

HEARING EXAMINER
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FILE NO. 11 101457 LU

R-1 BSRE Request for
Reconsideration July 9, 2018

SNOHOMISH COUNTY HEARING EXAMINER

9	BSRE POINT WELLS, LP ,)	
)	NO. 11-101457 LU
10	Appellant)	
)	BSRE POINT WELLS, LP'S
11	v.)	MOTION FOR
)	RECONSIDERATION AND
12	SNOHOMISH COUNTY PLANNING AND)	CLARIFICATION
	DEVELOPMENT SERVICES,)	
13)	
	Respondent.)	
14)	
)	

BSRE POINT WELLS, LP (“BSRE”), by and through its undersigned counsel of record, moves for reconsideration of the Decision Denying Extension and Denying Applications Without Environmental Impact Statement (the “Decision”) and further moves for clarification regarding whether the Decision was granted with or without prejudice.

I. STATEMENT OF FACTS

BSRE and Snohomish County Planning and Development Services (PDS) participated in an extensive hearing between May 16, 2018 and May 24, 2018 regarding PDS’s recommendation to deny BSRE’s permit application due to several alleged substantial conflicts with applicable Snohomish County codes. Additionally, BSRE requested an extension of its permit application from June 30, 2018, the date which PDS set as the expiration of the permit application.

1 After the completion of live testimony, the parties submitted closing briefs, and proposed
2 findings of facts and conclusions of law. The Hearing Examiner held substantial conflicts existed
3 between BSRE's permit application and applicable codes and therefore denied BSRE's permit
4 application. In addition, the Hearing Examiner denied BSRE's request for an extension to cure
5 the alleged conflicts between the permit application and applicable codes.
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7 **II. EVIDENCE RELIED UPON**

8 BSRE relies on the permit application hearing record, including witness testimony and
9 documentary exhibits, the permit application record, and the addenda attached hereto.

10 **III. ARGUMENT AND LEGAL AUTHORITY**

11 **A. Standard for Reconsideration**

12 SCC 30.72.065(2) establishes the grounds for a motion for reconsideration:
13

- 14 (a) The hearing examiner exceeded the hearing examiner's jurisdiction;
- 15 (b) The hearing examiner failed to follow the applicable procedure in reaching the hearing examiner's decision;
- 16 (c) The hearing examiner committed an error of law;
- 17 (d) The hearing examiner's findings, conclusions and/or conditions are not supported by the record;
- 18 (e) New evidence is discovered which could not reasonably have been produced at the open record hearing and which is material to the decision; or
- 19 (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.
20

21 BSRE seeks review of the Decision based on grounds (c), (d), (e), and (f) above.

22 **B. The Hearing Examiner Committed an Error of Law with Respect to All Findings, 23 Conclusions and Rulings Related to the Residential Setback.**

24 BSRE submits that all findings, conclusions and rulings related to the residential setback,
25 including, but not limited to, F.49, C.26, C.78, and Decision 4, reflect an error of law and should
26 be reconsidered. SCC 30.34A.040(2)(a) provides:
27

1 Buildings or portions of buildings that are located within 180 feet of
2 adjacent R-9600, R-8400, R-7200, T or LDMR zoning must be
3 scaled down and limited in building height to a height that represents
4 half the distance the building or that portion of the building is
5 located from the adjacent R-9600, R-8400, R-7200, T or LDMR
6 zoning line (e.g. – a building or portion of a building that is 90 feet
7 from R-9600, R-8400, R-7200, T or LDMR zoning may not exceed
8 45 feet in height).

9 As noted in F.45, the buildings proposed to be built in the Urban Plaza are adjacent to property
10 which is zoned R-14,500 and Urban Restricted. There is no property which is zoned R-9600, R-
11 7200, T or LDMR adjacent to the buildings proposed to be built by BSRE. Therefore, the plain
12 language of SCC 30.34A.040(2)(a) makes this statute inapplicable to this project. *See Bravo v.*
13 *Dolsen Cos.*, 125 Wn.2d 745, 752, 888 P.2d 147 (1995) (holding that where statutory language is
14 “plan, free from ambiguity and devoid of uncertainty, there is no room for construction because
15 the legislative intention derives solely from the language of the statute”). The statute does not
16 include any language which would make it applicable to “similar” or “equivalent” zoning
17 designations. Because the buildings proposed to be constructed in the Urban Plaza are not located
18 adjacent to any R-9600, R-7200, T or LDMR zones, SCC 30.34A.040(2)(a) does not apply and no
19 residential setback is required.

20 Thus, all findings, conclusions and rulings in the Decision which state or imply that SCC
21 30.34A.040(2)(a) is applicable or that a variance is required because of a residential setback reflect
22 an error of law and should be revised. There can be no substantial conflict with SCC
23 30.34A.040(2)(a) where it does not apply.¹

24 **C. With Respect to all Findings, Conclusions and Rulings Related to the Ordinary**
25 **High Water Mark, the Hearing Examiner Committed an Error of Law, the**

26 ¹ F.50 should also be revised because BSRE has included the two service buildings in the variance request.
27 *See Addendum 2.*

1 **Hearing Examiner’s Findings and Conclusions were not Supported by the**
2 **Record, and BSRE has Provided New Evidence and Proposed Changes.**

3 BSRE submits that all findings, conclusions and rulings related to the Ordinary High Water
4 Mark (the “OHWM”), including, but not limited to, F.38, F.97, C.12, C.13, C.14, C.15, C.17, C.73,
5 C.74, C.75, C.78, and ruling 4 reflect an error of law and are not supported by the record. In
6 addition, BSRE has provided new evidence which could not have been provided at the time of the
7 hearing and has proposed changes to the proposal based on the feedback received during the
8 hearing and in the Decision.

9 The Hearing Examiner’s Findings and Conclusions of Law which state or imply that BSRE
10 was derelict in not determining the OHWM are not supported by the record. As Gray Rand of
11 David Evans & Associates, Inc. testified on May 23, 2018, the first time that Snohomish County
12 (the “County”) claimed that BSRE was deficient because the shoreline buffer was not determined
13 based on the OHWM was in its May 9, 2018 Supplemental Staff Recommendation (the “May 2018
14 Letter”). Exhibit N-2. There, for the first time, the County stated,

15 The 200-foot shoreline jurisdiction is not correctly depicted on plans
16 (see, e.g., sheets Ex-2 & C-010). The Mean Higher High Water
17 (MHHW) was used rather than the Ordinary High Water Mark
18 (OHWM) for determining the landward extend of shoreline
19 jurisdiction. This may affect limitations on development activities
20 occurring within shoreline jurisdiction such as building heights.

21 Ex. N-2, p. 19. In its April 17, 2018 Staff Recommendation (the “April 2018 Letter”), sent just
22 two weeks prior to the May 2018 Letter, the County mentioned no such deficiency. Exhibit N-1.
23 In addition, the October 6, 2017 Review Completion Letter (the “October 2017 Letter”), Exhibit
24 K-31, only made two comments specific to the OHWM:

25 Urban Center Comment (s): Sheets A-050 and 051 indicate location
26 of an Ordinary High Water Line along the shoreline. Sheets C-201

1 – 203 indicate location of a Line Mean Higher High Water along the
2 shoreline. Do these terms represent the same line?

3 Ex. K-31, p. 24.

4 PDS notes that the drawings for the Urban Center Submittal from
5 March 4, 2011, make interchangeable use of the terms OHWM and
6 Mean Higher High Water (MHHW) (underline added by PDS).
7 Some pages show OHWM and others show MHHW. This latter
8 term, appears to be intended to refer to Mean High Higher Tide
9 (MHHT), which is synonymous with OHWM at salt water locations
per RCW 90.58.030(2)(c). For clarity, when there are revisions to
the application for other reasons, please update the pages that refer
to MHHW so that they refer to either MHHT or OHWM.”

10 Ex. K-31, p. 115. The first comment, on page 24, simply requested clarification of whether the
11 terms Mean Higher High Water (“MHHW”) and OHWM had the same meaning. BSRE addressed
12 this issue in the materials submitted on April 27, 2018. The second comment, on page 115,
13 requested a revision to the use of the terms “when there are revisions to the application for other
14 reasons”. The fact that the County only requested that this change be made “when there are other
15 revisions to the application for other reasons” clearly implies that this change was not urgent and
16 was not a reason to deny the applications in their entirety. Certainly, these comments did not
17 indicate that such an issue would be a “substantial conflict” with the code, as later claimed in the
18 May 2018 Letter. Contrary to the County’s claims and the Findings of Fact, Conclusions of Law
19 and rulings in the Decision related to the OHWM, BSRE was not derelict in failing to address an
20 issue which was not even raised by the County until May 9, 2018.

22 As soon as BSRE became aware of the issue with the OHWM, it authorized its consultants
23 to begin work to determine the OHWM. Gray Rand, while working on his Critical Area Report in
24 March 2018, investigated the OHWM and discovered that it could be discerned and that, therefore,
25 the buffer should be determined from the OHWM rather than the MHHW, which had been used
26

1 previously. *See* Gray Rand’s May 23, 2018 Testimony. Once Mr. Rand became aware of the
2 issue, he immediately began working to address it. BSRE was unable to revise the plans prior to
3 the April 27, 2018 submittal, but BSRE continued working on such revisions after the April 27,
4 2018 submittal and, after meeting with the Department of Ecology, has now determined the
5 appropriate location of the OHWM. Attached as Addendum 7 is the aerial depiction of the
6 OHWM. Attached as Addendum 8 is a memorandum from Perkins + Will which addresses the
7 changes needed to the site plan in order provide a sufficient setback. As noted in the memorandum,
8 BSRE can and will comply with the setback and make the necessary changes. It is expected that
9 these revisions may cause a loss of approximately 200 units. A reduction of approximately 200
10 units in a development which is proposed to have over 3080 units represents a loss of less than
11 6.5% of the units. Contrary to C.74, this is not a “substantial element” of the proposal and
12 correcting this does not require a significant redesign of the proposal. *See* Addendum 8.
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15 SCC 30.72.065(2)(f) allows for reconsideration where the applicant proposes changes
16 based on the hearing examiner’s decision. SCC 30.72.065(2)(e) allows for reconsideration where
17 the applicant presents new evidence which could not reasonably have been produced at the open
18 record hearing. Addenda 7 and 8 show that BSRE has proposed changes based on May 2018
19 Letter and the Decision. This evidence was not reasonably available at the hearing because the
20 work was being done at the time of the hearing and because the issue was not raised by the County
21 until its May 2018 Letter, which was received just days before the hearing began. In order to
22 determine the OHWM, Mr. Rand had to schedule a meeting with the Department of Ecology at
23 the site, which was held on June 26, 2018. Immediately after this meeting, Mr. Rand began the
24 work to depict the OHWM on the site plans. This is reflected in Addenda 7 and 8. As noted by
25 Mr. Seng in Addendum 8, the work needed to redesign the buildings located on the site to
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27

1 accommodate the change in the buffer area will take approximately 2-4 weeks. This is not
2 substantial given the amount of time already spent by both BSRE and the County on this proposal.

3 **D. The Findings of Fact, Conclusions of Law and Rulings Related to the Innovative**
4 **Development Design Should be Reconsidered Because BSRE has Made Changes**
5 **Based on the Decision and Supplied New Evidence.**

6 SCC 30.72.065(2)(f) allows for reconsideration where the applicant proposes changes
7 based on the hearing examiner's decision. Here, BSRE has made changes to its applications based
8 on the Decision and therefore all Findings of Fact, Conclusions of Law and rulings related to the
9 Innovative Development Design ("IDD"), including, but not limited to F.104, C.76, C.77, C.78,
10 and ruling 4, should be revised to state that analysis of the "functions and values" has been
11 provided and that there is no substantial conflict with the Snohomish County Code related to IDD.

12
13 On May 23, 2018, Gray Rand of David Evans & Associates, Inc. testified that the critical
14 area report (Exhibit C-30) provided a step-by-step explanation of how each of the criteria of the
15 IDD would be met and provided an overview of the improvement and ecological benefits as a
16 whole. However, because the County expressed concern that the specific "functions and values"
17 were not expressly labeled as such, BSRE had its consultants engage in further work to better
18 address those concerns after the hearing. BSRE has now specifically satisfied the requirement set
19 forth in F.103: a proposed IDD "must compare the existing functions and values of affected critical
20 areas and buffers with functions and values after the development to ensure the IDD protects the
21 functions and values at least as well as the standard prescriptive measures."

22
23 Attached as Addendum 3 is a Critical Areas Report Addendum prepared by Gray Rand of
24 David Evans & Associates, Inc., dated June 21, 2018, which specifically provides the "functions
25 and values" analysis which the Hearing Examiner deemed to be lacking in the Decision. As noted
26 in Addendum 3, "the use of the IDD measures will result in a significant net ecological benefit
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1 compared to implementation of standard administrative buffers. Overall, the project as proposed
2 will result in significant improvement to ecological function along the shoreline of Puget Sound
3 equivalent to application of the standard prescriptive measures of SCC 30.62A.” This is
4 demonstrated by the analysis of the “functions and values.” Addendum 3, pp. 5-7. For this reason,
5 all Findings of Fact, Conclusions of Law and rulings related to the IDD should be revised pursuant
6 to SCC 30.72.065(2)(f).
7

8 **E. The Findings of Fact, Conclusions of Law and Rulings Related to the Requirement**
9 **for High Capacity Transit Reflect an Error of Law, are not Supported by the**
10 **Record, and Fail to Consider New Evidence Provided.**

11 BSRE has supplied sufficient evidence to indicate that proximity to a high capacity transit
12 route is sufficient to allow for additional height pursuant to SCC 30.34A.040(1). In the alternative,
13 BSRE has shown its dedication to providing high capacity transit, either in the form of Sound
14 Transit or via water taxi, such that the Hearing Examiner could and should condition the project
15 on having high capacity transit rather than finding that the project is in substantial conflict with
16 the code at this point. Further, the requirement for the additional height to be “necessary or
17 desirable” has been satisfied and will be further satisfied by the environmental impact statement,
18 as set forth in SCC 30.34A.040(1). For these reasons, all Findings of Fact, Conclusions of Law
19 and rulings in the Decision which relate to high capacity transit, including, but not limited to, F.56,
20 F.57, F.58, F.59, F.60, F.62, F.63, C.20, C.34, C.35, C.36, C.37, C.38, C.39, C78, and ruling 4,
21 should be reconsidered and revised.
22

23 *i. Proximity to a Transit Station is Sufficient.*

24 The Hearing Examiner committed an error of law by determining, without justification,
25 that while “a high capacity transit route is near the project, proximity alone is not enough.” C.36.
26 SCC 30.34A.040(1) states:
27

1 The maximum building height in the UC zone shall be 90 feet. A
2 building height increase up to an additional 90 feet may be approved
3 under SCC 30.34A.180 when the additional height is documented to
4 be necessary or desirable when the project is located near a high
5 capacity transit route or station and the applicant prepares an
6 environmental impact statement pursuant to chapter 30.61 SCC that
7 includes an analysis of the environmental impacts of the additional
8 height on, at a minimum:

- 6 (a) Aesthetics;
- 7 (b) light and glare;
- 8 (c) noise;
- 9 (d) air quality; and
- 10 (e) transportation.

11 SCC 30.34A.040(1). The Hearing Examiner’s conclusion that proximity is not enough ignores the
12 plan language of the statute. “Statutes must be read so that each word is given effect and no portion
13 of the statute is rendered meaningless or superfluous.” *City of Spokane Valley v. Spokane County*,
14 145 Wn. App. 825, 831, 187 P.3d 340 (2008). While the County has argued that “proximity is not
15 enough,” an agency does not get deference for a statutory interpretation which conflicts with the
16 plain language of the statute. *Dept. of Labor & Indus. v. Landon*, 117 Wn.2d 122, 127, 814 P.2d
17 626 (1991).

18 C.36, and all other Findings of Fact, Conclusions of Law and rulings which state or imply
19 that proximity to a route is not sufficient, directly conflicts with the plain language of the statute,
20 which provides two alternatives for high capacity transit—the project must be located either near
21 a high capacity transit route *or* a high capacity transit station. SCC 30.34A.040(1) (emphasis
22 added). The only reading of this statute which does not render a portion of the statute “meaningless
23 and superfluous” is that which recognizes both options: (1) proximity to a high capacity transit
24 route; or (2) proximity to a high capacity transit station.

1 The fact that the Growth Management Hearing Board (the “GMHB”) ruled in *City of*
2 *Shoreline, et al. v. Snohomish County, et al.*, Coordinate Case Nos. 09-3-0013c and 10-3-0011c,
3 that proximity is not enough has no bearing on the interpretation of SCC 30.34A.040(1) [2010].
4 RCW 36.70A.302 provides the GMHB may determine that all or part of a comprehensive plan or
5 development regulations are invalid, however, it states that such authority is “proscriptive in
6 effect” only:
7

8 A determination of invalidity is prospective in effect and does not
9 extinguish rights that vested under state or local law before receipt
10 of the board’s order by the city or county. The determination of
11 invalidity does not apply to a completed development permit
application for a project that vested under state or local law before
receipt of the board’s order by the county or city

12 RCW 36.70A.302(2). The Washington Supreme Court recognized this is *Town of Woodway v.*
13 *Snohomish County*, 180 Wn.2d 165, 322 P.3d 1219 (2014). There, the Court held that “whether
14 or not a challenged plan or regulation is found to be noncompliant or invalid, any rights that vested
15 before the [GMHB]’s final order remain vested after the order is issued.” *Id.* at 175. Therefore,
16 even if the interpretation of SCC 30.34A.040(1) changed after the GMHB’s ruling in *City of*
17 *Shoreline*, that does not alter the plain language of the statute as it applies to BSRE’s applications.
18

19 Because the GMHB’s ruling does not change the plain language of SCC 30.34A.040(1)
20 and because statutes must be interpreted such that no word or phrase is rendered meaningless or
21 superfluous, the only possible reading of SCC 30.34A.040(1) allows additional height where the
22 urban center is proposed near *either* a high capacity transit route *or* station. Point Wells is located
23 near a high capacity transit route and therefore additional height for the buildings is available.
24

25 ii. *BSRE Acted Diligently in Attempting to Reach Agreement with Sound*
26 *Transit for a Station at Point Wells.*
27

1 The record shows that BSRE has had substantial contact with Sound Transit and that Sound
2 Transit has advised BSRE that it will not commit to providing a station at Point Wells until BSRE
3 has received approval and can guarantee a certain number of residents. *See* Douglas A. Luetjen’s
4 May 24, 2018 Testimony; Exhibit H-24. As demonstrated by Exhibit H-26 and Douglas A.
5 Luetjen’s May 24, 2018 testimony, Sound Transit has considered adding a stop in the Richmond
6 Beach/Shoreline area, and it is BSRE’s understanding that the stop considered to be in the
7 Richmond Beach/Shoreline area was specifically considered by Sound Transit to be at Point Wells.
8 *See* Exhibit H-24, where Sound Transit specifically added a comment on its Final Environmental
9 Impact Statement in response to a letter from BSRE stating “A Sounder station in the general
10 vicinity of Shoreline/Richmond Beach is included in Appendix A of the Final SEIS as a
11 “representative project” under the Current Plan Alternative . . . These are projects that could be
12 implemented along the corridors that comprise the Current Plan Alternative regardless of whether
13 service is already implemented along these corridors. . . .” This indicates that Sound Transit was
14 contemplating a possible stop at Point Wells. Contrary to the statements made in F.55, F.58 and
15 C.35, BSRE received a letter of support from the appropriate individual (not just a “mid-level
16 manager”) in 2010 indicating that Sound Transit was open to the possibility of a stop at Point
17 Wells. In fact, the letter stated that Sound Transit’s interest in such a station would be increased
18 if BSRE was willing to fund that station. BSRE has unequivocally made that commitment.

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21
22 In addition, F.60 is not supported by the record because Douglas A. Luetjen testified on
23 May 24, 2018 that BSRE has met with “various transit agencies that included King County Metro
24 and Community Transit as well as Sound Transit to discuss transit-related issues for the
25 development.” *See* Douglas A. Luetjen May 24, 2018 Testimony.
26
27

1 In addition, BSRE has retained the firm of Shields Obletz Johnson, a project management
2 consultancy group in the Pacific Northwest that has specific experience working with BNSF and
3 commuter lines to get approvals for additional stops. *See id.* This shows BSRE’s diligence and
4 dedication to building a Sound Transit station at Point Wells. Furthermore, BSRE has considered
5 Sound Transit’s design guidelines in creating its design and has acted in accordance with the
6 direction received from Sound Transit, which was to wait until approvals were received before
7 pursuing a written agreement with Sound Transit. *Id.*

9 *iii. BSRE Acted Reasonably to Provide Alternative High Capacity Transit with*
10 *a Water Taxi.*

11 In order to satisfy the County’s concerns regarding high capacity transit, BSRE proposed
12 having a water taxi serve the site until a Sound Transit station is constructed. The Hearing
13 Examiner’s Findings of Fact, Conclusions of Law, and rulings regarding the water taxi proposal
14 are not supported by the record and fail to consider evidence provided with BSRE’s closing brief.

