BSRE POINT WELLS, LP

Appellant

v.

SNOHOMISH COUNTY PLANNING AND
DEVELOPMENT SERVICES,

Respondent.

BSRE respectfully submits the following Findings of Fact and Conclusions of Law.

I. BRIEF SUMMARY

The project involves development of a 60+ acre parcel of land along the Puget Sound shore in southern Snohomish County (the “County”). The Point Wells site (the “Site”) has been in industrial use since the late 1800s. Shell Oil, Standard Oil and eventually Chevron Texaco operated at the Site until its sale in March 2005 to Paramount of Washington, Inc., a wholly owned subsidiary of Paramount Petroleum Corporation. In August 2006, the ownership of the Site was transferred to Paramount of Washington, LLC, a wholly owned subsidiary of Alon USA Energy, Inc. In June 2010, the property and certain of the improvements, such as the roads and railroad crossings, were sold to a then-affiliated company, BSRE Point Wells, LP (“BSRE”), the project applicant.
The County Council in 2009 and 2010 revised its comprehensive plan, adopted Chapter 30.34 SSC (the “Urban Center Code”) and designated the Site as an Urban Center. Following the Council’s action, BSRE submitted a short plat application on February 14, 2011, and an urban center development application on March 4, 2011, and other related applications (collectively, the “Applications”) for the development of a mixed use Urban Center, including approximately 3,000 residential units, approximately 130,000 square feet of commercial space and a large public access beach (the “Project”). The Project also anticipates a high-capacity passenger stop for Sound Transit commuter rail.

This matter came before the Hearing Examiner on the County’s recommended denial of BSRE’s Applications pursuant to SCC 30.61.220, which states:

When denial of a non-county proposal can be based on grounds which are ascertainable without preparation of an environmental impact statement, the responsible official may deny the application and/or recommend denial thereof by other departments or agencies with jurisdiction without preparing an EIS in order to avoid incurring needless county and applicant expense, subject to the following:

(1) The proposal is one for which a DS has been issued or for which early notice of the likelihood of a DS has been given;

(2) Any such denial or recommendation of denial shall be supported by express written findings and conclusions of substantial conflict with adopted plans, ordinances, regulations or laws; and

(3) When considering a recommendation of denial made pursuant to this section, the decision-making body may take one of the following actions:

(a) Deny the application; or

(b) Find that there is reasonable doubt that the recommended grounds for denial are sufficient and remand the application to the responsible official for
compliance with the procedural requirements of this chapter.

The County ceased the SEPA investigation process in approximately November 2016, alleging the Applications needed to be revised before the SEPA process could continue. BSRE submitted revised submittals in April of 2017 and April of 2018. However, on January 9, 2018, while BSRE was working on creating its April 2018 submittals, the County decided to proceed to the hearing examiner with a recommended denial under SCC 30.61.220, alleging that the Applications, as revised, were in substantial conflict with the Code.

As of the date of this order, BSRE has submitted the following documents in support of its Applications:

a. Project narratives
b. Supplements to the UC permit application
c. Expanded traffic impact analyses
d. Geotechnical engineering studies
e. Critical area reports
f. Subsurface condition reports
g. Transit compatibility studies
h. Drainage reports
i. Cultural resources technical report
j. Secondary access road reports
k. Coastal engineering assessments
l. Hydrogeological reports
m. Remediation memo
n. Variance application

o. Deviation request for the secondary access road

p. Deviation request for the Upper Plaza buildings

q. Accompanying plans, drawings, figures and tables.

The County, the City of Woodway and residents of the City of Shoreline oppose the Project, particularly because of potential traffic impacts. To date, 452 public comments have been received.

In recommending denial under SCC 30.61.220, the County alleges the following conflicts:

a) Failure to Document Feasibility and Code Compliance of Second Access Road
   - No site plan depicting entirety of second access road.
     o SCC 30.53A.512
     o EDDS 3-01 (B)(5) [2010]

b) Failure to Provide Appropriate Building Setbacks for Tall Buildings from Lower Density Zones and Failure to Document Evidence for Access to High Capacity Transit for Building Heights Over 90 Feet
   - Buildings adjacent to property zoned low-density exceed code limitations.
     o SCC 30.34A.040(1) [2010]
   - Buildings over 90 feet tall exceed code limitations.
     o SCC 30.34A.040(2) [2010]

c) Failure to Provide Adequate Parking
   - Does not meet provide required number of parking stalls.
     o SCC 30.34A.050 [2010]

d) Failure to Address Shoreline Management Regulations
   - Residential development dependent on shoreline protection measures is not allowed without a variance.
     o SMMP, Residential Development, General Regulation #5 [1993]
   - Commercial uses on pier not allowed except certain low density recreational developments.
     o SMMP, Commercial Development, Conservancy Environment Regulation #1 [1993]

e) Failure to Comply with Code Provisions Regarding Critical Areas
   - Development activities in a landslide hazard area or its setback not allowed.
     o SCC 30.62B.340 [2007]
     o SCC 30.32B.320 [2007]
   - Failure to submit adequate geotechnical report.
     o SCC 30.62B.140 [2007]
     o SCC 30.62B.320 [2007]
BSRE contends there is reasonable doubt as to whether any substantial conflicts with the above-listed Snohomish County Codes exists, and therefore BSRE should be granted an extension and the County should immediately recommence the SEPA review process.

II. FINDINGS OF FACT

1. The Record. The official record for this proceeding consists of the exhibits (a list of which is available at https://snohomishcountywa.gov/4075/Point-Wells-Exhibits) entered into evidence as well as the testimony of witnesses received at the open record hearing. The entire record was considered for this decision. All 452 public comment letters submitted as Exhibits I-1 through I-452 were read by the hearing examiner.

2. Public Hearing. A public hearing was held on the Applications over several days, starting on May 16, 2018, and concluding on May 24, 2018. The record was left open to June 1, 2018, for the parties to file their closing briefs and for additional community comments.

3. Project Description. The Project proposes to redevelop an existing heavy industrial area to a mixed-use Urban Center. The Project would consist of a sustainable high-density residential community with supporting commercial and recreational elements on approximately 45.7 acres of uplands. The Site also includes 16 acres of adjoining tidelands that would remain undeveloped and approximately 3,500 feet of public access beach on the Puget Sound. The entire
Site (both the upland area and the adjoining tideland area) is included in the calculation of the floor area ratio (“FAR”) for the Site. The Site is currently subject to Snohomish County’s Development Regulations, Title 30, Unified Development Code (the “Code”), which currently classifies the Site as an Urban Village. However, the Project is vested to a prior version of the Code, which classifies the site as an Urban Center. Development is subject to the vested version of the Code as well as applicable state and federal requirements for shoreline management and critical areas. The Code incorporates by reference the International Building Code, International Fire Code, International Mechanical Code, International Electric Code, Uniform Plumbing Code, International Fuel Gas Code, Washington State Energy Code and Washington State Ventilation and Indoor Air Quality Code. The Site is located entirely within Snohomish County, though access to the Property is currently entirely through the City of Shoreline in King County.

