

SNOHOMISH COUNTY COUNCIL

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BEFORE THE SNOHOMISH COUNTY COUNCIL

SNO-KING WATERSHED COUNCIL,

Appellant,

v.

SNOHOMISH COUNTY
DEPARTMENT OF PLANNING AND
DEVELOPMENT SERVICES,

Respondent,

and

PACIFIC RIDGE HOMES DRH LLC,

Applicant, Appellant, and Respondent

Re: Appeal of DNS for Clover Road
Assemblage, aka Ironwood

NO. 20-102399-PSD/SPA/REZO/WMD

NOTICE OF APPEAL

This is an appeal of the Hearing Examiner’s decision, dated January 19, 2021, approving the Ironwood Rezone and Preliminary Plat and denying Sno-King Watershed Council’s (SKWC) appeal of the SEPA Determination of Non-significance associated with the same. For the following reasons, the County Council should reverse the decisions, because the decision was not supported by substantial evidence in the record (SCC 30.72.080(2)(d)), and the Hearing Examiner failed to follow applicable procedure in that he did not address all issues in our appeal (SCC 30.72.080(2)(b)); and

1 the Hearing Examiner's decision was based on an error of law to the extent he believed, erroneously,
2 that the Project's numerous environmental impacts and code deficiencies can be cured later, at the
3 LDA permitting level (SCC 30.72.080(2)(c)).

4 **I. The Project**

5 The Ironwood Project is located along North Road, immediately east of the City of
6 Lynwood, located at 17710, 17622 Clover Road, 109, 129, 131, 117, 113, Bellflower Road and
7 17721 North Road, Bothell, WA, in unincorporated Snohomish County.
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9 Nearly the entire site is designated by Washington State Department of Fish and Wildlife
10 (WDFW) as a Priority Habitat Species (PHS) Area. The PHS program provides land use decision
11 support to clients such as local governments, tribes, government agencies, non-governmental
12 organizations, and landowners. The site contains habitat for sensitive species such as Pileated
13 Woodpecker, and roosting habitat for Bald Eagles.
14

15 Most of the Ironwood site is heavily forested and is bisected by a deep ravine, which was
16 formerly the outlet stream from Martha Lake to North Creek as shown on Snohomish County maps
17 from 1895. At some time prior to 1945, Martha Lake Creek was diverted into its present channel
18 discharging into Swamp Creek.

19 Pacific Ridge proposes to fill this ravine with 50,000 cubic yards of imported fill dirt from an
20 unspecified source and 50,000 cubic yards of soil excavated from on-site. The project will construct
21 a monumental concrete retaining wall, approximately 40 feet high, spanning the width of the ravine.
22 The wall will act as heat reflector, which will impact vegetation in the wetland buffer to the east, and
23 potentially the wetland itself. In addition, the construction of 88 lots will add acres of new
24 impervious surface.
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1 Pacific Ridge has not provided the conceptual mitigation plan for impacts to critical area
2 buffers. A large area of the Wetland A buffer will be destroyed during construction of the tall
3 retaining wall and surface water runoff will be diverted such that the hydroperiod of Wetland A will
4 not be maintained.

5 Pacific Ridge has also failed to mitigate impacts on the Wetland B buffer. Its plans treat the
6 wetland as a landscape area rather than critical area that will be destroyed during construction of the
7 retaining wall on Lot 28. The only buffer mitigation plan offered to date addresses only Wetland A
8 and is limited to buffer width adjustments using buffer averaging.

9 There has been no acknowledgement of the permanent and temporary impacts associated
10 with construction activities within the buffers. SCC 30.62A.150 lists elements required in critical
11 area mitigation plans and states “For development activities that require approval by the hearing
12 examiner, the director may allow mitigation plans to be submitted in two phases: a conceptual phase
13 and a detailed plan phase”. Given the proposed complete devastation of wetland buffers during wall
14 construction, the conceptual mitigation plan must be included in SEPA review.