15 In F.63, the Hearing Examiner states that operating a water taxi would be prohibited by the
16 Shoreline Management Master Program because it is a commercial use and that BSRE has not
17 applied for a conditional use permit. However, neither of these statements are supported by the
18 record. Randy Middaugh testified that the water taxi would not be a prohibited use if it was free.
19 *See Randy Middaugh May 22, 2018 Testimony.* Instead, he said it would simply require a
20 conditional use permit, which would be reviewed by the Department of Ecology. *Id.* BSRE
21 submitted such a conditional use permit with its closing brief. *See BSRE Closing Brief, Appendix*
22 *1.* Therefore, F.64, C.38, C.39, C.78 and ruling 4, should be revised.

23
24
25 As stated in F.62, the pier at Point Wells is subject to an aquatic lands lease from the
26 Washington Department of Natural Resources (the “DNR”). In its April 2018 Letter and May
27

1 2018 Letter, the County did not include any allegations with respect to BSRE’s dealings with DNR.
2 For this reason, BSRE did not submit any evidence into the record regarding BSRE’s contacts with
3 DNR. However, this does not mean that BSRE has not had discussions with DNR about the use
4 of the pier. Rather, BSRE has had substantial contact with DNR over the years. *See* Declaration
5 of Douglas A. Luetjen, submitted herewith as Addendum 9. As recently as August of 2017, BSRE
6 was advised by DNR to wait to modify the lease until after the urban center has been approved so
7 as to allow the industrial uses to continue in the meantime. *Id.* BSRE’s interactions and
8 negotiations with DNR were not part of the hearing and thus this evidence could not reasonably
9 be expected to have been provided at the time of the hearing. All Findings of Fact, Conclusions
10 of Law and rulings related to BSRE’s water taxi proposal, including, but not limited to, F.62, F.63,
11 C.38, C.39, C.78 and ruling 4, should be revised accordingly.
12

13
14 *iv. The Hearing Examiner Erred in Raising a New Issue of “Necessary or
Desirable” in Decision.*

15 In C.37, the Hearing Examiner, for the first time, concludes BSRE failed to show that the
16 height increase was “necessary or desirable.” However, the County has never claimed that BSRE
17 is not entitled to additional height under SCC 30.34A.040 because the height is not “necessary or
18 desirable”; such a claim was not before the Hearing Examiner and therefore the parties did not
19 present evidence on this issue. *See* April 2018 Letter and May 2018 Letter. In addition, neither
20 party addressed this issue in their closing briefs or in their proposed findings of fact and
21 conclusions of law. Neither party has had a chance to brief or argue whether the additional height
22 is “necessary or desirable.” Because of this, the record is silent on this issue. If the Hearing
23 Examiner is going to rule on whether the additional height is “necessary or desirable”, then the
24 parties should be given a chance to brief this subject. BSRE should be given the opportunity to
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26
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1 show why the additional height is both necessary and desirable from a “public, aesthetic, planning,
2 or transportation standpoint.” Such a conclusion at this point, where the record is silent on this
3 issue, is not supported by the record and should be removed.

4 **F. The Hearing Examiner’s Findings of Fact, Conclusions of Law and Rulings**
5 **Regarding the Landslide Deviation Requests Were Not Supported by the Record,**
6 **Failed to Consider New Evidence, and Should be Reconsidered Because of**
7 **Changes Made After the Hearing.**

8 BSRE has submitted two distinct landslide hazard deviation requests: one for buildings
9 proposed to be located in the Urban Plaza, and one for a secondary access road to be located in
10 that same general area. The County has not issued a formal decision on BSRE’s deviation requests.
11 See Ryan Countryman’s May 24, 2018 Testimony. Because the County has not issued a formal
12 decision on the landslide deviation requests, BSRE has not been given an opportunity to respond
13 to any such decision. As Randy Sleight testified on May 22, 2018, the typical process for a
14 deviation request includes a conversation between Mr. Sleight and the developer to discuss what
15 additional information Mr. Sleight needs and what options are available. BSRE should be given
16 this opportunity.

17
18 The Findings of Fact, Conclusions of Law and rulings regarding the landslide deviation
19 requests, including, but not limited to, F.84, F.85, F.89, F.91, F.93, F.94, C.53, C.54, C.56, C.59,
20 C.60, C.61, C.62, C.63, C.64, C.65, C.67, C.68, C.69, C.70, C.78 and ruling 4, should be
21 reconsidered because the deviation requests have not been denied, the findings are not supported
22 by the evidence and changes have been made in order to address the concerns raised by the County
23 and by the Hearing Examiner in the Decision.

- 24
25 *i. BSRE Has Shown there is No Alternate Location Available for the Buildings in*
26 *the Urban Plaza.*
27

1 The landslide deviation request for the buildings proposed to be located in the Urban Plaza
2 has now been updated to show that there is no alternate location available for those buildings. This
3 change was made after the hearing in order to address the County's concerns and is being submitted
4 after the Decision in order to solve the issue presented in the Decision. See Addendum 6.
5 Therefore, any Findings of Fact, Conclusions of Law and rulings related to the issue of whether
6 there is an alternate location for those buildings, including, but not limited to, C.54, should be
7 revised, pursuant to SCC 30.72.065(f).
8

9 *ii. The Geotechnical Report Does Not Substantially Conflict with the County*
10 *Code.*

11 The Hearing Examiner has raised the following concerns about the geotechnical report: (1)
12 that the geotechnical report does not adequately demonstrate that the proposed deviation provides
13 protection equal to that provided by the prescribed minimum setbacks (F.84, C.56, C.61); (2) that
14 the subsurface conditions report does not provide the required information regarding the method
15 and locations of drainage (F.89, C.59); (3) that the geotechnical report does not address the safety
16 of the vehicles and pedestrians on the secondary access road (F.91, C.65); (3) that the geotechnical
17 report does not confirm the site is suitable for the proposed development (F.93, F.94); and (4) that
18 the geotechnical report and/or deviation requests do not include what surcharges were included in
19 the safety factor calculations (C.60).
20

21 SCC 30.62B.340 specifically provides deviations may be granted to allow development
22 within a landslide hazard area. BSRE has not been given the typical treatment of scheduling a
23 meeting between Mr. Sleight and BSRE's consultants to discuss any outstanding issues.
24

25 BSRE's consultant, John Bingham of Hart Crowser, has done significant additional work
26 in order to address these concerns. Mr. Bingham has revised the subsurface conditions report and
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1 the landslide area deviation request. *See* Addenda 4 and 5. This new evidence was not reasonably
2 available during the hearing because BSRE only received the County's feedback on the deviation
3 requests in the May 2018 Letter and during the hearing itself. Mr. Bingham promptly revised his
4 reports to provide additional information to address these concerns as soon as he received the
5 feedback.
6

7 The record does not support F.91 and C.65 because Mr. Sleight testified that designs had
8 been submitted which would make the road safe for pedestrians and vehicles. Mr. Bingham's role
9 was not to design the road, but to provide that it could be built safely in the landslide hazard area.
10 He did that. However, the April 20, 2018 geotechnical report and Addendum 4 do show that the
11 current slope stability analysis and conceptual retaining wall design were done to achieve at least
12 the minimum static and seismic factors of safety required by the Snohomish County Code. The
13 analysis in these two reports shows that there would not be shallow slides which would affect
14 vehicles or people on the road. There is no evidence that these issues were not considered in Mr.
15 Bingham's analysis of the secondary access road. In addition, as Mr. Sleight testified, Mr.
16 Bingham took a conservative approach with the geotechnical report, assuming high liquefaction
17 throughout the area in which the buildings and road would be constructed. *See* Randy Sleight May
18 22, 2018 Testimony; John Bingham May 22, 2018 Testimony.
19
20

21 The geotechnical report, landslide hazard deviation requests, and subsurface conditions
22 report, with their respective addenda, provide sufficient information to determine that the project
23 is feasible. There will be additional time to provide further details and conduct further tests, if
24 necessary, after the draft environmental impact statement is issued and any required design
25 changes are made.
26
27

1 It is an error of law to find a substantial conflict with the code where a deviation request is
2 pending. Unless and until the deviation requests are denied, there is reasonable doubt that the
3 proposal is in substantial conflict with SCC 30.62B.320 and .340. If a project with a pending
4 deviation request is considered to be in substantial conflict with the code, provisions allowing for
5 deviation requests would be directly in conflict with the statute allowing premature denial.
6

7 BSRE has provided landslide hazard deviation requests, geotechnical reports, and
8 subsurface condition reports which do not substantially conflict with the Snohomish County Code
9 and therefore the Findings of Fact, Conclusions of Law and rulings related to the landslide hazard
10 areas should be revised accordingly. If the County or the Hearing Examiner believes additional
11 work is necessary to show compliance with any applicable provision, then it would be appropriate
12 to condition any future approvals on obtaining the deviation and any necessary approvals for the
13 secondary access road.
14

15 **G. BSRE's Request for an Extension Should be Granted.**

16 The Findings of Fact, Conclusions of Law, and rulings related to BSRE's actions since
17 April 2013 and related to whether BSRE should be granted an extension, including, but not limited
18 to, F.19, F.10, F.21, F.24, F.27, F.31, F.34, F.32, C.12, C.13, C.14, C.19, C.20, C.21, C.22, C.53,
19 C.69, C.78, C.79, ruling 3 and ruling 4, are not supported by the evidence. In addition, changes
20 have been proposed by BSRE in response to the Decision.
21

22 A number of these findings are not supported by the record and should be revised: Nothing
23 in the record indicates that BSRE proposed a transportation corridor study on February 2, 2014,
24 and, in fact, BSRE never proposed a transportation corridor study (F.9). Instead, as testified to by
25 Kirk Harris on May 24, 2018, BSRE entered into a memorandum of understanding with Shoreline
26 regarding how a study would be conducted. *See* Kirk Harris May 24, 2018 Testimony. BSRE and
27

1 Shoreline conducted seven public meetings (F.10). Exhibit P-18. BSRE continued working with
2 Shoreline on traffic issues beyond April 20, 2015 (F.14). *See id.*; Kirk Harris May 24, 2018
3 Testimony. The County’s March 31, 2016, letter granting BSRE an extension does not state that
4 further extensions will only be granted in “extraordinary circumstances”, nor does it state that “the
5 applications could be heard by the Hearing Examiner if the alleged deficiencies were not remedied,
6 though PDS would recommend denial” (F.21). *See* Exhibit K-13. The County’s letter on October
7 6, 2017, did not state discuss further extensions at all, and did not state that they would only be
8 granted in “extraordinary circumstances” (F.31). *See* Exhibit K-32. F.32 mischaracterizes the
9 meeting between the County and BSRE on November 13, 2017: during that meeting, the County,
10 including its legal counsel, assured BSRE that there was no reason that another extension would
11 be forthcoming, acknowledged that BSRE could not meet the January 8, 2018 deadline (which the
12 County admitted was not a “deadline” but instead merely a “target”), and advised BSRE to submit
13 a letter stating the date by which it would be able to provide the necessary information. *See*
14 Douglas A. Luetjen May 24, 2018 Testimony; *see also* Exhibit P-13 (Ryan Countryman’s notes
15 show clearly that BSRE asked when the extension request would need to be submitted).
16 Furthermore, BSRE proposes to improve Richmond Beach Drive so as to meet applicable road
17 standards (C.18).
18
19
20

21 In addition to the above inaccuracies, the Hearing Examiner failed to note in F.27 that the
22 County’s May 2, 2017, letter specifically stated, “As the applicant, if you wish to request a further
23 suspension of the application expiration period pursuant to the above-mentioned Code provision,
24 you should make a written request to PDS prior to May 30, 2018, in order for the PDS director to
25 have time to evaluate the request.” Exhibit K-19. Not only did the County not indicate that no
26 further extensions would be forthcoming, but the County also provided a date by which the next
27

1 extension must be provided – just one month before the expiration date. BSRE complied with this
2 request, submitting its extension request in January, more than five months prior to the expiration
3 date of June 30, 2018.

4 C.19 is similarly inaccurate as it fails to show that BSRE and Shoreline were negotiating
5 for years before Shoreline ceased cooperating with BSRE and determined that it would only work
6 with BSRE if Shoreline was permitted to annex Point Wells. At one point, Shoreline advised
7 BSRE that it did not have the votes on the Shoreline Council to permit Shoreline to continue
8 negotiating with BSRE. *See* Kirk Harris May 24, 2018 Testimony.

9
10 As the Hearing Examiner stated in C.11, “[a]n imminent deadline concentrates the mind
11 wonderfully.” This was certainly true for the County. The County provided more substantive
12 feedback from October 2017 through May 2018 than it had in all the time prior to that, which
13 allowed BSRE to provide the responses it did in April and May 2018. If the County had provided
14 such substantive responses earlier, then BSRE could have responded in kind. However, until
15 BSRE received the feedback from the County in its October 2017 Letter and its April and May
16 2018 Letters, BSRE was unable to do the work the County deemed necessary. This is certainly
17 true with respect to the OHWM, which was not even raised as an issue by the County until its May
18 2018 Letter, providing BSRE with no time to respond substantively before the hearing. *See*
19 Section C *supra*. For these reasons, all Findings of Fact, Conclusions of Law and rulings implying
20 or stating that BSRE was dilatory in not determining the OHWM sooner, including, but not limited
21 to, C.12, C.13, C.14, C.15, C.16, C.17, C.21, C.22, C.78, and ruling 3, should be revised.

22
23
24 BSRE has diligently worked to obtain approval from Sound Transit, but was told
25 repeatedly that Sound Transit would not consider putting a stop there until after BSRE obtained
26 the necessary approvals. *See* Douglas A. Luetjen May 24, 2018 Testimony. The letter that BSRE
27

1 received in 2010 was the strongest commitment Sound Transit was willing to make until BSRE
2 obtained approval from Snohomish County for its urban center. *Id.* BSRE has engaged consultants
3 who are experienced with working with Sound Transit and BNSF to ensure that the necessary
4 approvals will be received at the appropriate time. *Id.* BSRE has taken all steps available to it to
5 show its commitment to providing high capacity transit at Point Wells. *Id.* Thus, all Findings of
6 Fact, Conclusions of Law and rulings implying or stating that BSRE was dilatory in not obtaining
7 consent from Sound Transit, including, but not limited to, C.20, C.21, C.22, C.39, C.78, and ruling
8 3, should be revised.

10 As Ryan Countryman testified on May 21, 2018, applications typically go through seven
11 or eight iterations. With a project this complex, it is understandable why multiple iterations are
12 necessary, both from the applicant's perspective as well as the County's perspective. Multiple
13 reviews allow both parties to ensure that everything is accurate. This ability to fix issues is exactly
14 why the language of SCC 30.34A.180 [2007] provides an applicant with a chance to re-submit its
15 applications:

17 The hearing examiner may deny an urban center development
18 application without prejudice pursuant to SCC 30.72.060. If denied
19 without prejudice, the application may be reactivated under the
20 original project number without additional filing fees or loss of
21 project vesting if a revised application is submitted within six
months of the date of the hearing examiner's decision. In all other
cases a new application shall be required.

22 SCC 30.34A.180(2)(f) [2007]. *See* Section I *infra*. This project is by far the most complicated
23 project that Snohomish County has seen (*see* Ryan Countryman's May 24, 2018 Testimony),
24 making the need for multiple revisions even greater. BSRE has shown it is motivated to resolve
25 all issues raised by PDS and will work diligently to do so.

1 For all of the above cited reasons, ruling 3 should be reversed and BSRE should be granted
2 an extension and the parties should be directed to proceed with the draft environmental impact
3 statement.

4 **H. The Hearing Examiner Committed an Error of Law with Respect to Where the**
5 **Appeal Should be Filed.**

6 Section IV(B) of the Decision provides in part as follows: “This decision is a final decision
7 of the Hearing Examiner, but may be appealed by filing a land use petition in the Snohomish
8 County Superior Court.” SCC 30.34A.180(2) describes the Type 2 permit decision process
9 utilized in the review of BSRE’s application. SCC 30.34A.180(2)(c) provides that: “The urban
10 center development application shall then be processed as a Type 2 application as described in
11 chapter 30.72 . . .”

12
13 SCC 30.72.020(11) also identifies “Development applications in the UC zone as provided
14 in SCC 30.34A.180(2)” as a Type 2 permit and decision. Pursuant to the Snohomish County Code,
15 Type 2 applications should be appealed to the county council, rather than the Superior Court. This
16 is confirmed in SCC 30.72.025, which provides:

17
18 Type 2 decisions are made by the hearing examiner based on a report
19 from the department and information received at an open record
20 hearing. The hearing examiner’s decision on a Type 2 application is
a final decision subject to appeal to the county council . . .

21 Finally, SCC 30.72.070(1) states:

22 All Type 2 hearing examiner decisions may be appealed to the
23 county council except for shoreline substantial development permits
24 and permit rescissions, shoreline conditional use permits, and
shoreline variances, which may be appealed to the state shorelines
hearings board pursuant to SCC 30.34.250 and RCW 90.58.180.

1 Therefore, the Hearing Examiner committed an error of law when it held that the Decision may be
2 appealed to the Snohomish County Superior Court. For this reason, BSRE requests that this
3 statement be revised to provide that the appeal should be filed with the Snohomish County Council.
4

5 **I. Clarification is Necessary Regarding Whether the Decision is With or Without
6 Prejudice.**

- 7 *i. The County Code Provisions Addressing Reconsideration of Type 2 Examiner
8 Decisions Contemplate that Examiner Decisions are Normally to be
9 Considered to be Without Prejudice.*

10 SCC 30.72.065 explicitly provides as follows:

11 (2) The grounds for seeking reconsideration shall be limited to the
12 following:

- 13 . . .
14 (f) The applicant proposed changes to the application *in
15 response to deficiencies identified in the decision.* (Emphasis
16 added.)

17 SCC 30.72.065(2)(f). Thus, the code expressly contemplates reconsiderations based on changes
18 made to the application to address deficiencies identified in the Examiner’s decision. This reflects
19 an on-going process in which an application gradually evolves to come into full code compliance.
20 Such reconsiderations could not occur unless the Examiner’s decisions are without prejudice. A
21 decision *with* prejudice would necessarily terminate the applicant’s ability to revise its application
22 to address perceived deficiencies and would therefore conflict with SCC 30.72.065(2)(f).

- 23 *ii. While the Hearing Rules do not Address Inadvertence or Mistakes in a
24 Judgment, the Civil Rules Allow for Correction of Judgments.*

25 CR 60 RELIEF FROM JUDGMENT OR ORDER provides as follows:

- 26 (a) Clerical Mistakes. Clerical mistakes in judgments, orders or
27 other parts of the record and errors therein arising from oversight or
omission may be corrected by the court at any time of its own
initiative or on the motion of any party and after such notice, if any,
as the court orders. Such mistakes may be so corrected before review

1 is accepted by an appellate court, and thereafter may be corrected
2 pursuant to RAP 7.2(e).

3 (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered
4 Evidence; Fraud; etc. On motion and upon such terms as are just,
5 the court may relieve a party or the party's legal representative from
6 a final judgment, order, or proceeding for the following reasons:

7 (1) Mistakes, inadvertence, surprise, excusable neglect or
8 irregularity in obtaining a judgment or order;

9 . . .
10 (11) Any other reason justifying relief from the operation
11 of the judgment.

12 BSRE requests the Hearing Examiner clarify its findings of facts and conclusions of law inasmuch
13 as they do not indicate whether the denial of BSRE's permit application was with or without
14 prejudice. The Hearing Examiner is entitled to make such a determination and failure to clarify
15 its findings of fact and conclusions of law will prejudice BSRE.

16 *iii. SCC 30.72.060(3) and SCC 30.34A.180(2) Allows Denial of an Application
17 Without Prejudice.*

18 Pursuant to SCC 30.72.060(3):

19 The hearing examiner may grant, grant in part, return to the
20 applicable department and applicant for modification, deny without
21 prejudice, deny, or grant with such conditions or modifications as
22 the hearing examiner finds appropriate based on the applicable
23 decision criteria.

24 Further, SCC 30.34A.180(2)(f) [2007], states, in pertinent part:

25 The hearing examiner may deny an urban center development
26 application without prejudice pursuant to SCC 30.72.060. If denied
27 without prejudice, the application may be reactivated under the
original project number without additional filing fees or loss of
project vesting if a revised application is submitted within six
months of the date of the hearing examiner's decision. In all other
cases a new application shall be required.

A determination of non-prejudice will allow BSRE to refile its application and provide it with an
opportunity to correct the conflicts with the applicable Snohomish County Code provisions raised

1 by PDS. BSRE is particularly familiar with this code provision because BSRE suggested this
2 verbiage be included in the Urban Center Code at the time of its initial consideration. The goal
3 was to address this specific situation. PDS and the Snohomish County Council agreed and this
4 provision was included in the code when adopted.

5
6 *iv. The Hearing Examiner's Denial Should be Presumed Without Prejudice
Because PDS Did Not Request Denial With Prejudice.*

7
8 The Hearing Examiner's Findings of Facts and Conclusions of Law did not deny BSRE's
9 permit application with or without prejudice. Legal authorities do not exist to address whether a
10 Hearing Examiner's order denying a permit application which is silent regarding prejudice or non-
11 prejudice is presumed to be without prejudice.