The Project is proposed to be developed in phases. Phase I includes public amenities, retail, a mix of residential unit types, parking, utilities, public transportation, and off-site traffic and utility improvements, including a secondary access road to 116th Avenue West in the Town of Woodway. A Sound Transit commuter rail station is also included in Phase I. This station will consist of a two-grade level platform served by the north bridge over the railroad tracks. The bridge connects the Town of Woodway to the Woodland Road. As a result of the large building area encompassed by the phasing, construction and design will likely consist of sub-phases, each made up of three to four buildings containing a mix of uses and residential unit types.

Phase II encompasses the Urban Plaza, retail, commercial and residential construction, parking, the public transit hub, the ENVAC trash collection terminal and the security/EMT office and onsite parking. The Urban Plaza provides the gateway to the project site. It includes shopping, entertainment and office facilities for the residential community in and around Point Wells.
Phase III consists of the Central Village and the North Village. The Central Village is the largest development area on the site and comprises over 1,000 residential units, retail and parking. The North Village is comprised of residential towers and low-rise buildings tucked away in the northern end of the Site served by the Woodland Road. This phase includes village access, the esplanade and beach restoration work.

In its entirety, the Project will consist of 3,085 residential units, approximately 31,000 square feet of commercial space and 100,000 square feet of retail space.

4. **Project Chronology.** BSRE filed a Short Plat Application on February 14, 2011, and an Urban Center Application on March 4, 2011. BSRE submitted the initial Expanded Traffic Impact Analysis (the “ETIA”) and the initial Critical Areas Report (“CAR”) to the County on March 4, 2011. On April 25, 2011, the Growth Management Hearing Board (the “GMHB”) invalidated the Urban Center Code and the designation of Point Wells as an Urban Center. On September 12, 2011, the King County Superior Court enjoined the County from processing BSRE’s Applications. In the meantime, on October 19, 2011, BSRE continued to meet with Shoreline to discuss traffic issues and a memorandum of understanding regarding the traffic study. On December 20, 2012, the GMHB issued an Order finding the County in compliance with the GMHB’s prior ruling, including the adoption of the Urban Village Code. On June 7, 2013, the Court of Appeals invalidated the King County Superior Court’s injunction. From February 2, 2014 through April 3, 2014, BSRE and the City of Shoreline met on multiple occasions regarding the traffic issues.

From February 12 through April 3, 2014, six public meetings were held in the City of Shoreline to evaluate and receive public comment on the Transportation Corridor Study, which was filed on February 2, 2014, and the potential mitigation of transportation impacts. On April 10,
2014, the Supreme Court confirmed the Court of Appeals decision from January 7, 2013 invalidating the King County Superior Court’s injunction. From April 20, 2014 through April 20, 2015, BSRE continued to work with the City of Shoreline on the ETIA. As a result of the work being conducted on the ETIA, BSRE requested an extension for their Applications on April 15, 2015. The County granted this extension request on April 21, 2015. On May 27, 2015, BSRE received the County’s and Woodway’s comments on the first methods and assumptions memo related to traffic. On June 2, 2015, BSRE met with Ryan Countryman to discuss the methods and assumptions memo related to traffic.

In June of 2015, BSRE submitted its revised CAR. On July 6, 2015, BSRE submitted its second revised Methods and Assumptions Memo related to traffic to the County. In July of 2015, the County provided revised comments on the second CAR.

On August 26, 2015, BSRE submitted its Secondary Access Report. On September 8, 2015, BSRE met with the County to discuss the review comments regarding the traffic Methods and Assumptions Memo. On September 17, 2015, the County provided comments regarding the Secondary Access Report. On October 14, 2015, the County provided comments on the second Methods and Assumptions Memo related to traffic. On December 9, 2015, BSRE requesting a meeting with Ryan Countryman to discuss which revisions were necessary at this time and which should be made prior to the construction permit stage.

On December 14, 2015, BSRE submitted a third revised Methods and Assumptions Memo related to traffic to the County. On January 18, 2016, BSRE received Transpo’s peer review comments on the third Methods and Assumptions Memo related to traffic. On March 30, 2016, BSRE submitted a third extension request. PDS granted BSRE’s third extension request on March 31, 2016. On April 20, 2016, BSRE met with Woodway to discuss traffic. On May 5,
2016, BSRE submitted a second updated ETIA to the County. The County provided notice that
Transpo was authorized to review the second ETIA on May 11, 2016.

On May 26, 2016, BSRE received Transpo’s peer review comments on the second ETIA.
On May 27, 2016, BSRE received the City of Shoreline’s and the County’s review comments on
the second ETIA. BSRE met with City of Shoreline staff to better understand their review
comments on June 7, 2016.

On June 23, 2016, BSRE submitted responses to the County’s comments received to date.
BSRE submitted responses to City of Shoreline comments received to date on June 24, 2016. On
July 1, 2016, BSRE received Transpo’s responses to the approach of BSRE’s consultant, David
Evans & Associates (“DEA”), to comments received to date. BSRE was also informed that Ryan
Countryman advised EA that the County was working on a detailed review of Point Wells project.

On July 29, 2016, PDS provided a 279-page draft EIS for internal review. On September 1,
2016, BSRE provided responses to Transpo’s responses on DEA’s input/approach to comments
received to date. After spending months working with Shoreline and Transpo to address comments
on the second ETIA, BSRE submitted a third updated ETIA to the County on September 1, 2016.

On November 15, 2016, PDS requested BSRE provide a revised submittal by May 15,
2017, outlining the four major issues that needed to be resolved. In response to this request, on
April 17, 2017, BSRE provided a revised submittal which included the following documents:

1. Revised Urban Center permit application
2. Response Narrative
3. Project Narrative
4. Urban Center Review Comment Response Drawings
5. Short Plat Drawings
6. Targeted Drainage Report
7. Second revised Critical Areas Report
8. Transportation Demand Management Plan
10. Fire Apparatus Turning Radius “Exhibit B”
11. DNR Aquatic Lands Lease
12. Architectural drawings
13. Variance application for cross-parking agreement

On May 2, 2017, PDS sent a letter giving notice of the Applications’ expiration date and stated, “As the applicant, if you wish to request a further suspension of the application expiration period pursuant to the above-mentioned Code provisions, you should make a written request to PDS prior to May 30, 2016, in order for the PDS director to have time to evaluate the request.”