15 The proposed stormwater treatment and detention plan states that the outfalls from Central
16 Basin bioretention cell at the base of the 40-foot high retaining wall must be inspected and
17 maintained. However, the civil plan indicates no access to allow for such actions. As a result,
18 maintenance will result in additional adverse impacts to Wetland A and its buffer. The location of
19 the outlets at the base of the tall retaining wall immediately adjacent to the Wetland A buffer will
20 require repeated disturbance to the buffer whenever maintenance is necessary. Site plans do not
21 include any requirements to report on these repeated disturbances, nor the need for a mitigation
22 report, restoration implementation, monitoring, and annual reports per SCC 30.62A.150. To correct
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1 these deficiencies, the Wetland A buffer must be adjusted to include a dedicated access road of
2 reasonable width along the base of the retaining wall to avoid repeated impacts to critical area buffer.

3 Pacific Ridge also seeks to rezone portions of the Ironwood site to a higher density, thus
4 making Low Impact Development (LID) Best Management Practices (BMP's) infeasible, when it
5 would otherwise have been feasible at the current zoning density.
6

7 Pacific Ridge refuses to agree to haul in only clean, free-draining soil that would be suitable
8 for infiltration to avoid having to comply with the County's code requirement to provide Low
9 Impact Development, Best Management Practices.

10 **II. Decision on Appeal.**

11 The Hearing Examiner's decision approving Pacific Ridge's application is attached to this
12 notice of appeal. The decision includes the Hearing Examiner's decision to deny SKWC's appeal of
13 the Ironwood DNS.
14

15 **III. Specific Grounds for Appeal**

16 **A. Wetland A Was Incorrectly Typed.**

17 The Hearing Examiner has incorrectly categorized Wetland A, a Category II wetland, as a
18 lower-value Category III wetland, thus further increasing housing density on this site. *See* Decision,
19 Findings of Fact F.10 – F.15; § VI (A). These findings are not supported by substantial evidence but
20 rather contradicted by the evidence in the record. The failure to correctly type and adequately buffer
21 Wetland A results in noncompliance with SCC 30.62A.
22

23 The wetland rating form was revised at least four times, in a concerted effort not to rate the
24 wetland at the higher value it deserves—presumably to increase construction space by imposing a
25 smaller buffer. Exs. C-8 C-10 – C-11; L-1 – L-2. In the last rating attempt, it was purported that a
26 culvert was newly discovered that would lower the wetland's rating score. In reality, however, the

1 wetland should still have scored as a Category II. *See* Testimony of Lider, Brewster; Ex. N-26; N-
2 38.

3 In a further error, the Hearing Examiner refused to even consider the written report
4 documenting the Appellants argument that Wetland A had been incorrectly categorized as a Type III
5 wetland, rather than a Type II wetland. *See* Hearing Examiner Decision, § III (C) (declining to list
6 Ex. N-26). Regardless of whether a witness testified to this exhibit during the SEPA hearing, the
7 Hearing Examiner should have referred to it during his open-record review of the preliminary plat.
8

9 **B. The Hydroperiod of Wetland A Will Not Be Maintained.**

10 The wetland hydroperiod will not be maintained, and LID-BMP's will not be used, in
11 violation of the requirements in SCC 30.62A to protect wetlands. Almost all stormwater from the
12 Central Basin will be concentrated at a point location at the bottom of the ravine, robbing Wetland A
13 of groundwater recharge and the critical timing of water delivery that would have otherwise been
14 maintained prior to this development. Furthermore, the proposed stormwater treatment and detention
15 plan is inadequate to maintain code required discharge limits under the County's *Drainage Manual*.
16 This will create significant adverse impacts including loss of shallow subsurface groundwater
17 recharge that will impact summer base flows to North Creek resulting in higher water temperatures
18 with lower oxygen levels. *See* Testimony of Lider, Brewster. Exs. C-8 C-10 – C-11; L-1 – L-2. No
19 calculations were provided by Pacific Ridge to demonstrate that the wetland hydroperiod would be
20 maintained or that there will be no net loss of functions and values of the wetland as a result of the
21 structural or hydrologic modifications done to provide control of runoff and water quality (*See*
22 SNOCO Drainage Manual Appendix I-D, Para. B). The Hearing Examiner issued no findings on
23 this issue. To the extent the Hearing Examiner's non-findings on the modeling issue constitute an
24 endorsement of Pacific Ridge's erroneous modeling, the Hearing Examiner's decision is not
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1 supported by substantial evidence. To the extent his non-findings represent a failure to reach a
2 decision, the Hearing Examiner erred in failing to follow a required procedure.

