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SNOHOMISH COUNTY COUNCIL

BSRE POINT WELLS, LP ,)	
)	NO. 11-101457 LU
Appellant)	11-101461 SM
	)	11-101464 RC
v.	)	11-101008 LDA
	)	11-101007 SP
SNOHOMISH COUNTY PLANNING AND	)	11-101457 FHZ
DEVELOPMENT SERVICES,	)	11-101457 SHORE
	)	11-101457-002-00 VAR
Respondent.	)	11-101457-003-00 VAR
	)	11-101457-000-00 WMD
	)	11-101457-001-00 WMD
	)	18-116078 CI
)	
	)	BSRE POINT WELLS, LP'S
	)	APPEAL OF DECISION ON
	)	REMAND DENYING
	)	APPLICATIONS WITHOUT
	)	ENVIRONMENTAL IMPACT
	)	STATEMENT

BSRE POINT WELLS, LP (“BSRE”), by and through its undersigned counsel of record, hereby submits this Appeal of the Decision on Remand Denying Applications Without Environmental Impact Statement, dated January 29, 2021 (the “Decision”).

I. STATEMENT OF FACTS

I. Appellant.

The appellant here is BSRE Point Wells, LP. The address of appellant is:

1 BSRE Point Wells, LP
2 c/o Karr Tuttle Campbell
3 Attn: Douglas Luetjen
4 701 Fifth Avenue, Suite 3300
5 Seattle, WA 98104

6 **II. Description of the Project.**

7 The Snohomish County Council in 2009 and 2010 revised its comprehensive plan, adopted
8 Chapter 30.34A SCC (the “Urban Center Code”) and designated the land owned by BSRE (“Point
9 Wells”) as an Urban Center. *See* Exhibit Q-4. These combined actions satisfied, at least in part,
10 Snohomish County’s (the “County”) obligation pursuant to the Growth Management Act to plan
11 for the accommodation of future population growth within unincorporated portions of the County.
12 *Id.* The designation of Point Wells as an Urban Center largely satisfied the County’s density
13 allocation obligation. *Id.*

14 Following the Council’s action, BSRE’s predecessor submitted a complete Urban Center
15 Development Application (and other related supporting applications, collectively, the “Land Use
16 Applications”) for the development of a mixed-use Urban Center including approximately 3,000
17 residential units, approximately 100,000 square feet of commercial space and a large public access
18 beach. *Id.*

19 After an order of remand (as discussed in Section V below), BSRE submitted revised Land
20 Use Applications in December of 2019 for the development of a mixed-use Urban Center including
21 approximately 2,800 residential units, significant commercial space and a large public access
22 beach. Exhibits V-1–V-19.

23 **III. The County’s Attempt to Terminate.**

24 BSRE began working with the County on submitting and revising its applications to
25 develop Point Wells as an Urban Center in 2011. Exhibit Q-4. In January of 2018, the County
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1 took a drastic turn in its approach to the Point Wells development project. The parties had been
2 working together previously to satisfy the Snohomish County Code (the “Code”) requirements,
3 but in January of 2018, despite the significant progress that had been made and statements by the
4 County that projects typically go through seven or eight iterations, the County suddenly and
5 unexpectedly sought to have the Land Use Applications terminated. In May of 2018, the County
6 recommended denial of the Land Use Applications without preparation of an Environmental
7 Impact Statement (an “EIS”) pursuant to SCC 30.61.220, and scheduled a hearing to have the
8 Hearing Examiner rule on the County’s termination request. The County, in its request for
9 termination, identified eight issues in the Land Use Applications which it believed to be in
10 substantial conflict with the Code. *See* Exhibit N-2.
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13 After a hearing in May of 2018, the Hearing Examiner issued two decisions which had the
14 effect of terminating the Land Use Applications without preparation of an EIS: The Decision
15 Granting in Part and Denying in Part BSRE’s Motion for Reconsideration and Clarification (the
16 “Reconsideration Decision”) (Exhibit R-3) and the Amended Decision Denying Extension and
17 Denying Applications Without Environmental Impact Statement (Exhibit R-4). In issuing those
18 decisions, the Hearing Examiner found six issues of substantial conflict existed. *See* Exhibit R-4.
19 The issues were: (1) application of a residential zoning setback under SCC 30.34A.040(2)(a); (2)
20 building height allowances based on access to high capacity transit under SCC 30.34A.040(1); (3)
21 application of shoreline setback requirements; (4) landslide regulations impacting the proposed
22 secondary access road; (5) landslide regulations impacting the Upper Plaza (the entrance to Point
23 Wells); and (6) the use of Innovative Development Design (collectively, the “Original Conflict
24 Areas”). Exhibit R-4.
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1 After an appeal to the County Council and an appeal to the King County Superior Court,
2 BSRE was granted the opportunity to resubmit the Land Use Applications in December of 2019
3 to resolve the Original Conflict Areas. *See* Exhibit U-1. The parties were instructed to work in
4 good faith to resolve the Original Conflict Areas.

6 **IV. Appeals**

7 The King County Superior Court, while issuing a determination that allowed BSRE to
8 submit revised applications, failed to issue any legal interpretations on the six Original Conflict
9 Areas (the “Superior Court Decision”). *Id.* BSRE timely appealed the Superior Court Decision to
10 the Court of Appeals on July 31, 2019. BSRE specifically sought clarification on two of the
11 Original Conflict Areas. The first conflict relates to whether a residential setback ordinance
12 applies to the development contemplated by the Land Use Applications under SCC
13 30.34A.040(2)(a) and the second conflict relates to whether BSRE is entitled to build buildings up
14 to 180 feet high based on proximity to a high capacity transit station under SCC 30.34A.040(1)
15 (the two issues together are referred to herein as the “Appealed Statutory Issues”).

17 Pursuant to the Superior Court Order, BSRE was required to file its revised applications
18 no later than December 18, 2019 (the “Reactivation Deadline”). Despite not having a ruling on
19 the appeal in front of the Court of Appeals, BSRE had no choice but to prepare and submit its
20 revised Land Use Applications in December of 2019, before the Reactivation Deadline.¹

22 The Court of Appeals briefing by BSRE, the County and the City of Shoreline was
23 completed on February 12, 2020. The Court of Appeals held a hearing without oral argument on
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26 ¹ BSRE specifically sought a stay of the Reactivation Deadline from the Court of Appeals and the County in
27 order to receive a ruling from the Court of Appeals prior to revising the Land Use Applications. However, the Court
of Appeals stated that only the County had authority to issue such a stay, and the County refused to do so.

1 January 13, 2021. The Court of Appeals issued a decision on February 8, 2021, finding that the
2 Appealed Statutory Issues are not yet ripe because BSRE had revised its Land Use Applications
3 and submitted them to the County.

4 **V. BSRE’s Resubmittals**

5 After receiving the Superior Court Order, BSRE’s consultants spent six months preparing
6 the revised Land Use Applications in order to submit them by the Reactivation Deadline. In
7 December of 2019, BSRE submitted revised applications to address the six Original Conflict
8 Areas. Exhibits V-1—V-19. The revised Land Use Applications propose a mixed-use
9 development with approximately 2,800 units (reduced from over 3,000 in the prior iteration). After
10 BSRE submitted its revised Land Use Applications in December of 2019, the County failed to
11 issue any response until May 27, 2020, when BSRE received the County’s Supplemental Staff
12 Recommendation #2, stating that the County was again seeking denial of the Land Use
13 Applications without preparation of an EIS under SCC 30.61.220. BSRE worked in good faith to
14 address the County’s requirements and the County failed to provide BSRE with any meaningful
15 chance to respond to any questions or concerns noted by the County.

16 The County in May of 2020 alleged four areas of substantial conflict (the “Revised Conflict
17 Areas”): (1) the failure to document feasibility and code compliance for the secondary access road;
18 (2) the failure to document evidence for access to high capacity transit for building heights over
19 90 feet and failure to demonstrate compliance with the decision criteria for a variance from SCC
20 30.34A.040(1); (3) failure to provide appropriate building setbacks for tall buildings from lower
21 density zones and failure to demonstrate compliance with the decision criteria for a variance from
22 SCC 30.34A.040(2)(a); and (4) failure to comply with code provisions regarding critical areas,
23 including geologically hazardous areas. Two of the Revised Conflict Areas identified by the
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1 County (issues 2 and 3 listed above) were the Appealed Statutory Issues, the exact same issues for
2 which BSRE had filed its appeal with the Court of Appeals.² As part of its request for termination,
3 the County brought forth entirely new comments which had never before been raised with BSRE,
4 including arguing for the first time that BSRE’s floor area ratio (“FAR”) calculations were
5 incorrect. BSRE never saw that comment prior to the May 2020 Supplemental Staff
6 Recommendation No. 2, and thus was never given a chance to revise the plans to respond to that
7 new comment.
8

9 **VI. Hearing Examiner Hearing**

10 The Parties presented oral argument to the Hearing Examiner on November 5, November
11 6 and November 12, 2020. Public comments were heard on November 4 and November 24, 2020.
12 The Hearing Examiner issued the Decision on January 29, 2021, denying the Land Use
13 Applications without preparation of an EIS. Specifically, the Hearing Examiner found substantial
14 conflict in each of the Revised Conflict Areas.
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16 As directed by the Hearing Examiner, BSRE has submitted this Appeal to the County
17 Council.
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22 ² The variance requests submitted with those two identified issues (issues 2 and 3 listed above) were only
23 submitted as a “belt and suspenders” approach while the Court of Appeals matter was pending. BSRE has consistently
24 maintained that the variances are unnecessary as it is entitled to build up to 180 feet based on the clear language of
25 SCC 30.34A.040(1) and it is entitled to build within the Upper Plaza based on the clear language of SCC
26 30.34A.040(2)(a). BSRE has maintained throughout the proceedings that the variances on these two issues are not
27 necessary. Thus, any Findings of Fact and Conclusions of Law which state that the variances are necessary are an
error of law and should be reversed, including, but not limited to, F.63, F.73, and C.23, must be reversed as they are
an error of law and are not supported by the record. Further, any Findings of Fact and Conclusions of Law which state
that the Point Wells site is not unique should be reversed because the County’s planner himself testified that the Point
Wells site was unique because of all of the geographic constraints. *See* Testimony of Ryan Countryman, November
6, 2020.

1 **II. EVIDENCE RELIED UPON**

2 BSRE relies on the permit application hearing records, including witness testimony and
3 documentary exhibits, and the permit application record.³

4 **III. ARGUMENT AND LEGAL AUTHORITY**

5 **A. Standard for Appeal**

6 SCC 30.72.080(2) establishes the grounds for an appeal of a Type 2 decision:

- 7 (a) The decision exceeded the hearing examiner’s jurisdiction;
- 8 (b) The hearing examiner failed to follow the applicable
- 9 procedure in reaching the decision;
- 10 (c) The hearing examiner committed an error of law; or
- 11 (d) The hearing examiner’s findings, conclusions and/or
- 12 conditions are not supported by the record.

13 BSRE seeks review of the Decision based on grounds (b), (c), and (d) above.

14 **B. The Findings of Fact, Conclusions of Law and Rulings Related to the Requirement**
15 **for High Capacity Transit Reflect an Error of Law, are not Supported by the**
16 **Record, and Failed to Follow Applicable Procedures.**

17 BSRE has supplied sufficient evidence to indicate that proximity to a high capacity transit
18 route is sufficient to allow for additional height pursuant to SCC 30.34A.040(1). In the alternative,
19 BSRE has demonstrated its dedication to providing high capacity transit, in the form of Sound
20 Transit and/or via water taxi, such that the Hearing Examiner could and should have conditioned
21 the project on having high capacity transit rather than finding that the project is in substantial
22 conflict with the code at this point. Further, the requirement for the additional height to be
23 “necessary or desirable” is a conclusion to be made following the analysis to be included in the
24 project’s environmental impact statement, as set forth in SCC 30.34A.040(1). The County did not

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26 ³ Because the hearing in November 2020 was a continuation of the hearing in May 2018, BSRE specifically
27 incorporates all testimony and documents provided in 2018.

1 seek denial on any grounds related to necessity or desirability. Notwithstanding that this is an
2 improper ground for denial at this point, there is at least reasonable doubt that the additional height
3 is not “necessary” or “desirable” as evidenced by the variance application and the testimony of
4 BSRE’s consultants. For these reasons, all Findings of Fact, Conclusions of Law and rulings in
5 the Decision which relate to high capacity transit, including, but not limited to, F.46, F.48, F.49,
6 F.50 (including, but not limited to, the prior F.56, F.57, F.58, F.59, and F.60), F.52, F.53, F.54,
7 F.58, F.59, F.60, F.63, F.67, F.68, F.69, F.70, F.72, F.76, F.79, F.82, F.83, F.84, F.85, F.86, F.87,
8 F.88, F.91, F.92, F.93, F.94, F.97, F.98, F.99, C.11 (including but not limited to the prior C.34,
9 C.35, C.36, C.37), C.12, C.13, C.14, C.15, C.17, C.18, C.19, C.20, C.21, C.22, and C.23 should
10 be reversed.
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13 *i. Proximity to a Transit Station is Sufficient.*

14 The Hearing Examiner committed an error of law by determining, without justification,
15 that while “a high capacity transit route is near the project, proximity alone is not enough.” C.11.
16 SCC 30.34A.040(1) states:

17 The maximum building height in the UC zone shall be 90 feet. A
18 building height increase up to an additional 90 feet may be approved
19 under SCC 30.34A.180 when the additional height is documented to
20 be necessary or desirable when the project is located near a high
21 capacity transit route or station and the applicant prepares an
22 environmental impact statement pursuant to chapter 30.61 SCC that
23 includes an analysis of the environmental impacts of the additional
24 height on, at a minimum:

- 25 (a) Aesthetics;
26 (b) light and glare;
27 (c) noise;
(d) air quality; and
(e) transportation.

1 SCC 30.34A.040(1). The Hearing Examiner’s conclusion that proximity is not enough ignores the
2 plain language of the statute. “Statutes must be read so that each word is given effect and no
3 portion of the statute is rendered meaningless or superfluous.” *City of Spokane Valley v. Spokane*
4 *County*, 145 Wn. App. 825, 831, 187 P.3d 340 (2008). While the County has argued that
5 “proximity is not enough,” an agency does not get deference for a statutory interpretation which
6 conflicts with the plain language of the statute. *Dept. of Labor & Indus. v. Landon*, 117 Wn.2d
7 122, 127, 814 P.2d 626 (1991).

9 C.11, and all other Findings of Fact and Conclusions of Law which state or imply that
10 proximity to a route is not sufficient, directly conflict with the plain language of the statute, which
11 provides two alternatives for high capacity transit—the project must be located either near a high
12 capacity transit route *or* a high capacity transit station. SCC 30.34A.040(1) (emphasis added).
13 The only reading of this statute which does not render a portion of the statute “meaningless and
14 superfluous” is that which recognizes both options: (1) proximity to a high capacity transit route;
15 or (2) proximity to a high capacity transit station.

17 The fact that the Growth Management Hearing Board (the “GMHB”) ruled in *City of*
18 *Shoreline, et al. v. Snohomish County, et al.*, Coordinate Case Nos. 09-3-0013c and 10-3-0011c,
19 that proximity is not enough has no bearing on the interpretation of SCC 30.34A.040(1) [2010].
20 RCW 36.70A.302 provides the GMHB may determine that all or part of a comprehensive plan or
21 development regulations are invalid, however, it states that such authority is “proscriptive in
22 effect” only:
23

24 A determination of invalidity is prospective in effect and does not
25 extinguish rights that vested under state or local law before receipt
26 of the board’s order by the city or county. The determination of
27 invalidity does not apply to a completed development permit

1 application for a project that vested under state or local law before
2 receipt of the board's order by the county or city

3 RCW 36.70A.302(2). The Washington Supreme Court recognized this in *Town of Woodway v.*
4 *Snohomish County*, 180 Wn.2d 165, 322 P.3d 1219 (2014). There, the Court held that “whether
5 or not a challenged plan or regulation is found to be noncompliant or invalid, any rights that vested
6 before the [GMHB]’s final order remain vested after the order is issued.” *Id.* at 175. Therefore,
7 even if the interpretation of SCC 30.34A.040(1) changed after the GMHB’s ruling in *City of*
8 *Shoreline*, that does not alter the plain language of the statute as it applies to BSRE’s applications.
9

10 Because the GMHB’s ruling does not change the plain language of SCC 30.34A.040(1)
11 and because statutes must be interpreted such that no word or phrase is rendered meaningless or
12 superfluous, the only possible reading of SCC 30.34A.040(1) allows additional height where the
13 urban center is proposed near *either* a high capacity transit route *or* station. Point Wells is located
14 near a high capacity transit route and therefore additional height for the buildings is available. The
15 Hearing Examiner committed an error of law for all Findings of Fact and Conclusions of Law
16 which imply or state that proximity is not sufficient and should be reversed. SCC 30.72.080(2)(c).
17

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

20 The record shows that BSRE has had substantial contact with Sound Transit and that Sound
21 Transit has advised BSRE *that it will not commit to providing a station at Point Wells until BSRE*
22 *has received approval and can guarantee a certain number of residents.* See Exhibit T-7 (Douglas
23 A. Luetjen’s May 24, 2018 Testimony); Exhibit H-24. The Examiner clearly erred in faulting
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1 BSRE for failing to obtain Sound Transit’s commitment to provide service for a project which has
2 not yet been approved (and for which an EIS has not yet even been prepared).

3 As demonstrated by Exhibit H-26 and Douglas A. Luetjen’s May 24, 2018 testimony
4 (Exhibit T-7), Sound Transit has considered adding a stop in the Richmond Beach/Shoreline area,
5 and it is BSRE’s understanding that the stop considered to be in the Richmond Beach/Shoreline
6 area was specifically considered by Sound Transit to be at Point Wells. See Exhibit H-24, where
7 Sound Transit specifically added a comment on its Final Environmental Impact Statement in
8 response to a letter from BSRE stating “A Sounder station in the general vicinity of
9 Shoreline/Richmond Beach is included in Appendix A of the Final SEIS as a ‘representative
10 project’ under the Current Plan Alternative . . . These are projects that could be implemented along
11 the corridors that comprise the Current Plan Alternative regardless of whether service is already
12 implemented along these corridors. . . .” This indicates that Sound Transit was contemplating a
13 possible stop at Point Wells. Contrary to the statements made in F.50 and C.11, BSRE received a
14 letter of support from the appropriate individual in 2010 indicating that Sound Transit was open to
15 the possibility of a stop at Point Wells. In fact, the letter stated that Sound Transit’s interest in
16 such a station would be increased if BSRE was willing to fund that station. BSRE has
17 unequivocally made that commitment.
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21 In addition, F.50 is not supported by the record because Douglas A. Luetjen testified on
22 May 24, 2018 that BSRE has met with “various transit agencies that included King County Metro
23 and Community Transit as well as Sound Transit to discuss transit-related issues for the
24 development.” See Exhibit T-7 (Douglas A. Luetjen May 24, 2018 Testimony).

25 In addition, BSRE retained the firm of Shiels Oblatz Johnson, a project management
26 consultancy group in the Pacific Northwest that has specific experience working with BNSF and
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1 commuter lines to get approvals for additional stops. *See id.* This shows BSRE’s diligence and
2 dedication to building a Sound Transit station at Point Wells. Furthermore, BSRE has considered
3 Sound Transit’s design guidelines in creating its design and has acted in accordance with the
4 direction received from Sound Transit, which was to wait until approvals were received before
5 pursuing a written agreement with Sound Transit. *Id.* Any Findings of Fact and Conclusions of
6 Law which state or imply that BSRE was derelict in its duties by failing to obtain a written
7 commitment from Sound Transit or another transit agency are not supported by the record, do not
8 take into account the particular facts and requirements of the transit agencies, and should be
9 reversed.
10

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

13 In order to satisfy the County’s concerns regarding high capacity transit, BSRE proposed
14 providing a water taxi between the site and the Edmonds Sound Transit station or the Coleman
15 Dock at least until an on-site Sound Transit station is constructed. The Hearing Examiner found
16 that a water taxi does not meet the requirements for “high capacity transit” under the vested code.
17 C.14. However, this is not true. Under the vested code, there is not a set definition of “high
18 capacity transit.” Instead, the vested version of SCC 30.34A.085 simply states that an urban center
19 shall be considered near high capacity transit routes “such as light rail or commuter rail lines or
20 regional express bus routes or transit corridors that contain multiple bus routes[.]” However, the
21 plain language of this statute does not limit the definition of “high capacity transit” to *only* light
22 rail, commuter rail lines, regional express bus routes, or transit corridors that contain multiple bus
23 routes. Instead, it lists those as *examples* of high capacity transit. There is nothing in the vested
24 code which would preclude a water taxi from being considered as high capacity transit. As the
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1 Hearing Examiner correctly pointed out, Amended Ordinance 13-007, which was adopted on
2 September 11, 2013, created the first definition of high capacity transit.⁴ It created SCC
3 30.91H.108, which states, “‘High capacity transit’ means any transit technology that functions to
4 carry high volumes of passengers quickly and efficiently, and preferably on exclusive or semi-
5 exclusive rights-of-way, *such as* bus rapid transit, light rail, commuter rail, and passenger-only
6 ferries.” (Emphasis added.) Again, this is not a dispositive list of all “high capacity transit” but
7 rather a list of some examples. The fact that this new definition specifically lists “passenger-only
8 ferries” in no way indicates that passenger-only ferries could not be considered “high capacity
9 transit” prior to September 11, 2013. The Hearing Examiner’s Findings of Fact and Conclusions
10 of Law regarding the water taxi proposal are contrary to law and not supported by the record. SCC
11 30.72.080(2)(c)-(d).
12

13
14 In F.58, the Hearing Examiner stated that operating a water taxi would be prohibited by
15 the terms of the dock lease with the Department of Natural Resources (the “DNR”). The Hearing
16 Examiner is correct that the pier at Point Wells is subject to an aquatic lands lease from the
17 Washington Department of Natural Resources (“DNR”). Contrary to the allegations made in F.58,
18 though, BSRE has had substantial contact with DNR over the years. *See* Exhibit R-1 (pp. 87-8).
19 As recently as August of 2017, BSRE was advised by DNR to wait to modify the lease until after
20 the urban center has been approved so as to allow the industrial uses to continue in the meantime.
21 *Id.* BSRE’s interactions and negotiations with DNR were not part of the hearings and thus this
22 evidence could not reasonably be expected to have been provided at the time of the hearing. All
23 Findings of Fact and Conclusions of Law related to BSRE’s water taxi proposal, including, but not
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26 _____
27 ⁴ *See* <https://snohomish.county.codes/enactments/Ord13-007>.