On May 10, 2017, BSRE received the County’s comments on the second ETIA. BSRE had a call with the County (including Mike McCrary, Ryan Countryman, traffic) on June 1, 2017 to discuss the County’s review comments. On June 16, 2017, BSRE met with the County to discuss the County’s preliminary review comments on its April 17, 2017 submissions. BSRE received the County’s comments (dated June 23, 2017) on the third ETIA on July 11, 2017. On July 14, 2017, BSRE received the County’s comments from M. Uddin (dated July 12, 2017) on the third ETIA. On July 31, 2017, BSRE met with the County again to discuss the County’s comments on traffic and the April 17, 2017 submittals.

BSRE received the County’s comments from Erik Olsen (dated July 12, 2017) on the third ETIA on August 1, 2017. On September 13, 2017, BSRE received the County’s comments (dated May 23, 2017) on the third ETIA and met with the County to discuss the traffic analysis. At the September 13 meeting, Jim Bloodgood, the County traffic engineer, confirmed that the trip limit proposed by BSRE was acceptable.

On October 6, 2017, PDS provided its formal review comments on BSRE’s April 17, 2017 submission. On November 13, 2017, BSRE met with the County to discuss the October 6, 2017 letter (the “10/6/17 Letter”), the timeline for responding to that letter, and the expectation of an
On December 12, 2017, BSRE met with the County to further discuss the 10/6/17 Letter. On January 9, 2018, the County informed it was going to proceed with final review based on the April 17, 2017 submittals, rather than waiting for BSRE’s next submittal. On January 12, 2018, BSRE submitted a fourth extension request. The County denied that extension request on January 24, 2018. On April 17, 2018, the County submitted its Staff Recommendation of denial.

On April 27, 2018, BSRE provided a revised submittal which included the following documents:

1. Revised preliminary short plat
2. Detailed responses to Comment Letter
3. Revised architectural plans
4. Updated Master Permit Application and Checklist for 11-101008 LDA
5. Variance request regarding heights
6. EDDS deviation request regarding private roads
7. Updated Master Permit Application for 11-101457 and 11-101461 SM LU
8. Revised Urban Center Development Project Narrative
9. Flood Hazard Permit application
10. Updated Preliminary Short Subdivision Submittal Checklist
11. Supplement to Urban Center Application
12. Third revised Critical Areas Report
13. Secondary Access road exhibit
14. Subsurface conditions report
15. Coastal engineering assessment
16. Hydrogeologic report, version 3
17. Remediation memo
18. Revised targeted drainage report for short plat resubmittal
19. Revised targeted drainage report for urban center resubmittal
20. Geotechnical report

On May 9, 2018, the County provided its Supplemental Staff Recommendations (the “May 9 Report”). In response, on May 15, 2018, BSRE submitted the following revised documents:

1. Revised Supplement to Urban Center Application
2. Revised Shoreline consistency narrative
3. Landslide area deviation request clarification letter
4. Revised Phasing Drawing
5. Revised Urban Center Development Plan Project Narrative
6. Memo from Bill Gerken regarding response to Supplemental Staff Report
Memo from Kirk Harris regarding response to Supplemental Staff Report

Memo from Mark Davies regarding response to Supplemental Staff Report

Surrounding Area. The neighboring properties are primarily zoned for residential uses. The area directly to the east of the Site was annexed by the Town of Woodway in 2016 and is currently zoned as Urban Restricted (“UR”).

Stage of the Application. The project is in the feasibility stage as testified by Randy Sleight on 5/22/18. A generalized site plan is required in this feasibility phase as testified by Randy Sleight on 5/22/18.

Pending Variance and Deviation Requests. BSRE has submitted a variance request and deviation requests. To date, no decision has been reached on any of these requests. The Hearing Examiner has the final decision-making authority over variance requests and the County has the final decision-making authority over deviation requests.

Feasibility and Code Compliance of Secondary Access Road. BSRE provided a Secondary Access Report (Ex. C-21) and Secondary Access Road plans (Ex. A-7, B-8). The plans depict the entirety of the secondary access road, and show that it is located entirely within the Town of Woodway and connects up to 116th Ave West. BSRE agreed to have the project conditioned on the secondary access road.

Building Setbacks and Heights. The proposed site plan portrays an Urban Plaza which sits east of the BNSF rail line. The Urban Plaza includes three tall towers, two smaller buildings, and a proposed Sound Transit commuter rail station within the designated landslide areas and buffers. A deviation request (Ex. A-37) from the hazard area setback requirements has been submitted. The County has not issued its decision on this deviation request. The geotechnical report, along with the testimony of John Bingham, demonstrated the level of protection to be
provided if the buildings are located within this hazard area. The location of the buildings and Sounder station will be protected by a future retaining wall and/or other slope stabilization methods.

The Urban Plaza buildings are located adjacent to a portion of land in the Town of Woodway which is zoned Urban Restricted (“UR”). This land was annexed by Woodway in 2016. A number of the buildings proposed to be built on the Site are greater than 90 feet tall. Buildings are limited to 90 feet in an Urban Center zone unless it can be demonstrated that other criteria are satisfied. If the criteria set forth in SCC 30.34A.040(1) are satisfied, the developer can increase the height by an additional 90 feet, up to 180 feet. BSRE proposes to take advantage of this 90 foot bonus by complying with the requirements of SCC 30.34A.040(1).

10. Parking. BSRE accepted the County’s definition of Senior Housing and revised the Supplement to the UC Application to confirm that fact. Therefore, the parties agree that the required number of parking spaces have been provided.

11. Development in a Landslide Area. Because the road will be located in a landslide hazard area, the proposed secondary access road requires an engineering deviation. The proposed secondary access road satisfies the first criteria for a deviation as testified by Randy Sleight on 5/22/18 because there is no alternative location available for that road. If the secondary access road deviation is not granted, there can be no secondary access road as testified by Randy Sleight on 5/22/18. If a secondary access road cannot be built, the Site will not be able to be used as either an Urban Center or an Urban Village as testified by Randy Sleight on 5/22/18.