12 However, the Hearing Examiner's ruling is analogous to a civil motion to dismiss for lack
13 or prosecution inasmuch as the Hearing Examiner's ruling is partially based on BSRE's failure to
14 timely prosecute its permit application.

15 CR 41 (b) states, in pertinent part:

16
17 (b) Involuntary Dismissal; Effect. For failure of the plaintiff to
18 prosecute or to comply with these rules or any order of the court, a
defendant may move for dismissal of an action or of any claim
against him or her.

19
20 (1) Want of Prosecution on Motion of Party. Any civil action
21 shall be dismissed, without prejudice, for want of
22 prosecution whenever the plaintiff, counterclaimant, cross
23 claimant, or third party plaintiff neglects to note the action
24 for trial or hearing within 1 year after any issue of law or
25 fact has been joined, unless the failure to bring the same on
26 for trial or hearing was caused by the party who makes the
27 motion to dismiss. Such motion to dismiss shall come on
for hearing only after 10 days' notice to the adverse party.
If the case is noted for trial before the hearing on the motion,
the action shall not be dismissed.

1 PDS did not request a denial of BSRE's permit application with prejudice. The Hearing Examiner
2 did not rule whether his denial was with or without prejudice. Snohomish County's rules
3 unambiguously allow a denial of a permit application without prejudice. Dismissals in civil actions
4 are presumed to be without prejudice. Therefore, BSRE requests that the Examiner clarify that its
5 order denying BSRE's permit application is without prejudice.
6

7 **J. BSRE's Short Plat Application (11-101007 SP) is Unaffected by the Perceived**
8 **Deficiencies in the Application and Should Not Be Terminated.**

9 Apart from whatever decision results from this request for reconsideration, BSRE's short
10 plat application stands alone and is unaffected by the issues still being addressed by this motion.
11 At a minimum, the Examiner's decision should be modified so as to remove the short plat
12 application from its coverage and thereby leave the short plat application in place.

13 **IV. CONCLUSION**

14 Base on the foregoing, BSRE requests that the Hearing Examiner reconsider (1) its decision
15 to deny BSRE's applications without an environmental impact statement, (2) its decision to deny
16 BSRE's request for an extension, (3) its statement that an appeal should be filed with the
17 Snohomish Superior Court rather than the Snohomish County Council, and (4) all Findings of Fact,
18 Conclusions of Law or rulings which relate to any of the above issues. Further, BSRE requests
19 the Hearing Examiner clarify that the Decision was without prejudice.
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DATED this 9th day of June, 2018.

/s/ *Jacque E. St. Romain*
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Addendum 1



DAVID EVANS
AND ASSOCIATES INC.

June 20, 2018

Snohomish County PDS
3000 Rockefeller Ave M/S 604
Everett, WA 98201

SUBJECT: Shoreline Narrative for Point Wells Urban Center

Dear PDS Reviewer,

The following narrative is to accompany the Shoreline Substantial Use and Land Use applications for the Point Wells Urban Center Development. Responses to each policy are *italicized*.

Snohomish County Shoreline Management Master Program (SMMP)
Master Program Elements

Agricultural Element

Goal. Promote the development and growth of Snohomish County's agricultural industry and preserve the County's existing and potential agricultural land.

Consistency: *This goal is not relevant as there are no agricultural lands on the site.*

Circulation Element

Goal. Permit safe and convenient circulation systems appropriate to the shoreline environment which cause minimum disruption to shoreline access, shoreline environment, and minimum conflict between the different users.

Policies:

1. Locate and design circulation systems so as to preserve a high number of options and to allow for rapid technological advances. *The site plan makes appropriate provisions to comply with current requirements for public health, safety and welfare. These provisions will be owned in common, which allows for adaptation of technological advances.*
2. Locate and design circulation systems so as to insure the overall integrity of other social and economic activities and natural systems. *The circulation systems proposed interlink elements of the project to adhere to this policy.*
3. Design circulation systems which provide safe and efficient movement of people and products while providing for alternative modes of transportation. *The site plan makes appropriate provisions to comply with current requirements for public health, safety and welfare. Provisions for alternative modes of transportation are included. The project is to include a possible passenger only ferry, bus transit hub and Sound Transit station.*



4. Allow only those circulation activities which do not produce undue pollution of the physical environment and which do not reduce the benefit which people derive from their property without due compensation. *Circulation activities are limited to those necessary to support the urban center, which is intentionally designed to adhere to the intent of this policy. The programmatic EIS for comp plan change quantified the net reduction in GHG emissions.*
5. Locate and design major circulation systems well away from the land-water interface except for necessary crossings so that natural shorelines and floodplains remain substantially unmodified. *Major circulation systems are located outside of the Shoreline Management Zone. One exception is the potential use of a water taxi from the pier. If implemented, it would serve until such time as a permanent Sounder station is in place.*
6. Encourage the use of waterborne transportation and commuter ferry service. *The location of the proposal has the potential to link to the existing Edmonds multi-modal transportation facility.*
7. Encourage corridors for transportation and utilities when they must cross shorelines. *The access to the pier constitutes such a corridor.*

Conservation Element

Goal. Assure preservation, protection and restoration of Snohomish County's unique and nonrenewable resources while encouraging the best management practices for the continued sustained yield of renewable resources of the shorelines.

Policies:

1. Protect the scenic and aesthetic qualities of shorelines and vistas to the fullest extent practicable. *The proposal will not only protect, but will enhance these qualities through the transformation of an industrial site into an urban center with new public access to beach, along esplanade and to repurposed pier.*
2. Provide for a beneficial utilization of shoreline resources in a way which will not have an unreasonable adverse impact on other natural systems or the quality of the environment. *The proposal will enlarge and restore significant shoreline area. In addition, contamination from historic industrial use of the site will be cleaned up.*
3. Identify those areas which have a potential for restoration of damaged features or ecosystems to a higher quality than may currently exist, develop standard for improvement of the conditions in those areas, and provide incentives for achieving such standards. *The waterfront area has been identified as such an area. It will be enlarged and restored and contamination cleaned up.*
4. Provide incentives to preserve unique, rare and fragile natural features and resources as well as scenic vistas, parkways and habitats of wildlife. *Industrial development of the site dating back to the early 1900's altered such features. The development will restore many of them. Proposed building mass and locations are intended to preserve scenic vistas.*
5. Give priority to maintaining the function of natural systems in appropriate environments. *The project will restore the functions of existing degraded systems.*
6. Encourage the best management practices for the sustained yield of replenishable resources. *The beach will be enlarged and restored.*
7. Identify those areas which are necessary for the support of wild and aquatic life and those having



unique geological/biological or historical significance and establish regulations to minimize adverse impact on those areas. *The beach will be enlarged and restored.*

8. Encourage public and private shoreline owners to promote the proliferation of wildlife, fish and plants without unduly interfering with existing activities. *The beach and tideland areas will be placed into a separate tract owned in common by the residents of the development. The tract will be designated as a Critical Area Protection Area (CAPA).*

Economic Development Element

Goal. Allow only those industrial, commercial and recreational developments particularly dependent on their location on and use of Snohomish County's shorelines, as well as other developments that will provide substantial number of the public an opportunity to enjoy the shorelines. Minimal disruption of the natural environment is envisioned in the implementation of this goal.

Policies:

1. Give priority to commercial, industrial and recreational development that is water - surface or shoreline dependent and those developments that will provide substantial number of the public an opportunity to enjoy the shorelines *The proposal will provide significant opportunities for the public to enjoy and have access to and along the shoreline and repurposed pier. Only noncommercial uses will be allowed on the pier.*
2. Limit the adverse effects of new commercial, industrial and recreational development upon the physical environment and natural processes. *The site plan serves to limit adverse effects by largely staying out of the shoreline management area.*
3. Prevent commercial and industrial development from scattering randomly or from locating in undeveloped areas prematurely. *The urban center includes an official site plan and phasing plan that serve to prevent this from happening.*
4. Locate commercial and industrial development in areas already developed so long as such areas have not reached their carrying capacity. *Commercial elements of the development are located in areas presently used for industrial purposes.*
5. Encourage the development of commercial, industrial and recreational activities which can make use of existing public services. *Public services are presently available to the site.*
6. Encourage development toward a multi-use concept to provide public access to the shoreline while maintaining the economic viability of the principal use. *The urban center is intentionally a multi-purpose use. The planned esplanade will provide public access. As an amenity to the development, the shoreline and esplanade will serve to maintain the economic vitality of the principal use.*

Historical, Cultural, Scientific Element

Goal. Protect, preserve and encourage restoration of those sites and area on the shorelines of Snohomish County which have significant historical, cultural, education or scientific values.

Consistency: *The site was filled and has been utilized solely for petroleum-related purposes for over 100 years. The cultural resources report prepared for the project indicates that there are no specific*



areas that have historical, cultural, educational, or scientific value. The project will be subject to standard protocols for actions to be taken if such areas are encountered during cleanup and construction.

Implementation Element

Goal. Further the intent and policy of the Shoreline Management Act of 1971 through a fair, balanced and impartial administration of the substantial development permit process and other legal requirements of the act.

Consistency: *The project is subject to review by Snohomish County. The required shoreline substantial development permit application will be considered by the Snohomish County Hearing Examiner and Washington State Department of Ecology.*

Public Access Element

Goal: *Assure and regulate safe, convenient and diversified access for the public to the publicly owned shorelines of Snohomish County and assure that the instructions created by public access will recognize the rights of private property owners, will not endanger life, and will not adversely affect fragile natural areas.*

Policies:

1. Respect and protect the enjoyment of private rights in shoreline property when considering public access development. *The shoreline area will be placed in a tract of land to be owned in common by the residents of the development.*
2. Locate, design and maintain public access development so as to protect the natural environment and natural processes. *An esplanade is to be constructed abutting the shoreline boundary to allow for public access. In addition, parking will be provided for access to non-residents.*
3. Provide for the public health and safety when developing public access. *All improvements will be ADA compliant.*
4. Purchase or otherwise make available to the public shoreline properties, including tideland tracts if their value for public use merits such action. *Such areas will be a part of the development and owned in common by the residents.*
5. Provide for and design various types of access which are appropriate to the shoreline environment and its specific, uses. *Access is provided by both the esplanade and public parking area. In addition, a personal watercraft/kayak launch area off the pier is proposed.*
6. Control and regulate public access on the publicly-owned shorelines to insure that the ecology shall not be unduly damaged by public use. *There are no publicly owned shorelines within the Project.*

Recreational Element

Goal. Provide additional opportunities and space for diverse forms of recreation for the public.

Policies:



1. Identify, preserve, protect and purchase, if feasible, areas with unique recreational characteristics before other development makes such action impossible. *Such areas will be owned in common by the residents.*
2. Encourage recreational use consistent with the ability of the site to support such use. *The site plan includes many opportunities for access to and along the shoreline and pier.*
3. Encourage location, design and operation of recreational development for maximum, compatibility with other uses and activities. *The site plan provides for this.*
4. Provide a balanced choice of recreational opportunities. *The site plan provides for a balance of passive and active recreation opportunities.*
5. Encourage innovation and cooperative techniques among public agencies and private persons which increase and diversify recreational opportunities. *The intent is to maintain private ownership of the shoreline area, yet make provisions for public access. Opportunities will be regulated by a homeowners association in keeping with the bylaws and design guidelines.*
6. Encourage private investment in recreational facilities open to the public. *Recreational opportunities will be privately funded.*
7. Do not substantially impair original natural or recreational values when developing recreational uses. *The objective of the Project is to expand and restore the beach area to improve, rather than impair, natural and recreational values.*
8. Give recognition to the recreational values of shorelines in their natural state. *The site plan provides this.*
9. Encourage compatible recreational uses in transportation and utility corridors. *This is not applicable to the Project.*

Shoreline Use Element

Goal. Assure appropriate conservation and development of Snohomish County's shorelines by allowing those uses which are particularly dependent upon their location on and use of shorelines, as well as other development which provides an opportunity for substantial numbers of people to enjoy the shorelines. This must be done in a manner which will achieve an orderly balance of shoreline uses that do not unduly diminish the quality of the environment.

Consistency: *The Project will allow substantial numbers of people to enjoy the shoreline, which is not currently accessible at the site.*

Snohomish County Shoreline Management Master Program (SMMP) - Urban Environment Designation Criteria

The site of the proposal is designated as an Urban Environment in the SMMP, a designation that includes areas of high-intensity land use. This environment is particularly suitable for those areas presently subjected to extremely intensive use pressure and to areas planned to accommodate urban expansion. Shoreline areas to be designated as an Urban Environment should possess one or more of the following criteria:



- Areas of high-intensity land use including recreation, residential, public facility, commercial, industrial development and intensive port activities;
- Areas designated in the adopted plans of public agencies for expansion of urban uses; areas possessing few biophysical limitations for urban development; and
- Areas that can provide the necessary infrastructure of public services and utilities and access to accommodate urban development.

Urban Environment Management Policies:

1. Because shorelines suitable for urban uses are a limited resource, emphasis should be given to directing new development into already developed, but underutilized areas. *The Project will bring new development into an underdeveloped area that is consistent both with this policy and the vested designation of the site as an Urban Center.*
2. Give priority in Urban Environments to water dependent, industrial and commercial uses requiring frontage on navigable waters. *The Project is not a priority urban Environment land use as Urban Centers are not water-dependent and do not require frontage on navigable waters. However, the Project would result in the development of permanent public access to the shoreline, which is not currently available. The Project would also result in the redevelopment and renewal of an urban shoreline area that could accommodate future water-dependent activities and make maximum use of the available shoreline resource. Therefore, the proposal is partially consistent with this policy.*
3. Give priority to planning for and developing public visual and physical access to the shoreline in the Urban Environment. *Since public access to the shoreline is to be provided, the Project is consistent with this policy.*
4. Identify needs and plan for the acquisition of urban land for permanent public access to the water in the Urban Environment. *Since permanent public access is required and provided, the Project is consistent with this policy.*
5. Design industrial and commercial facilities to permit pedestrian waterfront activities where appropriate. *See policy 3 above.*
6. Link, where practical, public access points with non-motorized transportation routes such as bicycle and hiking paths. *Since pedestrian and bicycle connectivity is to be provided, the Project is consistent with this policy.*
7. Encourage maximum multiple use of urban shoreline areas. *The Project is a mixed-use development consistent with this policy.*
8. Promote redevelopment and renewal of substandard or obsolete urban shoreline areas in order to accommodate future water-dependent users and make maximum use of the available shoreline resource. *The Project redevelops the site, but will not target water-dependent uses. So the Project is consistent with portions of this policy.*
9. Actively promote aesthetics when considering urban shoreline development by means of sign control regulations, architectural design standards, planned unit development standards, landscaping requirements and other such means. *Design controls are in place for Urban Centers, and specific design guidelines have been prepared, so the Project is consistent with this policy.*
10. Regulate all urban shoreline development in order to minimize adverse impact upon adjacent land areas and shoreline environments. *Regulations are in place to monitor impacts on adjacent land and shorelines, so the Project is consistent with this policy.*



The site is designated as an urban shoreline environment in the SMMP. It is now, and has been for many decades, used for industrial purposes as a petroleum products storage facility and processing and distribution operation. The proposed development would allow redevelopment of the site as an Urban Center comprising a mix of high density residential and commercial uses with significant required public circulation facilities, and open space.

The Urban Center (UC) designation that the project is vested to is consistent with one or more of the urban shoreline environment designation criteria. The proposal would allow for a continuation of intensified use of the site. However, this mixed-use development would provide the necessary public services, utilities, and access would be available to accommodate the proposed opportunities for public physical access to the adjacent shoreline previously not available. Necessary public services, utilities, and access would be available to accommodate the proposed development. Since the site is currently a fully developed industrial facility, the proposal is consistent with the urban shoreline environment as there are few biophysical limitations for future urban development. However, redevelopment of the site under the UC designation would result in potential restoration in the shoreline setback area.

General Policy Plan (GPP)

Objective TR 1.A. Prepare, in cooperation with the cities, the Washington State Department of Transportation (WSDOT), regional agencies, Sound Transit, Community Transit, and Everett Transit, standards for public transportation services and facilities consistent with adopted road standards, the land use element, and the natural environment element of the county's comprehensive plan.

TR Policy 1.A.1. Public transportation planning shall be integrated with land development review and the design and maintenance of public roads.

TR Policy 1.A.2. Public transportation shall be extended throughout the urban area at a level of service appropriate to the planned form and intensity of development.

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

TR Policy 1.C.1A. A countywide network of primary corridors shall be identified that provide for multi-modal transportation services between centers designated on the comprehensive plan.

Objective TR 2.A. In cooperation with the cities, make the designated centers the focus of residential and employment growth and transportation investment in unincorporated county areas.

TR Policy 2.A.1. Roadways serving designated centers shall be redesigned, improved and maintained as primary corridor for multi-modal travel.

TR Policy 2.A.2. A transit-supportive transportation system shall be provided linking designated centers.

TR Policy 2.A.4. An interconnected system of high-occupancy vehicle (HOV) lanes and treatments shall be provided to serve the designated centers and transportation centers within the urban area.



TR Policy 2.A.5.A. A regionally coordinated system of bikeways and walkways shall be planned to serve the designated centers and transportation centers.

Objective TR 2.B. In cooperation with the cities, promote a variety of convenient transportation services to compact and attractively designed centers.

TR Policy 2.B.2. High-occupancy vehicle use and alternatives to single-occupancy vehicle shall be promoted in centers through higher density single family and multi-family developments.

Objective TR 5.D. Participate with the cities, transit agencies, Sound Transit and WSDOT in a cooperative planning process for public transportation and high-capacity transit.

TR Policy 5.D.3. Development review shall be performed with transit agency participation to ensure site plan compatibility with public transportation and other high-occupancy vehicles.

Consistency : *The County has adopted a Transportation Element as part of the Comprehensive Plan and a concurrency and road impact mitigation regulation (SCC 30.66B) which requires land use to be compatible with road capacity . The objectives and policies enumerated above emphasize the desire to focus growth in the County toward attractively designed, designated centers that contain high-density housing, good transportation accessibility and efficiency including transit, HOV lanes, bike paths, and walkways. The development provides opportunities for residential and employment growth as the UC designation allows and encourages high density residential and mixed use development. Transportation planning is integrated with the development review of this land use application.*

Affected Plans and Policies – Woodway

Point Wells Land Use Objective and Guiding Principles

Woodway's 1994 planning process included work on a Point Wells Subarea Plan. The report gives an overview of the community values and sets forth Land Use Objectives and Guiding Principles and Land Use Alternatives. The report is adopted in the Appendices of the 2004 Comprehensive Plan (Town of Woodway 2004).

Consistency: *Although the Land Use Objectives and Guiding Principles contain language indicating that the waterfront area (most of the site) could be redeveloped into an economically viable, pedestrian-oriented, land use mix, with pedestrian access to the shore, the Community Values section indicates a preference for a restored natural area with water-dependent uses rather than a highly urban development. However, the preferred alternative for the waterfront area "reflects the property owner's desire to maintain the existing industrial use as the planned future use.*

Because of inconsistencies within the Point Wells Subarea Plan the Proposal would not be consistent with the parts of the plan and not consistent with other parts.

In 2013, Woodway adopted a Woodway Municipal Urban Growth Area Subarea Plan which addresses Point Wells. The Woodway Comprehensive Plan was updated in 2015 to expressly incorporate this subarea plan



into the overall comprehensive plan. The comprehensive plan designates Point Wells for development as a mixed use Urban Village—one of the alternatives to be addressed in the BSRE/Point Wells environmental impact statement. The Urban Center EIS alternative is consistent with much of the subarea plan—the main exception being project density.

Sincerely,

DAVID EVANS AND ASSOCIATES, INC.

A handwritten signature in black ink, reading "Jack Molver". The signature is written in a cursive, flowing style with a large initial "J" and "M".