1 limited to, F.58, F.59, F.60, C.11, C.13, and C.14 should therefore be reversed and revised
2 accordingly.

3 iv. *The Hearing Examiner Erred in Raising the Issue of “Necessary or*
4 *Desirable” in the Decision.*

5 The County has never alleged that a substantial conflict with the Code existed justifying
6 the use of the extraordinary remedy of termination without preparation of an EIS related to BSRE
7 failing to show that additional height was either necessary or desirable. However, the Hearing
8 Examiner concluded (in F.48, F.49, C.11, and C.15, as well as others) that BSRE failed to show
9 that the height increase was “necessary or desirable” and thus that a substantial conflict with the
10 Code existed. Whether the additional height is necessary or desirable is a decision that should be
11 made following the completion of a view analysis in the project EIS. Making that determination
12 at this time is premature. Further, because the County has never claimed that BSRE is not entitled
13 to additional height under SCC 30.34A.040 because the height is not “necessary or desirable,”
14 such a claim was not properly before the Hearing Examiner. *See* Exhibits N-1, N-2, and X-3.
15

16 In making this improper determination, the Hearing Examiner failed to recognize that
17 BSRE was not arguing that the Land Use Applications were approvable at that exact moment. The
18 project cannot be approvable because the EIS has not been issued. Therefore, there is no allegation
19 by either party that every element of every issue either has been or needs to have been addressed.
20

21 Further, contrary to the Hearing Examiner’s statements otherwise, the hearing did involve
22 testimony regarding the necessity and desirability of the additional height for the proposed project.
23 SCC 30.34A.040(2)(a) simply states that the additional height must be “necessary or desirable”
24 but fails to provide any further guidance on this. Thus, it is enough that the additional height is
25 “necessary” or “desirable” to the applicant. BSRE included sufficient testimony to satisfy this
26

1 | burden in the November hearing. For example, on November 6, 2020, project architect Dan Seng
2 | explicitly testified that building heights over 90 feet are *necessary* to meet the minimum FAR
3 | using the weighted average FAR calculations that the County specifically identified. *See* Dan
4 | Seng, November 6, 2020 testimony. The County did not present any evidence to dispute this
5 | testimony. In addition, BSRE has provided multiple depictions of the project in its application
6 | materials showing the project with buildings over 90 feet and with buildings limited to 90 feet.
7 | *See, e.g.*, Exhibit K-37. The images included in Exhibit K-37 show the aesthetic desirability of
8 | the additional height to BSRE. The testimony clearly shows the additional height is desirable to
9 | BSRE. Any Findings of Fact and Conclusions of Law which state that BSRE did not show that
10 | the additional height was necessary or desirable should be reversed.
11 |

12 | **C. The Hearing Examiner Committed an Error of Law with Respect to All Findings**
13 | **and Conclusions Related to the Residential Setback.**

14 | BSRE submits that all findings and conclusions related to the residential setback, including,
15 | but not limited to, F.107, F.109, C.24, C.25, and C.30, reflect an error of law and should be
16 | reversed on appeal. SCC 30.34A.040(2)(a) provides:
17 |

18 | Buildings or portions of buildings that are located within 180 feet of
19 | adjacent R-9600, R-8400, R-7200, T or LDMR zoning must be
20 | scaled down and limited in building height to a height that represents
21 | half the distance the building or that portion of the building is
22 | located from the adjacent R-9600, R-8400, R-7200, T or LDMR
23 | zoning line (e.g. – a building or portion of a building that is 90 feet
24 | from R-9600, R-8400, R-7200, T or LDMR zoning may not exceed
25 | 45 feet in height).

26 | The effect of SCC 30.34A.040(2)(a) is to limit the height of buildings located adjacent to specific
27 | residential zones. The County, and the Hearing Examiner in its Decision, have determined that
the buildings in the Upper Plaza must be restricted in height because they are located adjacent to
residential zones.

1 However, as noted in F.101, the buildings proposed to be built in the Upper Plaza are
2 adjacent to property which is zoned R-14,500 and Urban Restricted. There is no property which
3 is zoned R-9600, R-7200, T or LDMR adjacent to the buildings proposed to be built by BSRE.
4 Therefore, the plain language of SCC 30.34A.040(2)(a) makes this statute inapplicable to this
5 project. *See Bravo v. Dolsen Cos.*, 125 Wn.2d 745, 752, 888 P.2d 147 (1995) (holding that where
6 statutory language is “plain, free from ambiguity and devoid of uncertainty, there is no room for
7 construction because the legislative intention derives solely from the language of the statute”).
8 The statute does not include any language which would make it applicable to “similar” or
9 “equivalent” zoning designations. Because the buildings proposed to be constructed in the Upper
10 Plaza are not located adjacent to any R-9600, R-7200, T or LDMR zones, SCC 30.34A.040(2)(a)
11 does not apply and no residential setback is required.
12

13 As a new argument, the Hearing Examiner now finds that SCC 30.34A.040(2)(a) applies
14 because the adjacent property was zoned as R-9600 when the project vested in 2011. However,
15 there is no case law stating that the application is vested to the adjacent zoning in another
16 jurisdiction as well as being vested to Snohomish County’s code. In fact, the Hearing Examiner’s
17 interpretation of vesting would lead to absurd results. If the adjacent property became zoned for
18 commercial uses after 2011, would BSRE still be obligated to treat that adjacent property as if it
19 were zoned R-9600? Would BSRE be “vested” to the idea that the adjacent property was a
20 residential property and thus be prohibited from building tall buildings in that area even if
21 skyscrapers were constructed next door? This is simply illogical. The fact of the matter is, if the
22 County intended for SCC 30.34A.040(2)(a) to apply to zones in addition to R-9600, R-7200, T or
23 LDMR zones, they should have specified that in the statute itself. Because they did not, they
24 cannot now re-write the statute to say otherwise.
25
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27

1 Thus, all Findings of Fact and Conclusions of Law in the Decision which state or imply
2 that SCC 30.34A.040(2)(a) is applicable or that a variance is required because of a residential
3 setback reflect an error of law and should be reversed. There can be no substantial conflict with
4 SCC 30.34A.040(2)(a) where it does not apply.
5

6 **D. The Hearing Examiner's Findings of Fact and Conclusions of Law Regarding the**
7 **Landslide Deviation Requests Were Not Supported by the Record and Failed to**
8 **Follow Applicable Procedures.**

9 BSRE submitted two distinct landslide hazard deviation requests: one for buildings
10 proposed to be located in the Upper Plaza, and one for a secondary access road to be located in
11 that same general area.

12 *i. The Deviation Requests Do Not Constitute a Substantial Conflict.*

13 The County only issued the decision denying the deviation requests with its Supplemental
14 Staff Recommendation No. 2 in late May, 2020. Because the County did not issue a formal
15 decision on the landslide deviation requests prior to its decision to terminate the project, BSRE
16 was not given an opportunity to respond to this decision. As Randy Sleight testified on May 22,
17 2018, the typical process for a deviation request includes a conversation between Mr. Sleight and
18 the developer to discuss what additional information Mr. Sleight needs and what options are
19 available. *See* Exhibit T-5. BSRE should have been given this opportunity prior to the County
20 denying the deviation request and prior to the County seeking termination for substantial conflicts.
21 The County willingly and knowingly violated its own standard procedures for addressing deviation
22 requests, which demonstrates the County's bad faith review of the Land Use Applications (as
23 further described in Section E below).
24

25 In addition, the County raised new comments in May of 2020 that had not previously been
26 raised. *See* Exhibit X-2. The County failed to provide BSRE with any meaningful chance to
27

1 respond to those comments. In fact, BSRE’s consultants specifically requested an opportunity to
2 discuss the landslide hazard deviation request with Mr. Sleight but they did not receive such an
3 opportunity. *See* Testimony of John Bingham, November 6, 2020 (reading from the landslide
4 hazard deviation request, “If these deviation requests are not approvable at the building permit
5 stage using the stated geotechnical approaches, we request the opportunity to discuss with
6 Mr. Sleight what specific additional items would be needed to receive approval.”). Further, the
7 comments raised do not amount to a substantial conflict. As BSRE’s consultants Mr. Mark Davies
8 and Mr. Rick Pratt testified, all comments raised in response to the landslide hazard deviation
9 request have now been addressed by the supplemental reports filed by BSRE in advance of the
10 hearing. *See* Testimony of Mark Davies, November 12, 2020; Testimony of Rick Pratt, November
11 12, 2020; Exhibits Z-4–Z-6, Z-11. At the hearing, BSRE showed that the proposed construction
12 techniques for building within the landslide hazard area setbacks provide more than sufficient
13 Factors of Safety and provide significant stabilization of the upper slope. *See* Testimony of John
14 Bingham, November 7, 2020. The County failed to meet its burden to prove a substantial conflict
15 in this issue beyond a reasonable doubt.

16
17
18 The Findings of Fact and Conclusions of Law regarding the landslide deviation requests,
19 including, but not limited to, F.139, F.140, F.142, F.143, F.144, F.146, F.148, F.149, F.150, F.151,
20 F.154, F.155, F.156, F.158, F.159, F.160, F.161, F.162, F.163, F.164, F.165, F.166, F.167, F.168,
21 F.169, F.170, C.33, C.36, C.37, C.39, C.40, C.41, C.42, and C.43, should be reversed because the
22 County failed to allow for a discussion about the deviation request before denying it (in contrast
23 to its own stated procedures), the findings are not supported by the evidence and the Hearing
24 Examiner failed to apply the correct standard of review.
25
26
27

1 i. *BSRE Has Shown there is No Alternate Location Available for the Buildings in*
2 *the Urban Plaza.*

3 BSRE previously has shown that there is no alternative location for the buildings proposed
4 to be located in the Upper Plaza. *See* Exhibit R-1. In addition, more recently, BSRE provided
5 testimony on November 6, 2020, that buildings would be required to be located in the Upper Plaza
6 to satisfy the minimum FAR. *See* Testimony of Dan Seng, November 6, 2020. Specifically, the
7 Project architect Dan Seng testified that the fire department access requirements constrained the
8 site and limited the areas in which buildings could be located. Further, he testified that the
9 buildings on the Upper Plaza could not be relocated to the lower bench of the property. *Id.* The
10 County failed to present any evidence that the buildings could be located elsewhere.⁵ At a
11 minimum, this is enough to cause a reasonable doubt as to the substantial conflict alleged by the
12 County. SCC 30.61.220 specifically states that the Hearing Examiner must remand the application
13 if it finds that there is “reasonable doubt that the recommended grounds for denial are sufficient.”
14 Any Findings of Fact and Conclusions of Law (including, but not limited to, F.139 and F.142)
15 which create a heavier evidentiary burden on BSRE are unsupported by the law.
16

17 ii. *The Geotechnical Report Does Not Substantially Conflict with the County*
18 *Code.*

19 The Hearing Examiner raised the following concerns about the geotechnical report: (1) the
20 geotechnical report does not adequately demonstrate that the site is suitable for the proposed
21 development (F.146, C.37, and C.43); (2) the geotechnical report does not adequately demonstrate
22 that the proposed deviation provides protection equal to that provided by the prescribed minimum
23

24
25 ⁵ In fact, the County made a production out of arguing that BSRE could not satisfy the FAR even with
26 buildings over 90 feet. *See* Exhibit X-1. However, the consultants hired by the County specifically stated that they
27 did not run any calculations where there were buildings located in the Upper Plaza. *See* Testimony of Jeffrey Brajcich,
November 5, 2020. Thus, the County simply cannot show that BSRE could not meet the FAR with the buildings
included in the Upper Plaza and cannot show that the buildings could be located elsewhere.

1 setbacks (F.148, F.149, F.150, F.151, C.37, C.38, C.39, C.40, C.41, C.42, and C.43); (3) the
2 geotechnical report does not show phasing appropriately (F. 152, F.153, F.154, F.155, and F.156)
3 ⁶; and (4) the geotechnical report does not sufficiently address drainage (F.158, F.159, F.160,
4 F.161, and F.162).

5
6 SCC 30.62B.340 specifically provides deviations may be granted to allow development
7 within a landslide hazard area. BSRE still has not been given the typical treatment of scheduling
8 a meeting between Mr. Sleight and BSRE’s consultants to discuss any outstanding issues. This is
9 directly contrary to the process outlined by Mr. Sleight himself during his testimony on May 22,
10 2018. *See* Exhibit T-5.

11
12 The record does not support the Findings of Fact and Conclusions of Law issued by the
13 Hearing Examiner with respect to the deviation request for a few reasons. First, as noted above,
14 the Hearing Examiner is applying the wrong standard of review. BSRE is not obligated to show
15 *by a preponderance of the evidence* that it satisfies all of the requirements at this state. BSRE is
16 not seeking final approval of the project at this time. Instead, BSRE must simply show that
17 reasonable doubt exists as to the substantial conflicts raised by the County. BSRE has done this
18 with the testimony of its geotechnical expert, John Bingham, who specifically stated, under oath,
19 that the necessary Factors of Safety have been satisfied. *See* Testimony of John Bingham,
20 November 7, 2020.

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24
25 ⁶ If there are issues with phasing or questions about which phase something will be built on, an appropriate
26 response would be to ask the applicant for clarification. The appropriate response is not to terminate the applications
27 for “substantial conflict.” This is an abuse of discretion by the County and by the Hearing Examiner for agreeing.
Thus, any Findings of Fact or Conclusions of Law related to phasing should be reversed.

1 Second, Mr. Bingham's role was not to design the road, but to provide that it and the
2 buildings could be built safely in the landslide hazard area.⁷ He did that. The geotechnical report,
3 including the addendum submitted by Mr. Bingham on October 29, 2020 (Exhibit Z-6) specifically
4 show that the minimum Factors of Safety have been satisfied. In the analysis provided by
5 Mr. Davies further addresses the concerns raised by Mr. Sleight. See Exhibits Z-4 and Z-5. As
6 Mr. Sleight previously testified, Mr. Bingham took a conservative approach with the geotechnical
7 report, assuming high liquefaction throughout the area in which the buildings and road would be
8 constructed. See Exhibit T-5 (Randy Sleight May 22, 2018 Testimony; John Bingham May 22,
9 2018 Testimony).

11 The geotechnical report, landslide hazard deviation requests, and subsurface conditions
12 report, with their respective addenda, provided sufficient information to determine that the project
13 is feasible. BSRE has designed the secondary access road to be in compliance with SCC
14 30.53A.512, as required by the County (despite the road not being in Snohomish County's
15 jurisdiction), has agreed to have the approval of the project be conditioned on having a full access
16 road, and has proven to the County that there is no alternative location for the road. BSRE has
17 demonstrated that building the road and the buildings is in fact feasible. The project is not yet at
18 a buildable stage, which means that there will be additional time to provide further details and
19 conduct further tests, if necessary. This project must still go through the EIS preparation, which
20 allows ample opportunity for any required design changes to be made.

24 ⁷ It should be noted that the road itself is proposed to be located in the Town of Woodway, not in Snohomish
25 County. Thus, Snohomish County has no jurisdiction over the road and should not be entitled to review it. Instead,
26 the appropriate approach would be for the County to issue a condition to approval, mandating that the secondary road
27 be in place prior to the construction of the buildings in Point Wells. BSRE would agree to comply with such a
condition. The County has no jurisdiction to make demands regarding the secondary access road and any Findings of
Fact and Conclusions of Law which impose any obligations or issue any findings or conclusions about the secondary
access road should be reversed.

1 The Hearing Examiner Rules of Procedure specifically allow for an application to have
2 “preconditions” to approval. *See* Rules of Procedure 8.1, 8.2. Hearing Examiner Rule of
3 Procedure 8.3 provides the Hearing Examiner may determine the deadline for fulfillment of the
4 preconditions based on “a realistic estimate of the amount of time necessary for a prudent and
5 reasonable person to complete the required action(s).” In this instance, where actual approval of
6 the secondary access road is not under the purview of the County, approval conditioned on the
7 secondary access is appropriate. The testimony provided by Mr. Bingham and Mr. Davis and
8 BSRE’s willingness to have the project subject to a conditional approval are sufficient to show
9 reasonable doubt exists as to whether there is a substantial conflict on this issue.
10

11 It is an error of law to find a substantial conflict with the code where a deviation request
12 has been denied without the County following its own procedure of meeting and working with the
13 applicant.
14

15 *iii. The Critical Areas Do Not Constitute a Substantial Conflict.*

16 The County alleged that BSRE’s proposal was in conflict with SCC 30.62B.340 and SCC
17 30.62B.320 because the plans call for buildings and a secondary access road to be located within
18 a landslide hazard area or its setback (collectively, a “Hazard Area”). However, SCC 30.62B.340
19 specifically provides deviations may be granted to allow development within a Hazard Area. Thus,
20 BSRE submitted the deviation requests, as discussed above. Also, the December 2019 Land Use
21 Applications provided significantly more analysis of the critical areas than the prior land use
22 applications. BSRE consultant Rick Pratt testified that the County raised “issues” related to the
23 foot ferry and Sounder station for the first time in the Supplemental Staff Recommendation No. 2
24 and BSRE was not provided any opportunity to meaningfully respond to those claims prior to the
25 hearing. However, all of those issues were addressed in Exhibit Z-11. Similarly, the new issues
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1 raised by the County regarding drainage were resolved by Mr. Davies in Exhibits Z-4 and Z-5.
2 The County failed to show that substantial conflicts remain after these supplemental reports were
3 submitted to the County in October of 2020.

4
5 Despite the County's claims and the Hearing Examiner's apparent understanding, this is
6 not the approval stage of the Project. No party is advocating that the Land Use Applications be
7 approved at this stage. In May of 2018, the County itself stated that this is the feasibility stage.
8 Exhibit N-2. Thus, even the County recognizes that this is not the final design stage of the
9 permitting process. BSRE has provided significant analysis to show the County that its
10 requirements have been satisfied and that the project is feasible and has made multiple offers to
11 work with the County to resolve any remaining questions that the County may have. BSRE has
12 shown this willingness despite the fact that the County keeps requesting more and more
13 information. The testimony at the hearing showed that the County failed to meet its burden to
14 show, beyond a reasonable doubt, that there are any conflicts with the Code related to critical areas,
15 and, further, that any such conflict is substantial.

16
17 The County's allegations that the Land Use Applications (1) fail to document feasibility
18 and code compliance of the secondary access road; (2) fail to provide a landslide hazard deviation;
19 and (3) fail to comply with code provisions regarding critical areas, including geologically
20 hazardous areas do not constitute substantial conflicts. None of these issues amount to a
21 "substantial conflict" sufficient to justify the County's premature denial of the Point Wells project
22 prior to SEPA review being completed and the site plan being finalized. Per the Oxford Living
23 Dictionary, "substantial" is defined as "of considerable importance." The County failed to show
24 and the Hearing Examiner failed to show how these issues are "of considerable importance," that
25 they have not been and cannot promptly be resolved, and that they provide any indication that the
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27

1 project is not feasible. Reasonable doubt exists as to whether each of the recommended grounds
2 for denial are sufficient and the Hearing Examiner's denial Decision should be reversed and the
3 County should be ordered to proceed with the SEPA review.

4 BSRE provided landslide hazard deviation requests, geotechnical reports, and subsurface
5 condition reports that did not substantially conflict with the Code and therefore the Findings of
6 Fact and Conclusions of Law related to the landslide hazard areas should be revised accordingly.
7 If the County or the Hearing Examiner believes additional work is necessary to show compliance
8 with any applicable provision, then it would be appropriate to condition any future approvals on
9 obtaining the deviation and any necessary approvals for the secondary access road. The Decision
10 failed to recognize that additional revisions will be made as the environmental review continues
11 and that conditions to approval would be appropriate. There has been no testimony that BSRE
12 cannot satisfy the requirements of a deviation request and cannot show that the site is suitable for
13 the proposed development. For these reasons, BSRE has shown reasonable doubt regarding this
14 alleged substantial conflict with the Code. Thus, the County should not be allowed to prematurely
15 terminate the Land Use Applications on these grounds.⁸

16
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18 **E. The County Failed to Act in Good Faith.**

19 The Findings of Fact and Conclusions of Law related to whether the County acted in good
20 faith (including, but not limited to F.171, F.176, F.177, F.178, F.179, F.180, F.181, F.182, F.183,
21 F.184, and C.44) are not supported by the evidence and should be reversed.

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24 ⁸ The Hearing Examiner also found that BSRE incorrectly mapped the landslide hazard area. F.167, F.168,
25 F.169 and F.170. However, as Mr. Bingham testified, this is not a substantial conflict with the code because it is easily
26 remedied and does not cause any substantial issues with the proposed development. The error was in the north end
27 only, where few buildings are located and amounted to a total difference of approximately 13 feet. *See* Testimony of
John Bingham, November 6, 2020. This was also addressed in Exhibit Z-6. Further, this was a new comment which
BSRE had never received before and should have been outside the scope of the recommended denial since this was to
be a remand from the prior decision and should have been limited to only those issues raised previously.