SCC 30.62B.340 provides the requirements for landslide hazard areas and the deviation requirements for buildings within the landslide hazard areas. Hart Crowser prepared a report analyzing the subsurface conditions of the potential landslide hazard areas. Exhibit C-33. The
slope east of the railroad tracks is a landslide hazard area. Construction in a landslide hazard area requires a deviation from the Code.

A code deviation requires the applicant to show:

a) There is no alternate location for the structure on the subject property; and
b) The proposal meets the requirements of SCC 30.62B.320

SCC 30.62B.340 also requires any proposal for construction in a landslide hazard area to be accompanied by a design which does not decrease the factor of safety for landslide occurrence to below the 1.5 factor of safety limit for static conditions or 1.1 for dynamic conditions. BSRE prepared a geotechnical report pursuant to SCC 30.62B.140 which explains and depicts BSRE’s proposed slope stabilization which would allow construction in the landslide hazard area. Exhibit A-37.

BSRE’s proposed slope stabilization includes a retaining wall which provides resisting force at the toe of the landslide hazard area, minimal removal of vegetation, drainage, contouring of the elevation to reduce the risk of landslide, and phased construction which allows additional stabilization and drainage for the site.

The proposed retaining wall provides 78 kips/foot of resistance and achieves the required County factors of safety. This resistance calculation takes into account the load created by the landslide slip area as well as the load created by the backfill surcharge. The resistance did not include the load created by traffic on the road. The load created by traffic on the road is approximately 250 lb/sq. ft. vertical load. BSRE’s proposal provides that storm water, surface water, and collected groundwater along the secondary access road would be collected and conveyed down slope to a suitable discharge point. Specifically, as proposed by drainage expert, Mark Davies, civil engineer from MiG|SVR, the collection point for surface water and storm water
in the Chevron Creek drainage area would be modified to collect water to the east of the secondary access road location. The water would be diverted to the current underground pipe system running beneath the BNSF railway line and empty into Puget Sound. Phasing of the construction allows the retaining wall to stabilize the slope adequately so the secondary access road can be constructed.

In the first phase of construction, the soil behind the retaining wall supports the retaining wall and is calculated into the resisting force of the retaining wall. In a subsequent phase of construction, the soil behind the retaining wall will be removed and additional tiebacks for the retaining wall will be added to maintain the resisting force of the wall. A concrete basement will be built adjacent to the retaining wall to replace the resisting force lost by removal of the soil behind the retaining wall. In addition, groundwater to areas of potential liquefaction during a seismic event, specifically on the west side of the proposed Urban Plaza, can be minimized by the proposed secondary retaining wall depicted in BSRE’s grading plans. The parties recognize that the entire property is a liquefaction zone. It is common and reasonable to construct structures in a liquefaction zone on deep piles, stone columns and other foundational alternatives for building foundations.

A 2015 report depicted the secondary access route from the main project site easterly along a strip of land owned by BSRE to 116th in Woodway. Hart Crowser prepared a report dated April 20, 2018 to support the preliminary design of the secondary access road. (Ex. A-30.) The report addresses geotechnical aspects and slope stability related to the secondary access road. Hart Crowser prepared and submitted a deviation request from landslide hazard regulations in April, 2018 (Ex. A-37).

Hart Crowser’s first deviation request to the County was dated April 24, 2018. (Ex. A-30.) This deviation from landslide hazard regulations relates to the three tallest towers in the Urban
Plaza. Hart Crowser’s revised deviation request was dated May 15, 2018. The revised deviation request was prepared to respond to requested clarifications sought by County Engineer Randy Sleight in the May 9 Report.

Figure 23b of Exhibit A-37, which demonstrates the feasibility of retaining wall concepts, was intended to provide additional information regarding slope stability conditions for use by the County Engineer in assessing the deviation request. Figure 23 of Exhibit C-33 represents a prior version of Figure 23b. Figure 23 did not include tiebacks or tieback calculations because the figure illustrates a wall load needed to provide the required factors of safety. Further, the report listed a variety of alternatives for landside repair that could be used to achieve the required load. The tiebacks were added in Figure 23b. The blue line in Figure 23b identifies the groundwater level under this concept. Additional retaining wall alternatives and/or slope stabilization alternatives are addressed in the report. Exhibit A-37, which was drafted to further answer comments contained in the May 9 Report, includes text which elaborated and picked one of the design alternatives. Figure 23b depicts more of the details on the preferred design alternative. Figure 23b, Note 2 indicates the building basement floor will support lateral earth pressure below existing grade.

Hart Crowser determined the number of tiebacks necessary to ensure stability and provide the required factor of safety for the selected design alternative. Specific design details normally occur at a later stage. The final stability design will require permanent drainage, therefore eliminating the need for including hydrostatic pressures. Permanent drainage means the water surface in this area will need to be lowered from the light blue line on Figure 23b to the dark blue line below the building. Given the margin of error in the model, factoring in rain or snow surcharge is unnecessary.
Hart Crowser has not yet designed a final wall. Its studies have demonstrated the feasibility of a certain wall type. Hart Crowser’s model searches for both shallow and/or deep-seated landslide areas. The model then depicts what the critical or minimum surfaces are. Hart Crowser’s borings and surface observations did not disclose signs of soil instability. In attempting to demonstrate the feasibility of the design concept, Hart Crowser utilized conservative assumptions which underscores the strength of the conclusions.

Hart Crowser’s studies concluded that the wall and system must provide 78,000 pounds per foot of resistance to provide the required factor of safety. The slope stability model runs continued, with the loads being increased, until the necessary safety factor is achieved.

Analysis at Monitoring Well 122 disclosed conditions that would be typical for liquefaction. Other nearby wells do not indicate liquefaction. Boring 12 is sufficiently close to the retaining wall to represent conditions at or around the wall. The lower unit is of a density such that liquefaction is not anticipated. The final design of the soldier pile wall will likely extend between 20 to 30 feet into non-liquefiable underlying material (Glacial Outwash). Once the final location of the wall is determined, additional borings may be conducted for aid in determining the final design. Later drainage design will also determine the quantity of water which must be removed from the hillside. This will determine the appropriate pipe size to be used.

In conjunction with its 2018 explorations, Hart Crowser installed five vibrating wire piezometers to gain further information, which is included in Hart Crowser’s recent reports.

Drainage of groundwater in slopes with potentially liquefiable soil could be used to mitigate liquefaction because liquefaction will not occur if the soil is not saturated. Several borings do not indicate much potential liquefaction while others indicate more potential. Using the most conservative groundwater parameters and utilizing the highest results from the vibrating wire
piezometers, the feasibility of these slope stabilization measures was confirmed. While dewatering the hillside may help prevent potential slides, Hart Crowser’s analyses indicate that dewatering the hillside is not necessary.