Jack Molver, P.E.
Vice President

Copies: Gary Huff, Karr Tuttle Campbell
Attachments/Enclosures: None
Project Number: PARA0009
File Path: Document2

Addendum 2

PERKINS+WILL

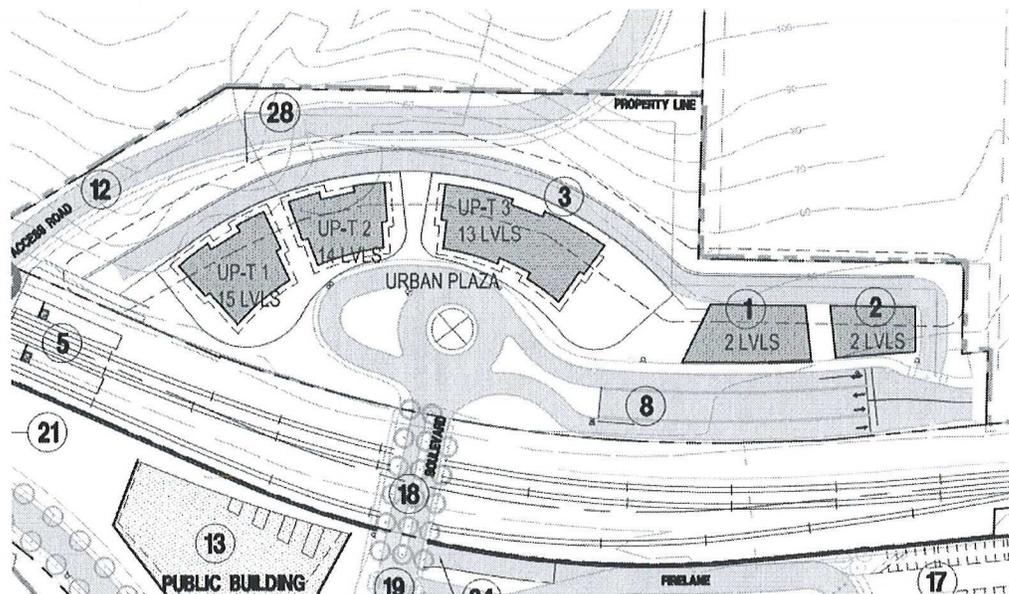
June 21, 2018

Doug Luetjen
BSRE Point Wells, LP
c/o Karr Tuttle Campbell
701 5th Avenue
Suite 3300
Seattle, Wa 98104

Re: 2018_04_26 SuppA-Zoning Code Variances_Pt Wells Height Revisions

Dear Mr. Luetjen,

Attached please find revisions to the request for a variance to the amended ordinance No. 09-079 30.34A.040 Building height and setbacks. The document '2018_04_26 SuppA-Zoning Code Variances_Pt Wells Height.pdf' refers to all five buildings (UP-T1-3, Envac collection terminal, Community Service Building) on the Urban Plaza at the Point Wells project. The original request for a variance shows a plan diagram on page 2 which highlight the three mixed use buildings. The variance request is for all five buildings as shown in red highlight the plan diagram below.



Sincerely

Carsten Stinn

(Project Architect)

Addendum 3



DAVID EVANS
AND ASSOCIATES INC.

MEMORANDUM

DATE: June 21, 2018

TO: Randy Middaugh
Snohomish County, Planning and Development Services
3000 Rockefeller Avenue, M/S 604
Everett, WA 98201

FROM: Gray Rand

SUBJECT: Critical Areas Report Addendum

PROJECT: Point Wells Urban Center – 11-101457 LU/11-101461 SM/11-101464 RC/11-101008 LDA/11-101007 SP

CC: Jack Molver and Kirk Harris (DEA)
Doug Luetjen and Jacque St. Romain (Karr Tuttle)

At the request of BSRE Point Wells, LP (Client), David Evans and Associates, Inc. (DEA) has prepared this addendum to the project Critical Areas Report (CAR) to provide additional information requested in the County's final legal brief. Information in this memo is broken into two sections:

1. Additional information to supplement the Habitat Management Plan (HMP) for the project.
2. Additional information to support the Innovative Development Design (IDD) analysis for the project.

Additional information is also being collected relative the ordinary high water mark (OHWM) along the marine shoreline at the project site, including coordination with the Washington Department of Ecology, but that information is not available at this time.

1. Habitat Management Plan

As described in Section 8 of the project CAR, eleven critical species, as identified in Section 30.62A of the Snohomish County Code (SCC), have been identified as potentially occurring on or near the site.

Primary Association Areas

All critical species that could occur on the proposed site have as their only primary association area the marine waters of Puget Sound, below the OHWM of the marine shoreline. **Table 1** below lists each of these critical species and the location and nature of their use of the project site.



DATE: June 21, 2018

FROM: Gray Rand

TO: Randy Middaugh

SUBJECT: Critical Areas Report Addendum

Table 1. Location and Nature of Use of the Site

Species	Habitat Use
Marbled murrelet	Adult murrelets can forage and loaf on the nearshore waters of Puget Sound near the project site. None were observed during marine bird monitoring in the 1990s in either summer or winter adjacent to the site (CAR, page 56). However, surveys conducted for the Brightwater project and the Seattle Audubon Christmas Bird Counts have observed them in the Edmonds area.
Chinook salmon	Adults and juveniles could occur in Puget Sound offshore of the proposed site. Juveniles are most likely present May through September and adults July through October. These fish would be migrating past the site. No spawning streams for Chinook are located nearby (CAR, page 93).
Bull trout	Adults and juveniles could occur in Puget Sound offshore of the proposed site at almost any time of year. Similar to Chinook and steelhead, bull trout could occur offshore as they forage and migrate along the shoreline of Puget Sound. Their density will coincide with the density of juvenile salmon, one of their primary prey items (CAR, page 98).
Steelhead	Adults and juveniles could occur in Puget Sound offshore of the proposed site. Marine waters adjacent to the site would be used as a migratory pathway and foraging habitat for all both life stages (CAR, page 96). No significant spawning streams are located nearby.
Peregrine falcon	Peregrine falcons forage widely along the shoreline of Puget Sound. Adults would be expected to hunt pigeons, ducks, and other birds. They are a year-round resident of Puget Sound. No nest sites are documented in the area.
Common loon	Common loons have been observed in the area of Puget Sound adjacent to the project site. They would occur most commonly in the winter. Common loons were observed by DEA during winter site visits (CAR, p. 57).
Gray whale	Gray whales are a regular transient visitor to Puget Sound. They feed on ghost shrimp in shallow, nearshore waters. An individual whale was seen as recently as February 21, 2018, about two miles north of the site in Edmonds. However, the vast majority of sightings are around Whidbey and Camano Island (CAR, pages 67-68).
Humpback whale	Humpback whales are a regular seasonal visitor to Puget Sound, more common in recent years (CAR, pages 68-69). They are normally observed in deeper water offshore in Puget Sound.
Killer whale	Listed resident killer whales routinely travel through central and southern Puget Sound in search of fish (CAR, pages 64-66). They migrate past the site on an annual basis but are not commonly seen offshore of the site.
Rockfish	Juveniles can occur in nearshore areas of Puget Sound (CAR, pages 90-91). While they have not been documented in the project area, they would be expected to occur, at least offshore of the project, in low numbers.



DATE: June 21, 2018

FROM: Gray Rand

TO: Randy Middaugh

SUBJECT: Critical Areas Report Addendum

Impacts

Potential impacts of the proposed project on these critical species (Table 1) as well as proposed avoidance and minimization measures are summarized in **Table 2** below. This information is taken from the existing CAR, but organized by species here.

Table 2. Impacts of the Proposed Project to Critical Species

Species	Impacts	Avoidance and Minimization
Marbled murrelet	Primary potential impacts to marbled murrelet are from underwater noise generated by impact pile driving. Modifications to the existing dock will include removal of three existing access ramps, and installation of a new central access pier. The new access pier will require installation of new steel piles (size and number to be determined). Pile driving in water will create elevated levels of underwater noise that could have negative behavioral effects on foraging and diving marbled murrelets. Removal and installation of piles can suspend sediment. Restoration of the marine shoreline could result in temporary increased turbidity that could affect foraging success of individual birds.	Section 3.0 of the CAR describes in detail proposed avoidance and minimization measures for the project. Primary impact reduction measures include the following: <ul style="list-style-type: none"> • Application of in-water work windows • Implementation of TESC and SWPP plans • Maximize use of vibratory pile driver to reduce underwater peak noise levels • Use of containment booms during removal of in-water structures • Avoid impacts to eelgrass beds • Restoration of all disturbed areas • Active monitoring for presence of sensitive species and habitats (including murrelet, eelgrass, marine mammals, etc.) will be conducted both before and during construction
Chinook salmon	The primary potential project impacts to Chinook salmon are disturbance and potential physiological effects of noise from pile driving. Juvenile chinook salmon would be most likely to occur in the nearshore areas and thus be exposed to high levels of noise. Long term, Chinook salmon will benefit from the project by an increase in nearshore marine habitat, removal of contaminated soils, and elimination of future oil spills from transport and off-loading of petroleum products.	Same as those described above for marbled murrelet. In particular, maximizing use of a vibratory pile driver, along with implementation of noise reduction strategies such as bubble curtains or double-walled piles, will be important to avoid and minimize high levels of underwater noise. Also, adherence to an agency approved in water work window (e.g., October through February) will minimize risk of encountering individual fish during construction.



DATE: June 21, 2018

FROM: Gray Rand

TO: Randy Middaugh

SUBJECT: Critical Areas Report Addendum

Species	Impacts	Avoidance and Minimization
Bull trout	Impacts to bull trout are similar to those described above for Chinook salmon. However, bull trout are less common in southern and central Puget Sound than Chinook salmon.	Same as those described above for Chinook salmon.
Steelhead	Same as described above for Chinook salmon.	Same as those described above for Chinook salmon.
Peregrine Falcon	The proposed project will have no detectable effects on peregrine falcons. These birds do not nest near the project site and would only occur as transients.	None required.
Common Loon	Common loons use offshore areas of the site for foraging and loafing. Construction would temporarily disturb birds nearby and disrupt daily activities. The project will have long term benefits through restoration and removal of contaminants.	Similar to those described above for marbled murrelet.
Gray Whale	The project will create potential disturbance to transient whales foraging in the project vicinity, primarily from in water pile driving. The likelihood of gray whales being near the project site during construction is very low. The project will have long term benefits of reducing risk of fuel spills during shipping or offloading.	Same as those described above for marbled murrelet. In addition, active monitoring before and during construction can minimize exposures of gray whales to underwater noise.
Humpback whale	Similar to gray whale impacts described above. Humpback whales are less likely to occur in nearshore areas than gray whale.	Same as those described above for gray whale.
Killer whale	Similar to gray whale impacts described above.	Same as those described above for gray whale.
Rockfish	Impacts to rockfish are similar to those described above for Chinook salmon. Individual adult and juvenile rockfish could be affected by underwater noise created by pile driving. Risk of harm is higher for juvenile rockfish which are more likely to be located in the nearshore areas near the dock (CAR, page 91).	Same as those described for Chinook salmon. Key measures will include implementation of noise reduction measures for pile driving and BMPs to control site runoff and sedimentation.



DATE: June 21, 2018

FROM: Gray Rand

TO: Randy Middaugh

SUBJECT: Critical Areas Report Addendum

Best Available Science for Protection

The proposed project will utilize the best available technology to avoid and minimize impacts to critical species. In particular, such technology will be used to reduce the risk of impacts from underwater noise associated with pile driving. Some of the most recent techniques have been developed in concert between WSDOT and the University of Washington Acoustics Lab, which have developed a double-walled pile that consistently reduces in-water noise more than 10 decibels. Other measures will be used to control upland areas during construction to minimize site runoff and sedimentation.

2. Innovative Development Design

Additional information to support the Innovative Development Design (IDD) analysis for the project is presented in **Table 3** below. As described in Section 9.2 of the CAR, the proposed project proposes the following elements of IDD:

- Cleanup of all contaminated soils on the site and removal of all former industrial materials;
- Restoration (creation) of approximately 7.3 acres of nearshore intertidal habitat by pulling back the existing seawall and removing existing impervious surfaces along approximately 3,600 linear feet of shoreline;
- Removal of approximately 327 creosote piles and the removal of approximately one acre of intertidal shading from existing structures;
- Expansion of the buffer of Stream 2 from existing conditions; and
- Permanent designation of the restored shoreline as protected tract.

Table 3 describes how the proposed IDD measures offset impacts to functions and values at each of the affected critical areas at the project site.



DATE: June 21, 2018

FROM: Gray Rand

TO: Randy Middaugh

SUBJECT: Critical Areas Report Addendum

Table 3. Additional Functions and Values Analysis for IDD

Functions and Values	Chevron Creek	Wetland T	Wetland R	Stream 2	IDD
Wildlife Habitat	Chevron Creek buffer is crossed by a second access road near its terminus. Impact is unavoidable. Stream buffer in area is disturbed but still provides habitat for generalist wildlife species. Mitigation would be either off-site or IDD.	Similar to Chevron Creek, the buffer of Wetland T will be unavoidably affected by the second access road, creating a loss of habitat for generalist wildlife species.	Similar to Wetland T.	Stream 2 currently has no significant buffer on the facility side of the stream and thus provides no wildlife habitat on that side. Also, the stream has no significant buffer on the north side parallel to the railroad. Finally, the buffer to the north, off the property, is dominated by nonnative species such as Himalayan blackberry.	7+ acres of intertidal habitat will be created, along with a wider buffer for Stream 2 than currently exists on the site (averaging approximately 25 feet wide). This habitat restoration will benefit some of the same wildlife species that use the buffers of the affected wetlands and streams, which are all within approximately 1,000 feet of the existing shorelines. The buffer of Stream 2 is entirely within the influence of the shoreline zone and will be widened by the proposed project. Removal of contaminated materials from the site will have a significant benefit to all wildlife in the area by reducing nearshore contamination and improving water quality.
Water Quality	As stated above, the buffer of the creek would be unavoidably affected by the second access road. However, this would have limited water quality effects on Chevron Creek because the stream would be in a pipe.	Affected buffer is on a steep slope downstream of the wetland; there would be limited water quality effects because this part of the buffer provides no water quality function for the wetland.	Similar to Wetland T.	Establishing a full buffer on Stream 2 would provide a slightly larger buffer to provide water quality treatment, but this would be limited because of the entirely flat grade. A wider buffer is currently proposed than exists now.	Project provides significant improvement to water quality for the project area through enhanced water quality, remediation of site, and removal of major source of pollutants that will avoid future spills. Low impact development techniques for stormwater treatment will be used throughout the site. These benefits far outweigh the buffer impacts of the project.
Water quantity / hydrology	Chevron Creek is a steep gradient seasonal stream that is supported primarily by groundwater. It is located within a deep highly eroded channel before it enters the project site in a debris settling basin. Given the gradient and small cross-section of the stream, it provides little water quantity storage and serves primarily as a conveyance. Maintaining a full administrative buffer on Chevron Creek would not change this function.	The buffer of Wetland T provides little water quantity storage or hydrologic function since it is downhill of the wetland and on a steep slope. Maintaining a full administrative buffer on Wetland T would not change this function.	Similar to Wetland T.	Stream 2 is a manmade conveyance that transmits natural water from east of the RR tracks. The portion of the channel adjacent to the east side of the site is actively maintained. Water from Stream 2 enters Puget Sound immediately north of the site through infiltration into the beach. This freshwater beach input is an important ecological function for nearshore habitat, and will not change. The buffer of Stream 2 on the site does not exist and performs no function currently. Establishing the full administrative buffer on Stream 2 will have minimal effect on water quantity and hydrology.	The project's IDD measures will improve the interface between the nearshore environment and the uplands, allowing a more natural hydrologic transition for hyporheic flow by removing the existing nearshore structures. The important nearshore habitat function provided by Stream 2 will be enhanced compared to existing conditions by providing a wider buffer and improved nearshore transition. The proposed project will result in a decrease in impervious surfaces over the site as a whole, which will improve hydrologic connection with Puget Sound.



DATE: June 21, 2018

FROM: Gray Rand

TO: Randy Middaugh

SUBJECT: Critical Areas Report Addendum

For the site as a whole, the use of the IDD measures will result in a significant net ecological benefit compared to implementation of standard administrative buffers. Overall, the project as proposed will result in significant improvement to ecological function along the shoreline of Puget Sound equivalent to application of the standard prescriptive measures of SCC 30.62A.

For these reasons stated above, and as currently described in the project CAR, the project is suitable for evaluation under the IDD criteria in SCC 30.62A.350, and meets the following approval criteria:

- a). The proposed innovative development design will achieve protection equivalent to the treatment of the functions and values of the critical areas which would be obtained by applying the standard prescriptive measures contained in SCC 30.62A.
- b). Low impact stormwater management strategies are to be applied throughout the project.
- c). The proposed 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.

Addendum 4



HARTCROWSER

June 22, 2018

Mr. Douglas Luetjen
BSRE Point Wells, LP
c/o Karr Tuttle Campbell
701 Fifth Avenue, Suite 3300
Seattle, Washington 98177

**Re: Subsurface Conditions Report Addendum - Revised
Point Wells Redevelopment
Unincorporated Snohomish County, Washington
17203-54**

Dear Mr. Luetjen:

In this letter, we provide additional geotechnical information to address items in the County's May 9, 2018 Supplemental Staff Recommendation document, the County's May 9, 2018 landslide hazard area memorandum (from Randolph Sleight), and the County's June 1, 2018 Findings of Fact/Conclusions of Law document for the hearing examiner. We clarify project geotechnical information provided in the Subsurface Conditions Report (Hart Crowser 2018a) and provide supplemental geotechnical information for the Point Wells Redevelopment (Project) in unincorporated Snohomish County, Washington. This letter is an addendum to our April 20, 2018 Subsurface Conditions geotechnical report. Subsequent sections are organized using the general headings from the County's May 9, 2018 Staff Recommendation document.

1. Feasibility and Code Compliance of Second Access Road

Subitem (2) claims the 2018 geotechnical report lacks sufficient geotechnical analysis to demonstrate compliance with Snohomish County Code (SCC) 30.62B.140(1)(b) and refers to Item 8 for more details on substantial conflicts with code compliance.

8. Code Provisions Regarding Geologically Hazardous Areas

Geologically Hazardous Areas

Landslide Hazard Areas Deviation Request

Our revised landslide hazard area (LHA) deviation request letter (June 22, 2018) discusses specific County deviation requirements. The sections below discuss the geotechnical items related to this request. The intent of the LHA deviation request letter is to determine if the deviation requests are



approvable by the County once the final design is completed following the general slope stabilization approach suggested. If these deviation requests are not approvable at this time, the letter requests the opportunity to discuss with the County what specific additional final design items would be needed to receive approval.

Secondary Access Road Location Alternatives

We understand the Secondary Access Road location is required to be different than the existing site southern access via Richmond Beach Drive, which leaves access routes to the northeast and southeast as possible options. Our August 2016 report, Appendix E (Hart Crowser 2016), shows access routes considered to the northeast (Abandoned Access Road) and southwest (current Secondary Access Road). Both locations are located in landslide hazard areas. The northeastern route requires more grading in wet areas and the Abandoned Access Road is displaced in places, which suggests less stable conditions (Figure 5, Hart Crowser 2018a). The current southeast Secondary Access Road location shown on Plan A-051 and in the geotechnical report (Figures 5 and 10, Hart Crowser 2018a) encounters fewer geologic critical areas, especially landslide hazard areas, than the northeast location. The southeast location is also in an area that has shorter and flatter average slopes (Figure 4, Sections E, F, and G, Hart Crowser 2018a). Thus, the southeastern access route option is more suitable than the northeast route. However, final design will need to follow final geotechnical design recommendations for subgrade preparation, drainage, and stabilization measures, as well as meeting County requirements.

Secondary Access Road Retaining Wall Improves Slope Stability

The proposed retaining wall for the Secondary Access Road would improve slope stability above current conditions to satisfy the required factors of safety (FS) in SCC 30.62B.340(3)(b), as discussed in Sections 5.1.6.1 and 7.1.1 of the geotechnical report (Hart Crowser 2018a). In summary, factors of safety for current conditions are below values in SCC 30.62B.340(3)(b), but would be increased to meet the SCC requirements by installing a permanent retaining wall. The following items clarify how the stability analysis for the retaining wall demonstrates it is feasible to achieve the required factors of safety in SCC 30.62B.340(3)(b).

- The permanent retained height of the retaining wall (Figures 22, 22a, 23, and 23a; 'a' designates the new, updated figures attached) is about 40 feet above final grades. The lower 20 feet below grade would temporarily support building basement wall lateral earth pressures until building basement floor slabs and walls are complete, depending on sequencing. Once complete, building walls and slabs would transfer lateral earth loads on the east side of the basement to soil on the opposite, or west, side of the building. The number of rows of tiebacks can be adjusted to include the lower 20 feet of wall at different times to accommodate different building phasing scenarios.
- Geotechnical slope stability analysis/calculation results on Figures 22, 22a, 23, and 23a show how a generic retaining wall providing a resisting force of 82 kips (kip = 1,000 pounds)/foot of wall length



increases factors of safety to the County code-required values. Several retaining wall options could be used. Figures 22a and 23a demonstrate how a permanent soldier pile and tieback retaining wall system is feasible to provide these loads (including soldier pile and tieback geometry and loads).

- Section 5.1.6.1 of our geotechnical report (Hart Crowser 2018a page 23) discusses how a high strength (i.e., a cohesion of 10,000 pounds per square foot [psf]) was used in the stability analysis (results in Figures 20 - 25) to represent the retaining wall (typically steel and concrete). Later structural design would be done so the wall is structurally strong enough so slip surfaces do not go through, but rather under it.
 - A high cohesion (10,000 psf) was not used for subgrade or retained soil, as noted in the text and on the stability figures.
 - Our slope stability analyses/calculations were completed using commercially available limit-equilibrium software that is widely accepted and used by many geotechnical engineers, as noted in our geotechnical report (Hart Crowser 2018a).
 - The permanent retaining wall resisting force of 82 kips/foot of wall is lower than loads used on other slope stabilization projects (170 to 190 kips/foot). Thus, if during final design, some additional load resistance is required, additional capacity can be provided, which also supports the feasibility of the proposed slope stabilization method.
- The horizontal force required to retain the Secondary Access Road was calculated using an iterative analysis method for the critical pseudostatic slope stability load case. The same profile, soil properties, and conditions were used in the calculation. In this method, a horizontal force was applied at the mid-point of the retained section to represent the resultant force applied by tiebacks. This force was increased until the critical slip surface reached the code required seismic factor of safety of 1.10 or greater. Figure 23b (attached) shows the critical slip surface, which is the general shape of an active wedge in lateral earth pressure analysis. By stabilizing this area of the slope (i.e. achieving a FS of 1.1 against failure within the roadway embankment) with a retaining force, the larger critical slip surface in the slope now occurs upslope in the location shown in Figures 23 and 23a, rather than through the retained backfill for the Secondary Access Road. The horizontal force is not directly providing a stabilizing force to the overall critical slip surface in the slope (Figure 23 and 23a, FS = 1.109). Instead, as discussed in Section 5.1.6.1 of our geotechnical report (Hart Crowser, 2018a), the stabilized/retained section of the Secondary Access Road acts as a buttress for the east slope to improve the overall stability over existing conditions. This action is demonstrated in our geotechnical report by the factor of safety increasing from the existing conditions (Figures 18 and 19, below code minimum FS) to the retaining wall with backfill option (Figures 22 and 23, above code minimum FS).