1 In June of 2019, the King County Superior Court specifically ordered the parties to “act
2 diligently, in good faith and in accord with the Snohomish County Code and all other applicable
3 statutory provisions in *completing the application review process.*” Exhibit U-1 (emphasis
4 added). Despite the Hearing Examiner’s findings to the contrary, the fact is that that the County
5 failed to take any actions to “complete the application review process.” Instead, the County took
6 every opportunity to attempt to prevent BSRE from succeeding.
7

8 Initially, as set forth above, to seek further clarification on the two Appealed Statutory
9 Issues, BSRE appealed a portion of the Superior Court Order. To be able to properly revise the
10 Land Use Applications, BSRE sought an extension from the County. Such an extension would
11 have allowed BSRE to receive a ruling on the Appealed Statutory Issues before submitting the
12 revised Land Use Applications. However, the County denied BSRE’s request.
13

14 Subsequently, BSRE spent significant resources preparing the revised Land Use
15 Applications by their deadline in December of 2019, despite not having a ruling on the Appealed
16 Statutory Issues. Instead of acting in good faith to allow the completion of the application review
17 process, the County did not provide any substantive response to the Land Use Applications until
18 it provided notice that it intended to deny the Land Use Applications once again without
19 preparation of an EIS under SCC 30.61.220. This particular provision is an extraordinary remedy,
20 which Mr. Countryman testified has only been used one other time in his entire career with the
21 County of more than 20 years. See Testimony of Ryan Countryman, November 6, 2020. The
22 County’s reliance on SCC 30.61.220 is not in good faith where the County failed to even
23 correspond with BSRE regarding the revised Land Use Applications. BSRE did not even receive
24 one comment letter and opportunity to respond. It is especially egregious that the County knew of
25 the pending appeal, refused to grant an extension, and then promptly tried to deny the Land Use
26
27

1 Applications without completing its review, relying, in part, on the issues to be resolved in the
2 appeal.

3 Another example of the County's bad faith is its decision to hire a consultant to review
4 BSRE's FAR calculations, but then specifically prohibiting that consultant from communicating
5 with BSRE. Mr. Brajcich testified on November 5, 2020, that the County determined that he
6 should not work with BSRE or ask BSRE for any clarification in determining the FAR
7 calculations. *See* Testimony of Jeffry Brajcich, November 5, 2020. Mr. Brajcich had to make
8 some assumptions to determine the FAR because he was prevented from communicating with
9 BSRE. *Id.* He testified that the normal process involves communication with the applicant. *Id.*
10 In addition, Mr. Brajcich was specifically advised not to conduct any calculations involving the
11 buildings proposed to be built in the Upper Plaza or buildings higher than 90 feet tall. *Id.* Thus,
12 Mr. Brajcich was not even allowed to calculate the FAR based on BSRE's proposed plans. This
13 provides an inaccurate view of what the actual FAR is and whether the minimum of 1.0 FAR can
14 be satisfied with BSRE's Land Use Applications. This also shows that the County was not
15 attempting, in good faith, to determine whether BSRE's application materials were accurate and/or
16 sufficient, but rather that the County was merely attempting to find a reason to deny BSRE's Land
17 Use Applications.
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21 The County's failure to engage in any discussions with BSRE regarding its deviation
22 requests is another example of its failure to act in good faith. Mr. Sleight testified in 2018 that the
23 normal process involves communicating with the applicant to discuss whether the deviation is
24 necessary, any alternatives, and whether the engineering support can be sufficient. *See* Exhibit T-
25 5. However, he failed to do that prior to issuing his denial in May of 2020.
26
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1 As Ryan Countryman testified on May 21, 2018, applications typically go through seven
2 or eight iterations. With a project this complex, it is understandable why multiple iterations are
3 necessary, both from the applicant's perspective as well as that of the County. Multiple reviews
4 allow both parties to ensure code compliance. This ability to fix issues is exactly why the code
5 authorizes the Examiner to reconsider his decision based on post-decision submittals. This project
6 is by far the most complicated project that Snohomish County has seen (*see* Exhibit T-7, Ryan
7 Countryman's May 24, 2018 Testimony), making the need for multiple revisions even greater.
8 BSRE has shown it is motivated to resolve all issues raised by PDS and will work diligently to do
9 so.
10

11 To the contrary, the County has demonstrated that it has no desire to work with BSRE and
12 no desire to work in good faith to process the Land Use Applications. In fact, the County sought
13 out new reasons for denying the Land Use Applications in 2020 – despite the fact that the remand
14 was only supposed to be to address the Original Conflict Areas raised in 2018. The County, for
15 the first time in its Supplemental Staff Recommendation No. 2, issued in May 2020, asserted that
16 BSRE's consultants miscalculated the FAR by incorrectly including common areas, stairwells, and
17 elevators in its floor area calculations. The County failed to provide BSRE with any opportunity
18 to meaningfully respond to this new assertion and failed to allow BSRE to work with the County
19 consultants on this issue. Further evidence of the County's bad faith is set forth in Section G
20 below.
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22 For all of these reasons, all Findings of Fact and Conclusions of Law stating that the County
23 worked in good faith should be reversed.
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1 **F. SCC 30.61.220 Violates State Law.**

2 In addition to the above cited reasons, the Hearing Examiner’s decision terminating the
3 Land Use Applications should be reversed because SCC 30.61.220 itself violates state law. The
4 County’s attempt to terminate the Land Use Applications without preparation of an EIS violate
5 state law and should be reversed.
6

7 As Mr. Countryman testified on May 21, 2018, and again on November 6, 2020, the County
8 rarely invokes SCC 30.61.220. In fact, Mr. Countryman could only recall one other time it had
9 been invoked in his 20+ year career with the County. *See* Testimony of Ryan Countryman,
10 November 6, 2020. This makes sense given the typical review process, which includes multiple
11 iterations of project applications.
12

13 Mr. Countryman could not identify any other jurisdiction with a similar code provision.
14 *Id.* This is understandable because the statute directly conflicts with state law. RCW 43.21C.030
15 requires that an environmental impact statement be prepared where there is a determination of a
16 probable impact. Specifically, RCW 43.21C.030 states:

- 17 (1) An environmental impact statement (the detailed statement required by
18 RCW 43.21C.030(2)(c)) **shall** be prepared for proposals for legislation
19 and other major actions having a probable significant, adverse
 environmental impact....

20 RCW 43.21C.030(1) (emphasis added). RCW 43.21A.030(1) is very specific – an EIS **shall be**
21 **prepared** for all proposals having a probable significant, adverse environmental impact (emphasis
22 added). By using the word “shall,” the legislature has mandated that the EIS be prepared if there
23 has been any proposal with a determination of a probable impact. There is no question that the
24 County has already issued a notice of significance for the proposed development at Point Wells.
25 *See* Exhibits E-1, E-2. Thus, under state law, the County is required to prepare the EIS. The
26

1 Hearing Examiner should have denied the County's attempts to prematurely deny the Land Use
2 Applications under SCC 30.61.220 in violation of RCW 43.21A.030(1).

3 **G. The Application Termination Date is in 2022 or an Extension Should be Granted.**

4 For the first time at the Hearing, the County stated it believes that the revised Land Use
5 Applications submitted in **December of 2019** actually expired in **June of 2018**. The Hearing
6 Examiner erred when it failed to issue a ruling on the expiration date of the revised Land Use
7 Applications.
8

9 If the County's interpretation of the termination date is correct, then BSRE's right to
10 reactivate its applications was illusory only. The County should have immediately advised BSRE
11 that it believed BSRE actually had no right to reapply, rather than encouraging BSRE to spend
12 significant money revising and reactivating its applications. SCC 30.70.140 states that urban
13 center development applications expire in 36 months. The only logical reading of this provision,
14 when read in conjunction with SCC 30.34A.180(2)(f) (2007), is that the reactivated application
15 would re-start the clock for the expiration date.
16

17 If the County truly believed that the Land Use Applications were expired by the time they
18 were submitted in December of 2019, then the County would have notified BSRE, upon receipt of
19 the applications in December of 2019, that they were expired and would not be reviewed by the
20 County. The fact that the County chose to attempt to deny the Land Use Applications by relying
21 on SCC 30.61.220 instead of an alleged expiration date shows that the County itself did not believe
22 that the Land Use Applications were expired.
23

24 Furthermore, if the County is taking this position, then during the LUPA appeal before the
25 King County Superior Court, the County should have raised this as an issue as to why BSRE was
26 not entitled to reapply under SCC 30.34A.180(2)(f) (2007). By failing to make that argument to
27

1 the King County Superior Court, the County waived its right to now argue that the Land Use
2 Applications were already expired. Thus, the County's interpretation of the termination date
3 should have been rejected by the Hearing Examiner and the Hearing Examiner should have found
4 that they expire in December of 2022. The County's interpretation is just another thinly veiled
5 attempt to prevent BSRE from having its right to have its Land Use Applications fully considered.
6 Such efforts further show the County's failure to act in good faith.

8 In the alternative, the Hearing Examiner should have granted an extension to BSRE. The
9 Code specifically grants the Hearing Examiner authority and discretion to modify the application
10 expiration period and grant an extension. SCC 30.70.140(2).⁹ The Hearing Examiner's discretion
11 under SCC 30.70.140(2) is broad and encompasses all applications set forth in SCC Table
12 30.70.140(1), including BSRE's revised Land Use Applications. SCC 30.70.140(2) does not
13 impose a temporal restriction on the Hearing Examiner's discretion.¹⁰ The Hearing Examiner
14 should have exercised his discretion in granting an extension under the unique circumstances here
15 so that BSRE can have a full and thorough review of its revised Land Use Applications.

17 The County Council should remand back to the Hearing Examiner with a finding that the
18 applications terminate in December of 2022 or remand to the Hearing Examiner for an extension.
19 The extension should be for 18 or 30 months, as set forth in Exhibit Q-4.

23 ⁹ The full text of SCC 30.70.140(2) is as follows:
24 SCC Table 30.70.140(1) establishes the expiration period for applications, approvals, and permits, except that:
25 (a) When an EIS is required, the expiration period of an application will be suspended until the
26 FEIS is issued. The suspension of the expiration period for an application shall not exceed 18
27 months unless approved by the director; and

(b) When otherwise modified by the hearing examiner.
¹⁰ The Hearing Examiner's discretion to grant an extension is also not limited in scope to specific permit
types by either SCC 30.70.140(2) or by any other Code provision (*e.g.*, Type 1 under Chapter 30.71 SCC or Type II
under Chapter 30.72 SCC).

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IV. CONCLUSION

Base on the foregoing, BSRE requests that the Snohomish County Council reverse the Hearing Examiner’s Decision and (1) deny the County’s request to deny BSRE’s applications without an environmental impact statement, (2) grant BSRE’s request for an extension or determine that the applications terminate in December of 2022, (3) find that the County acted in bad faith, (4) find that SCC 30.61.220 violates state law, and (5) reverse all Findings of Fact, Conclusions of Law or rulings which relate to any of the above issues.

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DATED this 12th day of February, 2021.



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CERTIFICATE OF SERVICE

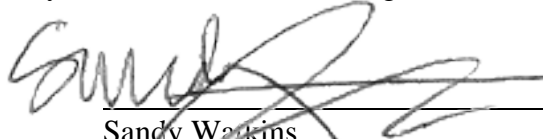
I, Sandy Watkins, affirm and state that I am employed by Karr Tuttle Campbell in King County, in the State of Washington. I am over the age of 18 and not a party to the within action. My business address is: 701 Fifth Avenue, Suite 3300, Seattle, Washington 98104. On this day, I caused the foregoing BSRE Point Wells, LP's Appeal of Hearing Examiner Decision, to be served on the parties listed below in the manner indicated.

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

- Via U.S. Mail and U.S. Mail; Return Receipt Requested
- Via Hand Delivery
- Via Electronic Mail
- Via Overnight Mail
- CM/ECF via court's website

I declare under penalty of perjury that the foregoing is true and correct.

Dated on this 12th day of February 2021, at Seattle, Washington.



Sandy Watkins
Legal Assistant

EXHIBIT A

BEFORE THE HEARING EXAMINER
IN AND FOR THE COUNTY OF SNOHOMISH

In Re Point Wells Urban Center,

No. 11-101457 LU
11-101461 SM
11-101464 RC
11-101008 LDA
11-101007 SP
11-101457 FHZ
11-101457 SHORE
11-101457-002-00 VAR
11-101457-003-00 VAR
11-101457-000-00 WMD
11-101457-001-00 WMD
18-116078 CI

BSRE Point Wells LP,

Applicant,

Decision on Remand Denying
Applications Without Environmental
Impact Statement

Snohomish County Planning and Development
Services Department

- 1 Snohomish County Planning and Development Services Department (PDS) asked for denial
- 2 of BSRE's development applications without completing an environmental impact statement
- 3 because of substantial conflicts with county code. SCC 30.61.220 (2003). The Hearing
- 4 Examiner grants PDS' request to deny the applications because of continued substantial
- 5 conflicts between BSRE's 2019 proposal and county code.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP, 11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1	I. FINDINGS OF FACT	5
2	A. Timeline.....	5
3	1. Incorporated Findings from Prior Decision	5
4	2. Findings on Remand.....	10
5	B. Buffer from Ordinary High Water Mark.....	15
6	C. Innovative Development Design.....	15
7	D. Building Heights Over 90 Feet.....	16
8	1. High Capacity Transit Access.....	16
9	a. Commuter Rail Platform.....	17
10	b. Water Taxi.....	19
11	2. Variance from Building Height Limit to Meet Floor Area Ratio Requirements.....	19
12	a. Special Circumstances	20
13	b. Substantial Property Right or Use.....	21
14	c. Materially Detrimental or Injurious to Other Properties	22
15	d. Adverse Impact on Comprehensive Plan.....	23
16	E. Building Height Setbacks from Lower Density Zones	24
17	1. Background.....	24
18	2. Variance.....	25
19	a. Special Circumstances	26
20	b. Substantial Property Right or Use.....	27
21	c. Materially Detrimental or Injurious to Other Properties	28
22	d. Adverse Impact on Comprehensive Plan.....	28
23	F. Critical Areas (Geologically Hazardous Areas & Secondary Access Road)	28
24	1. Landslide Hazard Area Deviation	28
25	a. No Alternative Location	29
26	b. Geotechnical Report	30
27	c. Safety Factors	31
28	d. Phasing	32
29	e. Drainage.....	32
30	f. Deviation Denial.....	33
31	2. Liquefaction.....	33
32	3. Mapping of the Land Hazard Area & Setback	34
33	G. Good Faith Review.....	34
34	II. CONCLUSIONS OF LAW	36
35	A. Denial for Substantial Conflicts with County Code.....	36
36	1. Buffer from Ordinary High Water Mark	37
37	2. Innovative Development Design	37
38	3. Building Heights.....	38
39	a. High Capacity Transit (SCC 30.34A.040(1)).....	38

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1	b. Variance from Building Height Limit to Meet Floor Area Ratio Requirements ...	40
2	4. Building Height Setbacks from Lower Density Zones (SCC 30.34A.040(2)(a)	41
3	5. Critical Areas (Geologically Hazardous Areas & Secondary Access Road.....	42
4	a. Landslide Hazard Area Deviation	42
5	b. Geotechnical Report	43
6	B. Good Faith	44
7	III. DECISION.....	45
8	IV. RECONSIDERATION AND APPEAL PROCEDURES.....	46
9	Reconsideration.....	46
10	Appeal.....	47
11	APPENDIX A -- LIST OF EXHIBITS AND WITNESSES.....	49
12	A. Application.....	49
13	B. Plans.....	50
14	C. Reports.....	50
15	D. Property	51
16	E. Environmental	52
17	F. Notice and Routing [List to be Appended with records from 2018].....	52
18	G. Other Submittal Items and Correspondence	52
19	H. City / Agency Comments.....	53
20	I. Public Comments	54
21	J. [Not used].....	64
22	K. Snohomish County Review.....	64
23	L. Documents Cited in Project Review	66
24	M. Miscellaneous Correspondence	66
25	N. Staff Recommendation – Department of Planning & Development Services.....	67
26	O. Applicant (BSRE) / Respondent (PDS) Exhibit, Witness Lists & Briefs	67
27	P. Submitted During The Open Record Hearing	67
28	Q. Record Left Open For Final Comments.....	68
29	R. Reconsideration	68
30	S. Documents relied on by Snohomish County Council	68
31	T. Transcripts Relied on by King County Superior Court	69

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1	U. King County Superior Court Decision	69
2	V. Applicant December 2019 Resubmittal and New Approval Requests	69
3	W. Agency and Public Comments [for continued Hearing]	70
4	X. Snohomish county Review, Staff recommendation and supporting documents... 73	
5	Y, Administrative Documents Submitted For The Record	73
6	Z. Joint Exhibits Submitted 10 29 2020 For The Record [<i>For Continued Hearing</i>].....	74
7	2018 Open Record Hearing.....	75
8	Counsel.....	75
9	Witnesses	75
10	Public Comment.....	75
11	2020 Open Record Hearing.....	76
12	Counsel.....	76
13	Witnesses	76
14	Public Comment.....	76

15

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ ,11-101457 SHORE,11-101457-002-00 VAR ,11-101457-003-00 VAR ,11-101457-000-00 WMD ,11-101457-001-00 WMD ,18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 **I. FINDINGS OF FACT**

2 **A. TIMELINE**

3 **1. Incorporated Findings from Prior Decision**

4 Findings of fact F.1 – F.43 of Amended Decision Denying Extension and Denying
5 Application Without Environmental Impact Statement, dated August 2, 2018 are
6 incorporated by reference. They are reproduced below for convenience:

- 7 F.1 BSRE Point Wells, LP, submitted a short plat application and land disturbing
8 activity permit application on February 4, 2011, and land use permit
9 application for an urban center site plan, shoreline management permit
10 application, and retaining wall – commercial permit application on March 4,
11 2011.¹ BSRE also submitted a traffic impact analysis and critical areas report.
- 12 F.2 On April 25, 2011, the Puget Sound Growth Management Hearings Board
13 invalidated Snohomish County’s urban center code and designation of Point
14 Wells as an urban center.
- 15 F.3 The King County Superior Court enjoined Snohomish County from processing
16 BSRE’s applications on September 12, 2011.
- 17 F.4 Despite the injunction, BSRE conferred with the city of Shoreline regarding
18 traffic.
- 19 F.5 On December 20, 2012, the Growth Management Hearings Board found
20 Snohomish County complied with its prior order.
- 21 F.6 PDS wrote to BSRE on April 12, 2013, describing needed information for
22 further evaluation of BSRE’s applications. PDS identified 62 separate items.²
- 23 F.7 The Washington State Court of Appeals reversed the King County Superior
24 Court injunction on June 7, 2013.
- 25 F.8 BSRE met with Shoreline in February and March 2014 to discuss traffic.
- 26 F.9 BSRE proposed a transportation corridor study on February 2, 2014.
- 27 F.10 BSRE and Shoreline conducted six public meetings between February 12,
28 2014 and April 3, 2014 to obtain public comment regarding the proposed
29 transportation corridor study and mitigation of transportation impacts.
- 30 F.11 On March 21, 2014, BSRE requested an extension of the application
31 expiration date, which PDS granted.³

¹ Ex. A.40.

² Ex. K.4.

³ Ex. G.1.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

- 1 F.12 The Washington State Supreme Court affirmed the Court of Appeals' decision
2 on April 10, 2014.
- 3 F.13 BSRE continued working with Shoreline on transportation issues between
4 April 20, 2014 and April 20, 2015.
- 5 F.14 On April 15, 2015, BSRE requested a second extension of the application
6 expiration date, which PDS also granted.⁴
- 7 F.15 On May 27, 2015, Snohomish County and the town of Woodway commented
8 on BSRE's proposed traffic methods and assumptions memo.
- 9 F.16 BSRE submitted a revised critical areas report in June 2015.
- 10 F.17 On July 6, 2015, BSRE submitted a revised traffic methods and assumptions
11 memo. During July, the county commented on the revised critical areas
12 report.
- 13 F.18 BSRE submitted a secondary access report to the county on August 26,
14 2015, for which the county provided comments on September 17, 2015.
- 15 F.19 The county commented on the second traffic methods and assumptions
16 memo on October 14, 2015.
- 17 F.20 BSRE submitted another revised traffic methods and assumptions memo on
18 December 14, 2015. The county's third-party reviewer, Transpo, commented
19 on this third memo on January 18, 2016.
- 20 F.21 On March 30, 2016, BSRE requested a third extension.⁵ PDS granted
21 BSRE's request, extending the expiration to June 30, 2018. PDS notified
22 BSRE of Amended Ordinance 16-004, which applied new expiration
23 regulations to pending applications, including the Point Wells applications.
24 PDS also advised BSRE that the applications could be heard by the Hearing
25 Examiner if the alleged deficiencies were not remedied, though PDS would
26 recommend denial. PDS told BSRE that it would receive no further
27 extensions absent "extraordinary circumstances."⁶
- 28 F.22 On May 5, 2016, BSRE submitted a second updated traffic impact analysis to
29 the county. The county authorized Transpo to review it on May 11, 2016.
- 30 F.23 Transpo commented on the second traffic impact analysis on May 26, 2016.
31 The county's and Shoreline's comments followed the next day.
- 32 F.24 PDS provided BSRE with a draft environmental impact statement for review
33 on July 29, 2016.

⁴ Ex. G.2; Ex. P.11.

⁵ Ex. G.5.