   Drainages 1, 2, 3 and 4 are all existing drainage basins. Hart Crowser may supplement its reports, if necessary, to more fully describe the proposed methods of drainage if needed to demonstrate feasibility or comply with report requirements.

   The intent of a landslide hazard setback requirement is to keep structures away from slopes that are unstable. Landslide stabilization changes the stability of the slope. Setbacks do not change slope stability.

   BSRE’s geotechnical report, slope stabilization design, secondary access road design and deviation request provides reasonable information to demonstrate likely compliance with the Snohomish County Codes, specifically the stabilization of a landslide hazard area. BSRE’s proposed slope stabilization design provides the same or better protection than the setback requirements for Landslide Hazard Areas. At this time, there is reasonable doubt as to whether a substantial conflict with the Snohomish County Codes exists.

12. Adequacy of Geotechnical Report. BSRE’s geotechnical engineer, John Bingham of Hart Crowser, is an expert in the field of geotechnical engineering. SCC 30.62B.140 governs the requirements for geotechnical reports. SCC 30.62B.320 provides the general requirements for geotechnical erosion hazard areas.

Pursuant to the Shoreline Management Master Plan and Snohomish County Code, building cannot occur within 200 feet of the ordinary high water mark (the “OHWM”).

RCW 90.58.030(2)(c) defines the OHWM as:

that mark that will be found by examining the bed and banks and ascertaining where the presence of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide.

The County first objected to BSRE’s use of the mean higher high water mark for its construction design in the May 9 Letter. Ex. N-2.

BSRE agreed to obtain agreement from the state and local governmental agencies as to the location of the OHWM on the Point Wells property. In addition, BSRE agreed to amend its CAR and site design to utilize the OHWM and the code restrictions related to the OHWM. BSRE’s CAR included plans for innovative development design (“IDD”) which would offset the project design’s effect on the functions and values of the critical areas of the site.

SCC 30.62A.350 requires the CAR to show how the IDD:

(a) … will achieve protection equivalent to the treatment of the functions and values of the critical area(s) which would be obtained by applying the standard prescriptive measures contained [in the Code].

(b) Applicants for innovative designs are encouraged to consider measures prescribed in guidance documents such as watershed conservation plans or other similar conservation plans, and low impact storm water management strategies that address wetlands, fish and wildlife habitat conservation area or buffer protection consistent with this section; and

(c) The innovative design will not be materially detrimental to the public health, safety or welfare or injurious to other properties or improvements located outside of the subject property.
BSRE’s CAR proposes the following IDD:

- Cleanup of all contaminated soils on the site and removal of all former industrial materials;
- Restoration of approximately 7.36 acres of nearshore intertidal habitat by pulling back the existing seawall and removing impervious surfaces along approximately 3,600 linear feet of shoreline;
- Removing creosote piles and intertidal shading.

BSRE’s CAR also provided a step-by-step explanation of how the criteria of IDD are met. Ex. C30, p. 106-107, Table 22.

Table 22: Innovative Development Design Criteria

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<th>IDD Criteria</th>
<th>How Criteria is Addressed by Project</th>
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<tr>
<td>1. The innovative design will achieve protection equivalent to the treatment of the functions and values of the critical area(s) which would be obtained by applying the standard prescriptive measures contained in this chapter;</td>
<td>Direct impacts to existing wetlands and streams and their functional buffers are only incurred by construction of the second access road, which is unavoidable. Allowing use of the marine shoreline restoration in lieu of standard buffer protections for Stream S2 and the existing marine shoreline will allow a significant improvement in net ecological function for nearshore Puget Sound compared to maintaining existing buffers from the hardened developed shoreline.</td>
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<tr>
<td>2. Applicants for innovative designs are encouraged to consider measures prescribed in guidance documents, such as watershed conservation plans or other similar conservation plans, and low impact stormwater management strategies that address wetlands, fish and wildlife habitat conservation area or buffer protection consistent with this section; and</td>
<td>The proposed project incorporates many comprehensive strategies for environmental protection, including extensive LID measures, on-site water conservation, removal of artificial hardened shorelines and remediation of nearshore contamination on a large scale. See the Targeted Drainage Report for more information on LID (MiG/SVR 2018). Removal of shoreline armoring is one of the primary implementation strategies of the Puget Sound Partnership (Shipman 2017).</td>
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<tr>
<td>3. The innovative design will not be materially detrimental to the public health, safety or welfare or injurious to other properties or improvements located outside of the subject property.</td>
<td>The proposed project significantly improves public health, safety and welfare by remediation of significant contamination, offering public access to improved shoreline, and removing the land use that has led to numerous fuel and oil spills over the last 100 years.</td>
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BSRE’s Critical Areas Report identified the existing conditions for fish and wildlife habitat on the property. Ex. C30, p. 26-75. BSRE’s CAR identified the existing locations of critical species, including location and nature of the use. Ex. C30, p. 104, Table 21 (3); p. 39-43, sect. 6.7, p. 50, p. 54 and p. 58-70. BSRE’s Critical Areas Report identified the existing wetlands on the property. Ex. C30, p. 33, Figure 10.
BSRE proposed IDD as mitigation for potential impacts to wetlands which were identified as Wetland T and R in the Critical Areas Report. Ex. C30, p. 76, 77, Figure 16.

BSRE does not intend to use the existing dock or pier for any commercial purposes which would be in violation of applicable statutes or regulations.

BSRE’s CAR provides reasonable information to demonstrate likely compliance with the SMMP within RCW 90.58 and Chapter 30.62A SCC. At this time, there is reasonable doubt as to whether a substantial conflict with the Snohomish County Codes or the SMMP exists.

14. Habitat Management Plan. BSRE’s consultant, Gray Rand of DEA was admitted as an expert wetland scientist. BSRE submitted several editions of the Critical Areas Report for the Point Wells project. Ex. C15, C30, C39 and C40. The CAR is a study of environmentally critical areas as required by the Code to evaluate impacts of a proposed project. Specifically for this Project, the County requested information about the wetlands, streams, fish and wildlife habitat conservation areas.


The Coastal Engineering Report recommended that the elevation of the esplanade be set at 16 feet. This recommendation was based on the need to eliminate overtopping for the 50-year design wave condition at a high water level with the inclusion of sea level rise.