3 **C. The Applicant's Stormwater Modeling Was Based on the Wrong Soil Type and**
4 **Used the Wrong Time Interval, Rendering Its Results Inaccurate.**

5 The Hearing Examiner failed to issue a ruling on the issue of whether Pacific Ridge used the
6 correct soil type and time interval in its modeling under the Western Washington Hydrological
7 Model (WWHM). As the testimony of Lider indicates, Pacific Ridge should have modeled the soil
8 as Type A/B, not Type C for the predeveloped condition.

9 Type A/B soil refers to glacier outwash soils with relatively low or moderate rates of surface
10 water runoff; while Type C soil refers to glacier till (aka hardpan), with a high potential for
11 stormwater runoff with an infiltration rate less than 0.3 inches per hour (*See* SNOCO Drainage
12 Manual, Vol. III, Table 3.1)

13 Not a single Pilot Infiltration Test (PIT) was run, nor were any other tests run to determine
14 infiltration capacity to determine *predeveloped* soil condition to model the predeveloped site
15 condition runoff or for LID design. No testing was done to determine whether Type C or Type A/B
16 soil should be used for *predeveloped* condition modeling under the WWHM. Instead, the Hearing
17 Examiner relied on a baseless opinion by Pacific Ridge and that none of the site is suitable for
18 stormwater infiltration. (*See* Decision, § VI (B)).

19 Type C soil may only be used for predeveloped modeling, if it can be shown that its
20 infiltration rate is less than 0.3-inches per hour. Drainage Manual, Volume III, Appendix III-B. The
21 rock chambers have been incorreced designed and modeled using Type C soil, rather than the Type
22 A/B soil that should have been used. As a result of Pacific Ridge's use of the wrong soil type,
23 Pacific Ridge designed an undersized detention that will increase in flow durations way above the
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1 one-half predeveloped 2-year flow to the 2-year flow with more than a 10% increase from the 2-year
2 to the 50-year flow. This will result in significant downstream bank erosion and streambed incising
3 that will not be mitigated under County Code and is not in compliance with the County's Drainage
4 Manual.

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6 Modeling the *predeveloped* soil as Type A/B would have demonstrated that under existing
7 conditions at the Project site, there is already substantial stormwater infiltration. Instead, Pacific
8 Ridge's erroneous use of Type C soil made it appear as if the Project site already generates a great
9 deal of stormwater runoff from impervious soils. Thus, modeling the wrong soil type makes it
10 appear as if adding impervious surface in the course of the Ironwood Project will not greatly increase
11 stormwater runoff. If the correct soil type had been modeled, it would have been apparent that the
12 Project will substantially increase stormwater runoff in violation of the Stormwater Manual. *See*
13 Testimony of Lider, Exs. N-29 – N-38.

14
15 Finally, the modeling used the wrong time interval. It should have used a 15-minute time
16 interval, not a one-hour time interval. *See* Testimony of Lider. PDS allowed Applicant's engineer to
17 submit an "abridged" set of WWHM calculations using a 1-hour time step rather than the 15-minute
18 time step required by the County's Drainage Manual. Lider correctly ran the WWHM calculations
19 showing that the design failed (*See* Ex. N-32, N-35). The 1-hour time step error was not disclosed in
20 the abridged calculations submitted by Pacific Ridge that were approved by PDS. It was only during
21 testimony at the hearing that Pacific Ridge's civil engineer Mr. Foster disclosed this error (*See*
22 Testimony of Foster). Had PDS required the applicant to provide an unabridged, complete portable
23 document file (pdf) printout of Pacific Ridge's WWHM calculations, or had PDS checked the
24 WWHM calculations, this error would have been immediately evident. However, PDS does not
25 check engineer's calculations, and hence this error went undiscovered until the hearing. The
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1 Hearing Examiner should have reversed the error when it was brought to his attention during Lider's
2 testimony.