- The stability results on Figures 22 to 23b include a 250 psf traffic surcharge on the road.
- Stability results on Figures 22 to 23b include permanent basement wall drainage (see Drainage Plan in Geotechnical Report section).
- Figures 22a and 23a include excavation west of the railroad to elevation +6 feet, showing factors of safety above the code-required values. This excavation would be temporary for either removal of contaminated soil or construction of building basements. Final grades just west of the railroad will be raised to about elevation 50 feet, which will act as a resisting force to potential global instability extending from the east slopes under the railroad, which is unlikely. These figures only show the two minimum/critical slip surfaces above the proposed retaining wall and west of the railroad. However, the analysis included larger surfaces starting above the retaining wall and extending under both the retaining wall and the railroad; but, the safety factors were well above the code-required values.
- Perched groundwater was encountered in the five vibrating wire (VW) piezometers installed in three borings for the Secondary Access Road, as noted in Table 2 of our report. As noted in Section 5.1.6.1 (Section G-G' subsection, pages 22 to 23), perched groundwater was encountered at different elevations in the VW piezometers in the sand layers within the Lawton silt/clay layer. However, the stability analysis uses a conservative groundwater assumption that all soil below the highest perched groundwater elevation is saturated. Based on this conservative groundwater assumption, stability analysis shows that groundwater drainage control is not required, up the slope where the slip surface exists (Figures 22 to 23b), to achieve the required factors of safety for the Secondary Access Road. We are currently recording water levels in these VW piezometers for use in future stability analysis, but the groundwater elevations have not changed significantly, as shown in Table 2 below. See Drainage Plan in Geotechnical Report section later in this letter for discussion about building basement permanent drainage.
- Landslide runout does not have a broadly accepted standard of practice calculation method, nor methods for how it is applied in conjunction with slope stability analysis. In our opinion, the existing landslide runout records are suitable to be used for reference, but should be used with caution for design purposes. Site slopes range from about 40 percent near Section B to 20 percent near Section G, which are much less than the estimated pre-slide slopes of the Woodway landslide (70 percent). Thus, in our opinion, a Woodway-type slide runout is highly unlikely east of this project. From the runout studies we found, estimated runout distances for the 50th to 90th percentile slides were between about 200 to 300 feet, respectively, from the head scarp of landslides. If these rough estimated runout distances start from the head scarp of slip surfaces estimated in our slope stability analysis, the runout may not reach the base of the slope near the Secondary Access Road and Upper Plaza buildings. However, the shallow 20 percent slopes at Section G are likely closer to the lower end of the runout distances in the studies we reviewed. Additional measures that can be considered during final design to address the potential for runout



from shallow slides above the wall that may reach the base of the slope include: a) one wall on either side of the secondary access road (i.e., Figures 24 and 25 of the 2018 geotechnical report), b) increasing the height of retaining walls to extend above grade and designing them to withstand slide runout from shallow slides starting higher up slope, and/or c) designing the east side of buildings to have walls to withstand/retain slide runout for some height above final grades (e.g., reinforced concrete without windows or doors).

Table 2 – Vibrating Wire Piezometer Water Level Measurements

Boring ID	Approx. Ground Surface Elevation in Feet	VWP Elevation in Feet ¹	Date	Measured Head in Feet	Groundwater Depth in Feet	Groundwater Elevation in Feet
HC-1 ¹	243	229	May 6, 2015	7.6	6.4	236.6
			May 21, 2015	6.9	7.1	235.9
			May 26, 2015	6.9	7.1	235.9
		184	May 6, 2015	39.0	19.8	223.2
			May 21, 2015	40.0	18.7	224.3
			May 26, 2015	40.5	18.3	224.7
		129	May 6, 2015	55.3	58.7	184.3
			May 21, 2015	57.2	56.8	186.2
			May 26, 2015	58.0	56.0	187.0
		89	May 6, 2015	38.4	115.6	127.4
			May 21, 2015	38.2	115.8	127.2
			May 26, 2015	38.4	115.6	127.4
HC-10 ²	180	151	March 23, 2018	16.8	12.6	167.4
			to April 20, 2018	16.4-17.9	-	167-168.5
		121	March 23, 2018	50.5	9.0	171.0
			to April 20, 2018	50-51.3	-	170.5-171.8
		91	March 23, 2018	65.2	24.2	155.8
			to April 20, 2018	65.1-66.4	-	155.7-157
HC-11 ²	142	112	March 23, 2018	22.1	7.5	134.5
			to April 20, 2018	21.6-23.1	-	134-135.5
HC-12 ²	47	31	March 23, 2018	18.7	-2.2 ³	48.8
			to April 20, 2018	18.5	-2.1 ³	48.6

Notes:

1. HC-1 VWPs installed on April 22, 2015.

2. HC-10, -11, and -12 VWPs installed on February 22, 2018, February 26, 2018, and February 19, 2018 respectively.



3. Groundwater appears to be slightly above the ground surface due to either slight artesian conditions or VWP locations that shifted slightly during installation from their original elevations.

- A Sounder Station is planned to be located adjacent to the railroad under the northern overpass where the Secondary Access Road crosses over the railroad. This structure will have a retaining wall on its east side and provide access from the Urban Plaza down to the railroad for train transit. The retaining wall for this structure should have similar loads as the retaining wall for the Secondary Access Road since the slopes above it are similar height and slope angle as Section G-G'. As a result, items in this section are also applicable to the Sounder Station.

The stability analysis/calculations and information in this section show that the proposed retaining wall just east of the Urban Plaza is feasible to achieve the code-required factors of safety and provide greater protection than standard landslide setbacks and existing slope stability with FS below code required values. Note that setbacks simply locate structures farther from potential landslides, but do not improve slope stability. The proposed retaining wall/slope stabilization would be (during final design), and has preliminarily been, designed to increase slope stability to code-required factors of safety (improved from existing conditions) for the proposed secondary access road and other structures. Future final design work can be done to adjust slope stabilization measures to achieve the county code factors of safety, which will be more stable than standard landslide setbacks and existing slope stability.

Urban Plaza Building Location Alternatives and Retaining Wall

Location Alternatives. We understand from the project architect (Perkins+Will) that buildings in the Urban Plaza (including the Sounder Station) need to be located in the front part of the site because the multi-modal transportation center has to be located here by the railroad, existing entry road, and proposed Secondary Access Road; and for other reasons noted in Attachment 1 of our June 22, 2018 landslide hazard deviation request letter.

Secondary Access Road Retaining Wall Protects Urban Plaza Buildings. The retaining walls for the Secondary Access Road and road below the secondary access would protect the Urban Plaza Buildings in a similar manner. The slope stability information in the Secondary Access Road Retaining Wall section above is applicable for the Urban Plaza Buildings.

Geotechnical Report

Purpose and Scope. Our 2018 geotechnical report (Hart Crowser 2018a), as well as 2015 and 2016 geotechnical reports referenced in our 2018 report, were developed to support preparation of an Environmental Impact Study (EIS) and address specific geotechnical engineering questions from EA Engineering and County Planning and Development Services (PDS), per Section 2.1 and 2.2 of our 2018 report. Additional geotechnical engineering was completed based on PDS comments in their October 6, 2017 review letter. Our geotechnical reports indicate that analyses and calculations are preliminary to



support planning-level decisions and demonstrate feasibility of site development concepts, but that final design analyses are required. As noted in the County's May 9, 2018 Supplemental Staff Recommendation (page 22), "It is appropriate for an applicant to provide specific details regarding the design of structures at a later stage, such as the time of building permit review. However, at this stage in the permitting process, the applicant must demonstrate the *feasibility* of the structures."

Geotechnical Feasibility. In our opinion, as professional geotechnical engineers, our analyses and preliminary recommendations are adequate to demonstrate the geotechnical engineering aspects of the proposed development (slope stability, foundation support in liquefiable soil, etc.) are feasible to design and construct as discussed in this letter and in our reports. We have indicated items that would require additional geotechnical investigation, analysis, and design recommendations during later final design stages of the project. Such items that we indicate can be done later are less critical items that, in our professional opinion, are not needed to demonstrate the geotechnical feasibility of the project. The following list discusses and/or clarifies items PDS staff indicate are critical to determine the feasibility of geotechnical aspects of the project at this time.

- Our 2018 geotechnical report and this letter include slope stability analysis at locations, that, in our opinion, represent critical conditions for a location (i.e., combination of steep slope, high slope height, high groundwater, etc). We did this to determine existing slope stability and demonstrate slope stabilization is feasible where needed above the Secondary Access Road. Section G-G' has steeper and higher slopes than other locations above the Secondary Access Road.

Section B-B' at the north part of the east slopes has steeper and higher slopes than other areas along the east slopes. Buildings west of these slopes, and west of the railroad, are beyond the landslide hazard area setback and west of the proposed grade separation wall on the west side of the railroad. The grade separation wall would essentially block landslide runout from reaching these buildings.

- Building basement excavations west of the railroad may encounter groundwater that may require temporary construction dewatering. Section A (Figure 7 Hart Crowser 2018a) shows some borings with time of drilling groundwater levels a few feet above the proposed basement bottom elevation of 6 feet, but other groundwater levels have groundwater below elevation 6 feet. Dewatering only a few feet is not a critical item that would determine if excavation is feasible or not. Several methods may be used to lower the water level, if needed, including ditching and sump pumps, wells, or well points. These methods are routinely used and would be determined during a later design stage. At that time, potential impacts of dewatering on the railroad would be determined. If this is a concern, a sheet pile cutoff wall (or continuous secant piles or soil freezing) could be installed near the railroad such that dewatering would not detrimentally affect the railroad.



- **Drainage Plan.** Permanent drainage of the slope above the Urban Plaza is not necessary to stabilize the slope above the Secondary Access Road, based on slope stability results. However, surface water along the upslope edge of the Secondary Access Road would be collected and conveyed to the creek diversion structure. Subsurface drainage adjacent to the up slope edge of the road and building basement retaining walls is needed to avoid the buildup of hydrostatic pressure on the retaining wall(s) as shown on Figure 2A (attached). The civil drainage plans for the Upper Bench and access road show relocating the existing diversion structure further up Chevron Creek above the retaining wall. Both the existing and new diversion structures collect the creek into a pipe with an outfall into Puget Sound. Figure 2A shows one feasible drainage configuration for surface and subsurface drainage for the road, retaining wall, and building basement wall. The permanent basement wall drainage would likely include a typical wall drainage layer and perimeter perforated collection pipe with either gravity drainage in a solid wall pipe or a pump to convey water to the existing creek diversion pipe. Final drainage configurations would be determined during final design.
- Section 6.2.2.1 of our 2018 geotechnical report (and our prior reports Hart Crowser 2005, 2016a, 2016b) indicates additional work needs to be done to provide geotechnical seismic design information for International Building Code (IBC)-based building structural design. However, sufficient information is available to determine the feasibility of building support in liquefiable soil. In our opinion, the site is suitable for development, provided that appropriate foundation support and/or ground improvement method(s) are used. Section 7.1.2 of our 2018 geotechnical report discusses several different methods that are feasible and likely to be used to support residential towers, including, but not limited to, ground improvement (e.g., stone columns, rammed aggregate piers, grouting, soil mixing, etc.), deep foundations (drilled shafts, augercast piles, driven piles, etc.), overexcavation and replacement with structural fill, and groundwater drainage. All these methods are commonly used in local practice for development in liquefaction-susceptible soil. Selection of a specific building support method would be done at a later design stage when structural load information is determined, and be based on geotechnical final design recommendations. One likely foundation support method would be to support buildings on deep foundations that transfer loads down to dense bearing soil below the liquefiable soil with ground improvement along the west part of the site to limit liquefaction and lateral spreading. We have used these methods on numerous recent local projects.
- Liquefaction susceptibility on site was evaluated using the Idriss & Boulanger (2008) method for standard penetration test (SPT) blow counts from both historical and recent borings on site (Figure 26). For fine-grained soils, liquefaction susceptibility was further evaluated using the Bray & Sancio (2006) method, based on Atterberg limits and natural water contents of exploration samples (Figure 27). Fine-grained samples of higher plasticity and lower water contents are generally not expected to liquefy, and these characteristics were determined for the majority of samples that have Atterberg limits laboratory tests. Atterberg limits and water content information was used to classify the general geologic units (i.e. Lawton Clay, Glacial Outwash, Transitional Beds, etc.) as “non-



susceptible". Figures 26 and 27 (new figures, attached) illustrate our findings on the liquefaction potential across the site: including the Lower Bench, the Upper Bench, and the East Slope.

- **Slope:** Liquefaction potential in the slope east of the site is low (~5% of mid slope and ~4% of upper slope on site samples [5 or 112]). Some isolated, small pockets exist that may liquefy in the event of a design-level earthquake, although these are thin (generally 1- to 4-feet thick) and discontinuous within the slope (see Figure 9A). Some shallow areas of soil that exhibit liquefaction susceptibility do exist, but these are above the measured groundwater table and thus will not liquefy. The groundwater table in the area of the Secondary Access Road has shown very minor fluctuation (less than a few feet in Table 2) for the duration of our measurements, suggesting saturation of these areas is unlikely.
 - **Upper Bench:** The Upper Bench area, east of the railroad, shows potentially liquefiable soils within the top 20 feet in boring MW-122 at the western-most edge of the area and pockets of deeper susceptibility in E-101 (about 150 feet south of site). Borings towards the east (HC-12) and north (MW-95), closer to the bottom of the slope, show high factors of safety against liquefaction. In the event of a design-level earthquake, the Upper Bench may experience liquefaction in western and southern portions of the area. The disparity between the two sides of the area is likely due to the transition between glacially deposited soils in the bluff to loose, granular shoreline deposits toward the Puget Sound, or loose fill to the west if a sidehill cut was used to create the bench. About 14 percent of samples in this site area are susceptible to liquefaction.
 - **Lower Bench:** We performed liquefaction analysis on selected representative deeper widely distributed borings in the Lower Bench. This analysis shows a widespread potential for liquefaction (about 27% of samples) in the upper 50 feet. The shoreline deposits in this area are loose, granular, and saturated materials. Figure 26a shows no fine-grained samples in the borings analyzed from the Lower Bench.
- As noted in the Secondary Access Road section above and Section 5.1.6.1 of our 2018 geotechnical report, groundwater elevations were measured with several piezometers and included in slope stability analysis using conservative groundwater level assumptions. Thus, groundwater conditions in this area are reasonably well defined for this stage in a project.
 - Site access includes bridges/overpasses over the railroad. These bridges could be supported by a variety of methods, including shallow foundations and retaining walls designed for static and seismic loads. This would likely require shallow foundations and retaining walls on ground improvement as mentioned in Section 7.5.1 of our 2018 geotechnical report. Several deep foundation support options could also be used such as drilled shafts, augercast piles, and/or driven piles, as discussed in Section 7.5.2 of our 2018 geotechnical report. The existing bridge over the railroad appears to be



pile supported, indicating deep foundations are feasible. These methods are routinely used and would be determined during a later design stage, once structural loads are determined.

Local Projects with the Same Geotechnical Considerations

Several local projects have the same geologic hazards and used similar geotechnical analysis and design methods to address the geologic hazards. The following local projects have used the general methods discussed above and in our 2018 geotechnical report, which demonstrates the feasibility of the proposed geotechnical methods.

Amgen/Expedia Campus, Pier 88 and 89, Seattle, Washington

- Stone column ground improvement to prevent liquefaction induced lateral spreading.
- Deep foundation support in liquefiable soil.

Federal Center South, Duwamish Valley, Seattle, Washington

- Stone column ground improvement to prevent liquefaction-induced lateral spreading.
- Deep foundation support in liquefiable soil.

West Point Wastewater Treatment Plant, Discovery Park, Seattle, Washington

- Permanent soldier pile and tieback retaining wall in landslide area.
- Deep foundation support in liquefiable soil.

Puget Sound Bluff Estate, Shoreline, Washington

- Permanent soldier pile and tieback retaining wall in landslide area.

Issaquah Residential Campus, Issaquah, Washington

- Permanent drilled shaft, tieback, and anchor block retaining walls in landslide area.

Sound Transit Maintenance Building and Access Ramps, Duwamish Valley, Seattle, Washington

- Stone column ground improvement to prevent liquefaction near deep foundations.
- Stone column ground improvement to prevent liquefaction and support mechanically stabilized earth walls.
- Deep foundation support of structures in liquefiable soil.

West Seattle Bridge, Duwamish Valley, Seattle, Washington

- Stone column ground improvement to prevent liquefaction near deep foundations.
- Deep foundation support of structures in liquefiable soil.



BSRE Point Wells, LP
June 22, 2018

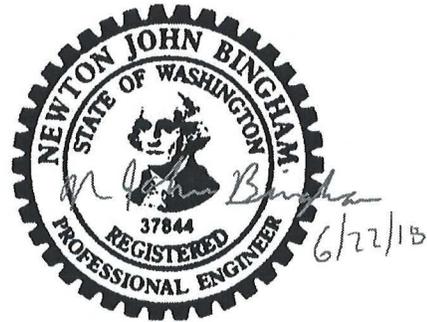
17203-54
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We trust this letter provides the required information. Please let us know if you or others have any questions about the content of this letter.

Sincerely,

HART CROWSER, INC.

BARRY S. CHEN, PHD, PE
Senior Principal



N. JOHN BINGHAM, PE
Senior Associate, Geotechnical Engineer

Attachments:

- Figure 2a Conceptual Drainage Plan for Secondary Access Road
- Figure 9a Liquefaction and Slickenside Potential in Generalized Subsurface Cross Section G-G'
- Figure 22a Section G-G' Wall with Backfill – Static
- Figure 23a Section G-G' Wall with Backfill – Pseudostatic
- Figure 23b Section G-G' – Retaining Force Calculation (Pseudostatic)
- Figure 26 Liquefaction Analysis of SPT Samples
- Figure 27 Fine Grained Soils Liquefaction Susceptibility

References

- Bray, J. D., & Sancio, R. B. (2006). Assessment of the liquefaction susceptibility of fine-grained soils. *Journal of geotechnical and geoenvironmental engineering*, 132(9), 1165-1177.
- Hart Crowser 2018a. Subsurface Conditions Report: Point Wells Redevelopment, April 20, 2018.
- Hart Crowser 2018b. Landslide Area Deviation Request Information, Point Wells Redevelopment, June 22, 2018.
- Idriss, I. M., & Boulanger, R. W. (2008). *Soil liquefaction during earthquakes*. Earthquake Engineering Research Institute.