⁶ Ex. K.13

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

- 1 F.25 BSRE submitted a third traffic impact analysis to PDS on September 1, 2016.
- 2 F.26 Four years after PDS' initial review completion letter, BSRE comprehensively
3 responded on April 17, 2017, including a revised urban center application,
4 project narrative, response to PDS, drawings, targeted drainage report, the
5 revised critical areas report, a transportation demand management plan,
6 information regarding secondary access and fire apparatus turning radius.
- 7 F.27 On May 2, 2017, PDS confirmed receipt of the additional information and
8 advised BSRE that its applications would expire a little over a year later on
9 June 30, 2018.⁷
- 10 F.28 PDS commented on the second traffic impact analysis on May 10, 2017.
- 11 F.29 BSRE and PDS met on June 16, 2017 to discuss BSRE's April submissions.
- 12 F.30 PDS commented on the third traffic impact analysis in July, August, and
13 September 2017. PDS and BSRE met to discuss traffic in July and
14 September.
- 15 F.31 PDS sent BSRE a review completion letter on October 6, 2017. More than
16 half of the issues identified in the April 12, 2013 letter were still unresolved
17 due to lack of adequate information.⁸ PDS again advised BSRE of the June
18 30, 2018 expiration of the applications. PDS reiterated that a further
19 extension of the expiration date would only be granted in extraordinary
20 circumstances.⁹
- 21 F.32 BSRE and PDS met on November 13, 2017. BSRE asked PDS attendees
22 whether there was any reason BSRE might not receive another extension?
23 PDS attendees did not assure BSRE that it would receive another extension
24 or advise BSRE that it would not. BSRE left the meeting with the belief that a
25 further extension was likely.
- 26 F.33 BSRE and PDS met again in December 2017.
- 27 F.34 BSRE advised PDS by letter on December 29, 2018 that it would not be able
28 to submit responsive materials by January 8, 2018.
- 29 F.35 On January 9, 2018, PDS wrote BSRE that it would proceed to review the
30 project materials on hand and process the urban center application. BSRE
31 understood that PDS would likely recommend the Hearing Examiner deny the
32 application without proceeding with environmental impact statement.

⁷ Ex. K.19.

⁸ Ex. K.31.

⁹ Ex. K.32.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

- 1 F.36 BSRE wrote PDS on January 12, 2018 to request a fourth extension. BSRE
2 asked for at least another two years.¹⁰ BSRE also advised that it would
3 submit revised materials by April 30, 2018.
- 4 F.37 PDS denied the request for an extension on January 24, 2018.¹¹
- 5 F.38 Five years after receiving the first review completion letter, BSRE authorized
6 its consultant, David Evans and Associates, to ascertain the ordinary high
7 water mark in March 2018.¹² BSRE had not ascertained the ordinary high
8 water mark prior to this time, though locating the ordinary high water mark is
9 necessary to delineate the shoreline buffer and to configure the location and
10 footprint of buildings in the proposed urban center.
- 11 F.39 In April 2018, BSRE asked its consultant HartCrowser to prepare a deviation
12 request from landslide hazard area requirements.¹³
- 13 F.40 On April 11, 2018, the Hearing Examiner scheduled an open record hearing
14 on PDS' request to deny the applications and BSRE's request for an
15 extension.
- 16 F.41 On April 27, 2018, BSRE filed:
- 17 A. Updated master permit application and checklist for land disturbing activity
18 permit.¹⁴
- 19 B. Variance request to allow tall buildings near low density zones.¹⁵
- 20 C. EDDS deviation request to allow private roads.¹⁶
- 21 D. Updated master permit application for Urban Center Development Plan
22 and Shoreline Substantial Development Permit.¹⁷
- 23 E. Updated Point Wells development project narrative.¹⁸
- 24 F. Initial application for a flood hazard permit.¹⁹
- 25 G. Updated preliminary short subdivision submittal checklist.²⁰

¹⁰ Ex. G.8.

¹¹ Ex. K.40.

¹² Testimony of Gray Rand.

¹³ Testimony of John Bingham.

¹⁴ Ex. A.28.

¹⁵ Ex. A.29.

¹⁶ Ex. A.30.

¹⁷ Ex. A.31 (April 27, 2018).

¹⁸ Ex. A.32 (April 24, 2018).

¹⁹ Ex. A.33

²⁰ Ex. A.34.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

- 1 H. Supplement to Urban Center narrative.²¹
- 2 I. Architectural plans for Urban Center site plan.²²
- 3 J. Secondary access road exhibit.²³
- 4 K. Initial coastal engineering assessment.²⁴
- 5 L. Updated critical areas report.²⁵
- 6 M. Updated targeted stormwater site plan reports.²⁶
- 7 N. Landslide area deviation request.²⁷
- 8 O. Updated subsurface conditions report.²⁸
- 9 P. Fire turning studies.²⁹
- 10 Q. Hydrogeologic report.³⁰
- 11 R. Remediation memo.³¹
- 12 F.42 BSRE submitted more information the day before the open record hearing
13 began:
- 14 A. Updated Point Wells development project narrative.³²
- 15 B. Updated Shoreline Management Act consistency narrative.³³
- 16 C. Updated landslide area deviation request.³⁴
- 17 D. Urban Center development application supplement.³⁵
- 18 E. Revised phasing drawing showing transit station in Phase 1.³⁶

²¹ Ex. A.35, superseded by A.38 submitted on May 15, 2018.

²² Ex. B.7 (April 24, 2018).

²³ Ex. B.8.

²⁴ Ex. C.25 (April 23, 2018).

²⁵ Ex. C.30

²⁶ Ex. C.32 (April 27, 2018).

²⁷ Ex. C.27 (April 24, 2018).

²⁸ Ex. C.33 (April 20, 2018).

²⁹ Ex. C.23.

³⁰ Ex. C.26.

³¹ Ex. C.29.

³² Ex. A.40.

³³ Ex. A.36.

³⁴ Ex. A.37.

³⁵ Ex. A.38.

³⁶ Ex. A.39, sheet A.056.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 F.43 The open record hearing began on May 16, 2018.

2 **2. Findings on Remand**

3 F.1 On August 3, 2018, the Hearing Examiner issued an Amended Decision Denying
4 Extension and Denying Application Without Environmental Impact Statement (“Denial
5 Decision”). BSRE appealed the Denial Decision to the County Council.³⁷

6 F.2 On October 8, 2018, the County Council affirmed the Hearing Examiner’s Denial
7 Decision with minor modifications by Motion No. 18-360.

8 F.3 On October 29, 2018, BSRE filed a Land Use Petition Act (LUPA) appeal in King
9 County Superior Court challenging the Examiner’s Reconsideration Decision and
10 Denial Decision, along with the Council’s Decision.

11 F.4 On June 18, 2019, the Superior Court issued an “Order on BSRE Point Wells, LP’s
12 LUPA Petition Remanding Per SCC 30.34A.180(2)(f)” (“Remand Order”).³⁸

13 F.5 In the Remand Order, the Superior Court provided that BSRE was entitled to “a one-
14 time reactivation opportunity” under former SCC 30.34A.180(2)(f) because PDS had
15 included the regulation in a review letter to BSRE after the regulation had been
16 repealed.

17 F.6 The Superior Court applied SCC 30.34A.180(2)(f) to establish a December 18, 2019,
18 deadline for BSRE to reactivate its applications and provided the reactivation was
19 “one-time reactivation opportunity rather than as an avenue for future reactivation
20 requests.”

21 F.7 The Remand Order provided that “[t]he parties are to act diligently, in good faith and in
22 accord with the Snohomish County Code and all other applicable statutory provisions
23 in completing the application review process.”³⁹

24 F.8 The Superior Court explicitly declined to rule on the issues of substantial conflict
25 recognizing that due to the remand “[those issues] may come before the Court in the
26 future depending on what happens with the reapplication process allowed by this
27 ruling.”

28 F.9 On July 31, 2019, BSRE appealed the Superior Court’s Remand Order to the court of
29 appeals. BSRE alleged that the Superior Court erred by not reversing or ruling upon

³⁷ Ex. R.4.

³⁸ Ex. U.1.

³⁹ *Id.*, 19:11-13.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-
101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-
001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 (i) the conclusion that the residential setback of SCC 30.34A.040(2)(a) applies to Point
2 Wells; and (ii) the conclusion that proximity without access to high capacity transit
3 does not satisfy SCC 30.34A.040(1). BSRE did not allege error with any other issues
4 of substantial conflict.

5 F.10 On August 27, 2019, BSRE filed a Motion to Stay Enforcement of Judgment with the
6 Court of Appeals. On September 19, 2019, a Court of Appeals commissioner denied
7 BSRE's motion. The ruling was based on the grounds that "BSRE offers no authority
8 for this Court to extend the time period *set by the county code*" (emphasis in the
9 original) and suggested that BSRE may seek relief from the County.⁴⁰

10 F.11 On October 4, 2019, BSRE sent a letter to PDS requesting a stay of the six-month
11 application deadline.⁴¹

12 F.12 On October 9, 2019, PDS responded to BSRE's request and explained that the county
13 code does not authorize PDS to extend or waive the six-month deadline established in
14 SCC 30.34A.180(2)(f).⁴²

15 F.13 On December 12, 2019, BSRE submitted new and revised application materials (the
16 "Application") that consisted of the following eighteen documents:

- 17 A. Summary of Revisions Letter⁴³
- 18 B. Revised Master Permit Application⁴⁴
- 19 C. Supplement to Urban Center Application⁴⁵
- 20 D. Revised Point Wells Project Narrative⁴⁶
- 21 E. Shoreline Narrative⁴⁷
- 22 F. Architectural Plans⁴⁸

⁴⁰ Ex. Y.3, Att. 3.
⁴¹ Ex. Y.3, Att. 4.
⁴² Ex. Y.3, Att. 5.
⁴³ Ex. V.1.
⁴⁴ Ex. V.2.
⁴⁵ Ex. V.3.
⁴⁶ Ex. V.4.
⁴⁷ Ex. V.5.
⁴⁸ Ex. V.6.

- 1 G. Preliminary Short Plat⁴⁹
- 2 H. Targeted Stormwater Site Plan for Short Plat⁵⁰
- 3 I. Targeted Stormwater Site Plan for Urban Center⁵¹
- 4 J. Critical Areas Report⁵²
- 5 K. Memo Re Calculation of Trip Generation⁵³
- 6 L. Memo Re Updated Info for Expanded Traffic Impact Analysis⁵⁴
- 7 M. Secondary Access Road Exhibit⁵⁵
- 8 N. Fire Truck Turning Movements Exhibit⁵⁶
- 9 O. Landslide Deviation Request⁵⁷
- 10 P. Subsurface Conditions Report Addendum⁵⁸
- 11 Q. EDDS Deviation Request for Private Roads⁵⁹
- 12 R. Variance Application – Height over 90 Feet⁶⁰
- 13 F.14 On December 16, 2019, BSRE submitted a nineteenth document: Variance
- 14 Application – Height Near Low Density Zones⁶¹
- 15 F.15 BSRE’s reactivated application did not change from its prior proposal in the following
- 16 material ways: (a) it continues to include numerous buildings taller than 90 feet; (b) it
- 17 continues to propose buildings and facilities within the landslide hazard area; and (c)
- 18 it continues to propose buildings in setback areas to adjacent property that are taller

⁴⁹ Ex. V.7.

⁵⁰ Ex. V.8.

⁵¹ Ex. V.9.

⁵² Ex. V.10.

⁵³ Ex. V.11.

⁵⁴ Ex. V.12.

⁵⁵ Ex. V.13.

⁵⁶ Ex. V.14.

⁵⁷ Ex. V.15.

⁵⁸ Ex. V.16.

⁵⁹ Ex. V.17.

⁶⁰ Ex. V.18.

⁶¹ Ex. V.19.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

- 1 than allowed by county code.⁶² The application did not provide any different or
2 confirming information from the Regional Transit Agency (Sound Transit) regarding
3 implementation of commuter rail service at BSRE's proposed rail platform.
- 4 F.16 BSRE modified its proposal to remove some (but not all) of the taller-than-allowed
5 buildings in the upper plaza from the residential setback area; relocation of buildings
6 outside of the shoreline setback; reduction of residential units from 3,085 to 2,846;
7 and four development phases.⁶³ Otherwise, the project proposal remains largely
8 unchanged.⁶⁴
- 9 F.17 In January 2020, PDS Chief Engineering Officer, Randy Sleight and BSRE's
10 drainage engineer, Mark Davies, discussed questions and issues related to drainage
11 related to the landslide hazard deviation request.⁶⁵
- 12 F.18 In February 2020, PDS hired a third-party consultant, WJA Design Collaborative, to
13 conduct peer-review of BSRE's floor area ratio (FAR) calculations that BSRE
14 claimed justified two variances and a landslide hazard area deviation.⁶⁶
- 15 F.19 WJA issued a Point Wells Development Floor Area Ratio (FAR) Review – Initial
16 Findings Report, dated April 13, 2020.⁶⁷
- 17 F.20 The Chief Engineering Officer denied BSRE's Landslide Hazard Deviation request in
18 a decision dated May 14, 2020.⁶⁸
- 19 F.21 PDS issued Supplemental Staff Recommendation No. 2 on May 27, 2020,
20 recommending denial of the two variance applications and shoreline CUP
21 application, and recommending denial of the proposal under SCC 30.61.220.⁶⁹
- 22 F.22 In a letter dated June 5, 2020, PDS forwarded the Supplemental Staff
23 Recommendation No. 2, Landslide Hazard Deviation Decision, and the Point Wells
24 Development Floor Area Ratio (FAR) Review – Initial Findings Report to the Hearing
25 Examiner. With the letter, PDS invoked the Hearing Examiner's jurisdiction over the
26 Point Wells Application and requested a pre-hearing conference.⁷⁰
- 27 F.23 PDS did not provide BSRE another project review letter or invite BSRE to submit
28 another revised development proposal.

⁶² Ex. V.6.

⁶³ Phases 1, 2, 3.1, and 3.2. Ex. V.4, p. 8.

⁶⁴ Ex. V.1.

⁶⁵ Sleight Testimony, November 5, 2020; Davies Testimony, November 12, 2020.

⁶⁶ Brajcich Testimony, November 5, 2020.

⁶⁷ Ex. X.1.

⁶⁸ Ex. X.2.

⁶⁹ Ex. X.3.

⁷⁰ Ex. Y.1.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

- 1 F.24 A pre-hearing conference was held June 10, 2020, and open record hearing dates of
2 November 5, 6, 12, and 13, 2020, were tentatively established by the Hearing
3 Examiner.
- 4 F.25 On June 24, 2020, BSRE moved to stay the open record hearing pending a decision
5 by the Washington State Court of Appeals on BSRE's appeal from the King County
6 Superior Court decision. After briefing by both parties, the Hearing Examiner denied
7 the motion.⁷¹
- 8 F.26 The Hearing Examiner issued a scheduling order on September 24, 2020.⁷²
- 9 F.27 On October 29, 2020, BSRE submitted eight additional documents responding to
10 PDS's Supplemental Staff Recommendation No. 2. The documents included:
- 11 A. Response to Point Wells FAR Calculation Methodology⁷³
- 12 B. Variance Request Support Narrative and Diagrams⁷⁴
- 13 C. Height Variance Request Support Narrative and Diagrams⁷⁵
- 14 D. Woodway Highlands Storm Water As-Build Drawings⁷⁶
- 15 E. Response Letter to Landslide Hazard Deviation Decision⁷⁷
- 16 F. Response Letter to Supplemental Staff Recommendation No. 2⁷⁸
- 17 G. Critical Areas Report – Supplemental Memorandum⁷⁹
- 18 H. Geotechnical Justification and Response⁸⁰
- 19 F.28 The continued open record began on November 4, 2020 with public comment, and
20 continued with witness testimony on November 5, 6, and 12, 2020. A final day of
21 public comment was held on November 24, 2020, and the written record was closed
22 at 11:59 pm on November 24, 2020.
- 23 F.29 The Hearing Examiner considered the testimony of the witnesses, comment by the
24 public, and the exhibits in the record.⁸¹ A recording of the hearing is available from
25 the Snohomish County Office of Hearings Administration.

⁷¹ Ex. Y.5.

⁷² Ex. Y.6.

⁷³ Ex. Z.7.

⁷⁴ Ex. Z.9.

⁷⁵ Ex. Z.8.

⁷⁶ Ex. Z.10.

⁷⁷ Ex. Z.4.

⁷⁸ Ex. Z.5.

⁷⁹ Ex. Z.11.

⁸⁰ Ex. Z.6.

⁸¹ See Appendix A.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 **B. BUFFER FROM ORDINARY HIGH WATER MARK**

2 F.30 Shoreline jurisdiction extends 200 feet in all directions horizontally from the ordinary
3 high water mark (OHWM).⁸²

4 F.31 The site contains marine shorelines, which are categorized as critical areas by
5 county code.

6 F.32 Marine waters require a 150-foot buffer, measured horizontally landward from the
7 OHWM.

8 F.33 Despite the county code requirement of a 150-foot buffer from OHWM in existence in
9 2011, BSRE's original application delineated the mean higher high water mark, did
10 not delineate the OHWM and located four buildings partially or entirely within the
11 marine buffer.⁸³

12 F.34 BSRE did not delineate the OHWM until March 2018.⁸⁴

13 F.35 BSRE changed the site plan in its 2019 reactivated application by replacing the
14 mean higher high water with the OWHM and relocating four buildings that intruded
15 into the marine buffer.⁸⁵ BSRE's 2019 application relocated four residential
16 structures in the south village upland and 150 feet from the OHWM.

17 F.36 BSRE's 2019 reactivated application does not substantially conflict with county code
18 regarding the location of the marine buffer and its impact on building footprints.

19 **C. INNOVATIVE DEVELOPMENT DESIGN**

20 F.37 The project site contains streams, wetlands, and marine shorelines, which are all
21 categorized as critical areas by county code.

22 F.38 BSRE submitted an updated critical areas report in December 2019.⁸⁶

23 F.39 BSRE's critical area report quantified the following expected impacts: wetland
24 buffers (24, 243 square feet); streams (567 square feet; 68 linear feet); stream
25 buffers (11,425 square feet); stream buffer over existing developed area (6,202
26 square feet); marine shoreline over existing developed area (319,071 square feet).⁸⁷

27 F.40 BSRE proposes to mitigate the project's impact on wetlands, streams, marine
28 waters, and their buffers by Innovative Development Design (IDD).⁸⁸

⁸² RCW 90.58.030(2)(d).

⁸³ Ex. A.40.

⁸⁴ Ex. T.6, Rand Testimony.

⁸⁵ Ex. V.6.

⁸⁶ Ex. V.10.

⁸⁷ Ex. V.10, p. 86 (Table 15).

⁸⁸ Ex. V.10, pp. 116-117.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-
101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-
001-00 WMD, 18-116078 CI

- 1 F.41 With the revised critical areas report, IDD is no longer an issue of substantial conflict
2 with county code.
- 3 F.42 PDS identified failure to address impact of the water taxi as a conflict with the critical
4 area regulations.
- 5 F.43 BSRE provided a critical areas memo on October 29, 2020.⁸⁹ Although the memo
6 addresses impacts from the water taxi and Sounder station, BSRE did not provide its
7 critical areas any design or operation plans for the Sounder station or water taxi.⁹⁰
8 The consultant therefore did not review the design or operation of either the station
9 or water taxi.

10 **D. BUILDING HEIGHTS OVER 90 FEET**

- 11 F.44 The reactivated application proposes 46 buildings, 41 of which contain residences.
- 12 F.45 Seventeen of the proposed 46 buildings are taller than 90 feet. One is in the urban
13 plaza, five are in the south village, seven are in the central village, and four are in the
14 north village.⁹¹ The 17 residential buildings contain hundreds of dwelling units and
15 significant residential square footage. The seventeen buildings are a material,
16 substantial element of the proposal.⁹²
- 17 F.46 BSRE contends it is entitled to build 180-foot tall buildings because either (a) it plans
18 a water taxi and a commuter rail platform or (b) it is entitled to a variance from the
19 building height limit in county code.

20 **1. High Capacity Transit Access**

- 21 F.47 BSRE contends it is entitled to a 90-foot building height bonus because the
22 Burlington Northern Santa Fe (BNSF) mainline railroad tracks bisect the site and
23 Sound Transit's commuter rail operation (Sounder) operates on the tracks. SCC
24 30.34A.040(1).
- 25 F.48 BSRE did not present any evidence in either the 2018 or 2020 open record hearings
26 that the building height bonus is reasonable or necessary.
- 27 F.49 In the absence of any evidence from the applicant who bears the burden of proof,
28 the Hearing Examiner finds that the building height bonus is neither reasonable nor
29 necessary.

⁸⁹ Ex. Z.11.

⁹⁰ Pratt Testimony, November 12, 2020 Tape 2, 2:20-2:53.

⁹¹ Ex. V.6, pp. 5, 21-23.

⁹² Ex. V.6, pp. 21-23.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-
101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-
001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 **a. Commuter Rail Platform**

2 F.50 Findings F.54 – F.60 of the Denial Decision are incorporated by reference and
3 reproduced below for convenience.

4 F.54 Burlington Northern Santa Fe (BNSF) railroad tracks run through the
5 development. BNSF runs freight trains on the tracks and Sound Transit, the
6 central Puget Sound transit agency, runs a commuter train (Sounder) on the
7 tracks. Sound Transit purchased an easement from BNSF to run Sounder
8 and BNSF operates Sounder.