3 Although the Hearing Examiner never ruled on the soil modeling or time interval issue, his
4 conclusions in § VI (B) indicate a belief that impermeable soil is present on the site. This conclusion
5 is not supported by substantial evidence.
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7 In addition, to the extent the Hearing Examiner's non-findings on the modeling issue
8 constitute an endorsement of Pacific Ridge's erroneous modeling, the Hearing Examiner's decision
9 is not supported by substantial evidence. To the extent his non-findings represent a failure to reach a
10 decision, the Hearing Examiner to reach a decision.

11 **D. The Bioretention Cells Do Not Comply with the Code and Are Harmful to the**
12 **Water Quality.**

13 The bioretention cells proposed are inadequate and harmful to the water quality. The Hearing
14 Examiner's decision to approve the bioretention cells was not based on substantial evidence. *See*
15 *Decision, § VI (B); Findings F-37 – F-45.*

16 SCC 30.91P.257 defines Pollution Generating Pervious Surfaces (PGPS) as:

17 "Pollution-generating pervious surfaces" or "PGPS" means any non-impervious surface
18 subject to vehicular use, industrial activities (as further defined in the glossary of the
19 *Drainage Manual*), or storage of erodible or leachable materials, wastes, or chemicals, and
20 which receive direct rainfall or the run-on or blow-in of rainfall, use of pesticides and
21 fertilizers, or loss of soil. Typical PGPS include permeable pavement subject to vehicular
22 use, lawns, and landscaped areas, including golf courses, parks, cemeteries and sports fields
(natural and artificial turf. (emphasis added).

23 Pacific Ridge proposes to construct five PGPS bioretention cells using lawn, nitrogen fixing
24 clover, and similar grasses, rather than the facultative plants recommended referenced in the
25 *Drainage Manual* Volume V, 7.3 Bioretention BMP's and Appendix 1 of the 2012 *Low Impact*
26 *Development Technical Guidance Manual for Puget Sound* for recommended plant species for

1 bioretention facilities. The PGPS bioretention cells are proposed as play fields, dog runs for pets to
2 relieve themselves, and will be treated like a park so that it can be counted as fulfilling part of the
3 project's open space requirements, rather than a stormwater treatment facility, similar to the Aravalli
4 site that was approved by the Hearing Examiner on March 17, 2017. *See* Testimony of Lider; Exs.
5 N-38 N-13 – N-14; B-2. The Hearing Examiner did not even consider and discarded evidence that
6 past bioretention facilities have been incorrectly designed by the Pacific Ridge. *See* Hearing
7 Examiner Decision, § III (C) (declining to consider Ex. N-14).

9 The fifteen-foot-deep rock chambers proposed by Pacific Ridge for the stormwater detention
10 storage are not an approved BMP and are subject to clogging over time. There is no way to clean or
11 regenerate deep rock chambers when they do become clogged with sediment, short of a massive,
12 expensive excavation and reconstruction project that a future homeowners' association will never be
13 willing to undertake. *Id.* Nor can this deficiency be remedied at the land-disturbing activity permit
14 phase as the Hearing Examiner suggests (Finding F-44; Conclusion C-9), because compliance with
15 the Drainage Manual is a requirement at this stage of the permitting process; it may not lawfully be
16 deferred to later stages (although later stages must also demonstrate compliance).

18 No water quality treatment is provided under the current design to the West Basin runoff.
19 The design shows the runoff from the pollution generating impervious surfaces (PGIS) running into
20 the bottom of the deep rock chamber, bypassing any treatment that would be provided via the
21 bioretention soil. *See* Testimony of Lider; Exs. N-38 N-13 – N-14; B-2.

23 The Hearing Examiner suggests in Condition 11.f, that the applicant provide a description of
24 how the rock chambers will be maintained, but no such description exists. Yet, once contaminated,
25 there is no way short of complete removal and replacement of a deep rock chamber to remedy a
26 clogged system. This replacement cost will be enormous and it is unlikely that any future

1 homeowners' association would have the funds to replace a deep rock chamber and even more
2 unlikely that Snohomish County would enforce the replacement of a deep rock chamber.