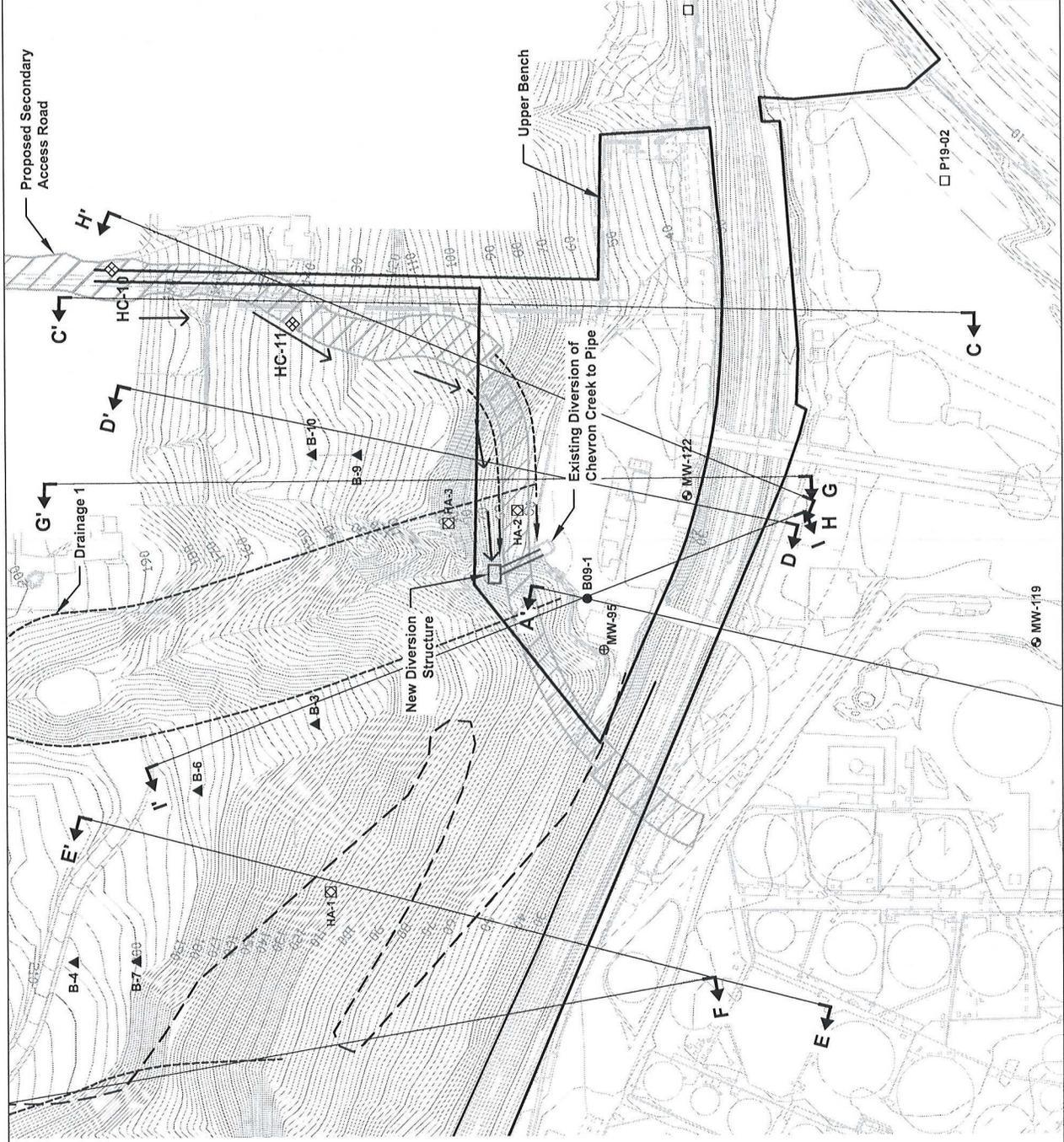
BSRE Point Wells, LP
June 22, 2018

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Perkins + Will 2018. Point Wells Development, Urban Center Review Response, Combined [Plan] Set,
April 25, 2018.

Snohomish County 2007. Snohomish County Code, Chapters 30.62A - Wetlands and Fish & Wildlife
Habitat Conservation Areas and 30.62B Geologic Hazardous Areas.

L:\Notebooks\1720354_Point Wells EIS Geotech Analyses\Deliverables\Letters\06-2018 geot addendum Itr\Geotechnical Letter Addendum
06.22.2018.docx



Legend

- HC-10 \diamond Hart Crowser boring (2018)
- HC-1 \blacklozenge Hart Crowser boring (2015)
- HA-1 \boxtimes Hart Crowser hand auger (2015)
- B09-1 \bullet Hart Crowser boring (2009)
- MW-110 \odot Hart Crowser monitoring well (2008)
- B-483+00 \blacksquare HWA boring (2007)
- B-1 \blacktriangle ECI boring (2004)
- P19-03 \square CDM boring (2003)
- AP-39 \odot KHM boring/well (2001)
- MW-99 \circ KHM monitoring well (2001)
- MW-95 \oplus Pacific Environmental Group monitoring well (1998)
- MW-79 \odot Converse NW monitoring well (1991-1992)

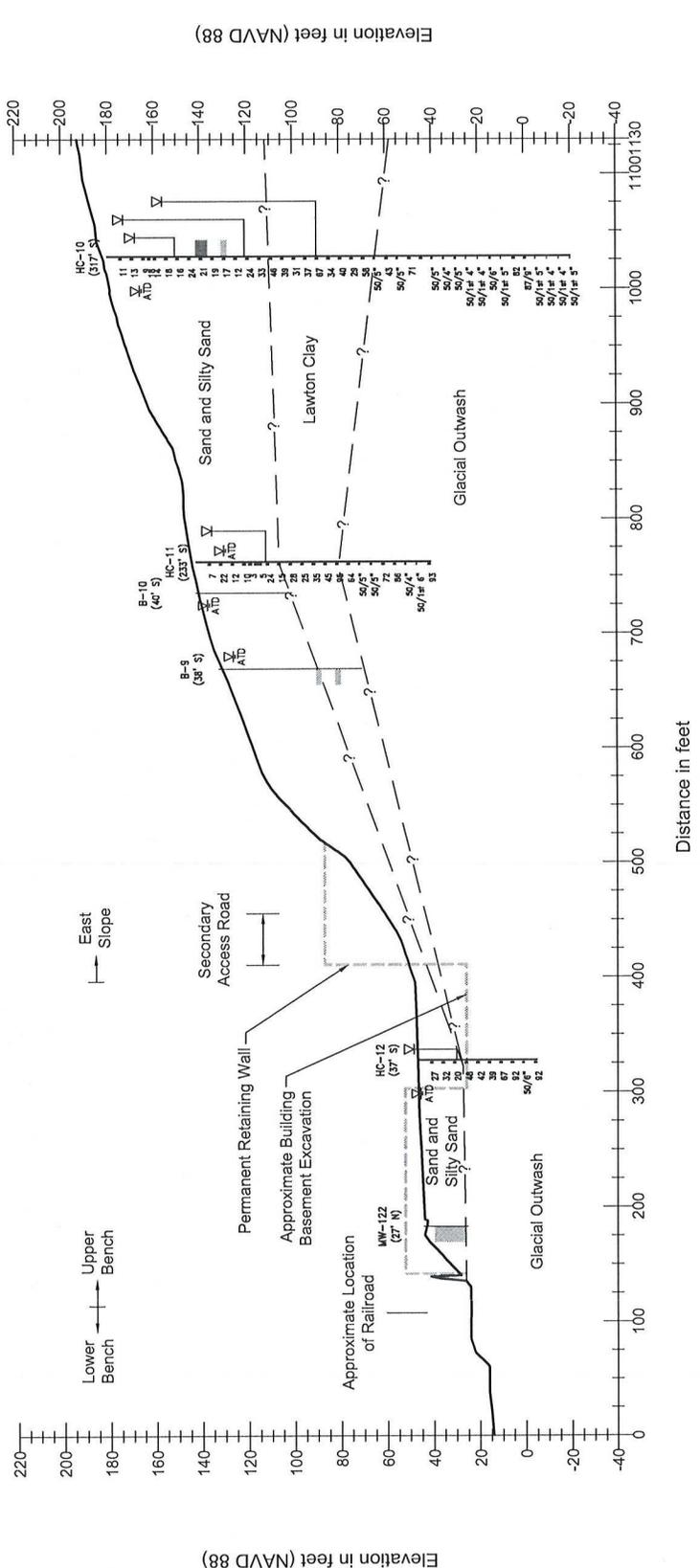
A A' Cross section/slope profile designation

- - - Abandoned access road
- Surface drainage (see Drainage Plan text)
- - - Subsurface wall or building drainage (See Drainage Plan text)

Note: Explorations shown are 20 feet or deeper. Previous shallower explorations are not shown.



Point Wells Richmond Beach, Washington
Conceptual Drainage Plan for Secondary Access Road
17203-54
6/18
Figure 2A



Horizontal Scale in Feet
 0 100 200

Vertical Scale in Feet
 0 50 100
 Vertical Exaggeration x 2

Point Wells
 Richmond Beach, Washington

Liquefaction and Slickenside Potential in Generalized Subsurface Cross Section G-G'
 17203-54
 6/18

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Figure
9A

- Legend**
- █ Possible Slickensides
 - █ Possible Liquefaction
 - Exploration Number (Offset Distance and Direction)
 - Exploration Location
 - ▽ A/D Water Level
 - ▽ A/D Vibrating Wire Piezometer and Measured Groundwater Head
 - Standard Penetration Resistance in Blows per Foot

Notes:

1. Contacts between soil units are based upon interpolation between borings and represent our interpretation of subsurface conditions based on currently available data.
2. Slopes appear steeper than they actually are because of vertical exaggeration used for figure clarity. See Figure 4 for slope profile without vertical exaggeration.
3. See text and Figures 26 and 27 for further discussion of the potential liquefaction and slickensides observed in the borings shown here and in other borings across the site.
4. Liquefaction is not typically expected within the Lawton Clay. Possible zones of liquefaction in the Lawton Clay in boring B-9 represent thin layers of interbedded sands within the geologic unit.

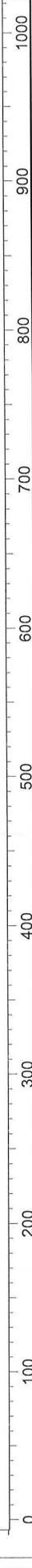
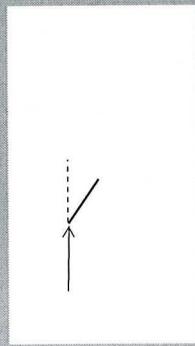
Material Name	Color	Unit Weight (lbs/ft ³)	Cohesion (psf)	Phi (deg)
Sand and Silty Sand	[Light Gray Box]	120	0	30
Lawton Clay	[Medium Gray Box]	120	50	33
Glacial Outwash	[Dark Gray Box]	125	0	38
Wall	[Black Box]	150	10000	42

1.966

1.800

78000.00 lbs/ft

W



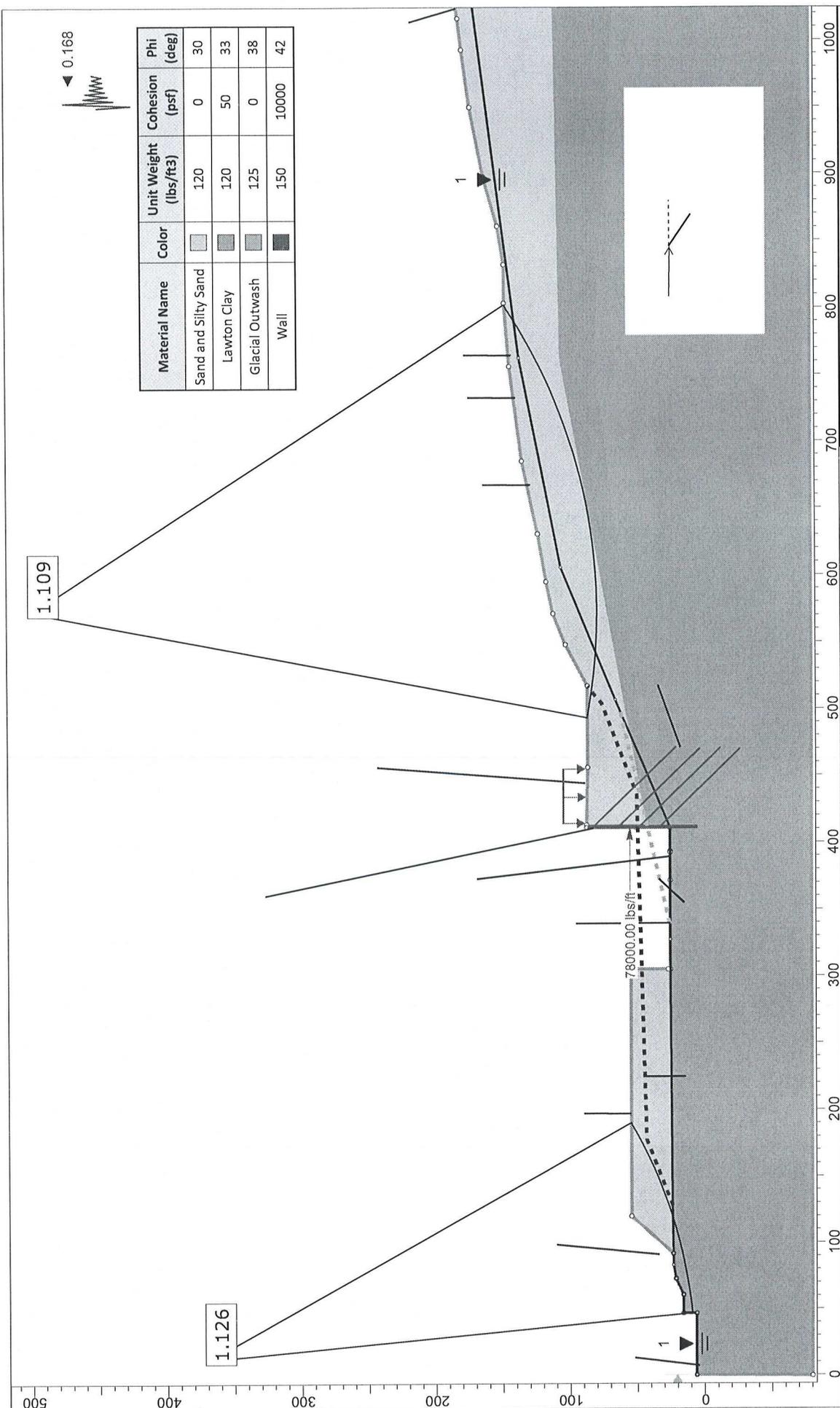
Point Wells
 Richmond Beach, Washington

Section G-G'
 Wall with Backfill - Static

17203-54 Scale 1:1200

HARTCROWSER

5/18
 Figure
22a



Material Name	Color	Unit Weight (lbs/ft ³)	Cohesion (psf)	Phi (deg)
Sand and Silty Sand	[Light Gray Box]	120	0	30
Lawton Clay	[Medium Gray Box]	120	50	33
Glacial Outwash	[Dark Gray Box]	125	0	38
Wall	[Black Box]	150	10000	42

Point Wells
Richmond Beach, Washington

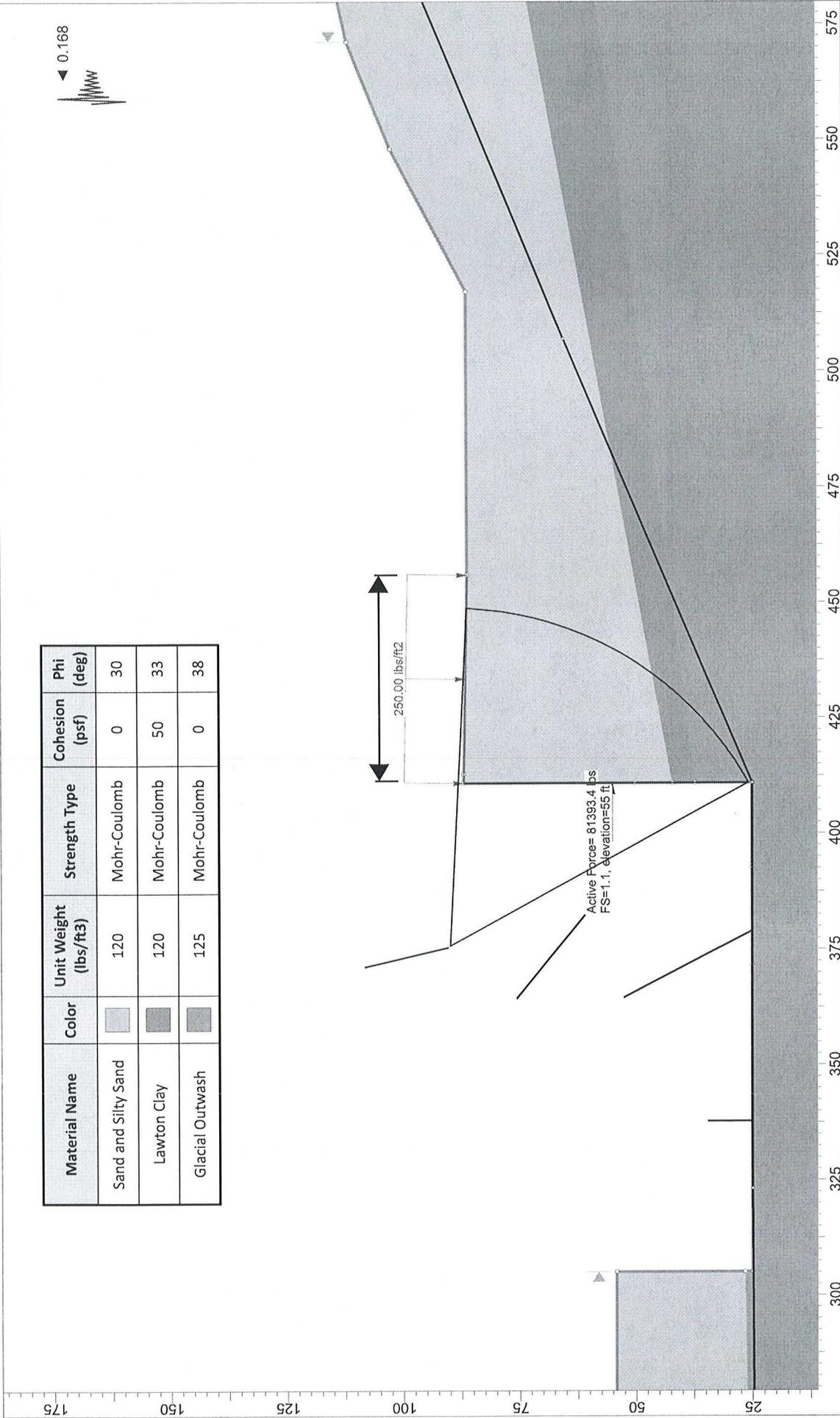
Section G-G'
Wall with Backfill - Pseudostatic

17203-54 Scale 1:1200 5/18

Figure
23b

HARTCROWSER

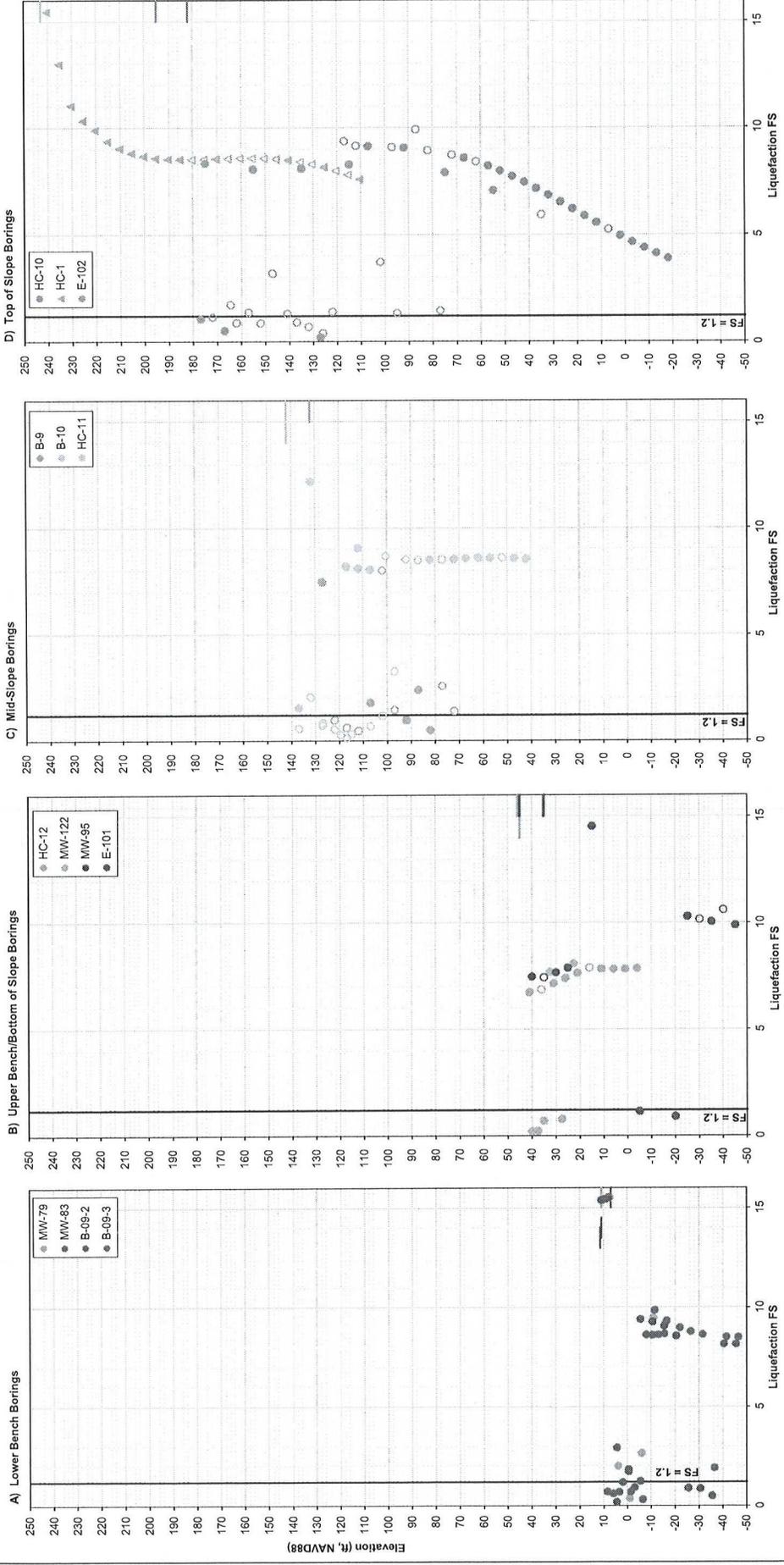
Material Name	Color	Unit Weight (lbs/ft ³)	Strength Type	Cohesion (psf)	Phi (deg)
Sand and Silty Sand		120	Mohr-Coulomb	0	30
Lawton Clay		120	Mohr-Coulomb	50	33
Glacial Outwash		125	Mohr-Coulomb	0	38