9 F.55 In 2010, the year before BSRE applied for approval of an urban center
10 development, a mid-level manager at Sound Transit advised BSRE that
11 Sound Transit might be interested in providing commuter rail service by
12 Sounder to the development, but that Sound Transit had no plans to fund a
13 platform.⁹³ BSRE is willing to construct a platform and shows a platform in its
14 current plans.⁹⁴ BSRE’s proposed site plan does not show any parking for the
15 platform, however.

16 F.56 The final Supplemental Environmental Impact Statement in 2014 for a Sound
17 Transit plan and bond issue included a Sounder station in the
18 Shoreline/Richmond Beach area as a representative project in the
19 appendix.⁹⁵ The putative Sounder station was only generally located in the
20 Shoreline/Richmond Beach area. No evidence indicated that the notional
21 station would be at or close to Point Wells or that Sound Transit had the Point
22 Wells development in mind when it listed a representative project in the
23 Shoreline/Richmond Beach area.

24 F.57 BSRE had no contacts or meetings with Sound Transit between 2010 and
25 May 2018, other than to comment publicly on a draft environmental impact
26 statement:

27 “Sound Transit staff are not aware of additional recent contact
28 between BSRE and the agency since the Long Range Plan
29 FEIS [in 2014]. The ST3 package approved by voters in 2016
30 does not include a station at Point Wells. To construct a station
31 there (or any other additional location along that corridor) would
32 require an additional easement from Burlington Northern
33 Railroad, something that likely would be very challenging to
34 obtain.”⁹⁶

⁹³ Ex. H.24.

⁹⁴ Ex. A.40, p.6; Ex. H.24, pp. 4-8.

⁹⁵ Ex. H.24, p.1.

⁹⁶ Ex. H.30.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-
101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-
001-00 WMD, 18-116078 CI

- 1 F.58 Other than a single letter of mild interest in 2010 from a mid-level Sound
2 Transit manager to Paramount Petroleum and a public comment submitted
3 on a draft environmental impact statement, BSRE did not make any
4 substantive efforts to obtain any commitments, memoranda of understanding,
5 agreements, or criteria for future approval and implementation from decision
6 makers at either Sound Transit or BNSF.⁹⁷
- 7 F.59 The Hearing Examiner finds that BSRE did not diligently pursue approval of a
8 Sounder platform or stop with Sound Transit or BNSF. The Hearing Examiner
9 acknowledges that BSRE thought it may be premature to do so and agrees
10 that formal approval from either BNSF or Sound Transit takes considerable
11 time and effort to obtain and that they are not likely to give formal approval to
12 a land use proposal that has not been approved. However, more progress
13 and more formality could and should have been made in the past years.
14 BSRE could have appeared before the Sound Transit board of directors and
15 attempted to negotiate a memorandum of understanding that at least outlined
16 the elements and steps needed for formal approval of commuter rail service
17 at Point Wells. BSRE did not attempt to obtain a formal document from
18 decision makers at either Sound Transit or BNSF that described the
19 conditions under which service could be provided.
- 20 F.60 BSRE has not had any contact with Community Transit regarding bus rapid
21 transit service for Point Wells. Bus rapid transit, such as Community Transit's
22 Swift operation, is an example of high capacity transit.
- 23 F.51 In its May 2018 resubmittal, BSRE proposed a commuter rail platform ("Sounder
24 station") to be constructed and operational in phase one of the intended three
25 phases of development.⁹⁸
- 26 F.52 In its reactivated application of December 2019, BSRE delayed the Sounder station
27 to the ultimate or penultimate phase of development.⁹⁹
- 28 F.53 BSRE did not present any additional evidence of Sound Transit's interest in or
29 commitment to initiating Sounder commuter rail service at Point Wells if, as, and
30 when a passenger rail platform is constructed.

⁹⁷ Mr. Huff, counsel for BSRE, commented to Sound Transit on the draft environmental impact statement in 2014 that a Point Wells stop should be included in the final environmental impact statement. The final environmental impact statement was not changed to be any more specific than the draft upon which Mr. Huff commented.

⁹⁸ Ex. A.40, p. 6; Ex. H.24, pp. 4-8.

⁹⁹ Ex. V.6, sheet A056; V.4, p. 6. The 2019 reactivated application has four phases: 1, 2, 3.1, and 3.2. Ex. V.4, p. 8. The phasing plan (Ex. V.6, sheet A056) places construction of the rail platform in phase 3 but does not identify whether it is in phase 3.1 or 3.2.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 F.54 Phases one and two of the development include six buildings over 90 feet in height.
2 Under the phasing plan, six buildings over 90 feet in height would be constructed
3 and occupied prior to development of the Sounder station in phase three.¹⁰⁰

4 **b. Water Taxi**

5 F.55 BSRE proposed a passenger-only water taxi for the development.¹⁰¹

6 F.56 BSRE submitted a shoreline conditional use permit associated with the water taxi.¹⁰²

7 F.57 BSRE's shoreline narrative provided that the water taxi would link Point Wells and
8 the Edmonds multi-modal transportation facility.¹⁰³ On the other hand, BSRE's
9 supplemental memorandum to its critical areas report assumed the water taxi would
10 link Point Wells to Seattle's Coleman Dock.¹⁰⁴

11 F.58 The pier at Point Wells is operated under a lease from the Washington State
12 Department of Natural Resources (DNR). DNR indicated that the current lease of
13 the pier would not allow ferry or water taxi service, and that ferry or water taxi service
14 has not been part of lease renewal discussions.¹⁰⁵

15 F.59 BSRE's phasing plan identified demolition of the existing pier access and
16 construction of new docks and pier access in phase three of the development.¹⁰⁶
17 The water taxi service cannot operate until phase three when the access structure
18 and pier improvements have been completed.

19 F.60 The first two phases of the development include six buildings over 90 feet in height.
20 Under the phasing plan, six buildings over 90 feet in height would be constructed
21 and occupied prior to construction of new docks and pier access in phase three.¹⁰⁷

22 **2. Variance from Building Height Limit to Meet Floor Area Ratio Requirements**

23 F.61 Generally, the maximum building height in urban center zones is 90 feet. SCC
24 30.34A.040(1). SCC 30.34A.40(1) extends the height limit to 180 feet in certain
25 circumstances:

26 The maximum building height in the UC zone shall be 90 feet. A building
27 height increase up to an additional 90 feet may be approved under SCC
28 30.34A.180 when the additional height is documented to be necessary or
29 desirable when the project is located near a high capacity transit route or

¹⁰⁰ Ex. V.6, pp. 5, 51-23.

¹⁰¹ Ex. V.1, p. 2.

¹⁰² Ex. V.2.

¹⁰³ Ex. V.5, p. 2.

¹⁰⁴ Ex. Z.11, p. 2.

¹⁰⁵ Ex. Z.32.

¹⁰⁶ Ex. V.6, pp. 21-23.

¹⁰⁷ Ex. V.6, pp. 5, 21-23.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-
101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-
001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 station and the applicant prepares an environmental impact statement
2 pursuant to chapter 30.61 SCC that includes an analysis of the
3 environmental impacts of the additional height

4 F.62 On December 12, 2019, BSRE submitted a variance application from SCC
5 30.34A.040(1), to allow building heights up to 180 feet without high capacity
6 transit.¹⁰⁸

7 F.63 BSRE needs either a variance or a favorable Court of Appeals decision on its high-
8 capacity transit claim to allow it build 17 buildings taller than 90 feet.

9 F.64 For a variance, BSRE must satisfy the decision criteria of SCC 30.43B.100: (a) the
10 property has special physical characteristics that are not shared by other properties
11 or uses in the area; (b) a variance is necessary for BSRE to enjoy a substantial
12 property right or use enjoyed by others in the area that BSRE is prevented from
13 enjoying because of the special physical characteristics of the site; (c) a variance will
14 not be detrimental to the public welfare or injure other property owners; and (d) a
15 variance will not be detrimental to the comprehensive plan.

16 **a. Special Circumstances**

17 F.65 To obtain a variance, BSRE must demonstrate that:

18 There are special circumstances applicable to the subject property or to
19 the intended use, such as size, shape, topography, location or
20 surroundings, that do not apply generally to other properties or classes of
21 use in the same vicinity and zone.¹⁰⁹

22 F.66 BSRE cited the shoreline, steep slopes, railroad, critical area buffers, and zoning
23 setbacks as special circumstances applicable to the subject property.

24 F.67 These characteristics apply generally to other properties and classes of use in the
25 same vicinity on the Puget Sound shoreline and zone. The BNSF railroad mainline
26 tracks run along the shoreline from Seattle to Everett. Steep slopes are common on
27 the shoreline. Buffers from ordinary high water mark and from landslide hazard
28 areas apply to shoreline properties up and down the coastline, as do zoning
29 setbacks.¹¹⁰

30 F.68 BSRE's site vested to the urban center zoning designation. Other urban center
31 zoned properties are subject to critical area setbacks and zoning setbacks, including
32 the required setback from adjacent lower density zones under SCC
33 30.34A.040(2)(a).

¹⁰⁸ Exs. V.18, Z.8.

¹⁰⁹ SCC 30.43B.100(1)

¹¹⁰ Exs. C.24, pp. 12-24; V.10, pp. 2-9.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-
101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-
001-00 WMD, 18-116078 CI

1 F.69 The Hearing Examiner finds that the claimed special circumstances apply generally
2 to other properties or classes of use in the same vicinity or zone.

3 F.70 As a factual matter, BSRE's request for a variance does not satisfy the first criteria of
4 county code.

5 **b. Substantial Property Right or Use**

6 F.71 BSRE must also show:

7 A variance is necessary for the preservation and enjoyment of a
8 substantial property right or use possessed by other properties in the same
9 vicinity and zone but which because of special circumstances is denied to
10 the property in question. SCC 30.43B.100(2).

11 F.72 BSRE claims the substantial property right or use possessed by other properties is
12 the right to develop the property consistent with its zoning of urban center, but BSRE
13 will be denied that property right if it is forced to satisfy county code's FAR standards
14 for urban centers. SCC 30.34A.040(1) (FAR standards).

15 F.73 BSRE claims a variance from SCC 30.34A.040(1) is necessary to satisfy the
16 minimum floor area ratio (FAR) for a mixed-use urban center development. Without
17 the variance, BSRE represents that it cannot satisfy the minimum for the
18 development.¹¹¹

19 F.74 A floor area ratio (FAR) is a measure of intensity of use and FAR minimum and
20 maximum indirectly regulate the intensity of use in a zone.

21 F.75 The county's FAR standards in effect in 2011 establish a minimum 1.0 FAR for
22 mixed use urban center uses, and a minimum 0.5 FAR for residential and non-
23 residential uses. SCC 30.34A.030. The FAR standards provide several methods of
24 calculating FAR. Note 1 and Note 3 of SCC Table 30.34A.030(1) provide methods
25 of calculating FAR by adding together residential and non-residential uses that allow
26 a mixed-use development with a minimum FAR of less than 1.0.

27 F.76 Eight years after it applied for an urban center development, BSRE advised PDS
28 that its preferred site plan did not comply with FAR regulations in its 2019 reactivated
29 application.

30 F.77 SCC 30.91F.445 defines floor area ratio:

31 "Floor Area Ratio" means the total building square footage (building area),
32 measured to the inside face of exterior walls, excluding areas below finished
33 grade, space dedicated to parking, mechanical spaces, elevator and stair shafts,
34 lobbies and common spaces including atriums and space used for any bonus
35 features, divided by the site size square footage (site area).

¹¹¹ Ex. V.18.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-
101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-
001-00 WMD, 18-116078 CI

1 Floor Area Ratio = (Building area)/(Site area)

2 F.78 BSRE claims a variance to the building height limit is needed to allow it to satisfy the
3 1.0 FAR requirement.

4 F.79 However, BSRE's calculation of FAR included areas such as lobbies and common
5 spaces that are specifically excluded from FAR definition. As a result, BSRE's FAR
6 calculations significantly overstate the FAR for its development.

7 F.80 WJA conducted peer review of BSRE's FAR calculations.

8 F.81 WJA found BSRE's FAR calculation overstates the proposed development's FAR by
9 an estimated 25 – 30%.¹¹²

10 F.82 BSRE's proposed site plan with building heights limited to 90 feet would result in a
11 FAR of 0.59, or 0.627 if the urban plaza is included. The FAR figures provided by
12 WJA are significantly lower than the 0.907 FAR represented by BSRE.¹¹³

13 F.83 WJA found the 1.0 FAR figure provided by BSRE for the 180-foot building height
14 schematic overstated FAR by similar margins. As a result, BSRE's 180-foot building
15 height schematic did not obtain a 1.0 FAR for the development.¹¹⁴

16 F.84 WJA found the inclusion of lobbies and common spaces in the FAR calculation
17 would increase the FAR for the development by only 2.5 – 3% for BSRE's 180-foot
18 building height schematic.¹¹⁵ The Hearing Examiner finds WJA's study and evidence
19 credible.

20 F.85 BSRE did not demonstrate its preferred site plan can achieve a 1.0 FAR even with
21 the requested variance.

22 F.86 BSRE did not demonstrate that the required FAR can only be met with the requested
23 variance. To the contrary, the Hearing Examiner finds it is possible to develop the
24 site to the FAR standard if the project is designed differently than as proposed by
25 BSRE.¹¹⁶

26 F.87 BSRE did not demonstrate that a variance is necessary to develop the property as
27 an Urban Center.

28 F.88 As a factual matter, BSRE did not demonstrate compliance with SCC 30.43B.100(2).

29 **c. Materially Detrimental or Injurious to Other Properties**

30 F.89 To obtain a variance from the FAR standard for urban centers, BSRE must
31 demonstrate:

¹¹² Ex. X.1; Brajcich Testimony, November 5, 2020, Tape 2: 18:40 – 20:15.

¹¹³ Ex. X.1; Brajcich Testimony, November 5, 2020, Tape 2: 18:40 – 20:15; 30:09 – 30:40; 39:10 – 39:48.

¹¹⁴ Brajcich Testimony, November 5, 2020, Tape 2: 18:40 – 20:15; 30:09 – 30:40; 39:10 – 39:48.

¹¹⁵ Brajcich Testimony, November 5, 2020, Tape 2 18:00 – 30:00.

¹¹⁶ Seng Testimony, November 6, 2020, Tape 1, 2:56:50 - 2:57:41; Ex. X.3, pp. 6-9.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-
101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-
001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 The granting of the variance will not be materially detrimental to the public welfare
2 or injurious the properties or improvements in the vicinity and zone in which the
3 subject property is located. SCC 30.43B.100(3).

4 F.90 BSRE failed to demonstrate that increasing the maximum building heights from 90 to
5 180 feet will not result in material detriment to the public welfare or injury to the
6 properties in the vicinity.

7 F.91 BSRE failed to demonstrate that waiving the requirement for high capacity transit will
8 not result in material detriment to the public or property in the vicinity from increased
9 traffic.

10 F.92 BSRE also did not address or demonstrate that the variance will result in no material
11 detriment to the public or property in the vicinity from increased traffic resulting from
12 delaying construction and operation of the proposed Sounder station and water taxi
13 to third phase of development.¹¹⁷

14 F.93 To the contrary, neighboring properties will be injured by the obstruction of their
15 views by 180-foot tall buildings, as demonstrated by BSRE's own view impact
16 analysis.¹¹⁸

17 F.94 BSRE did not satisfy SCC 30.43B.100(3).

18 **d. Adverse Impact on Comprehensive Plan**

19 F.95 Finally, BSRE may obtain a variance only if it also proves that the variance will not
20 adversely affect the comprehensive plan. SCC 30.43B.100(4).

21 F.96 The urban center zone allows for the highest density residential development of any
22 of the County's zoning designations. With its urban center zoned property, BSRE
23 seeks to double the maximum building heights to 180 feet to increase density on the
24 development site but waive the requirement to provide high capacity transit for
25 residents in the development.

26 F.97 The comprehensive plan provides that the purpose and intent of the urban center
27 designation is to encourage medium- and high-density development with an
28 essential and defining element of close proximity and access to both transit
29 emphasis corridors and regional high capacity transit. Waiving the requirement for
30 high capacity transit for the development would directly conflict with the urban center
31 policies of the comprehensive plan that encourage and require access to high
32 capacity transit and regional transportation systems.¹¹⁹

33 F.98 BSRE has not demonstrated that waiving the requirement for high capacity transit
34 while doubling the maximum allowable building height from 90 to 180 feet will not

¹¹⁷ Ex. V.4, p. 6.

¹¹⁸ Ex. Z.8, referring to view impact analysis of Ex. K.37.

¹¹⁹ Ex. X.3, p. 19; Urban Center designation definition; Objectives LU 2.A, LU 2.B; LU Policy 2.B.3, 3.A.2, 3.A.3, 3.A.6; and Goal LU 3.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

1 adversely affect the comprehensive plan. To the contrary, doubling the height of
2 buildings with its attendant additional dwelling units without access to high capacity
3 transit adversely affects the comprehensive plan, which calls for greater transit
4 access with greater density of dwelling units.

5 F.99 BSRE has not demonstrated compliance with SCC 30.43B.100(4).

6 **E. BUILDING HEIGHT SETBACKS FROM LOWER DENSITY ZONES**

7 **1. Background**

8 F.100 BSRE's proposed development consists of 46 buildings in an urban plaza, north
9 village, central village, and south village.¹²⁰ The urban plaza portion of the
10 development is located east of the BNSF railroad tracks on the portion of the site
11 referred to as the upper bench and identified in the phasing drawing as Phase 2.¹²¹

12 F.101 When BSRE filed its urban center application in 2011, the property adjacent to the
13 urban plaza was unincorporated Snohomish County and zoned R-9600.¹²² R-9,600
14 is the least dense urban residential zoning in the county. The adjacent property was
15 later annexed by Woodway and zoned R-14,500 and Urban Restricted (UR).¹²³

16 F.102 The urban plaza comprises one residential tower (UP-T1), a commercial building
17 (UP-Commercial), and two service buildings (Service Building 1 and Service Building
18 2). The residential tower is 180 feet tall; the commercial and service buildings are 35
19 feet tall.¹²⁴ The urban plaza is a substantial element of the BSRE's urban center
20 application.

21 F.103 PDS notified BSRE in an April 12, 2013 review completion letter that several
22 proposed buildings in the urban plaza must comply with the building height and
23 setback requirements of SCC 30.34A.040.¹²⁵ The review completion letter told
24 BSRE:

25 Several proposed buildings will be located near adjacent residential properties in
26 the Town of Woodway that are zoned R-14.5 and R-9600. These buildings will
27 need to comply with the building height and setback requirements of SCC
28 30.34A.040.

29 F.104 SCC 30.34A.040(2)(a) provides that building or portions of buildings that are located
30 within 180 feet of adjacent R-9,600 zoning must be scaled down and limited in
31 building height to a height that represents half the distance the building or that

¹²⁰ Ex. V.6.

¹²¹ Ex. V.6, p. 12.

¹²² Ex. N.2, pp. 1, 11.

¹²³ Ex. N.1, p. 9.

¹²⁴ Ex. V.6, p. 21.

¹²⁵ Ex. K.4, p. 4.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-
101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-
001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 portion of the building is located from the adjacent R-9,600 zoning. For example, a
2 building in a parcel zoned urban center that is 90 feet from an adjacent parcel zoned
3 R-9,600 cannot exceed 45 feet in height.

4 F.105 BSRE submitted a variance application from the building height setback regulations
5 in SCC 30.34A.040(2)(a) on December 12, 2019.¹²⁶ BSRE requested a variance for
6 building heights to allow a maximum height equal to the building's distance from the
7 adjacent, differently zoned property, but to exceed 45 feet. For example, the
8 proposed variance would allow a building 45 feet from an R-9,600 zone to be 45 feet
9 in height under the variance request instead of 22.5 feet tall otherwise allowed by
10 SCC 30.34A.040(2)(a).

11 F.106 BSRE's urban center development application is vested to former SCC
12 30.34A.040(2)(a), which provides:

13 Building or portions of buildings that are located within 180 feet of adjacent R-
14 9600, R-8400, R-7200, T or LDMR zoning must be scaled down and limited in
15 building height to a height that represents half the distance the building or that
16 portion of the building is located from the adjacent R-9600, R-8400, R-7200, T or
17 LDMR zoning line (e.g. a building or portion of a building that is 90 feet from R-
18 9600, R-8400, R-7200, T or LDMR zoning may not exceed 45 feet in height).

19 F.107 When BSRE vested to former SCC 30.34A.040(2) on February 1, 2011 and March 4,
20 2011, the adjacent property was zoned R-9,600, triggering the height limits of former
21 SCC 30.34A.040(2).¹²⁷ Since then, the town of Woodway annexed the property and
22 zoned it Urban Restricted and R-14,500.¹²⁸

23 **2. Variance**

24 F.108 BSRE requests a variance for the commercial building, service building 1, and
25 service building 2 in the urban plaza.¹²⁹ These buildings are a substantial element of
26 the development, housing emergency and security services for the development.

27 F.109 The buildings are 35 feet tall. The commercial building is 80 feet from the adjacent
28 zone, and the service buildings are 40 feet from the adjacent zone.¹³⁰ To comply
29 with the county code to which BSRE's application vested, the service buildings

¹²⁶ Ex. V.19.

¹²⁷ Ex. N.2, pp. 1, 11.

¹²⁸ Ex. N.1, p. 9.

¹²⁹ Ex. V.19; Z.9. The residential tower in the urban plaza (UP-T1) is located more than 180 feet from the adjacent R-9,600 zoning line and is not subject to the building height setback requirement of SCC 30.34A.040(2)(a).

¹³⁰ Ex. Z.6.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 cannot be taller than 20 feet and the commercial building could be no taller than 40
2 feet.¹³¹

3 F.110 A variance must satisfy four criteria.¹³²

4 **a. Special Circumstances**

5 F.111 BSRE must first demonstrate.¹³³

6 There are special circumstances applicable to the subject property or to the
7 intended use, such as size, shape, topography, location or surroundings, that do
8 not apply generally to other properties or classes of use in the same vicinity and
9 zone.

