes. The Rural and Resource Use Matrix, SCC 30.22.110, conditionally allows "government structures and facilities" to be placed on those lands, provided that a CUP is obtained. Accordingly, the use is authorized under the Zoning Code provided all of the CUP criteria are met.

B. Parking. The project will provide 37 parking stalls when completed. The calculation for the number of stalls is found at SCC 30.26.030(1). For a building that is 13,569 square feet, a total of 41 parking stalls are required. The Applicant requested a small reduction in the number of stalls, pursuant to SCC 30.26.040(3), and the request was approved by PDS based upon an established rideshare program called "Stilly Crews Line". The request and details on the rideshare program are found at Exhibit H.6. The reduced number of parking stalls also helps the Tribe meet their goal of a low impact development by reducing the amount of impervious surfaces on the site. Additionally, there is ample on-street parking should there be an atypical number of cars on a given day. The project is proposed at the end of a dead-end street so in the unlikely event of an overflowing parking lot there is little chance of negatively affecting neighboring properties.

C. Building height. Elevations of the proposed building are found on Sheets A3.0 and A3.1 in Exhibit B.1. The top of the flat roof is approximately 25 feet, and a number of steel columns top out at 34 feet. The maximum building height in the R-5 zone is 45 feet, and the structure is well below that height.

D. Zoning Setbacks. According to the site plan, the placement of the new government building on the site will meet all required setbacks. The minimum building setback in the R-5 zone for a utility structure is 20 feet, per SCC 30.23.110(9). The closest to any property line that the proposed building will be is 180 feet from the east property line.

E. Parking Area Landscaping. SCC 30.25.022(2) requires at least 10 percent of the parking lot area to be landscaped and trees must be included in the parking lot landscaping at the rate of one tree for every seven parking stalls or one per landscaping area or island, whichever is greater. Here, the parking and backout area is 18,000 square feet and the Applicant proposes to install 37 parking stalls. Accordingly, the Applicant must provide 1,800 square feet of landscaping, along with 1 tree for every 7 parking stalls, for a total of 6 trees. The applicant has proposed in excess of 1,800 square feet of landscaping (greater than 5,000 square feet) and has proposed to plant 12 trees, double the required amount. (See, Exhibit B.1, Sheets L.1 and L.2) The Hearing Examiner finds that the parking lot landscaping proposal meets and exceeds the County's requirements.

F. Perimeter Landscaping. Perimeter landscaping must be provided in the amount of a 20-foot wide buffer of Type A landscaping. (Table 30.25.020(1)) The landscaping for the project, as well as the existing native vegetation that will be retained, shows a significant amount of landscaping, well in excess of the required 20-foot width area. (Exhibit B.1, Sheets L.1 and L.2) In some areas, due to the existence of landscaping areas for the parking lot, perimeter landscaping appears to be in excess of 90 feet. Accordingly, the Hearing Examiner finds that requirements of Table 30.25.020(1) have been met.

Based on the preponderance of the evidence presented in the record, the Hearing Examiner finds that the proposal meets Zoning Code requirements for building height, parking, perimeter landscape buffers, parking area landscaping, building setbacks and other zoning code regulations and requirements, subject to the conditions of approval.

13. Development Regulations. Finally, the Applicant must demonstrate that they have met all other applicable development regulations applicable to the proposed use. Each applicable regulation is reviewed below. The Applicant is vested to the regulations in effect on January 10, 2012. (Exhibit J)

(A) Traffic Mitigation and Road Design Standards (Title 13 SCC & Chapter 30.66B SCC)

PDS Traffic has reviewed the proposal for compliance with Title 13 and Chapter 30.66B SCC, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures. The subject property is located within Transportation Service Area (TSA) "A." The Traffic Study was resubmitted with an engineer's stamp and signature from Donald Samdahl, P.E., PTP, on April 24, 2012. (Exhibit C.1, and C.1A)

i. Road System Impacts (SCC 30.66B.310) A development must mitigate its impact upon the future capacity of the Snohomish County 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. A development's road system impact fee will be equal to the development's new average daily traffic (ADT), based on the latest edition of the ITE Trip Generation report published by the Institute of Transportation Engineers, times the per trip amount for the specific transportation service area identified in SCC 30.66B.330 or acceptable specific trip generation information provided by the Applicant or their traffic engineer.