The intent of the design was not to provide shoreline protection. It was to provide a stable, expanded enhanced shoreline with a sufficient crest elevation and crest setback to prevent overtopping.
The site currently has bulkheading and a large stone revetment throughout much of the project. These shore protection measures will be removed as part of the shoreline improvement plan. The intent of the design is to remove the existing shore protection measures, to excavate and then replace beach materials to provide an expanded contiguous beach. In the May 9 Report, the County misinterpreted the Coastal Engineering Report in that the County failed to properly distinguish between shoreline stabilization and the creation of an expanded, stable shoreline that will attenuate wave energy naturally as a natural beach would.

The issues brought up in the May 9 Report related to Shoreline Management Regulation Number 5 have been properly and fully addressed in the Coastal Engineering Report and follow-up letter of May 15, 2018.

Shoreline General Regulation Number 5 for residential development provides that residential development will not be approved when flood control shoreline protection measures or bulkheading will be required for protection unless a variance is obtained. The Coastal Engineering Report and follow-up letter do not propose traditional or conventional shoreline protection. Rather, the plan includes the removal of traditional shoreline protection that currently exists on-site.

Exhibit P-17 includes concept-level schematics for the beach restoration plan. This includes the removal of the existing seawall and revetment and excavation of existing beach materials to provide a flat, contiguous expanded upper beach area. The upper beach provides for natural wave attenuation and provides sufficient distance and elevation to allow for wave run-up to dissipate and avoid overtopping at the crest elevation of the beach.

Exhibit P-17 depicts the esplanade with edge beam and a separation wall. The edge beam is structural for the edge of the esplanade and the separation wall provides separation between the
large grain porous material that constitutes the beach and the sub-grade materials. This separation wall is not a shoreline protection measure. The esplanade and the wall supporting the esplanade form part of the project infrastructure but are unnecessary as shoreline protection measures. Even if the esplanade was removed, the shoreline would remain stable.

The esplanade is not a levee.

The Project does not include residential development for which flood control, shoreline protection or bulkheading is required.

The Project has been sited and designed to prevent the need for shoreline or bank stabilization and structural flood hazard protection measures. The crest elevation of the proposed beach is sited such that it allows for sufficient setback elevation and slope run-up distance. The esplanade does not need to be there for the stable expanded beach shoreline to function to dissipate wave energy. The esplanade is not necessary as an erosion or flood protection measure or to deal with climate change sea level rise.

There is no substantial conflict between either the proposed site development plan and Shoreline Regulation Number 5 or the County Code related to shoreline stabilization measures. Alternate designs such as the placement of construction fabric could be utilized to maintain separation of the beach material separation, thus allowing for the elimination of the esplanade concrete wall.

The concrete wall is not a shore armoring or hard wall in that it is not necessary in order to provide a stable shoreline. To constitute shore armoring, the wall must serve the function of providing shoreline protection. If the wall is not for the function of providing protection, then it does not constitute shore armoring.
Fourth Extension Request. In a letter dated November 15, 2016, the County requested BSRE provide certain supplementation to its Applications by no later than May 15, 2017. BSRE submitted its response materials on April 17, 2017. As the current expiration of the Applications was June 30, 2018, the County, on May 2, 2017, addressed the availability of an additional extension: “As the Applicant, if you wish to request a further suspension of the application expiration period pursuant to [SCC 30.70.140(1)(b)], you should make a written request to PDS prior to May 30, 2018, in order for the PDS director to have time to evaluate the request.”

In response to the materials BSRE submitted in April 2017, the County confirmed it would provide its responsive comments on or before June 30, 2017. The County actually provided its comments on October 6, 2017 (the “10/6/17 Letter”). In this 10/6/17 Letter, the County instructed BSRE it must submit its response by January 8, 2018. The County and BSRE met on November 13, 2017 to discuss the preparation and expected time it would take for BSRE to complete the submission of BSRE’s response to the 10/6/17 Letter. The County advised BSRE that the January 8, 2018 date was a “target” and not a statutory deadline. This was selected as the “target” to allow the County adequate time to review the submission prior to the application deadline of June 30, 2018. As a result of the discussions at this meeting, the County recommended that BSRE submit a letter to the County confirming BSRE could not complete its response by January 8, 2018, and providing a date certain by which the submittal could be completed.

As additional time would be required for the publication of the draft environmental impact statement (“EIS”), the public comment period and County review, BSRE’s response, and the preparation of the final EIS, the County and BSRE discussed the need for an additional extension of the application deadline. An 18-month extension was discussed to allow for the various steps to be completed prior to the application deadline. BSRE inquired of County planning...
staff and its legal staff in attendance at the November 13 meeting whether there was any reason to suspect an extension of the June 30, 2018 deadline would not be granted. No one from the County at the meeting indicated that they were aware of any issue that would result in a denial of an additional 18-month extension. BSRE left the meeting with the impression the extension would be forthcoming. Therefore, BSRE proceeded with the preparation of its supplemental materials. Without the expectation that an extension would be forthcoming, BSRE would have had no reason to proceed with the revisions to the plans and materials.

As a result of the discussions with the County in November and December 2017, BSRE notified the County, in a letter dated December 29, 2017, that BSRE would not be able to submit its responsive materials by January 8, 2018. With no other communication between the County and BSRE, the County waited until January 9, 2018 to notify BSRE in writing that as BSRE had failed to submit the supplemental materials by January 8, 2018, the County would proceed with the review of the project materials in their current form and would proceed with the processing of the Urban Center application. The County implied it would likely result in a recommendation of “denial” to the hearing examiner without preparation of the EIS.

By letter dated January 12, 2018, BSRE confirmed it would submit the revised materials by April 30, 2018. The January 12, 2018 letter also included a formal request for an extension of the application deadline. In a letter dated January 24, 2018, the County denied the request for the extension. In a letter dated February 1, 2018, BSRE requested the County reconsider its denial of the extension request. The County denied the request for reconsideration on February 5, 2018.

BSRE submitted the revised materials in advance of the self-imposed deadline of April 30, 2018.
III. CONCLUSIONS OF LAW

1. Permit Review Authority. SCC 30.72.020 designates UC zone development applications, and shoreline substantial development, conditional use and variance permits as Type 2 permits. SCC 30.72.025 provides that Type 2 permits are subject to hearing examiner approval, subject to appeal to the Snohomish County Council. SCC 30.70.140(2) provides the hearing examiner with the authority to grant an extension. SCC 30.61.220 provides the hearing examiner with the right to either determine that substantial conflict with code exists, and therefore deny the Applications without completion of the SEPA process, or to find that reasonable doubt exists as to whether the grounds for denial are sufficient, and therefore remand the Applications to the County for compliance with Chapter 30.61 SCC.