10 F.112 BSRE cited the narrow site, limited access, irregular panhandle shape, and vertical
11 clearance as the special circumstances justifying the variance.

12 F.113 The special circumstances cited by BSRE relate to location of the access road in the
13 building height setback area but do not apply to the proposed location of the
14 buildings in the urban plaza. BSRE applied for a variance from SCC
15 30.34A.040(2)(a) for the buildings, not the road.¹³⁴

16 F.114 For the buildings, BSRE represented that the building programs, specifically design
17 considerations, such as massing, and locating site security and community service
18 at the entry of the development as special circumstances.¹³⁵ Design preferences or
19 a preferred site design are not special circumstances particular to the subject
20 property or use, such as size, shape, topography, location, or surroundings.¹³⁶

21 F.115 BSRE did not demonstrate that special circumstances are applicable to its subject
22 property that do not apply generally to other properties or classes of use in the same
23 vicinity or zone.

24 F.116 BSRE did not satisfy SCC 30.43B.100(1).

¹³¹ Half the distance to the adjacent property zoned R-9,600. It is unclear whether the commercial building requires a variance at all. BSRE current proposal lists the height of the commercial building at 35 feet, which is less than the code's limit of 40 feet. BSRE's variance request nevertheless seeks approval for up to 45 feet in building height. Ex. V.19.

¹³² SCC 30.43B.100.

¹³³ *Id.* at (1).

¹³⁴ Exs. V.19, Z.9.

¹³⁵ Exs. V.19, Z.9.

¹³⁶ "Resolution of this matter depends on whether a 'substantial property right' includes construction of a particular design. We conclude that it does not." *Risko v. Grand Haven Charter Township Zoning Board of Appeals*, 284 Mich. App. 453, 460, 773 N.W.2d 730, 735 (2009) appeal denied 485 Mich. 1011

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 **b. Substantial Property Right or Use**

2 F.117 BSRE must also show:¹³⁷

3 A variance is necessary for the preservation and enjoyment of a substantial
4 property right or use possessed by other properties in the same vicinity and zone
5 but which because of special circumstances is denied to the property in question.

6 F.118 BSRE identified the substantial property as the right to develop the property as an
7 urban center under its vested zoning.¹³⁸ BSRE also cited setback requirements in
8 the neighboring city of Shoreline as an alternative to preserve development
9 density.¹³⁹

10 F.119 The criterion requires that the variance is necessary for a substantial property right
11 or use possessed by other property in the same vicinity and zone. The setback
12 standards in a different jurisdiction in a different zoning category are inapposite and
13 do not legally support a variance. To hold otherwise would necessarily import and
14 apply a neighboring jurisdiction's land use controls, vitiating a jurisdiction's ability to
15 establish zoning.

16 F.120 As it did with the variance request from the building height limit of 90 feet,¹⁴⁰ BSRE
17 relied on the claim it cannot satisfy FAR without the taller than allowed buildings in
18 the setback from lower-density zones. Evidence provided by the FAR consultant
19 established that even with the square footage provided by the buildings in the urban
20 plaza, including those building in the setback, BSRE would not achieve a 1.0
21 FAR.¹⁴¹ Further, it is possible to design an urban center on this site that meets the
22 FAR standards without a variance.¹⁴²

23 F.121 BSRE has not demonstrated that a variance is necessary to develop the property as
24 an urban center.

25 F.122 BSRE has not demonstrated that a variance is necessary for the preservation or
26 enjoyment of a substantial property right or use.

27 F.123 BSRE has not demonstrated compliance with SCC 30.43B.100(2).

¹³⁷ SCC 30.43B.100(2).

¹³⁸ Ex. V.19.

¹³⁹ Ex. Z.9.

¹⁴⁰ See F.72 *et. seq.* beginning at page 19 *supra*.

¹⁴¹ Brajcich Testimony. November 5, 2020. Tape 2: 18:40 – 20:15; 30:09 – 30:40: 39:10 – 39:48.

¹⁴² See finding of fact F.85 on page 22

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-
101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-
001-00 WMD, 18-116078 CI

1 **c. Materially Detrimental or Injurious to Other Properties**

2 F.124 BSRE must demonstrate that the variance “will not be materially detrimental to the
3 public welfare or injurious the properties or improvements in the vicinity and zone in
4 which the subject property is located.”¹⁴³

5 F.125 BSRE provided section diagrams of views illustrating the impact of increased
6 building heights on neighboring properties.¹⁴⁴ The variance appears to have minimal
7 detrimental impacts on property uphill to the east of the site, but significantly detracts
8 from views of property located south of the site at same or lower elevation of the
9 urban plaza.

10 F.126 The proposed variance injures neighboring properties and therefore does not comply
11 with SCC 30.43B.100(3).

12 **d. Adverse Impact on Comprehensive Plan**

13 F.127 Finally, BSRE may obtain a variance only if it proves that the variance will not
14 adversely affect the comprehensive plan. SCC 30.43B.100(4).

15 F.128 BSRE cited comprehensive plan policies supporting density in urban growth areas
16 and urban center zones.¹⁴⁵ However, the policies and objectives of the
17 comprehensive plan also demonstrate an intent to ensure that new development,
18 including urban center development, are compatible with existing and adjacent
19 neighborhoods by providing for stepped-down heights, and appropriate height and
20 scale.

21 F.129 BSRE has not demonstrated that waiving the requirement for stepped-down building
22 heights adjacent to lower-density zones will not adversely affect the comprehensive
23 plan. To the contrary, waiving the step-down building height requirements for parcels
24 adjacent to lower-density zone contradicts, and therefore adversely affects, the
25 comprehensive plan.

26 F.130 BSRE has not demonstrated compliance with SCC 30.43B.100(4).

27 **F. CRITICAL AREAS (GEOLOGICALLY HAZARDOUS AREAS & SECONDARY**
28 **ACCESS ROAD)**

29 **1. Landslide Hazard Area Deviation**

30 F.131 PDS told BSRE in April 2013 that development activities are generally not allowed
31 within a landslide hazard area or its setback. PDS said that BSRE’s proposal to
32 locate development east of the BSNF railroad tracks, including buildings, grading,
33 and retaining walls, was likely to violate the landslide hazard regulations. PDS

¹⁴³ SCC 30.43B.100(3).

¹⁴⁴ Ex. Z.9, pp. 4-5.

¹⁴⁵ Ex. Z.9, p. 2.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-
101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-
001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 asked BSRE to address this issue.¹⁴⁶ BSRE had two options: either redesign the
2 project or obtain approval of a deviation.

3 F.132 BSRE chose the latter approach. Five years after PDS raised the issue, BSRE
4 asked HartCrowser to prepare a deviation request in April 2018. BSRE submitted its
5 first deviation request to PDS on April 27, 2018.

6 F.133 The PDS director had generally delegated decision-making authority for landslide
7 hazard area and setback deviations to PDS's Chief Engineering Officer, Randolph
8 Sleight, P.E.

9 F.134 On May 9, 2018, the Chief Engineering Officer issued a memo on behalf of PDS that
10 concluded BSRE had not satisfied the deviation criteria and project substantially
11 conflicted with SCC 30.62B.320(1)(b)(i).¹⁴⁷

12 F.135 BSRE submitted a new deviation request on December 12, 2019, requesting
13 approval to locate the secondary access road, urban plaza, and Sounder station in
14 the landslide hazard area and setback.¹⁴⁸

15 F.136 Deviations from the prohibition on development in landslide hazard areas and their
16 required setbacks may be granted only if BSRE demonstrates compliance with
17 certain conditions.

18 F.137 BSRE must demonstrate that there is no alternative location for the structure on the
19 subject property. SCC 30.62B.340(2)(b). BSRE must also provide a geotechnical
20 report that demonstrates that alternative setbacks provide protection equal to that
21 provided by the standard setbacks. The geotechnical report must also demonstrate
22 that the proposal satisfies the requirements of SCC 30.62B.320. BSRE must
23 demonstrate the factor of safety for landslide occurrences shall not be decreased
24 below 1.5 for static conditions and 1.1 for dynamic conditions.

25 **a. No Alternative Location**

26 F.138 BSRE established that there is no alternative location outside of the landslide hazard
27 area and setbacks for the secondary access road.¹⁴⁹

28 F.139 BSRE's consultant testified that Sound Transit told them that the Sounder station
29 needed to be located where there is 500 feet of straight track.¹⁵⁰ BSRE did not
30 produce any other evidence of this requirement, such as documentation from Sound
31 Transit or any other evidence that the Sounder station could not be located farther
32 south on the site. Although hearsay is admissible, the hearsay nature of testimony is

¹⁴⁶ Ex. K.4, p. 7.

¹⁴⁷ Ex. K.39.

¹⁴⁸ Ex. V.15.

¹⁴⁹ Ex. X.2.

¹⁵⁰ Ex. Z.6, p. 7.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-
101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-
001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 considered when weighing it.¹⁵¹ BSRE introduced no other evidence regarding the
2 inappropriateness of other locations for the commuter rail platform. The Hearing
3 Examiner finds this record is insufficient to demonstrate by a preponderance of
4 evidence that the Sounder station cannot be located outside of the landslide hazard
5 area and setbacks.

6 F.140 The Hearing Examiner incorporates by reference his previous finding of fact no. 92
7 of his Denial Decision, reproduced here for convenience:

8 BSRE has not demonstrated by a preponderance of evidence that there is
9 no alternate location for the buildings in the Urban Plaza outside of the
10 landslide hazard area or that the buildings are necessary. The project
11 architect considered alternate locations, but discarded those ideas,
12 preferring building locations closer to the hillside to minimize visual impact
13 and based on urban design principles.¹⁵² A preference to minimize visual
14 impact does not equal necessity and no alternate location.

15 F.141 In December 2019, the project architect again cited urban design principles and
16 added satisfying the minimum 1.0 FAR density as a basis.¹⁵³

17 F.142 BSRE did not prove by preponderance of the evidence that the minimum FAR for the
18 development could only be satisfied by locating buildings in the urban plaza and
19 within the landslide hazard area and setback.¹⁵⁴

20 F.143 A preference to minimize visual impact and locate emergency facilities at the
21 entrance for visual purposes does not demonstrate necessity and the lack of an
22 alternative location.¹⁵⁵

23 F.144 BSRE did not prove the lack of alternative locations for the buildings in the urban
24 plaza outside of the landslide hazard area and setbacks.

25 **b. Geotechnical Report**

26 F.145 In its April 2013 project review letter, PDS informed BSRE that development
27 activities within 200 feet of a seismic hazard area were allowed only with an
28 approved geotechnical report that confirmed the site was suitable for the proposed
29 development and met the requirements of the International Building Code and
30 chapter 30.51A. SCC. The review letter requested the geotechnical engineer
31 confirm the site was suitable for the proposed development.¹⁵⁶

¹⁵¹ See H. Ex. R. of Proc. 5.6(b) (2019).

¹⁵² Testimony of Stinn and Seng. Neither witness identified or explained the urban design principles that drove their decision.

¹⁵³ Ex. V.15.

¹⁵⁴ See finding of fact F.72 *et seq.* beginning at page 6 above.

¹⁵⁵ Ex. V.15, pp. 10-11.

¹⁵⁶ Ex. K.4, p. 7.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 F.146 The subsurface conditions report identifies areas of liquefiable soils but does not
2 address the issue of whether the site is suitable for the proposed development.¹⁵⁷
3 Virtually the entire site is subject to high liquefaction.¹⁵⁸ The subsurface conditions
4 report defers characterization of the liquefaction hazard for proposed buildings until
5 design,¹⁵⁹ which would be after the project is approved and when building permit
6 applications are submitted. This defers a determination of whether the site is
7 suitable for the proposed development until after project approval. Deferral of site
8 suitability until after project approval is inconsistent with SCC 30.62B.350, which
9 requires submittal of a geotechnical report that “confirms the site is suitable for the
10 proposed development” **prior** to project approval.

11 **c. Safety Factors**

12 F.147 SCC 30.62B.340(3) requires that the factor of safety for slope stability must be at
13 least 1.5 for static conditions and 1.1 for dynamic conditions.

14 F.148 BSRE’s geotechnical report identifies a slope stability safety factor of 1.04 for
15 dynamic conditions, which does not comply with the code.¹⁶⁰

16 F.149 Days before the hearing, BSRE amended its report to show a safety factor of 1.1 for
17 dynamic conditions.¹⁶¹ BSRE did not propose design changes to support the safety
18 factor change from 1.04 to 1.1. According to BSRE’s geotechnical engineer, BSRE
19 achieved the increase in the dynamic conditions safety factor to 1.1 by making a less
20 conservative assumption regarding soil cohesion values.¹⁶² BSRE presented no
21 evidence that the increased and newly compliant dynamic conditions safety factor
22 resulted from further investigation or analysis or that the soil cohesion value was
23 wrong. BSRE simply changed a number to be less conservative to achieve the
24 required safety factor. The Hearing Examiner does not find BSRE’s new safety factor
25 to be credible.

26 F.150 The hillside on which the secondary access road will be located contains soils with a
27 low cohesion factor. According the to the Chief Engineering Officer, such soils are
28 “very bad” for construction.¹⁶³

29 F.151 On this record, the Hearing Examiner does not find that the factors of safety under
30 static and dynamic conditions comply with county code requirements for a
31 deviation.¹⁶⁴

¹⁵⁷ Ex. T.5, Sleight Testimony, May 22, 2018, 12:22:50 – 12:23:14 p.m.

¹⁵⁸ Ex. B.7, Sheet 051.

¹⁵⁹ Exs. C.33, p. 36; V.15; V.16.

¹⁶⁰ Ex. V.16.

¹⁶¹ Ex. Z.6, p. 11.

¹⁶² Sleight Testimony, November 5, 2020, Tape 2, 1:27:25 – 1:28:40.

¹⁶³ Ex. T.5, Sleight Testimony, May 22, 2018, 11:21:40 – 11:23:16 and 11:31:48 – 11:32:20 a.m.

¹⁶⁴ Exs. V.16, Z.6.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-
101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-
001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 **d. Phasing**

2 F.152 BSRE's drainage plans identify the retaining wall as part of phase 1, prior to
3 development of the urban plaza parking garage in phase 2.¹⁶⁵

4 F.153 BSRE geotechnical report provides that the retaining wall would have to be
5 constructed to enable construction of the secondary access road, which BSRE
6 claims would improve stability of the slope above the urban plaza.¹⁶⁶

7 F.154 BSRE's phasing diagram identifies construction of the secondary access road in
8 phase 1 and appears to include construction of the retaining wall in the urban plaza
9 in phase 2.¹⁶⁷

10 F.155 The drainage plans and geotechnical report conflict with the phasing diagram; the
11 former show construction of the retaining wall during phase 1 while the latter shows
12 construction of the retaining wall in phase 2.

13 F.156 This conflict is significant and substantial because development phasing is crucial for
14 BSRE to demonstrate to the Chief Engineering Officer that alternative setbacks
15 provide protection equal to that provided by the standard setbacks as required by
16 SCC 30.62B.340(2)(b)(ii)(A).

17 **e. Drainage**

18 F.157 Deviation requests must include a geotechnical report that demonstrates that
19 proposal provides protection equal to that which would be provided if development
20 was not located in the landslide hazard area or setback. SCC 30.62B.340(2)(b)(ii).
21 A geotechnical report is required to contain the "proposed method of drainage and
22 locations of all existing and proposed surface and subsurface drainage facilities and
23 patterns." SCC 30.62B.140(2)(j).

24 F.158 In the urban plaza, BSRE proposes to collect groundwater in a sump at the base of
25 wall and pump the groundwater.¹⁶⁸ SCC 30.63B.340(3)(f)(i) allows for point source
26 discharge of stormwater in landslide hazard areas under certain conditions, but does
27 not authorize point source collection, conveyance, or discharge of groundwater.
28 BSRE's proposal to collect groundwater within a landslide hazard area in the urban
29 plaza is prohibited by SCC 30.62B.320(1)(a)(iii).

30 F.159 PDS's Chief Engineering Officer explained that collecting and pumping groundwater
31 at the base of the landslide hazard area with the hydrostatic pressure from the
32 groundwater from the slope above could result in destabilization of the slope.

¹⁶⁵ Ex. Z.4, p. 3.

¹⁶⁶ Ex. Z.6, p. 10.

¹⁶⁷ Ex. V.4, p. 6.

¹⁶⁸ Ex. Z.4; Z.5.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-
101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-
001-00 WMD, 18-116078 CI

1 BSRE's proposal added to his concern for public health and safety by the proposed
2 development in the landslide hazard area and setbacks.¹⁶⁹

3 F.160 BSRE testified that the stormwater from the secondary access road and
4 groundwater collected at the base of retaining wall may require directional drilling
5 under the railroad. BSRE provided no designs or specifics for this proposal and no
6 evidence that BNSF had been consulted on this issue.

7 F.161 BSRE provided drainage plans for the secondary access road and portions of the
8 urban plaza, but those drainage plans were not consistent with the civil plans,
9 geotechnical reports, and phasing diagram.¹⁷⁰ BSRE's drainage engineer did not
10 know the phasing of the development and how the proposed drainage is designed to
11 function in relation to the phasing plans.¹⁷¹ BSRE's drainage engineer testified the
12 county's Chief Engineering Officer request for drainage information in the context of
13 reviewing the landslide hazard area deviation request was reasonable.¹⁷²

14 F.162 BSRE did not provide civil or drainage plans for the Sounder station.¹⁷³ BSRE has
15 not demonstrated that the Sounder station complies with SCC 30.62B.320(1)(a) and
16 (1)(b), specifically with regard to collection and conveyance of groundwater and
17 stormwater, and its impact on landslide hazards risks.

18 **f. Deviation Denial**

19 F.163 The Chief Engineering Officer denied BSRE's deviation request for the secondary
20 access road, Sounder station, and urban plaza.¹⁷⁴ BSRE did not provide evidence of
21 no alternative location for the Sounder station and urban plaza. BSRE's deviation
22 request and geotechnical report did not demonstrate the site is suitable for the
23 proposed development and that the proposal provides equal level of protection
24 compared to locating development outside landslide hazard areas and setbacks. ,
25 Individually and collectively, these concerns are sufficient to deny the deviation
26 request. The record supports the Chief Engineering Officer's denial of the deviation
27 request.

28 **2. Liquefaction**

29 F.164 PDS informed BSRE in April 2013 that development could only occur within 200 feet
30 of a seismic hazard area if an approved geotechnical report confirmed the site was
31 suitable for the proposed development and met the requirements of the International

¹⁶⁹ Sleight Testimony, November 5, 2020, Tape 2. 1:29:05 – 1:32:50.

¹⁷⁰ Exs. V.6, p. 12, V.15, V.16, Z.4, Z.5, Z.6; Sleight Testimony, November 5, 2020.

¹⁷¹ Davis Testimony, November 12, 2020, Tape 2, 1:24:41 – 1:26:16.

¹⁷² Davis Testimony, November 12, 2020, Tape 2, 1:24:41 – 1:26:16.

¹⁷³ Ex. Z.4, p. 4.

¹⁷⁴ Ex. X.2.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-
101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-
001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 Building Code and chapter 30.51A SCC. PDS asked BSRE's geotechnical engineer
2 to confirm the site was suitable for the proposed development.¹⁷⁵

3 F.165 Most, if not all, of the site is susceptible to liquefaction in an earthquake.¹⁷⁶ The
4 geotechnical report defers characterization of liquefaction hazard until the building
5 permit phase, i.e., after location, size, setbacks, etc. of buildings have already been
6 approved.¹⁷⁷

7 F.166 The geotechnical report does not confirm the site is suitable for the proposed
8 development

9 **3. Mapping of the Land Hazard Area & Setback**

10 F.167 BSRE mapped the landslide hazard area based on an assumed uniform slope height
11 of 200 feet.¹⁷⁸

12 F.168 In 2016, BSRE was notified by PDS that the landslide hazard area and setback were
13 not accurately mapped and some of the development in the north village appeared
14 to be located within the setback.¹⁷⁹

15 F.169 The height of the slope on the north portion of the site is over 200 feet. BSRE did
16 not accurately map the landslide hazard area and setback until October 29, 2020,
17 when it provided an updated map for the landslide hazard area and setbacks.¹⁸⁰
18 The updated map demonstrates that the buildings in the urban plaza are located in
19 the landslide hazard area setback; building in a setback from a landslide hazard area
20 is prohibited unless a deviation is granted. BSRE did not demonstrate the expanded
21 landslide hazard area and setback in the north village does not impact buildings or
22 the parking garage structure in the north village. BSRE did not submit a deviation
23 request for any development in the north village.

24 F.170 BSRE has not accurately mapped the development in the landslide hazard area and
25 setback. BSRE appears to propose development in the north village within the
26 landslide hazard area and setback in the absence of an approved deviation. County
27 code prohibits such development.

28 **G. GOOD FAITH REVIEW**

29 F.171 BSRE argued that PDS's review of the Application was not conducted in good faith
30 because PDS did not issue additional project review letters or conduct additional
31 meetings with BSRE.

¹⁷⁵ Ex. K.4, p. 7.

¹⁷⁶ Exs. T.5 (Sleight Testimony); B.7, Sheet 051.

¹⁷⁷ Ex. V.16, pp. 8 – 11.

¹⁷⁸ Ex. V.6.

¹⁷⁹ Ex. K.14.