3 For these reasons, the bioretention cells do not comply with the code, and the Hearing
4 Examiner should be reversed.

5 **E. The Vegetation Plan Does Not Comply with the Code.**

6 The Hearing Examiner erred in finding the Ironwood vegetation plan compliant with the
7 code, SCC 30.42B, and 30.25. *See* Decision, § VI (E)(2)(d), (e). Ironwood's vegetation buffer relies
8 on "stealing" credit for from the Normandie Crest subdivision property, that Pacific Ridge does not
9 own. *See* Testimony of Rubenkönig, Ex. N-25.

10 The proposed landscaping does not meet the minimum site perimeter landscaping
11 requirements of SCC 30.25.020 and -.036, because there is an insufficient depth and density of
12 plantings. Nor does the proposed landscaping meet the criteria for a landscape modification approval
13 in SCC 30.25.040, because the landscaping proposed will not achieve an equal or better effect than
14 required landscaping as required by SCC 30.25.040(2)(a); it will achieve much less effect. Also, the
15 project does not fulfill the purposes of SCC 30.25.010(1)(a) (as required by SCC 30.25.040(2)(b)),
16 because it does not mitigate the incompatibility between the Ironwood homes, which rely on
17 substandard PRD lots, and the existing homes, which are on standard lots. *See* Testimony of
18 Rubenkönig, Ex. N-25.

19 Because the vegetation plan does not comply with the code and cannot be implemented by
20 Pacific Ridge without intruding onto property it does not own, the Hearing Examiner's approval of
21 the Project should be reversed.

22 **F. The DNS Was Not Based on Information Reasonably Adequate to Reach a**
23 **Determination. Instead, the DNS Was Wrongly Predicated on Code Compliance.**

1 PDS's DNS was based on the erroneous notion that the Ironwood Project would comply
2 with the County's regulations. For the reasons described above, it will not. While compliance with
3 local codes may be grounds to issue a DNS (WAC 197-11-158(2)(c)), where there is *non-*
4 *compliance* with local codes, it is grounds to issue a determination of significance. WAC 197-11-
5 330(3)(e)(iii). At the very least, it is grounds to re-examine the Project's environmental impacts,
6 rather than simply relying on the DNS for both analysis and mitigation.
7

8 The Hearing Examiner erred in finding that any non-compliance with the local code was not
9 grounds for reversal of the DNS. *See* Conclusions C-6 and C-9. First, compliance with the code is
10 required at this stage of permitting. Compliance may not be deferred to subsequent stages. Second, it
11 is not accurate to say that "non-compliance with development regulations does not necessarily mean
12 that significant adverse environmental impacts will result." *Id.* Instead, non-compliance with the
13 local code means environmental issues were insufficiently analyzed. WAC 197-11-330(3)(e)(iii). In
14 such a scenario, the only possible actions are either a Determination of Significance (to trigger an
15 EIS), or else a demand to Pacific Ridge to provide more environmental information. *See* WAC 197-
16 11-335. What is not permissible, however, is what has happened here: to issue a DNS predicated on
17 code compliance, without further environmental review. *See* Decision C-6 – C-11.
18

19 The impacts that should have been considered but were not include: the Project's impacts to
20 wetlands, including inadequate buffers plus the downstream-facing, 40-foot retaining wall that will
21 reflect heat into wetlands, resulting in further degradation; downstream stormwater impacts resulting
22 from inadequate retention and an erroneous calculation of existing infiltration rates; and the aesthetic
23 impacts of the non-compliant vegetation buffer.
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25 **G. Hearing Examiner did not allow sufficient time for Appellants to present their case**
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The Hearing Examiner failed to follow proper procedure by not allowing the Appellant adequate time to present their case. A hearing, including public testimony that would normally be held over a two or three-day period, was jammed into 1-day. The Appellant was not allowed time to present all witnesses. Indeed, the Hearing Examiner only allowed the Appellant five minutes to provide rebuttal testimony—a totally insufficient time to address the complex stormwater and wetlands issues involved in this project.

III. Conclusion

The County Council should order the following relief:

- 1. Reverse the Hearing Examiner’s decision upholding the SEPA threshold determination and vacate Snohomish County’s DNS.
- 2. Reverse the Hearing Examiner’s approval of the preliminary plat.

Respectfully submitted this 1st day of February, 2021.

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