2. Substantial Conflict. SCC 30.61.220 provides an application can be denied without preparation of an environmental impact statement (the “EIS”) if a “substantial conflict” with adopted plans, ordinances, regulations or laws exists. “Substantial” is defined by the Oxford Living Dictionaries as “of considerable importance, size, or worth.” Denial of an application without preparation of an EIS must “be supported by express written findings and conclusions of substantial conflict with adopted plans, ordinances, regulations or laws”. SCC 30.61.220(2).

3. Reasonable Doubt Exists as to Each Alleged Substantial Conflict. The County has failed to show how each of the issues raised is “substantial.” Further, reasonable doubt exists as to whether a conflict actually exists.

a. Feasibility and Code Compliance of the Second Access Road. PDS first informed BSRE that it needed a secondary access road in December of 2015. BSRE has provided a secondary access report which depicts the entire secondary access road. While the road is in Woodway, and outside the purview of the County, BSRE confirmed that it has designed the road...
to be in compliance with SCC 30.53A.512. BSRE agreed to have the Project conditioned on having the full access secondary access road. The Hearing Examiner Rules of Procedure specifically allow the Hearing Examiner to place a “precondition” of approval on a Project. If this Project is eventually approved, it will be approved with the condition that there be a full access secondary access road.

b. **Appropriate Building Heights.** The County asserted two distinct issues with respect to building heights.
   
   i. **High Capacity Transit.** The clear language of SCC 30.34A.040(1) [2007] provides that the maximum building height in a UC zone shall be 90 feet, unless the building is located near a high capacity transit route or station and the applicant prepares an EIS which includes an analysis of certain potential impacts. “Statutes must be read so that each word is given effect and no portion of the statute is rendered meaningless or superfluous.” *City of Spokane Valley v. Spokane County*, 145 Wn. App. 825, 831, 187 P.3d 340 (2008). The only reading of this statute which does not render any word “meaningless or superfluous” is a reading which allows for two alternatives. The clear language of SCC 30.34A.040(1) allows for an additional 90 feet where the building is located either near (1) a high capacity transit route or (2) a high capacity transit station. It is undisputed that the buildings proposed on the Site are located near a high capacity transit route – the BNSF railroad tracks, which are used by the Sound Transit commuter rail, bisect the Site. Assuming the remainder of the requirements of SCC 30.34A.040(1) are satisfied, the buildings at the Site are permitted to be up to 180 feet because they are located near a high capacity transit route. There is no substantial conflict with respect to SCC 30.34A.040(1) [2007].

   ii. **Residential Setbacks.** SCC 30.34A.040(2) provides:
Buildings or portions of buildings that are located within 180 feet of adjacent R-9600, R-8400, T or LDMR zoning must be scaled down and limited in building height to a height that represents half the distance the building or that portion of the building is located from the adjacent R-9600, R-8400, T or LDMR zoning line (e.g. – a building or portion of a building that is 90 feet from R-9600, R-8400, R-7200, T or LDMR zoning may not exceed 45 feet in height.

SCC 30.34A.040(2)(a). The buildings proposed to be built in the Upper Plaza are located adjacent to property which was annexed by the Town of Woodway in 2016 and which is currently zoned Urban Restricted (“UR”). Under the plain language of the statute, SCC 30.34A.040(2)(a) only applies where buildings are located within 180 feet of specific zoning designations: R-9600, R-8400, R-7200, T, or LDMR. The code provision does not have any language which would apply these restrictions to equivalent or similar zoning designations, and UR zoning is not included in the specific language of SCC 30.34A.040(2)(a). Therefore, SCC 30.34A.040(2) is not applicable to the Project and no substantial conflict exists with respect to this statute.

iii. **Parking.** BSRE agreed to apply the County’s definition of “Retirement Housing” set forth in SCC 30.62.032 [2013] for the undefined term of “senior housing” set forth in SCC 30.34A.050 [2010]. The parties thus acknowledge that this issue has been resolved and no substantial conflict exists with respect to the parking requirements.

iv. **Shoreline Management Regulations.** The County alleged two sub-issues with respect to Shoreline Management Regulations.

1. **Shoreline Protection Measures.** The County alleged the Applications are in conflict with SMMP, Residential Development, General Regulation #5, which prohibits residential structures which are dependent on shoreline protection measures without a variance. BSRE’s expert, Bill Gerken of Moffatt & Nichol, testified on May 24, 2018, that the residential developments proposed by BSRE are not dependent on shoreline protection measures. The
esplanade is not a levee. The esplanade and buildings have been intentionally set in a location and
at an elevation so shoreline protection measures are not necessary. The esplanade has a separation
wall on the side closest to the buildings, but this wall is not a shoreline protection measure. Mr.
Gerken testified that this wall could be removed and replaced with a fabric separator. If such a
simple change would make the Project compliant with General Regulation #5, then any conflict
which does exist could not be considered “substantial”. Accordingly, BSRE has provided
sufficient information to create reasonable doubt as to whether a substantial conflict exists related
to General Regulation #5.

2. Commercial Uses on the Pier. The County alleged the Project substantially
conflicts with the SMMP because it includes proposed commercial uses on the pier. BSRE
removed all commercial uses on the pier which would be in violation of applicable codes and
regulations and further submitted a conditional use permit for allowance to have a non-commercial
water taxi or ferry service on the pier. Mr. Randy Middaugh testified on behalf of the County that
there is no express prohibition on a non-commercial ferry service being located on the pier. A
non-commercial ferry service may be located on the pier with a conditional use permit, which must
be approved by the Department of Ecology. BSRE has submitted a conditional use permit request,
which has not been approved or denied. Reasonable doubt exists as to whether there is a substantial
conflict with the SMMP.

v. Compliance with Code Provisions Regarding Critical Areas. The County alleges
substantial conflicts with five sub-issues regarding critical areas.

1. Development Within a Landslide Hazard Area or its Setback. The County
alleges there are substantial conflicts with SCC 30.62B.320 and .340 because the plans call for
buildings and a secondary access road to be located within a landslide hazard area or its setback
(collectively, the “Hazard Area”). SCC 30.62B.340 specifically provides deviations may be granted to allow development within the Hazard Area. BSRE has submitted a deviation request pursuant to SCC 30.62B.340. The County has not issued its determination on the deviation request. A deviation request is often a collaborative process with the County, where the chief engineering officer will typically meet with the applicant or its engineers to review the request and determine if sufficient information has been provided. BSRE and the County have not engaged in such collaboration. If the County denies BSRE’s deviation requests, BSRE should be given the opportunity to revise its plans or provide additional information pursuant to the deviation request. There is reasonable doubt as to whether a substantial conflict exists where a deviation request is pending.