The site is currently functioning without benefit of County review and mitigation being imposed. The estimates of trip generation for the development are based on actual counts taken from the site and are 87 new ADT, with 12 new AM peak hour trips and 14 new PM peak hour trips. These figures include adjustments for employee expansion.

The City of Marysville Central Annexation, effective December 30, 2009, resulted in the unusual circumstance of removing a significant number of the impact fee projects listed in the TNR Appendix D Impact Fee Cost Basis, which is used in determining the road system impact fee within TSA "A." This resulted in a significant reduction in the maximum road system impact fee that can be charged in TSA "A." To fairly impose the required Road System Impact Fee for this specific development, the Director of Public Works, in accordance with SCC 30.66B.310(1)(a), has adjusted the amount of the Road System Impact Fee in SCC 30.66B.330 from \$227.00 to \$43.00 per ADT. Accordingly, the road system impact fee for the subject development is \$3,741.00. Consistent with SCC

30.66B.340, payment of this road system impact fee is required prior to building permit issuance.

ii. Concurrency (SCC 30.66B.120) The County makes a concurrency determination for each development application to ensure the development will not impact a county arterial unit in arrears or cause a county arterial to go in arrears. The subject development has been evaluated for concurrency under the provisions of SCC 30.66B.120 and has been deemed concurrent as of February 2, 2012. The concurrency determination approval will expire on February 2, 2018, six years from the date concurrency was given. The development was deemed to be concurrent based on the fact that it generates fewer than 50 peak-hour trips in a TSA with no arterial unit in arrears. (See, SCC 30.66B.130(4)). The project is not subject to review under SCC 30.66B.035.

iii. Inadequate Road Condition (IRC) (SCC 30.66B.210) Regardless of the existing level of service, any development which adds three or more p.m. peak-hour trips to a location in the road system determined to have an existing IRC at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC. The subject development proposal will not impact any IRC locations identified within TSA A 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.

iv. Frontage Improvement Requirements (SCC 30.66B.410) All developments are required to make frontage improvements along the parcel's frontage on any opened, constructed, and maintained public road. Adequate shoulder improvements exist along the subject parcel. This road standard is consistent from 236th Street NE to its terminus at the south end of the subject parcel. Therefore, no improvements will be required.

v. Access and Transportation Circulation (SCC 30.66B.420) All developments are required to provide for access and transportation circulation in accordance with the comprehensive plan and this chapter applicable to the particular development, to design and construct such access in accordance with the EDDS, and to improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430. (See, SCC 30.66B.420) Access to state highways and city streets must be in accordance with the applicable state or city standards and requirements. Additionally, all developments that propose to take access via an existing public or private road which, for the vehicle trips projected to use the road after full occupancy of the development, is not designed and constructed in accordance with the EDDS, will be required to improve such road to bring it into compliance with the EDDS when the Director of Department of Public Works (DPW) determines it necessary to provide for safety and the operational efficiency of the road. The extent of improvements will be established by the Director of Public Works in accordance with SCC 30.66B.430.

The Hearing Examiner has reviewed the analysis and finds that by a preponderance of the evidence in the record, there is ample evidence to support the required road and transportation improvements recommended by PDS and DPW. (Exhibit K at pp. 5-8)

vi. Right-of-Way Requirements (SCC 30.66B.510, and .520) A development shall be required to dedicate, establish or deed right-of-way to the County for road purposes as a precondition 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.

The road serving this development, 6th Avenue NE, 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, 50 feet of right-of-way exists on the development's side of the right-of-way. (Exhibit C.1) Therefore, no additional right-of-way is needed.

vii. Impacts to State Highways (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 Washington State Department of Transportation (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. Here, the Applicant has offered to pay \$36.00/ADT for their obligation to the State. The amount offered is \$3,132.00. This has been accepted by the State in an e-mail dated January 30, 2012. Payment of this amount is a condition of approval. (Exhibit H.7)

viii. Impacts to City Streets and Roads in Another County (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 a Reciprocal Traffic Mitigation Interlocal Agreement (ILA) between the County and the other jurisdiction(s). This development is subject to SEPA and therefore is subject to the ILA between Snohomish County and the City of Arlington and the City of Stanwood. According to the Traffic Study, less than 3 peak hour trips will pass through either Arlington or Stanwood. Accordingly, the Tribe has not proposed to pay any impacts to those cities, and the Cities responded with "no comments" on the application. Accordingly, no impact fees are required to be paid to either City. (Exhibits H.1, H.2)

ix. Transportation Demand Management (TDM) (SCC 30.66B.630) All new developments in the urban area shall provide TDM measures. However, this project is located outside the UGA, therefore this regulation does not apply.