¹⁸⁰ Ex. Z.6.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-
101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-
001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

- 1 F.172 Project development is usually an iterative process. An applicant submits a complete
2 application and proposal, PDS comments and questions the project by issuing a
3 review letter or meeting with the applicant's team, and the applicant responds and
4 resubmits its drawings and materials. This cycle repeats until PDS is satisfied that
5 the proposal complies (or can comply) with county code requirements.
- 6 F.173 PDS followed this iterative process with BSRE's initial application. Lengthy review
7 letters were issued and BSRE responded. Eventually, PDS and BSRE came to an
8 impasse regarding fundamental aspects of the project and PDS asked the Hearing
9 Examiner to find that an environmental impact statement would be futile because of
10 substantial conflicts with county code.
- 11 F.174 The Hearing Examiner agreed with PDS in part and disagreed in part. County
12 Council affirmed the Hearing Examiner's decision.
- 13 F.175 BSRE appealed the county's decision to King Superior Court, which held only that
14 county code as it existed at the time of BSRE's submission of a complete application
15 allowed BSRE to stay vested if it "reactivated" its application within six months.
- 16 F.176 BSRE resubmitted its application in December 2019 which is now before the Hearing
17 Examiner. PDS's thoroughly reviewed BSRE's resubmitted proposal, as
18 demonstrated by the landslide hazard deviation decision and supplemental staff
19 recommendation no. 2.¹⁸¹ PDS also hired a third-party consultant to conduct peer
20 review analysis of the FAR requirement, indicating an intent for an objective and
21 independent analysis of BSRE's 2019 reactivated application.¹⁸²
- 22 F.177 The Hearing Examiner finds that BSRE's resubmission did not change the project
23 design in material aspects that previously conflicted with county code in substantial
24 ways. For example, BSRE continues to assert that it may construct buildings taller
25 than 90 feet. BSRE did not attempt find an alternative location for buildings in the
26 landslide hazard area or demonstrate the lack of alternative location.
- 27 F.178 BSRE's disagreement with PDS regarding the meaning and interpretation of
28 applicable code provisions could not be resolved through additional rounds of review
29 or further meetings with PDS. Review letters and meetings would not have been
30 productive or useful.
- 31 F.179 PDS' refusal to invest time, effort, and resources in exercises in futility is reasonable
32 in these circumstances. BSRE's intransigence is demonstrated by its refusal to
33 submit a materially different design or even to submit alternative designs dependent

¹⁸¹ Exs. X.2, X.3.

¹⁸² Ex. X.1. When asked by BSRE's attorney whether PDS instructed the FAR Consultant to reach a certain result, WJA testified: "They [PDS] told us very clearly, give us an interpretation, and tell us what you find. If it supports the Application exactly, that's fine. We are just looking for information." Brajcich Testimony, November 5, 2020, Tape 2: 33:27 – 34:27.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 on the outcome of BSRE's appeal presently under consideration by the Washington
2 State Court of Appeals.

3 F.180 BSRE bet entirely on its claimed right to build taller than 90 feet and its deviation
4 request to build within the landslide hazard area and setback.

5 F.181 Good faith does not require PDS to agree with or acquiesce in BSRE's interpretation
6 of county code.

7 F.182 County code does not require PDS to issue review letters or hold futile meetings that
8 will only be grist for litigation.¹⁸³ No statute, regulation, or published appellate
9 decision has been cited that requires issuance of review letters or meetings in these
10 circumstances.

11 F.183 PDS did not act in bad faith by refusing to engage in issuing useless review letters or
12 conducting meetings when BSRE fundamentally disagreed with PDS regarding code
13 compliance for material elements of the project.¹⁸⁴ PDS did not engage in any
14 improper actions or consider BSRE's application on anything other than its merits.

15 F.184 While perfect consistency and accuracy are not required or expected at this
16 preliminary stage of project development, the inaccuracies and inconsistencies are
17 more numerous and more significant than appropriate in the context of this
18 development application and at this point in the development's life cycle.

19 F.185 Any finding of fact in this decision which should be deemed a conclusion of law is
20 hereby adopted as a conclusion of law.

21 **II. CONCLUSIONS OF LAW**

22 **A. DENIAL FOR SUBSTANTIAL CONFLICTS WITH COUNTY CODE**

23 C.1 The Hearing Examiner may deny development applications prior to completion of an
24 environmental impact statement if he has no reasonable doubt that the applications
25 substantially conflict with county code.

26 C.2 When denial of a non-county proposal can be based on grounds which are
27 ascertainable without preparation of an environmental impact statement, the

¹⁸³ Seng Testimony, November 6, 2020, 3:01:10 – 3:01:23 (no knowledge of a code provisions that requires PDS to issue review letters).

¹⁸⁴ PDS recommended denial of the application based on its review of its merits. There is no evidence of any improper actions or bad faith by PDS. Countryman Testimony, November 6, 2020, Tape 1, 26: 06 – 26:24 (St. Romain: Did you or other PDS staff receive direction from anyone within the County to attempt to terminate BSRE's land use applications? Countryman: No, it was just raised by staff because the applications were not responsive to the requests we have been making since 2013.); Seng Testimony, November 6, 2020, Tape 1. 3:01:55 – 3:02:07 (Otten: Do you believe PDS's staff has been directed by anyone at the County to recommend termination of BSRE's application? Seng: I have no evidence to support that.)

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 responsible official may deny the application or recommend denial by other
2 departments or agencies with jurisdiction without preparing an EIS in order to avoid
3 incurring needless county and applicant expense, subject to the following:

4 (1) The proposal is one for which a DS [determination of significance] has been
5 issued or for which early notice of the likelihood of a DS has been given;

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

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

11 (a) Deny the application; or

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

15 **1. Buffer from Ordinary High Water Mark**

16 C.3 Marine waters must be protected by a 150-foot buffer. SCC 30.62A.320 (Table 2a).
17 The buffer is measured from the Ordinary High Water Mark (OHWM) shoreward.
18 SCC 30.62A.320(1)(b).

19 C.4 BSRE's revised its application to relocate four residential buildings in the south
20 village to be at least 150 feet from the OHWM.

21 C.5 The location of these residential buildings no longer conflicts with the county code.
22 SCC 30.62A.310, .320.

23 **2. Innovative Development Design**

24 C.6 The project site contains streams and extensive category III wetlands. BSRE
25 proposes to mitigate impacts to critical areas by Innovative Development Design
26 (IDD). County code requires BSRE to demonstrate that the IDD will achieve
27 protection equivalent to the treatment of the functions and values of the critical
28 area(s) which would be obtained by applying the standard prescriptive measures
29 contained in chapter 30.62A SCC. SCC 30.62A.350(1)(a).

30 C.7 BSRE revised its critical area report to demonstrate equivalent protection of the
31 standard prescriptive measures in chapter 30.62A SCC.

32 C.8 The IDD proposal no longer substantially conflicts with the county code. SCC
33 30.62A.350(1)(a).

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

1 **3. Building Heights**

2 **a. High Capacity Transit (SCC 30.34A.040(1))**

3 C.9 Generally, the maximum building height for the proposed Point Wells project is 90
4 feet.¹⁸⁵ Seventeen of the proposed 46 building are taller than 90 feet.

5 C.10 BSRE contends it can exceed the 90-foot height limit because of its proximity to high
6 capacity transit. SCC 30.34A.040(1).

7 C.11 PDS incorporates by reference Hearing Examiner Conclusions C.32 through C.37,
8 reproduced below for convenience:

9 C.32 BSRE contends that SCC 30.34A.040(1) allows it to build up to 180 feet
10 because it is near a high capacity transit route or station.

11 The maximum building height in the UC zone shall be 90 feet. A
12 building height increase up to an additional 90 feet may be
13 approved under SCC 30.34A.180 when the additional height is
14 documented to be necessary or desirable when the project is
15 located near a high capacity transit route or station and the
16 applicant prepares an environmental impact statement pursuant to
17 chapter 30.61 SCC that includes an analysis of the environmental
18 impacts of the additional height

19 C.33 Sound Transit’s commuter rail service travels BNSF’s railroad tracks that
20 bisect the project. BSRE offers to build a platform for commuter rail service
21 during phase 1. BSRE therefore contends that the maximum building height
22 should be 180 feet, not 90, and has designed the project accordingly.

23 C.34 BSRE’s assumption is problematic for several reasons.

24 C.35 First, BSRE made no serious effort to realize commuter rail service. A tepid,
25 non-committal letter from a mid-level Sound Transit manager prior BSRE’s
26 application and a single public comment on a draft Sound Transit
27 environmental impact statement do not qualify as substantial effort or
28 progress. Based on the record, any claim that Sound Transit will operate a
29 commuter rail stop at Point Wells is speculative at best.

30 C.36 Second, BSRE contends that it need only be “near a high capacity transit
31 route . . .” The railroad tracks are not near the project; they bisect it. While
32 BSRE is correct that a high capacity transit route is near the project, proximity
33 alone is not enough.

¹⁸⁵ SCC 30.34A.040(1).

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ ,11-
101457 SHORE,11-101457-002-00 VAR ,11-101457-003-00 VAR ,11-101457-000-00 WMD ,11-101457-
001-00 WMD ,18-116078 CI

- 1 C.37 The height increase may only be approved when “the additional height is
2 **documented to be necessary or desirable.**” (Emphasis added.) BSRE’s
3 bare proposal for buildings twice the permitted height does not demonstrate
4 either necessity or desirability which are necessary for approval of the height
5 increase. If the applicant’s subjective need or desire for additional height were
6 sufficient, there would have been no need for approval or need to identify
7 necessity or desirability as criteria for approval of increased height. Words of
8 a law are not interpreted to be superfluous or meaningless.¹⁸⁶ To give
9 meaning to the words “approval” and “necessary or desirable”, it must mean
10 necessity or desirability for some reason other than the applicant’s desire.
11 The record lacks any evidence to support a finding or conclusion that the
12 additional height is necessary or desirable from a public, aesthetic, planning,
13 or transportation standpoint.
- 14 C.12 Sound Transit’s commuter rail service travels BNSF’s railroad tracks that bisect the
15 project. BSRE had offered to build the platform for commuter rail service during
16 phase 1. In its 2019 proposal, BSRE delayed construction of the platform to phase 3.
17 BSRE maintains the maximum building height should be 180 feet, not 90, and has
18 designed the project accordingly.
- 19 C.13 BSRE also claims it may initiate a water taxi, but the proposal is very general and
20 conceptual only. For example, some information from BSRE says the water taxi will
21 travel to Edmonds while other BSRE information says it will serve the Seattle
22 waterfront.
- 23 C.14 A water taxi traveling to either destination does not qualify as high capacity transit
24 under the vested urban center regulations for the Point Wells project.¹⁸⁷ BSRE’s
25 proposed development vested to the 2011 version of the urban center regulations
26 when it submitted its urban center development application. In 2011, county code did
27 not include passenger-only ferries in the definition of qualifying high-capacity transit.
28 Passenger-only ferries were not included in the definition of high-capacity transit until
29 2013,¹⁸⁸ well after BSRE’s development application vested. Water taxi and

¹⁸⁶ Local ordinances are interpreted in the same manner as statutes. *Sleasman v. City of Lacey*, 159 Wn.2d 639, 643, 151 P.3d 990, 992 (2007). “Another well-settled principle of statutory construction is that ‘each word of a statute is to be accorded meaning.’ [T]he drafters of legislation ... are presumed to have used no superfluous words and we must accord meaning, if possible, to every word in a statute.’ [W]e may not delete language from an unambiguous statute.’ ‘Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.’” *State v. Roggenkamp*, 153 Wash. 2d 614, 624, 106 P.3d 196, 201 (2005) (citations omitted).

¹⁸⁷ *East County Reclamation Co. Bjornsen*, 125 Wn. App. 431, 439-40, 105 P.3d 94 (2005) (prohibiting an applicant from choosing between vested and newly adopted regulations).

¹⁸⁸ Amended Ordinance No. 13-007.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 passenger-only ferries therefore do not qualify as high capacity transit for the
2 purposes of this development application.

3 C.15 BSRE did not provide any evidence in the current proceedings demonstrating either
4 need or desirability of lifting the building height limit to 180, as required SCC
5 30.34A.040(1).

6 **b. Variance from Building Height Limit to Meet Floor Area Ratio**
7 **Requirements**

8 C.16 BSRE requested an area variance¹⁸⁹ to allow buildings above 90 feet without regard
9 to SCC 30.34A.040(1) (high capacity transit) but did not satisfy any of the four of the
10 variance criteria. “[A] variance may be lawfully granted only within the guidelines set
11 forth in the zoning ordinance.” *Grant County v. Bohne*, 89 Wn.2d 953, 957, 577 P.2d
12 138, 140 (1978), citing *Lewis v. Medina*, 87 Wn.2d 19, 548 P.2d 1093 (1976).

13 C.17 BSRE does not satisfy the first criteria because there are no special circumstances
14 applicable to the subject property or intended use, such as size, shape, topography,
15 location or surroundings that do not apply generally to other properties or classes of
16 use in the same vicinity or zone. SCC 30.43B.100(1) (2003).¹⁹⁰

17 C.18 BSRE does not and cannot satisfy the second criteria either factually¹⁹¹ or legally–
18 that a variance is necessary for preservation and enjoyment of a substantial property
19 right, the right to develop an urban center on the site.

20 C.19 BSRE’s preferred site plan is not a substantial property right as a matter of law.
21 *Risko v. Grand Haven Charter Township V Zoning Board of Appeals*, 284 Mich. App.
22 453, 460, 773 N.W.2d 730, 735 (2009) appeal denied 485 Mich. 1011 (“Resolution of
23 this matter depends on whether a ‘substantial property right’ includes construction of
24 a particular design. We conclude that it does not.”)

25 C.20 Further, BSRE’s need for a variance is self-imposed because of its insistence on a
26 non-compliant site plan and therefore fails the second factor. *Rivera v. City of*
27 *Phoenix*, 186 Ariz. 600, 603, 925 P.2d 741, 744 (Ariz. Ct. App. 1996).

28 C.21 BSRE did not satisfy the third required element for a variance, i.e., that it will not be
29 materially detrimental to the public welfare or injurious to the properties or
30 improvements in the vicinity.¹⁹² SCC 30.43B.100(3).

¹⁸⁹ *Hoberg v. City of Bellevue*, 76 Wn.App. 357, 360, 884 P.2d 1339, 1341 (1994) (citations omitted);
Stoebuck and Weaver, 17 WASH. PRAC., Real Estate § 4.25 (2d ed.).

¹⁹⁰ Finding of fact F.65 at page 18 through finding of fact F.69 at page 19.

¹⁹¹ Finding of fact F.70 at page 19 through finding of fact F.87 at page 21.

¹⁹² Finding of fact F.88 at page 21 through finding of fact F.93 at page 21.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-
101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-
001-00 WMD, 18-116078 CI

1 C.22 BSRE did not satisfy the fourth criterion, either. BSRE cannot show that the
2 requested variance will not adversely affect the comprehensive plan. SCC
3 30.43B.100(4) (2003). increasing building heights and associated site density in an
4 urban center without providing access to high capacity transit adversely affects the
5 comprehensive plan.¹⁹³

6 C.23 BSRE proposes 17 buildings in excess of the height permitted in an urban center, a
7 substantial conflict with SCC 30.34A.040. The 17 buildings taller than 90 feet are a
8 substantial element of the project. Because BSRE did not demonstrate compliance
9 with the variance criteria, there is no reasonable doubt that proposed development
10 substantially conflicts with county code.

11 **4. Building Height Setbacks from Lower Density Zones (SCC 30.34A.040(2)(a))**

12 C.24 The commercial building¹⁹⁴ and two service buildings in the urban plaza cannot be
13 built as proposed without a variance because they are too tall for their proximity to
14 the urban center's boundary with adjacent residential zones.¹⁹⁵

15 C.25 BSRE submitted a variance application to resolve this conflict with county code.
16 BSRE does not comply with the variance criteria.¹⁹⁶

17 C.26 BSRE did not satisfy nor demonstrate it can satisfy the first variance criteria – that a
18 variance is necessary for preservation and enjoyment of a substantial property
19 right.¹⁹⁷ The right to develop an urban center on a site zoned for that use is a
20 substantial property right, but it is not a substantial property right to develop one's
21 property to a preferred design. *Risko v. Grand Haven Charter Township Zoning*
22 *Board of Appeals*, 284 Mich. App. 453, 460, 773 N.W.2d 730, 735 (2009) appeal
23 denied 485 Mich. 1011. BSRE cited design preferences but did not provide evidence
24 that the variance is necessary to develop an urban center on the site.

25 C.27 BSRE did not prove that a variance is necessary to preserve and enjoy a substantial
26 property right or use possessed by other properties in the same vicinity or zone.
27 SCC 30.43B.100(2) (2003). Another jurisdiction's zoning and setback requirements
28 are not "a substantial property right or use possessed by other properties in the
29 same vicinity or zone." BSRE's arguments regarding its inability to meet the FAR
30 standards are both factually and legally flawed.

¹⁹³ Finding of fact F.94 at page 21 through finding of fact F.98 at page 22.

¹⁹⁴ The commercial building is apparently included in the variance request, though its current 35-foot height is within code's 45-foot height limit. See n. 131 on page 24.

¹⁹⁵ See findings of fact F.99 et seq. starting on page 22.

¹⁹⁶ SCC 30.43B.100 (2003).

¹⁹⁷ Finding of fact F.116 on page 25 through finding of fact F.122 on page 26.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

- 1 C.28 BSRE did not satisfy the third requirement, either. BSRE's proposal will injure
2 properties to the south by negatively affecting their view.
- 3 C.29 Finally, BSRE did not satisfy the fourth requirement of not harming the
4 comprehensive plan, because the development regulations requiring stepping down
5 building heights in the setback area adjacent to lower density residential zones
6 implements the comprehensive plan's policies and objectives to provide compatibility
7 between different zones and creating a transition in building heights between the low
8 density residential zones and high density urban center.
- 9 C.30 BSRE proposes to locate three buildings in the urban plaza closer to the urban
10 center's boundary with adjacent low-density zones than prescribed by county code,
11 a substantial conflict with SCC 30.34A.040. Because BSRE did not demonstrate
12 compliance with the variance criteria, the development substantially conflicts with
13 county code. The evidence does not support a reasonable doubt that this issue is
14 not a substantial conflict.

15 **5. Critical Areas (Geologically Hazardous Areas & Secondary Access Road**

16 **a. Landslide Hazard Area Deviation**

- 17 C.31 The project site contains landslide hazard areas.¹⁹⁸ Absent an approved deviation
18 request, development must be set back from the landslide hazard areas and their
19 buffers by a distance half of the height of the slope.¹⁹⁹ BSRE proposes substantial,
20 significant, and material development in these prohibited areas.
- 21 C.32 Deviations from setback requirements are allowed only when an applicant (1)
22 demonstrates there is no alternative location for the structure on the subject
23 property; and (2) provides a geotechnical report demonstrating the applicant's
24 proposed protection provides protection equal to that provided by the standard
25 minimum setbacks.²⁰⁰

¹⁹⁸ BSRE's application is evaluated by the critical area regulations in effect when BSRE filed completed development application in 2011. Regulations pertaining to geological hazard areas were significantly revised in 2015 after the Oso disaster, including setback requirements from landslide hazards and geotechnical report requirements. See Amended Ordinance 15-035. Public comment encouraged the Hearing Examiner to apply the updated law in the interest of public safety. The Hearing Examiner does not have the authority to contradict statutory vesting requirements, however.

¹⁹⁹ SCC 30.62B.340(2)(b). Partially in response to the Oso landslide tragedy, the setback has since increased to twice the height of the slope. Amended Ordinance 15-035.

²⁰⁰ SCC 30.62B.340(2)(b).

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

- 1 C.33 PDS advised BSRE in April 2013 that development activities were not allowed within
2 a landslide hazard area or its setback.²⁰¹
- 3 C.34 BSRE waited five years before attempting to address this issue. BSRE submitted a
4 deviation request on April 27, 2018, and a revised deviation request on May 15,
5 2018, the day before the 2018 open record hearing started.²⁰² On reactivation,
6 BSRE submitted a new deviation request on December 12, 2019.²⁰³
- 7 C.35 BSRE adequately demonstrated the lack of an alternative location for the secondary
8 access road.
- 9 C.36 BSRE did not demonstrate the lack of an alternative for the urban plaza and
10 Sounder rail station. BSRE did not prove the lack of an alternative location for the
11 Sounder rail station or the urban plaza. BSRE only offered the conclusion that the
12 location of the urban plaza is based on appropriate urban planning principles.
13 Locating development in the urban plaza is not necessary to satisfy FAR
14 requirements. Substantial conflicts with the county code remain regarding the urban
15 plaza and Sounder station.

16 **b. Geotechnical Report**

- 17 C.37 The landslide hazard area deviation request must be supported by a geotechnical
18 report that contains the “proposed method of drainage and locations of all existing
19 and proposed surface and subsurface drainage facilities and patterns.”²⁰⁴ The
20 subsurface conditions report addendum,²⁰⁵ the targeted stormwater site plans,²⁰⁶
21 landslide deviation request,²⁰⁷ and response documents²⁰⁸ provide conflicting
22 information regarding the proposed methods and phasing for addressing drainage,
23 particularly with subsurface drainage of groundwater. Evidence supports the Chief
24 Engineering Officer’s conclusion that BSRE failed to provide an adequate
25 geotechnical report that complies with the requirements of SCC 30.62B.140. Denial
26 of the deviation because of an inadequate geotechnical report precludes
27 development in much of the urban plaza. BSRE’s insistence on development in the
28 urban plaza location therefore constitutes a substantial conflict.

²⁰¹ Ex. K.4, p. 7.

²⁰² Ex. A.37.

²⁰³ Ex. V.15.

²⁰⁴ SCC 30.62B.140(2)(j).