2. Adequacy of Geotechnical Report. The County alleged BSRE’s geotechnical report, prepared by Hart Crowser, is in substantial conflict with SCC 30.62B.140, .320 and .350. The County, in its May 9 Report, stated the applicant must “demonstrate the feasibility of the structures.” Ex. N-2 (emphasis in original). BSRE has provided sufficient information to determine that its plans are feasible.

3. Compliance with Buffer Requirements. The County, for the first time in its May 9 Letter, required BSRE to use the ordinary high water mark (“OHWM”) for determining the extent of the shoreline jurisdiction. BSRE agreed to perform the necessary studies and evaluations to confirm the appropriate location of the OHWM and to revise the plans, if necessary, based on the determined location of the OHWM.

The only specific allegation related to a deficiency in the critical area report made by the County during the hearing pertained to SCC 30.62B.350. With respect to this code provision, the County’s only allegation was that the Critical Area Report did not sufficiently analyze the
“functions and values of the critical area(s) which would be obtained by applying the standard prescriptive measures.” BSRE’s expert, Gray Rand, testified that sufficient information as included in the CAR for this stage of proceedings. While the CAR does not clearly identify the “functions and values”, the equivalent information is included in the report. Mr. Middaugh testified that he did not have enough information to be able to determine whether the proposed plans conflicted with SCC 30.62B.350. Therefore, there is reasonable doubt as to whether there is a substantial conflict with buffer requirements.

4. Adequacy of Habitat Management Plan. The County alleges that the habitat management plan submitted by BSRE is insufficient. Mr. Rand testified that the habitat management plan addresses all required issues identified in SCC 30.62A.460 [2007]. The County did not challenge this testimony. There is reasonable doubt as to whether the submitted habitat management plan, included in the CAR, substantially conflicts with SCC 30.62A.460 [2007].

5. Shoreline Stabilization. SCC 30.62A.330(2)(a)(i) [2007] provides projects shall be sited and designed to prevent the need for shoreline or bank stabilization and structural flood hazard measures for the life of the development. The Project has been specifically designed to comply with SCC 30.62A.330(2)(a)(i). The elevation of the esplanade has been set above the Base Flood Elevation, and an adequate setback has been proposed from the shoreline to the esplanade to construct a dynamically stable mixed sand-and-gravel beach. The proposed shoreline modifications and rebuilt beach eliminate the need for typical shoreline protection measures. There is reasonable doubt as to whether there is a substantial conflict with shoreline stabilization measures.

vi. An Extension is Warranted. The Code grants the hearing examiner authority and discretion to modify the application period and grant an extension. SCC 30.70.140(2). The
hearing examiner’s discretion under SCC 30.70.140(2) is broad and encompasses all applications set forth in SCC Table 30.70.140(1), including the Applications. SCC 30.70.140(2) does not include a temporal restriction on the hearing examiner’s decision. The hearing examiner is in the best position to interpret and apply his authorized discretion pursuant to the Code. See Durland v. San Juan County, 174 Wn. App. 1, 12, 298 P.3d 757 (2012) (“An appellate court must give substantial deference to both the legal and factual determinations of a hearing examiner as the local authority with expertise in land use regulations.” (internal quotations omitted)). The County has conceded the hearing examiner has jurisdiction over land use decisions, as set forth in Title 30 SSC, which necessarily includes the hearing examiner’s discretion authorized by SCC 30.70.140(2).

At least until November 13, 2017, both parties acted as if an additional extension would be forthcoming. In a letter dated November 15, 2016, the County requested BSRE provide certain supplementation to its Applications by no later than May 15, 2017. BSRE submitted its response materials on April 17, 2017. As the current expiration of the Applications was June 30, 2018, the County, on May 2, 2017, addressed the availability of an additional extension: “As the Applicant, if you wish to request a further suspension of the application expiration period pursuant to [SCC 30.70.140(1)(b)], you should make a written request to PDS prior to May 30, 2018, in order for the PDS director to have time to evaluate the request.”

In response to the materials BSRE submitted in April 2017, provided its review comments in October of 2017, and requested BSRE submit further revisions no later than January 8, 2018. On November 13, 2017, the parties met to discuss the January 8 “deadline” and the potential for an extension. BSRE left the November 13, 2017 meeting with the impression that a
fourth extension would be forthcoming. Based on this impression, BSRE proceeded with the revisions and responses to the 10/6/17 Letter.

BSRE has made considerable progress since April 17, 2017. While the 10/6/17 Letter identified 178 issues, the May 9 Report only identified 11. The County terminated all work on the EIS as of November 2016 and has failed to resume work, despite BSRE’s progress with its revisions. BSRE has provided sufficient information for the County to resume work on the EIS.

This Project is large and complex. Given the complexity of this Project and the substantial legal challenges that the County and BSRE have already faced with respect to this development, the length of time during which the Applications have been pending is not unreasonable. The County did not provide its initial review comments on the Applications until April of 2013. Therefore, the length of this project is not seven years, as alleged by the County, but five years.

The Code contemplates supplementation of otherwise complete applications. In its January 24, 2018 letter, the County invited BSRE to supplement its application so all relevant information would be before the hearing examiner in this proceeding. BSRE has continued to update and supplement its submittals in an ongoing effort to satisfy PDS’s increasing demands. That PDS has not objected to this supplementation confirms its view that such supplementation is appropriate.

This approach is consistent with numerous code provisions which clearly contemplate the supplementation of otherwise complete applications. For example, SCC 30.70.110(2) exempts from review timelines “[a]ny period during which the county asks the applicant to correct plans, perform required studies, or provide additional required information.” Similarly, SCC
30.70.110(3)(b) address substantial revisions to an application which restarts the County’s review time limit on project review.

Because there is reasonable doubt as to the existence of any substantial conflicts with the Code provisions cited by the County, and because BSRE has shown a good faith effort to respond to the County’s requests, an extension is warranted.

The extension shall be structured as follows: BSRE shall be given an additional 18 months from the date of this order. This 18 months will only apply to the time by which BSRE is requested to provide any supplemental materials and will not be applied to any time where the Project is being reviewed by the County, the EIS consultants, or any other party not under the control of BSRE.

DATED this 1st day of June, 2018.

/s/ Jacque E. St. Romain
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