(B) Drainage, Clearing and Grading – (Ground Disturbing Activity) (Chapters 30.63A, 30.63B, and 30.63C SCC) The site is a 65-acre parcel, divided between the lower level, which encompasses the floodplain of the Stillaguamish River, and the upper level, which is mainly undeveloped forest land, with the exception of one previously cleared area. The upper level is separated from the floodplain by a steep slope which the Geotechnical Engineering Report has classified as a landslide hazard area, which is a critical area. Consistent with SCC 30.62B.340(2)(a)(i), Associated Earth Sciences, Inc. (AESI) has recommended a structural setback of 50 feet from the top of bank. (Exhibit C.3) The Stillaguamish Tribe's existing Natural Resource Department is housed in two buildings located in the floodplain. Other accessory buildings are located in the floodplain adjacent to these structures. The Applicant proposes to construct a 13,569 square foot building, a new access drive off Nygaard Road, a parking lot, and a large water tank for fire protection for the building, with additional capacity that can be utilized by the local fire department for fighting fires with the surrounding community. Once the facility is complete, the older residences and associated utilities will be removed from the floodplain.

Soils onsite are classified by the Snohomish County Soil Survey as follows: The upper plateau is Tokul gravelly sandy loam, the steep slope is Tokul/Winston gravelly loam, and

the floodplain soils are classified as Puyallup fine sandy loam. The Tokul/Winston gravelly loam is classified as an Erosion Hazard Soil. Subsurface exploration pits were dug as reflected in the geotechnical report and depict near surface soils as recessional outwash with an underlying low-permeable sandy silt/silty sand layer at a depth of about 5 feet. Ground water seepage was noted in all exploration pits near the contact between the loose deposits of sand and the stiff silts, usually between 5 and 7 feet below existing site grades.

The Geotechnical Engineering Report explored infiltration potential of the upper plateau area and made setback recommendations for infiltration facilities. The recommendation is that infiltration systems should be set back from the top-of-slope conditions to reduce the potential for storm water infiltration and then day-light on the slope. AESI recommended a top-of-slope setback of at least 150 feet for infiltration systems, with a reduction to 100 feet on the north end as shown on Figure 2.

The stormwater mitigation for this proposal uses a combination of rain gardens, pervious pavement and discharge to a new dispersion swale located in the floodplain with dispersion to the Stillaguamish River several hundred feet to the west. According to the County's drainage regulations, flow control is not required for projects that discharge directly or indirectly through a municipal separate storm sewer system to a water listed in Volume I, Appendix I-E of the Drainage Manual. (See, SCC 30.63A.550(3)) The site also qualifies for BMP 5:30 (Full Dispersion) as a stormwater mitigation technique for Minimum Requirement 6 and 7. Pollution Generating Impervious Surfaces (PGIS) is being mitigated by treatment via rain gardens and pervious pavement. Low impact development (LID) features are being offered as mitigation.

AESI provided a response to Kenneth and Sally Lind's letter dated February 3, 2012 concerning potential impacts to their well water caused by the construction of the proposed Stillaguamish Tribe Natural Resources building. The response indicates the proposed building will be hydraulically down-gradient of surface and groundwater flows from the Lind's wells. Groundwater recharge and/or flow beneath the Lind property will not be affected by this proposal.

The Applicant proposes approximately 5,420 cubic yards of excavation and 9,110 cubic yards of fill.