Point Wells
Richmond Beach, Washington

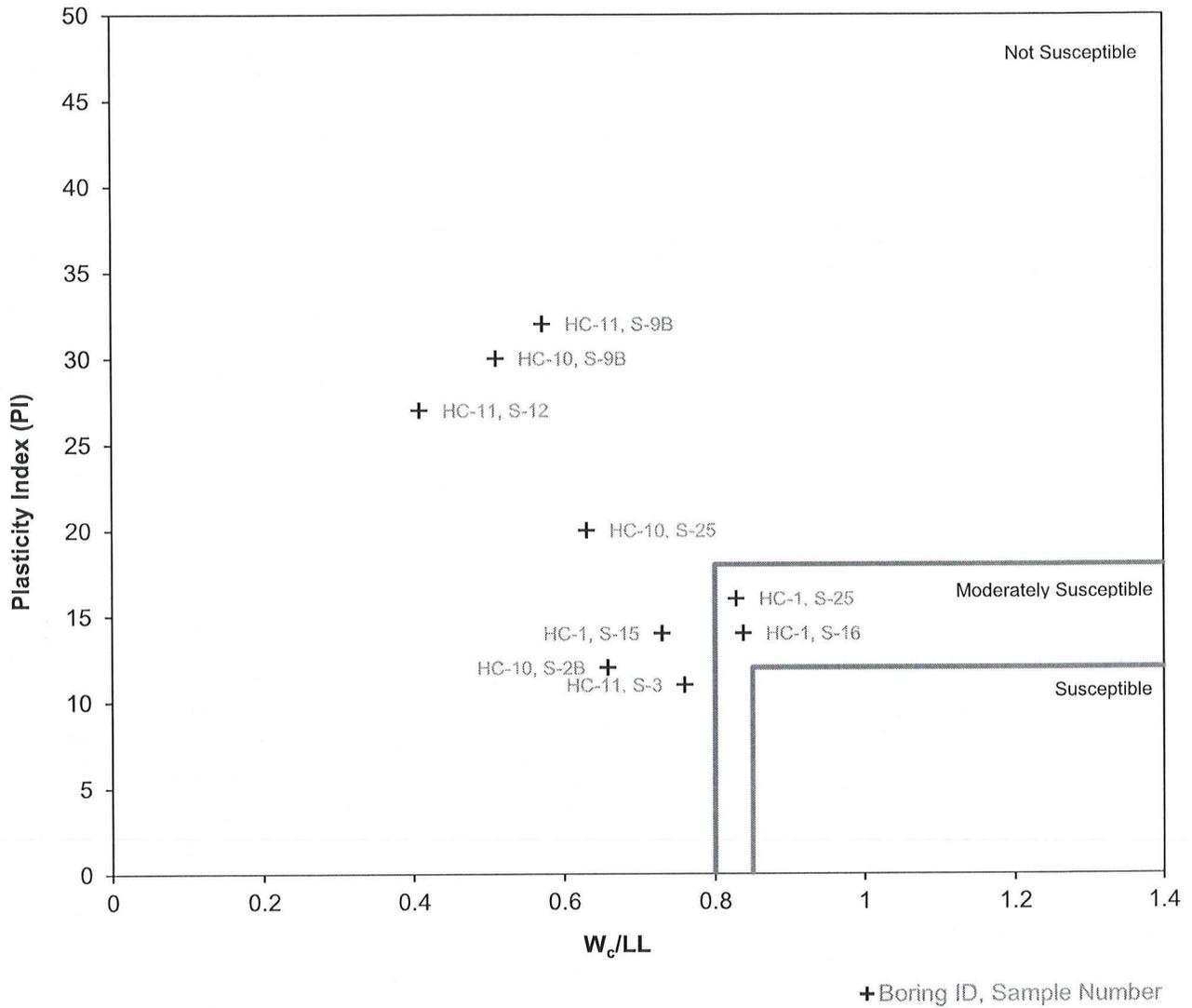
**Section G-G' - Retaining Force Calculation
(Pseudostatic)**

17203-54 Scale 1:350 06/18
 Figure
23B



Notes:

1. Liquefaction potential evaluated based on SPT blow counts using the Idriss & Boulanger (2008) method.
2. Hollow data points represent fine-grained samples that are not expected to liquefy, regardless of FS shown above. Fine grain liquefaction susceptibility was evaluated for select samples using Atterberg lab data and the criteria of $WcLL < 0.8$ and $PI > 18$ (Bray & Sancio, 2006). See text for further explanation.
3. A factor of safety of 1.2 is used per the Washington Dept of Transportation Geotechnical Design Manual (GDM) section 6.4.2.3.



Notes:

1. Liquefaction susceptibility of fine grained soils was evaluated using the method presented in Bray & Sancio (2006).
2. The data plotted above represents samples from both historical and recent borings on site. See Figure 2 of the Subsurface Conditions Report (Hart Crowser, 2018) for boring locations.

Point Wells Richmond Beach, Washington	
Fine Grained Soils Liquefaction Susceptibility	
17203-54	06/18
 HARTCROWSER	Figure 27

Addendum 5



HARTCROWSER

June 22, 2018

Mr. Douglas Luetjen
BSRE Point Wells, LP
c/o Karr Tuttle Campbell
701 Fifth Avenue, Suite 3300
Seattle, Washington 98177

**Re: Landslide Area Deviation Request Based on Preliminary Analysis
 Point Wells Redevelopment
 Unincorporated Snohomish County, Washington
 17203-54**

Dear Mr. Luetjen:

We have revised this letter to address items in the County's May 9, 2018 memorandum (from Randolph Sleight) that commented on our original April 24, 2018 landslide deviation request letter and items in the June 1, 2018 County Findings of Fact/Conclusions of Law document for the hearing examiner. In this letter, we clarify project information supporting the request for a deviation for development in a landslide area at the Point Wells Redevelopment (Project) in unincorporated Snohomish County, Washington. Our June 22, 2018 Subsurface Conditions Report Addendum provides much of the information and clarifications referenced in this letter and is intended to accompany this letter.

In this letter, we discuss requirements of the Snohomish County Code for landslide hazard areas (SCC 30.62B.320 and .340, 2007 version in effect when project vested in 2011) and shows how these requirements have been met. This letter requests two separate deviations for developing the proposed a) Secondary Access Road and b) buildings (including the Sounder Station) in the Urban Plaza in a landslide hazard area after satisfying the SCC 30.62.320 and .340 requirements. The intent of this letter is to determine if these deviation requests are approvable by the County once the final design is completed following the general approach suggested by our current preliminary analysis. If these deviation requests are not approvable at this time, we request the opportunity to discuss with Mr. Sleight what specific additional final design items would be needed to receive approval.

Project Background

The proposed project will be a mixed-use (i.e., residential, retail, commercial, and public recreation) urban center development with multiple low- to high-rise buildings, supporting infrastructure, an open space, and a secondary access road. Additional project information was provided in the April 2018 submittal to Snohomish County Planning and Development Services (PDS).



Landslide Area Regulations

Items Satisfying Landslide Hazard Area Requirements

The following items list SCC 30.62B landslide hazard area requirements and reference specific April 2018 protect submittal documents and our June 2018 geotechnical addendum letter (Hart Crowser 2018d) that satisfy these requirements. Items are organized using SCC 30.62B numbering.

SCC 30.62B.140 Geotechnical Report Requirements

- (1) and (2) are satisfied by Sections 3 to 6 and Figures 2 to 12 in the April 20, 2018 geotechnical report (Hart Crowser 2018a) with the following exceptions.
 - (2)(c) is not applicable since the site is not near one of the listed channel migration zones.
 - (2)(d) impervious surfaces, wells, and drain facilities, etc. are provided in the existing survey plans (EX1 and EX2), summarized on Figure 3 of the geotechnical report, and Figure 3 of the hydrogeologic report (Hart Crowser 2018c).
 - (2)(h) proposed development is described in detail on the April 25, 2018 project plans (Perkins + Will 2018).
 - (2)(j) drainage methods are shown in general on Figure 2a and discussed in the geotechnical letter addendum (Hart Crowser 2018d), discussed in Section 7.1.1 of the geotechnical report (Hart Crowser 2018a), and generically indicated on the civil drainage plans (C-300 series, Perkins + Will 2018), discussed in the drainage reports (MIG | SvR 2018a and 2018b).
 - (2)(k and l) existing vegetation, vegetation management, and vegetation mitigation/restoration plans are included in the critical areas report (especially Critical Areas Report [CAR] Section 9, David Evans & Associates 2018) and discussed in Sections 5.1.5 and 7.1.1 of the geotechnical report (Hart Crowser 2018a).
 - (2)(m) upland erosion is discussed in Sections 6.4 and 7.1.4 of the geotechnical report (Hart Crowser 2018a). Coastal erosion, due to wind and wave action, as well as shoreline stabilization methods, are discussed in the coastal engineering report (Moffat & Nichol 2018).

SCC 30.62B.320 General Standards and Requirements for Landslide Hazard Areas

- (1)(a)(i) geotechnical reporting is satisfied, as noted in the prior section.
- (1)(a)(ii) would be satisfied by using best management practices (BMPs) and all known and available reasonable technology (AKART) of 30.63A SCC, as determined appropriate by PDS for final design. At this preliminary stage of the project, preliminary BMPs are shown on the Civil temporary erosion and sedimentation control plans (C-200 series plans, Perkins + Will 2018), discussed in the drainage reports (MIG | SvR 2018a and 2018b), and discussed in Sections 6.4, 7.1.4, and 7.2 of the geotechnical report (Hart Crowser 2018a).



- (1)(a)(iii) collection, concentration, or discharge of stormwater or groundwater within the landslide hazard area will be addressed by methods noted in the response above to SCC 30.62B.140(2)(j). This will improve slope stability from current wet slope conditions by controlling surface water and groundwater.
- (1)(a)(iv) secondary access road will increase impervious surfaces on the slope some, but the added drainage improvements for the road would be designed to control surface and groundwater, which will improve slope stability from current wet slope conditions. Removal of vegetation for the secondary access road would be minimized to the extent practicable. Minimizing removal of vegetation and improving slope vegetation as recommended in Section 7.1.1 of the geotechnical report (Hart Crowser 2018a) would help reduce surface water infiltration, erosion, and shallow sloughing. Mitigation and restoration plans in the CAR (especially Section 9, David Evans & Associates 2018) should improve the habitat function for the project overall.
- (1)(b)(i) the risk of property damage, death, or injury from potential landslides will decrease from current conditions by slope stabilization retaining walls designed to resist landslide static and seismic forces, as noted in Sections 5.1.6.1, 6.1, and 7.1.1 of the geotechnical report (Hart Crowser 2018a). Additional measures that can be included during final design to provide additional protection include: a) two walls on either side of the secondary access road (i.e., Figures 24 and 25 of the 2018 geotechnical report), b) increasing the height of retaining walls to extend above grade and designing them to withstand slide runout from shallow slides starting higher up slope, and/or c) designing the east side of buildings to have walls to withstand/retain slide runout for some height above final grades (e.g., reinforced concrete without windows or doors).
- (1)(b)(ii) erosion hazard would be controlled by BMPs and AKART methods, as noted in (1)(a)(ii) above.
- (1)(b)(iii) surface water discharge would be controlled and improved from current conditions on the east slope near the secondary access road and conveyed to the base of the slope to existing conveyance pipes, which will reduce slope instability and sedimentation, as discussed in (1)(a)(ii) and (1)(a)(iv) above.
- (1)(b)(iv) impacts to wetlands, fish, and wildlife habitat conservation areas are discussed in Section 9 of the CAR (David Evans & Associates 2018).
- (2) shoreline stabilization measures are discussed in the coastal engineering report (Moffat & Nichol 2018) and setbacks and protection of wetlands and habitat conservation measures are discussed in Sections 3, 8, and 9 of the CAR (David Evans & Associates 2018).
 - (2)(a) the existing shoreline bulkhead will be removed, riprap will be removed, the shoreline slope flattened (effectively setting it back), and the shoreline restored to natural habitat



conditions (see CAR Section 9, David Evans & Associates 2018). Thus, existing shoreline stabilization will be replaced using flatter slopes and natural coarse gravel instead of structural stabilization measures (Moffat & Nichol 2018).

- (2)(b) landslide stabilization measures consisting of a retaining wall for the secondary access road are necessary to stabilize the slope to achieve adequate factors of safety per SCC 30.62B.340(3)(b), as discussed in the next section.

SCC 30.62B.340 Landslide Hazard Area

Secondary Access Road

- **(2) Alternate Locations Considered.** Construction of the secondary access road is required by PDS. We understand its location is required to be different than the existing site southern access via Richmond Beach Drive, which leaves access routes to the northeast and southeast as possible options. Our August 2016 report (Hart Crowser 2016) shows access routes considered (Appendix E) to the northeast (Abandoned Access Road) and southwest (current Secondary Access Road). Both locations are located in landslide hazard areas. The northeastern option required more grading in wet areas and the Abandoned Access Road was displaced in places, suggesting less stable conditions (Figure 5 Hart Crowser 2018a). The current southeast Secondary Access Road location shown on Plan A-051 and in the geotechnical report (Figures 5 and 10, Hart Crowser 2018a) encounters fewer geologic critical areas, especially landslide hazard areas than the northeast location. The southeast location is also in an area that has flatter average slopes (Figure 4, Sections E, F, and G, Hart Crowser 2018a). Thus, the southeastern access route option is more suitable than the northeast route. However, final design will need to follow final geotechnical design recommendations for subgrade preparation, drainage, and stabilization measures.
- **(2) Geotechnical Report Demonstrates Code Required Protection is Provided.** The proposed retaining wall for the secondary access road would improve slope stability above current conditions to satisfy the required factors of safety in SCC 30.62B.340(3)(b), as discussed in Sections 5.1.6.1 and 7.1.1 of the geotechnical report (Hart Crowser 2018a). The geotechnical addendum letter (Hart Crowser 2018d) clarifies how the stability analysis for the retaining wall demonstrates it is feasible to achieve the required factors of safety in SCC 30.62B.340(3)(b). Key points are summarized below.
 - The retained height of the retaining wall (Figures 22, 22a, 23, and 23a; 'a' designates updated figures in the addendum letter) permanently supports about 40 feet above final grades. The lower 20 feet below grade would temporarily support building basement wall lateral earth pressures until building basement floor slabs and walls are complete. Once complete, building walls and slabs would transfer lateral earth loads on the east side of the basement to soil on the opposite, or west, side of the building. The number of rows of tiebacks can be designed to be adjustable to include the lower 20 feet of wall at different times to accommodate different building phasing scenarios.



- Geotechnical slope stability analysis/calculation results Figures 22 to 23 (including 22a and 23a) show how a generic retaining wall providing 82,000 pounds per foot of wall of resisting force achieves the required County factors of safety. Several retaining wall options could be used. Figures 22a and 23a of our addendum letter demonstrate how a permanent soldier pile and tieback retaining wall system is feasible to provide these loads (including soldier pile and tieback geometry and loads).
 - Section 5.1.6.1 of our report (page 23) discusses how a high strength (i.e., cohesion of 10,000 pounds per square foot [psf]) was used in the stability analysis (results in Figures 18 - 25) to represent the retaining wall (typically steel and concrete) that would be designed to be structurally strong enough so slip surfaces do not go through it.
 - A high cohesion (10,000 psf) was not used for soil, as noted above.
- Figures 22a and 23a include excavation west of the railroad to elevation +6 feet, showing factors of safety above the required values. See our June 2018 addendum letter for a more detailed discussion.
- Perched groundwater was encountered in the five vibrating wire (VW) piezometers installed in three borings for the secondary access road, as noted in Table 2 of our report. As noted in Section 5.1.6.1 (Section G-G' subsection, pages 22 to 23), perched groundwater was encountered at different elevations in the VW piezometers. However, stability analysis used a conservative groundwater assumption that all soil below the highest perched groundwater elevation is saturated. Based on this conservative groundwater assumption, stability analysis shows that groundwater drainage control was not required upslope of the road to achieve the required factors of safety for the Secondary Access Road.
- Landslide runout does not appear to be a requirement in SCC 30.62B, nor is there a well-accepted standard of practice for how it is used and applied in conjunction with slope stability analysis. In our opinion, the existing landslide runout methods are suitable to be used as estimates, but should be used with caution for design purposes. Site slopes range from about 40 percent near Section B to 20 percent near Section G, which are much less than the estimated Woodway pre-slide slopes (70 percent). Thus, in our opinion, a Woodway type slide runout is highly unlikely east of this project. Estimated runout distances, from the references we found, for the 50th to 90th percentile slides studied were between about 200 to 300 feet, respectively, from the headscarp of landslides. If these rough estimated runout distances start from the headscarp of slip surfaces estimated in our slope stability analysis, the runout should not reach the base of the slope near the secondary access road and Upper Plaza buildings. Slopes at Section G are very flat, so are likely closer to the lower end of the runout distances in the studies we reviewed.



- (2)(b)(ii)(A) indicates that alternate setbacks must provide protection that is equal to standard setbacks. Standard setbacks keep structures away from unstable slope conditions, but do not increase or improve slope stability (i.e., do not change the hazard). The proposed retaining wall would provide equivalent protection to the standard setbacks by designing the wall to provide the resisting force noted above to increase slope stability to code required factors of safety. Thus, an appropriately designed and constructed retaining wall would reduce the slope instability hazard.
- The geotechnical report and addendum letter meet the requirements of SCC 30.62B.320, as discussed in the prior section.
- (3)(a) vegetation removal would be minimized, as discussed in SCC 30.62B.320(1)(a)(iv) and the vegetation management and restoration are discussed in the CAR (David Evans & Associates 2018).
- (3)(b) slope stability factors of safety are satisfied, as discussed in (2) [Geotechnical Report] above.
- (3)(c and d) different retaining wall and slope stabilization options (single wall and multiple stabilization tiers) are presented in the geotechnical report (Hart Crowser 2018a) that satisfy this and the prior item.
- (3)(e) utility lines would be constructed along the secondary access road according to these requirements, as the existing utilities in this sloped area are now.
- (3)(f) stormwater, surface water, and collected groundwater along the secondary access road would be collected and conveyed down slope to a suitable discharge point, as discussed in SCC 30.62B.140(2)(j) and SCC 30.62B.320(1)(a)(iii) above.

Urban Plaza Buildings (Including Sounder Station)

This section is intended to be a separate deviation request, from the Secondary Access Road, for the buildings in the Urban Plaza. These proposed buildings are currently located within a landslide hazard area, which would be protected by a future retaining wall(s) and/or other slope stabilization methods.

(2) Alternate Locations. We understand from the project architect (Perkins+Will) that buildings in the Urban Plaza (including the Sounder Station) need to be located in the front part of the site because the multi-modal transportation center has to be located by the railroad, existing entry road, and proposed secondary access road, as well as other reasons. See Attachment 1 for specific building siting considerations.

(2) Geotechnical Report Demonstrates Code Required Protection is Provided. The same comments as noted above for the Secondary Access Road apply.



Other Items

We understand the Secondary Access Road grading widths have recently been revised to stay within the property limits for the eastern narrow section of this road. We understand that short retaining walls would be used on one or both sides to achieve these requirements unless agreements are reached with adjacent property owners or the Town of Woodway during final design. In our opinion, this type of change should be geotechnically feasible and can be determined during a later design stage.

Conclusions

In summary, our findings and recommendations are:

- The proposed development would not decrease and would actually increase slope stability and improve drainage conditions on the slope by the secondary access road and above the Urban Plaza. We are of the opinion that current slope stability analysis demonstrates feasible options to achieve the code required slope stability factors of safety.
- Some items to completely satisfy SCC 30.62B would need to be completed during final design stages when final design plans are being completed. These items include, but are not limited to, final geotechnical design stability analysis, slope stabilization recommendations, permanent drainage recommendations, and building support recommendations.
- If the proposed development is designed, constructed, operated, and maintained in conformance with the appropriate construction practices, County regulations, and final design geotechnical recommendations by Hart Crowser and other design team members; slope stability, drainage, and habitat protection, mitigation, and restoration are unlikely to be degraded by the proposed development (many would be improved). County requirements for SCC 30.62B could be satisfied during the later design stages.
- Based on our review of the documents included in the April 2018 submittal to PDS, we are of the opinion that a deviation to allow development in the landslide hazard area can be completed to satisfy the requirements of SCC 30.62B.140, SCC 30.62B.320, and SCC 30.62B.340.



BSRE Point Wells, LP
June 22, 2018

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We trust this letter provides the required information. Please let us know if you or others have any questions about the content of this letter.

Sincerely,

HART CROWSER, INC.



N. JOHN BINGHAM, PE
Senior Associate, Geotechnical Engineer

Attachments:

Attachment 1 Landslide Hazard Areas Revision [SCC 30.62B.340 alternate location criteria] letter by Perkins+Will dated June 21, 2018

References

David Evans and Associates, 2018. Critical Areas Report, BSRE Point Wells, LP, Redevelopment Project, April 2018.