(C) Critical Areas Regulations (Chapters 30.62, 30.62A, 30.62 B, and 32.62C SCC) The subject property contains various critical area features: Stillaguamish River (Type S), three on-site wetlands and one adjacent to the site, an Np unnamed stream, and geologically hazardous areas. The April 17, 2012 Critical Areas Study and Proposed Mitigation Plan by Wetlands & Wildlife Environmental Consulting is accurate with regards to the presence and classification of the critical areas thereof. PDS Staff concurs with the critical area evaluation conducted by Wetlands & Wildlife Environmental Consulting. (Refer to the April 17, 2012 Critical Areas Study and Proposed Mitigation Plan (Exhibit C.4) by Wetlands & Wildlife Environmental Consulting for an accurate assessment of critical area conditions.)

The project was reviewed under the Innovative Development Design provisions of SCC 30.62A.350 per the Applicant's request, which allows deviation from the standards of Part 300 of Chapter 30.62A SCC.

Critical area and buffer impacts are minimal and are proposed to be fully mitigated as part of the development action. The main impact to critical areas and their buffers stems from installation of the proposed stormwater conveyance and dispersion facilities. A detailed

description of impacts and mitigation thereof is contained within the April 17, 2012 Critical Areas Study and Proposed Mitigation Plan prepared by Wetlands & Wildlife Environmental Consulting. (Exhibit C.4) Critical Area Protection Areas (CAPAs) are depicted on the February 15, 2012 Critical Areas Overview Map (Exhibit B.4) and will be permanently protected in accordance with Chapter 30.62A and B SCC.

An evaluation of the information submitted in the revised application coupled with on-site investigations has resulted in a determination that the application complies with Chapter 30.62A SCC (Critical Areas Regulation/Wetlands and Fish & Wildlife Habitat Conservation Areas), and is consistent with the purpose and objectives of the Chapter in regulation of development activities in Critical Areas to safeguard the public health, safety and welfare.

(D) International Fire Code (Chapter 30.53A SCC) Fire protection for the building is being provided by the use of non-combustible building materials and the provision of a 59,500 gallon water tank for firefighting purposes. The water in the tank also will be made available in emergency situations to local fire protection districts. The Snohomish County Fire Marshal's Office has reviewed the proposal and has recommended approval of the CUP. (Exhibit K)

(E) Utilities

- Potable Water. Water for the project will be via a new Group B water system, which has been approved by the Washington State Department of Health. (Exhibit H.3)
- Wastewater Disposal. The design for the onsite septic system has been approved by the Snohomish Health District. (Exhibit H.4)
- Electricity. Electricity is to be provided by the Snohomish County Public Utility District. Electrical power currently exists at the project's frontage on 6th Avenue; electricity will be accessed from the existing power pole.

(F) School Impact Mitigation (Chapter 30.66C SCC) The project is not subject to fees associated with Chapter 30.66C SCC.

(G) Park and Recreation Impact Mitigation (Chapter 30.66A SCC) 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. Additionally, no bicycle facilities are required along the frontage of 6th Avenue NE.

(H) Land Use Permit Binder (SCC 30.42C.200) The Applicant is required to file a Land Use Permit Binder (LUPB) prior to the initiation of any site work.

Based on the foregoing facts set forth in Paragraphs 12 and 13, the Hearing Examiner finds that the proposal complies with the County's zoning and development regulations.

14. The proposal will not be materially detrimental to uses or property in the immediate vicinity.

The project is proposed at the end of a dead end street. This street is used by only one non-tribal landowner. Traffic volumes on this street currently are low, and the proposed office building is estimated to add few new average daily trips since Tribal operations are ongoing at the site and are not expected to change greatly after construction of the new building.

The proposed development is set well back from the right-of-way, and will be screened from view to persons on the county right-of-way by the existing and proposed vegetation. It will be difficult to view the completed development from other streets and roads in the vicinity due to the nature of the property and the amount of trees that will remain around it, and the distance that the new building will be from those roads due to the large agricultural parcels of land in the area.

15. 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 applicant has analyzed the proposed structures for visibility from existing homes in the vicinity of the project and has concluded that it is unlikely to be seen from any of them. Regarding visibility from I-5, only the 15-foot tall concrete water tank will be briefly seen by the traveling public, given the 70 mph speeds in that area of I-5. As part of this project, several buildings will be removed from the lower portion of this property. The Hearing Examiner finds that the scale and high quality exterior design of the proposed building is compatible with the existing area. Approval of the CUP will allow the construction of this new facility, but the setbacks, architecture, site design, and wetland planting plan mitigate any aesthetic impact.

16. Based on the foregoing Findings of Fact, the Hearing Examiner finds that the proposal meets all of the requirements of the County's CUP regulations and should be approved, subject to the conditions.
17. Any Finding of Fact which should be deemed a Conclusion of Law in this Decision is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner has original jurisdiction over the CUP application pursuant to Chapter 2.02 SCC and SCC 30.72.020.
2. In issuing a CUP, the Hearing Examiner has broad discretion to impose conditions of approval. The hearing examiner may:
 - (a) Increase requirements in the standards, criteria, or policies established by Title 30 SCC;
 - (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 CUP, reduce the requirements specified by Title 30 SCC as pertaining to any use nor otherwise reduce the requirements of Title 30 SCC 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.
3. Based upon the entire record and the Findings of Fact herein, the Examiner concludes by a preponderance of the evidence that the application has met all of the required approval criteria, subject to the conditions of approval:
- 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.
 - The proposal complies with applicable requirements of Title 30 SCC.
 - As conditioned, 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.
4. Adequate public and/or private services exist to serve the proposal.
5. If approved with the conditions, the proposal will make adequate provisions for the public health, safety and general welfare.
6. The Examiner concludes that the CUP should be granted.
7. Any Conclusion of Law in this Decision which should be deemed a Finding of Fact is hereby adopted as such.

DECISION AND ORDER

A **CONDITIONAL USE PERMIT** is **GRANTED** to the Applicant for the operation of a government facility and water quality laboratory on the subject property as described in the application, subject to the following **CONDITIONS**:

CONDITIONS


- A. The CUP site, landscape, and floor plans received by PDS on February 15, 2012 (Exhibit B.1) shall be the approved site configuration. Changes to the approved site plan are governed by SCC 30.42C.110.

- B. Any and all exterior lighting onsite shall be shielded so as not to cast any direct glare onto adjacent and nearby private properties and public roads.
- C. Prior to initiation of any further site work and/or prior to issuance of any development/construction permits by the County:
1. A Land Use Permit Binder shall have been completed, signed, and recorded with the Snohomish County Auditor's Office.
 2. Simultaneous to the recordation of a Land Use Binder for the CUP, a Critical Area Site Plan (CASP) shall be recorded with the Snohomish County Auditor that depicts the critical area and their buffers in a Critical Area Protection Area (CAPA) with the restrictive language as follows:

"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."
 3. Prior to any development activity (e.g. clearing, grading or filling) 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 the County.
 4. A land disturbing activity (LDA) permit, to include a Storm Water Pollution Prevention Plan (SWPPP), issued pursuant to SCC Chapter 30.63B shall have been obtained for any on-site grading.
 5. A full stormwater site plan shall be submitted with the LDA permit application prior to development activity onsite for review and approval. The plan shall be in conformance with SCC 30.63A.400. All development activity shall be in compliance with the Associated Earth Sciences, Inc. Geotechnical Engineering Report dated September 8, 2011 and received by PDS on January 10, 2012.
 6. Prior to any work occurring within the right-of-way, a Title 13 Right-of-Way Use Permit shall have been obtained from PDS.
 7. All site development work shall comply with the requirements of the plans, landscape modification, and permits approved pursuant to Condition A, above.
 8. The Applicant shall pay an impact fee to Snohomish County for traffic impacts to Transportation Service Area "A" in the amount of \$3,741.00.
 9. The Applicant shall make a payment to Snohomish County for the WSDOT in the amount of \$3,132.00 for mitigation of traffic impacts to State highways.
- D. Prior to final approval of the LDA permit, all CAPAs shall have permanently marked and the critical area/buffer mitigation plan satisfactorily installed and a mitigation performance bond posted. The bond shall be retained for a minimum period of five years or thereafter until the performance standards are met.

Nothing in this permit 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 30th day of August, 2012.


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 SEPTEMBER 10, 2012**. 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 SEPTEMBER 13, 2012**, 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: 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.

PARTY OF RECORDS REGISTER
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NATURAL RESOURCES DEPT
12-100218-LU
HEARING: 8/6/2012

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