Hart Crowser 2018a. Subsurface Conditions Report: Point Wells Redevelopment, April 20, 2018.

Hart Crowser 2018b. Point Wells Urban Center, Environmental Remediation Approach, Memorandum April 20, 2018.

Hart Crowser 2018c. Point Wells Redevelopment, Hydrogeologic Report, April 20, 2018.

Hart Crowser 2018d. Subsurface Conditions Letter Addendum: Point Wells Redevelopment, June 22, 2018.

Hart Crowser 2016e. Draft Final, Subsurface Conditions Report, Point Wells Redevelopment, Prepared



BSRE Point Wells, LP
June 22, 2018

17203-54
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for BSRE Point Wells, LP by Hart Crowser, August 4, 2016. MIG | SvR 2018a. Point Wells Development, Preliminary Short Subdivision Submittal, Targeted Stormwater Site Plan Report, April 24, 2018.

MIG | SvR 2018b. Point Wells Development, Urban Center Submittal, Targeted Stormwater Site Plan Report, April 24, 2018.

Moffat & Nichol 2018. Coastal Engineering Assessment, Point Wells Redevelopment, June 2018.

Perkins + Will 2018. Point Wells Development, Urban Center Review Response, Combined [Plan] Set, April 25, 2018.

Snohomish County 2007. Snohomish County Code, Chapters 30.62A - Wetlands and Fish & Wildlife Habitat Conservation Areas and 30.62B Geologic Hazardous Areas.

L:\Notebooks\1720354_Point Wells EIS Geotech Analyses\Deliverables\Letters\06-2018 LHA dev rqst\Landslide Area Deviation Request Letter 6-2018.docx

Addendum 6

PERKINS+WILL

June 21, 2018

Doug Luetjen
BSRE Point Wells, LP
c/o Karr Tuttle Campbell
701 5th Avenue
Suite 3300
Seattle, Wa 98104

Re: Point Wells, SCC 30.62B.340 Landslide hazard areas. Revision

Dear Mr. Luetjen,

Attached please find revisions to the request for a variance to *Former SCC 30.62B.340 Landslide hazard areas*.

The variance request is made to allow for the placement of five buildings (UP-T1-3, Envac collection terminal, Community Service Building) on the Urban Plaza at the Point Wells project as well as for a covered parking garage and bus terminal that serve the Point Wells site and the surrounding neighborhoods.

The Snohomish County Code states that: *(1) Development activities, actions requiring project permits and clearing shall not be allowed in landslide hazard areas or their required setbacks unless there is no alternate location on the subject property. And further: (b) Deviations from setbacks may be allowed when the applicant demonstrates that the following conditions are met: (i) there is no alternate location for the structure on the subject property.*

In this letter, we are addressing the 'alternate location' criterion.

The design team tested and evaluated other locations for the site amenities and services provided on the Urban Plaza. These locations and their deficiencies proved to be unfeasible as alternatives. A variance request for a feasible and safe design solution was submitted. The criteria listed below support the request and illustrates why alternate locations did not qualify.

Urban context: The site is located at the south-west corner of the Snohomish County Comprehensive Plan area. As a future Urban Center, the Point Wells development requires a strong connection to and integration with neighboring zones. The urban plaza as an entry element is a necessary physical connection from the east side of the BNSF railroad tracks to the development west of the tracks. It provides access to amenities as the planned grocery stores, medical offices and a bus transit hub for the surrounding zones. We do not consider moving these functions east across the bridge to any other portion of the site as an alternate location

The proposed location of structures favors view corridors for the neighboring sites to the south and east and effectively reduces the building bulk within these view corridors. The building massing is equally distributed and appropriate for the zoned use. The comprehensive plan states that Residential net densities shall not be less than 12 dwelling units per acre (about 60 units for this site). The preferred design follows this guideline placing three mixed-use buildings and two lower service buildings on the Urban Plaza.

Onsite security, site services in central location: The community service center and Envac garbage disposal system are centrally located at the entry to the site and in the closest proximity to the surrounding neighborhoods to ensure quick

response times and site safety. Retaining and building walls stabilize slope conditions to the east protect the services buildings.

Traffic and site circulation: The Urban Plaza is a tightly connected system of paths and essential program elements. It is in direct connection to Richmond Beach Drive, the main access point to the development. The plaza will be connected via a bridge to a rail station on its north side. The planned 2-story parking garage below the main plaza level accommodates the transit hub as well as parking, loading docks and service vehicle access. The pedestrian environment and its safety is enhanced by keeping larger vehicles such as buses and garbage trucks below grade. Locating these functional spaces in an alternate location would lead to extensive loss of landscaped areas and large impervious ramps to make up for grade change. Increased traffic volumes on the bridge would create bottlenecks and unsafe conditions for public use. The proposed building massing mitigates traffic noise from the trains and road traffic to uphill parcels.

The development comprehensive plan would be complemented by an approval of this request. The location of this particular part of the development is in a key position and builds a strong connection to the surrounding neighborhoods. The proposed design is a complex urban assembly of uses and circulation for this particular location. There are no alternate locations available that could achieve a comparably positive result.

Sincerely,

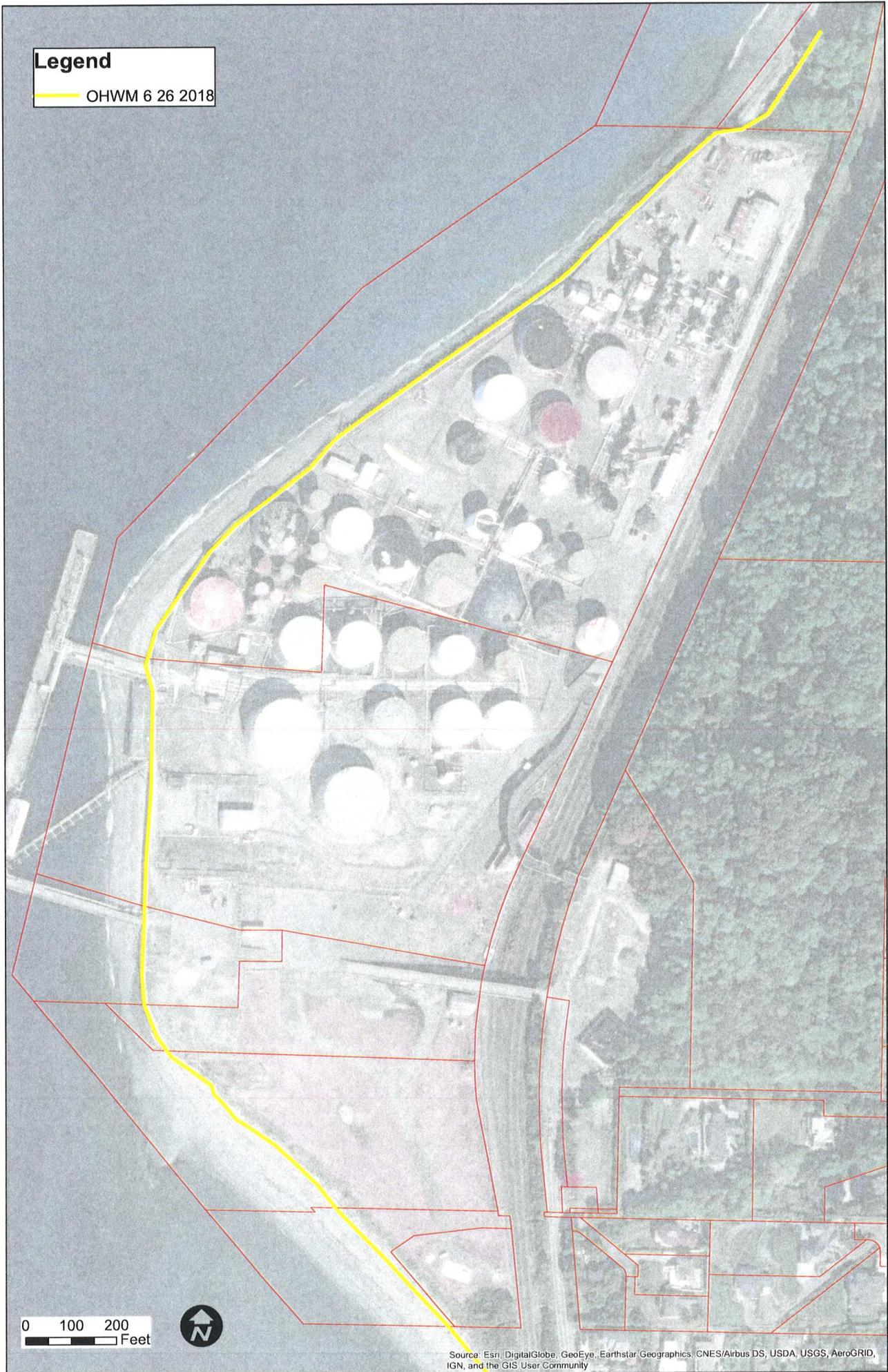
Carsten Stinn, LEED

(Senior Project Architect)

Addendum 7

Legend

— OHHM 6 26 2018



0 100 200 Feet



Addendum 8

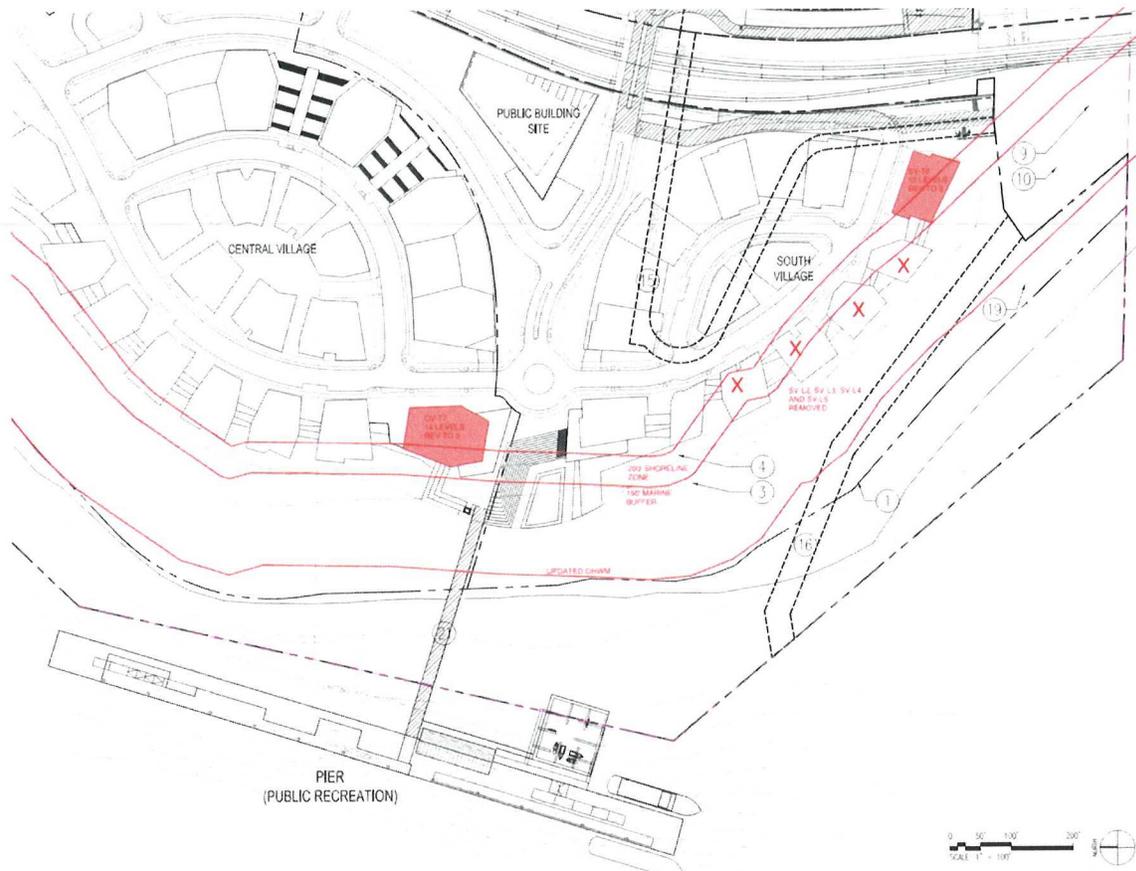
July 9, 2018

Doug Luetjen
BSRE Point Wells, LLP
c/o Karr Tuttle Campbell
701 5th Avenue, Suite 3300
Seattle, WA 98104

Re: Point Wells - Revised Ordinary High Water Mark Site Impacts

Dear Mr. Luetjen,

I am writing in regards to the revised Ordinary High Water Mark provided by DEA on July 6, 2019. The revised outline is overlaid on the existing site plan sketch as shown below.



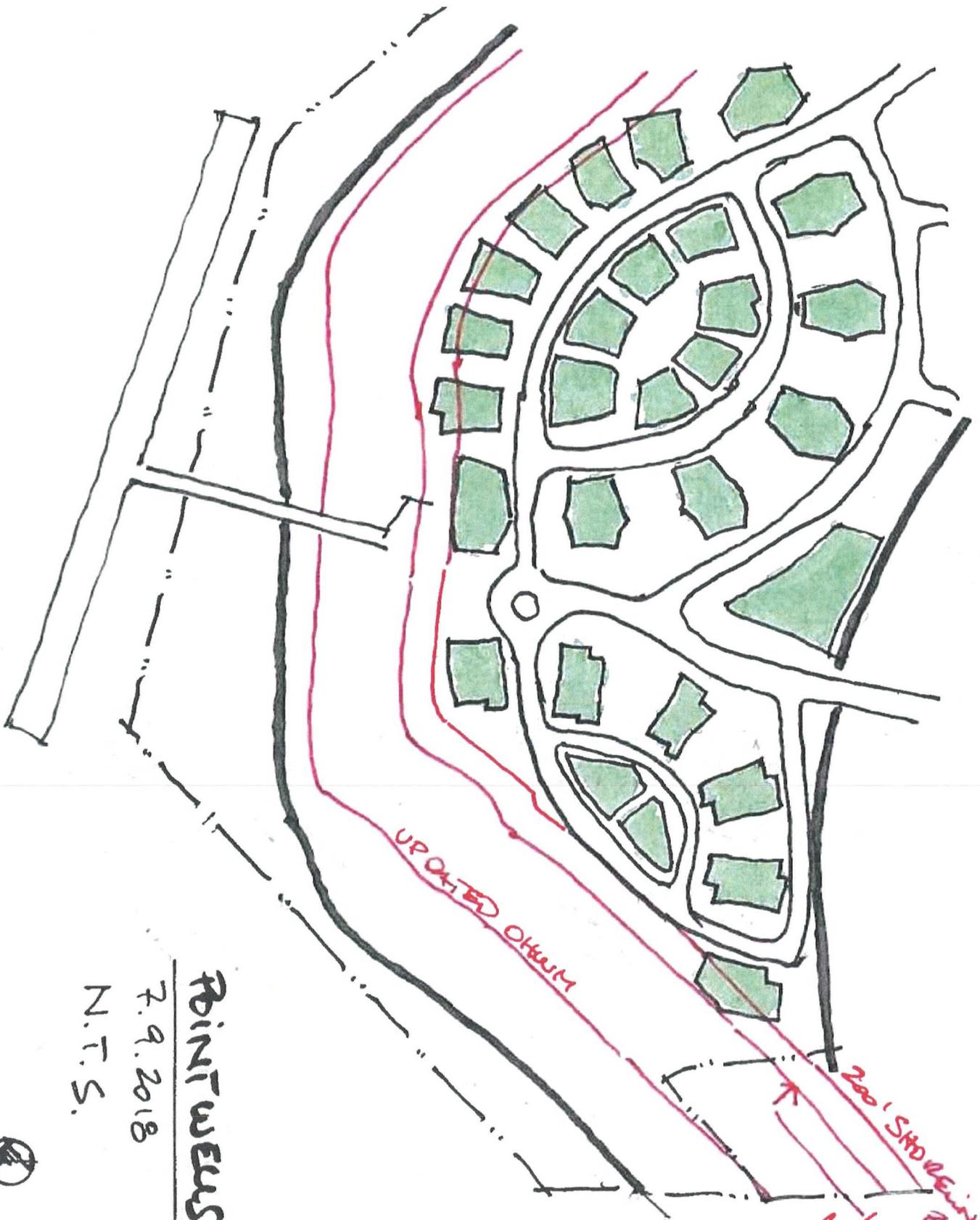
The architectural site design could be revised to comply with requirements of the code with approximately 2-4 weeks of effort. The change would include eliminating four (4) of the South Village low buildings along the esplanade (SV-L2, SV-L3,

SV-L4 AND SV-L5 – 45 units) and reducing the height of one tower in the Central Village (CV-T7) and one tower in the South Village (SV-T6) to 3 levels (91 units and 66 unit reductions respectively). The net impact would be a reduction of 202 units.

Based on alignment of below grade parking in the Central Village, parking area would be affected on both levels. There would be a net reduction of parking area to impact approximately 20 stalls.

Sincerely,

Dan Seng LEED® AP, BD+C
Associate Principal



UPDATED OUTLINE

200' SHORELINE ZONE
150' MARINE BUFFER

FBINI WEUS

7.9.2018

N.T.S.



Addendum 9

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SNOHOMISH COUNTY HEARING EXAMINER

BSRE POINT WELLS, LP ,)
Appellant)
v.)
SNOHOMISH COUNTY PLANNING AND)
DEVELOPMENT SERVICES,)
Respondent.)

NO. 11-101457 LU
DECLARATION OF DOUGLAS A. LUETJEN

I, Douglas A. Luetjen, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

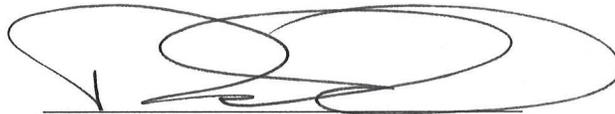
1. I am counsel for BSRE POINT WELLS, LP in the above matter. I make this declaration based on personal knowledge and I am competent to testify to the matters stated herein.
2. BSRE Point Wells, LP (“BSRE”) holds the leasehold rights to certain aquatic lands owned by the Washington Department of Natural Resources (the “DNR”) pursuant to that certain Aquatic Lands Lease (the “Aquatic Lands Lease”). In 2010 BSRE acquired the leasehold rights under the Aquatic Lands Lease and certain of the assets associated therewith, along with the real estate known as Point Wells.
3. On August 19, 2017 representatives of BSRE (including myself and Steve Ohlenkamp) met with DNR officials to discuss the process by which the Aquatic Lands Lease

1 would either be replaced with a new form of aquatic lands lease or the existing Aquatic Lands
2 Lease would be amended. The DNR representatives in attendance included Brenda Werden, DNR
3 Easement Land Manager, Tammy Armstrong, DNR Land Manager, Aquatic Resource Division,
4 Orca-Straits District, and Mary Huff, DNR District Manager.

5
6 4. At this meeting in August 2017, we discussed the issue of changing the authorized
7 uses on the dock to be consistent with the Point Wells Urban Center (as a non-industrial use). We
8 agreed that the approach would be to wait until the Urban Center Project was approved before
9 negotiating a new Aquatic Lands Lease Agreement (such that the industrial uses could continue
10 on the dock until such time the Urban Center Project was approved and the industrial uses were
11 terminated).

12
13 5. Since this meeting in August 2017 we have had several telephone conversations
14 and the exchange of emails with DNR representatives on these and other issues, specifically during
15 April and May of 2018.

16 DATED this 9th day of July, 2018 in Seattle, Washington.

17
18 

19 Gary D. Huff, WSBA #6185
20 Douglas A. Luetjen, WSBA #15334
21 J. Dino Vasquez, WSBA #25533
22 Jacque E. St. Romain, WSBA #44167
23 **KARR TUTTLE CAMPBELL**
24 701 Fifth Avenue, Suite 3300
25 Seattle, WA 98104
26 Telephone: 206-223-1313
27 Facsimile: 206-682-7100
Email: dvasquez@karrtuttle.com
Attorneys for Appellant

DECLARATION OF SERVICE

I, Heather L. Hattrup, affirm and state that I am employed by Karr Tuttle Campbell in King County, in the State of Washington. I am over the age of 18 and not a party to the within action. My business address is: 701 Fifth Ave., Suite 3300, Seattle, WA 98101. On July 9, 2018, I caused a true and correct copy of the foregoing document to be filed with the Snohomish County Hearing Examiner. I caused the same to be served on the parties listed below in the manner indicated.

Matt Otten
Snohomish County Prosecuting Attorney
Robert Drewel Building
3000 Rockefeller Avenue, 8th Floor, M/S 504
Everett, WA 98201

Via U.S. Mail
Via Hand Delivery
Via Electronic Mail
Via Overnight Mail
CM/ECF via court's website

Snohomish County Hearing Examiner
3000 Rockefeller Avenue, M/S 405
Everett, WA 98201

Via U.S. Mail
Via Hand Delivery
Via Electronic Mail
Via Overnight Mail
CM/ECF via court's website

/s/ Heather L. Hattrup

Heather L. Hattrup
Assistant to J. Dino Vasquez and
Jacque E. St. Romain