²⁰⁵ Ex. V.16.

²⁰⁶ Exs. V.8, V.9.

²⁰⁷ Ex V.15.

²⁰⁸ Exs. Z.4, Z.5, Z.6.

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

- 1 C.38 BSRE provided additional information regarding surcharges that were included in the
2 safety calculations. BSRE's subsurface conditions report addendum acknowledged
3 a slope safety factor of 1.04 for dynamic conditions, which does not satisfy the code
4 requirement for a 1.1 safety factor for dynamic conditions.²⁰⁹ BSRE later amended
5 its report to show a safety factor of 1.1 for dynamic conditions by altering the soil
6 cohesion values.²¹⁰
- 7 C.39 Because of the existence of conflicting application materials and differing soil
8 cohesion assumptions, it was reasonable for the Chief Engineering Officer to
9 conclude BSRE had not demonstrated compliance with the safety factors or with the
10 requirement to demonstrate equal protection to the standard setbacks. BSRE has
11 not demonstrated compliance with the code required slope safety factors.
- 12 C.40 The subsurface conditions report does not confirm the site is suitable for the
13 proposed development, though such confirmation is required by the county code and
14 the site is subject to high liquefaction. BSRE thinks characterization should be
15 deferred until building permit application.²¹¹ County code disagrees and requires the
16 confirmation to be included in the geotechnical report required for urban center
17 approval. BSRE cannot arrogate to itself the decision to defer confirmation of
18 suitability of the site. In the conflict between BSRE's desired development sequence
19 and county code's required sequence, county code wins.
- 20 C.41 This failure is a substantial conflict with county code because virtually the entire site
21 is susceptible to high liquefaction, a major public safety issue in a seismic zone like
22 western Washington.
- 23 C.42 PDS met its burden of proving substantial conflicts with county code. There is
24 insufficient evidence to create reasonable doubt regarding the substantial conflicts.
- 25 C.43 Therefore, the failure of the geotechnical report to confirm the site's suitability for the
26 proposed development remains substantially in conflict with the county code.

27 **B. GOOD FAITH**

- 28 C.44 BSRE argues that PDS' request to reject the application prior to an EIS should be
29 denied because PDS did not review the application in good faith. The Hearing
30 Examiner found that PDS reviewed the application in good faith.²¹² Further, BSRE's

²⁰⁹ Ex. V.16.

²¹⁰ Ex. Z.6, p. 11.

²¹¹ Ex. V.16, p. 9.

²¹² See findings of fact F.170 on page 33 through F.183 on page 34..

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 hands are not clean.²¹³ It failed to take advantage of its mulligan or do-over and did
2 not materially change its application or submit alternatives. One must do equity to
3 receive equity.²¹⁴ Finally, BSRE assertion of bad faith by PDS is an equitable
4 defense but the Hearing Examiner lacks any equitable powers.²¹⁵

5 III. DECISION

6 PDS' request to deny project approval without performing an environmental impact
7 statement is granted. BSRE's development applications are denied with prejudice pursuant
8 to SCC 30.61.220 and SCC 30.72.060(3) (2013).

9 DATED this 29th day of January, 2021.

10 Peter B. Camp

11 Peter B. Camp

12 Snohomish County Hearing Examiner

13

²¹³ *Top Line Builders, Inc. v. Bovenkamp*, 179 Wn. App. 794, 815, 320 P.3d 130, 142 (2014) ("Moreover, a party with unclean hands may not assert equitable estoppel.") (citation omitted).

²¹⁴ *Group Health Cooperative v. Coon*, 4 Wn. App. 2d 737, 753, 423 P.3d 906, 914, *aff'd*, 193 Wn.2d 841, 447 P.3d 139 (2019) ("The law has long recognized that 'he who seeks equity must do equity.'").

²¹⁵ "[The Hearing Examiner] had no discretion to exempt a landowner from SCC 20A based on what he deemed equitable . . ." *Chaussee v. Snohomish County Council*, 38 Wn. App. 630, 638-39, 689 P.2d 1084, 1091-92 (1984) (citation omitted).

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

IV. RECONSIDERATION AND APPEAL PROCEDURES

This decision of the Hearing Examiner may be reconsidered or appealed by a party of record, as described below. is final and conclusive with right of appeal to the County Council. For more information about reconsideration and appeal procedures, please see chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

RECONSIDERATION

Any party of record may request reconsideration by the Examiner by filing a petition for reconsideration **on or before February 8, 2021**. A petition for reconsideration must be filed in writing with the Office of Hearings Administration by (a) delivering the petition to 2nd Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (b) mailing the petition to the Office of Hearings Administration, M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201, or (c) emailing the petition as an attachment in PDF format to Hearing.Examiner@snoco.org. Irrespective of method of delivery, a petition for reconsideration is deemed filed when it is delivered by the close of business on the deadline, if it is postmarked on or before the deadline, or if the email is timestamped on or before the deadline. There is no fee for filing a petition for reconsideration. The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing. SCC 30.72.065.

A petition for reconsideration does not have to be in a special form but must contain the name, mailing address and daytime telephone number of the petitioner, the signature of the petitioner or of the petitioner's attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the Applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded his jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence is discovered which could not reasonably have been produced at the hearing and which is material to the decision; or

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 (f) The Applicant proposed changes to the application in response to deficiencies
2 identified in the decision.

3 Petitions for reconsideration will be processed and considered by the Hearing Examiner
4 pursuant to the provisions of SCC 30.72.065. Please include the county file number in any
5 correspondence regarding this case.

6 **APPEAL**

7 An aggrieved party of record may appeal this decision to the County Council by filing an
8 appeal **on or before February 12, 2021**. If the reconsideration process of SCC 30.72.065
9 has been invoked, no appeal may be filed until the reconsideration petition has been
10 decided by the Hearing Examiner. An aggrieved party of record need not file a petition for
11 reconsideration but may file an appeal directly to the County Council. If a petition for
12 reconsideration is filed, issues subsequently raised by that party on appeal to the County
13 Council shall be limited to those issues raised in the petition for reconsideration.

14 Appeals shall be addressed to the Snohomish County Council but shall be filed in writing
15 with the Department of Planning and Development Services, 2nd Floor, County
16 Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing
17 address: M/S No. 604, 3000 Rockefeller Avenue, Everett, WA 98201), and shall be
18 accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each appeal
19 filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing
20 fee shall be refunded in any case where an appeal is summarily dismissed in whole without
21 hearing under SCC 30.72.075.

22 To file an appeal electronically:

- 23 1. Scan the original manually signed (handwritten) copy of the appeal document;
- 24 2. Send your appeal as an email attachment to epermittech@snoco.org. Please include
25 your phone number where you can be reliably reached.
- 26 3. Staff will call you to collect your credit card information and process your payment.
- 27 4. Mail the original to Snohomish County PDS, 3000 Rockefeller M/S 604, Everett, WA
28 98201.

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

In Re Point Wells Urban Center

*11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-
101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-
001-00 WMD, 18-116078 CI*

Decision Denying Applications Without Environmental Impact Statement

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

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

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

11 Staff Distribution:

12 Department of Planning and Development Services: Ryan Countryman

13 The following statement is provided pursuant to RCW 36.70B.130: "Affected property
14 owners may request a change in valuation for property tax purposes notwithstanding any
15 program of revaluation." A copy of this Decision is being provided to the Snohomish County
16 Assessor as required by RCW 36.70B.130.

17

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

APPENDIX A -- LIST OF EXHIBITS AND WITNESSES

A. APPLICATION

- A-1 Master Permit Application for 11-101457 LU and 11-101461 SM - March 4, 2011
- A-2 Master Permit Application for 11-101007 SP - February 14, 2011
- A-3 Master Permit Application for 11-101008 LDA - February 14, 2011
- A-4 Re-submittal Transmittal, April 17, 2017
- A-5 Urban Center Project Narrative revised April 17, 2017
- A-6 Short Plat Project Description - February 14, 2011 for 11-101007 SP
- A-7 Second Access AKA Exhibit A of April 17, 2017 Resubmittal
- A-8 Fire Truck Turning Movement Study AKA Exhibit B of April 17, 2017 Resubmittal
- A-9 Record of Survey AFN 200205065001 for DNR Lease AKA Exhibit C of April 17, 2017 Resubmittal
- A-10 Variance Request Regarding Parking April 17, 2017 (11-101457 VAR)
- A-11 Traffic Presubmittal Conference Review Form (SCC 30.66B) - January 12, 2011
- A-12 LEED Checklist - March 4, 2011
- A-13 Legal Description of Project Site - March 4, 2011
- A-14 Mitigation Offer to WSDOT Signed March 4, 2011
- A-15 Officers Certificate Signed January 19, 2011
- A-16 Olympic View Water & Sewer District Letter of Availability - November 30, 2009
- A-17 Parties with Legal Interest - February 14, 2011
- A-18 Partnership Certificate signed January 19, 2011
- A-19 Point Wells Urban Center 30.34A.170(2) Certification - March 3, 2011
- A-20 Project Description and Tax Numbers - March 4, 2011
- A-21 Memo on the subject Point Wells Redevelopment Road Standards - March 4, 2011
- A-22 Ronald Wastewater Certificate of Availability - February 16, 2010
- A-23 SEPA Checklist - February 2011
- A-24 Point Well Narrative: Consistency with Shoreline Management Act Policies June 2010
- A-25 Title Certificate - February 4, 2011
- A-26 Title Report Backup Documents - June 1, 2010
- A-27 Unified Control Assurance Document - March 3, 2011
- A-28 Updated Master Permit Application and Checklist for 11-101008-LDA - April 27, 2018
- A-29 Variance Requests Regarding Heights, April 27, 2018 (11-101457 001 00 VAR)
- A-30 EDDS DEVIATION Request Regarding Private Roads - April 27, 2018
- A-31 Updated Master Permit Application for 11-101547 and 11-101461 SM LU - April 27, 2018
- A-32 Urban Center Project Narrative, - April 27, 2018
- A-33 Point Wells Flood Hazard Permit Application - April 27, 2018
- A-34 Updated Preliminary Short Subdivision Submittal Checklist - April 27, 2018
- A-35 Supplement to Urban Center Application - April 25, 2018 received April 27, 2018
- A-36 Revised Shoreline Consistency Narrative
- A-37 Landslide Area Deviation Request Clarification Letter 5.15.2018
- A-38 Revised Supplement to UC Application

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP, 11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

- 1 A-39 Revised Phasing Drawing
- 2 A-40 Revised Urban Center Development Plan Project Narrative

3 **B. PLANS**

- 4 B-1 Architectural Plans April 17, 2017
- 5 B-2 SUPERSEDED Architectural Plans March 4, 2011
- 6 B-3 2017-0417 Point Wells - Response to Snohomish County review comments
- 7 B-4 20 TDM Plan, dated March 4, 2011
- 8 B-5 Preliminary Short Plat dated April 17, 2017 for 11-101007 SP
- 9 B-6 SUPERSEDED Preliminary Short Plat dated Feb 11 2011 for 11-101007 SP
- 10 B-7 Architectural Plans received April 27, 2018
- 11 B-8 Point Wells Secondary Access Road Exhibit received April 27, 2018
- 12 B-9 Preliminary Short Plat received April 18, 2018 for 11-101007 SP

13 **C. REPORTS**

- 14 C-1 DRAFT Point Wells Expanded Traffic Impact Analysis by David Evans and Associates
- 15 Aug 2016 w/App. C
- 16 C-2 DRAFT Point Wells Expanded Traffic Impact Analysis by David Evans and Associates
- 17 May 2016 Appendix A
- 18 C-3 DRAFT Point Wells Expanded Traffic Impact Analysis by David Evans and Associates
- 19 Aug 2016 Appendix B
- 20 C-4 DRAFT Point Wells Expanded Traffic Impact Analysis by David Evans and Associates
- 21 Aug 2016 App. B1
- 22 C-5 DRAFT Point Wells Expanded Traffic Impact Analysis by David Evans and Associates
- 23 May 2016 Appendix D
- 24 C-6 DRAFT Point Wells Expanded Traffic Impact Analysis by David Evans and Associates
- 25 May 2016 Appendix E
- 26 C-7 DRAFT Point Wells Expanded Traffic Impact Analysis by David Evans and Associates
- 27 May 2016 Appendix F
- 28 C-8 DRAFT Point Wells Expanded Traffic Impact Analysis by David Evans and Associates
- 29 Aug 2016 App. F1
- 30 C-9 DRAFT Point Wells Expanded Traffic Impact Analysis by David Evans and Associates
- 31 May 2016 Appendix G
- 32 C-10 DRAFT Point Wells Expanded Traffic Impact Analysis by David Evans and Associates
- 33 May 2016 Appendix I
- 34 C-11 DRAFT Point Wells Expanded Traffic Impact Analysis by David Evans and Associates
- 35 May 2016 Appendix J
- 36 C-12 DRAFT Point Wells Expanded Traffic Impact Analysis by David Evans and Associates
- 37 Aug 2016 App. J1
- 38 C-13 SUPERSEDED Point Wells Expanded Traffic Impact Analysis by David Evans and
- 39 Associates March 2011

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

- 1 C-14 SUPERSEDED Point Wells Traffic Impact Analysis in Accordance with SCC 30.66B
- 2 March 2011
- 3 C-15 Critical Areas Report received April 17, 2017
- 4 C-16 Preliminary Geotechnical Engineering Study by HartCrowser dated November 16,
- 5 2010
- 6 C-17 Draft Final Point Wells Subsurface Conditions Report by HartCrowser dated August 4,
- 7 2016
- 8 C-18 Transit Compatibility Study dated March 1, 2011
- 9 C-19 Targeted Drainage Report by SvR Design revised for April 17, 2017 Resubmittal
- 10 C-20 Cultural Resources Technical Report revised July 23, 2015
- 11 C-21 DRAFT Secondary Access Report by DEA dated Aug 26, 2015
- 12 C-22 Stormwater Pollution Prevent Plan by SvR Design dated March 4, 2011
- 13 C-23 Fire turning Studies received April 27, 2018
- 14 C-24 Subsurface Conditions Report by HartCrowser received April 27, 2018
- 15 C-25 Costal Engineering Assessment received April 27, 2018
- 16 C-26 Hydrogeologic Report by HartCrowser received April 27, 2018
- 17 C-27 Landslide Area Deviation Geotechnical Support received April 27, 2018
- 18 C-28 Point Wells Expanded Traffic Impact Analysis by David Evans and Associates dated
- 19 August 31, 2016
- 20 C-29 Point Wells Remediation Memo received April 27, 2018
- 21 C-30 Critical Ares Report prepared by David Evans and Associates, received April 27, 2018
- 22 C-31 Targeted Drainage Report by SvR Design revised for April 27, 2018 Short Plat
- 23 Resubmittal
- 24 C-32 Targeted Drainage Report by SvR Design revised for April 27, 2018 Urban Center
- 25 Resubmittal
- 26 C-33 Pt Wells Geotechnical Report prepared by HartCrowser dated April 20, 2018
- 27 C-34 SUPERSEDED 1st Point Wells Transportation Analysis Methods and Assumptions
- 28 April 17, 2015
- 29 C-35 SUPERSEDED 2nd Point Wells Transportation Analysis Methods and Assumptions
- 30 July 6, 2015
- 31 C-36 SUPERSEDED 3rd Point Wells Transportation Analysis Methods and Assumptions
- 32 Mar 29, 2016
- 33 C-37 SUPERSEDED Critical Areas Report January 2011
- 34 C-38 SUPERSEDED Draft Subsurface Conditions Report by Hart Crowser June 11, 2015
- 35 C-39 Revised Critical Areas Report with Comments from EA and Grette Associates 6-15
- 36 C-40 Revised Critical Areas Report with comments 4-16

37 **D. PROPERTY**

- 38 D-1 Boundary Line Adjustment Auditor File Number 200405180215
- 39 D-2 Survey of Storm Drain and Utility Easement AFN 199911100667
- 40 D-3 Survey of Storm Drain and Utility Easement AFN 200405245217
- 41 D-4 Water Main Easement AFN 9206120018
- 42 D-5 Water Main Easement AFN 9603290025

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

- 1 D-6 Electrical Facilities Easement AFN 8503180060
- 2 D-7 Ingress Egress and Utility Easement AFN 200606271070
- 3 D-8 Survey of Railroad Easement AFN 200405245217
- 4 D-9 Critical Area Site Plan at Brightwater AFN 200607030209
- 5 D-10 Deed of Trust AFN 201309170649
- 6 D-11 DNR Aquatic Lands Lease

7 **E. ENVIRONMENTAL**

- 8 E-1 Notice of Determination of Significance and Request for Comments on Scope of EIS
- 9 February 2, 2014
- 10 E-2 2nd Notice of Determination of Significance and Request for Comments on Scope of
- 11 EIS dated March 12, 2014
- 12 E-3 PRELIMINARY DRAFT Point Wells Preliminary Draft EIS for Internal Review, July 29,
- 13 2016

14 **F. NOTICE AND ROUTING [LIST TO BE APPENDED WITH RECORDS FROM 2018]**

- 15 F-1 Notice and Routing Records 2011-2017 (not indexed, redundant attachments removed)
- 16 F-2 Notice and Routing Records 2018 (not indexed, redundant attachments removed)

17 **G. OTHER SUBMITTAL ITEMS AND CORRESPONDENCE**

- 18 G-1 Extension Request from Gary Huff dated March 21, 2014
- 19 G-2 Extension Request from Gary Huff dated April 15, 2015
- 20 G-3 Email from Gary Huff dated December 7, 2015
- 21 G-4 Response to Request for Clarifications Dec 9, 2015
- 22 G-5 Extension Request from Gary Huff Dated March 30, 2016
- 23 G-6 BSRE Letter to PDS Director Mock December 29, 2017
- 24 G-7 Email from Douglas Luetjen dated May 11, 2017
- 25 G-8 BSRE Letter Regarding Deadline Extension January 12, 2018
- 26 G-9 BSRE Letter to Matt Otten January 19, 2018
- 27 G-10 BSRE Request for Reconsideration Feb 1, 2018
- 28 G-11 Point Wells Urban Center Application Response Timeline Gantt Chart from Perkins
- 29 Will Dated November 2, 2017
- 30 G-12 2018-0427 Submittal Transmittal
- 31 G-13 Review Completion Letter Response received April 27, 2018, native Word Version
- 32 G-14 Review Completion Letter Response received April 27, 2018, scanned hard copy
- 33 G-15 Supplement to Urban Center Application received April 27, 2018
- 34 G-16 NCHRP Report 684, 2011
- 35 G-17 2011 Shoreline TMP
- 36 G-18 Travel Model Validation Final dated September 24, 2010
- 37 G-19 SRL WDOE Remediation Approach Final dated April 14, 2016
- 38 G-20 Highway Capacity Manual 2000

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

- 1 G-21 Request for Interpretation of SCC 30.70.140 April 26, 2018
- 2 G-22 Letter to Matthew Otten dated February 15, 2018
- 3 G-23 Memo from Mark Davies re Response to Point Wells Urban Center Supplemental
- 4 Staff Recommendation
- 5 G-24 Memo from Bill Gerken re Response to Point Wells Urban Center Supplemental Staff
- 6 Recommendation
- 7 G-25 Memo from Kirk Harris to MacCready re Response to Point Wells Urban Center
- 8 Supplemental Staff Recommendation

9 **H. CITY / AGENCY COMMENTS**

- 10 H-1 Tulalip Tribes by Mason Morisset April 11, 2011
- 11 H-2 City of Shoreline, Planning Director Joe Tovar – March 23, 2009
- 12 H-3 City of Shoreline, Planning Director Rachael Markle – February 28, 2014
- 13 H-4 City of Shoreline review comments on May 2016 Draft Expanded TIA from Kendra
- 14 Dedinsky -
- 15 May 24, 2016
- 16 H-5 Washington State Department of Archeology and Historic Preservation, Gretchen
- 17 Kaehler –
- 18 March 15, 2018
- 19 H-6 Muckleshoot Indian Tribe, Team Leader Karen Walter – February 28, 2014
- 20 H-7 Olympic View Water and Sewer District, by Susan Boyd of Pace Engineers – March 2,
- 21 2014
- 22 H-8 Shoreline Fire Department, Chief Matt Cowen – May 19, 2014
- 23 H-9 Shoreline Fire Department comments, Fire Chief Matt Cowen - September 24, 2015
- 24 H-10 Town of Woodway, Mayor Carla Nichols – March 3, 2014
- 25 H-11 Washington State Department of Archeology and Historic Preservation, Gretchen
- 26 Kaehler,
- 27 March 3, 2014
- 28 H-12 Washington State Department of Ecology, David Pater – March 31, 2014
- 29 H-13 Snohomish County Urban Center Design Review Board, recommendation signed
- 30 March 26,
- 31 2018
- 32 H-14 City of Shoreline, Kirk McKinley, Public Works dated May 5, 2015
- 33 H-15 Town of Woodway, Administrator Eric Faison – June 3, 2015
- 34 H-16 Sound Transit, Patrice Hardy - March 10, 2014
- 35 H-17 City of Shoreline, Planning Manager Paul Cohen, February 5, 2013
- 36 H-18 City of Shoreline, Kendra Dedinsky, September 18, 2015
- 37 H-19 City of Shoreline, Rachel Markle, October 2, 2015
- 38 H-20 City of Shoreline, Kendra Dedinsky, February 7, 2016
- 39 H-21 City of Shoreline, Rachael Markle, September 15, 2016
- 40 H-22 City of Shoreline, Rachel Markle, March 15, 2018
- 41 H-23 Washington State Archaeology & Historic Preservation, Gretchen Kaehler, March 15,
- 42 2018

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

- 1 H-24 Sound Transit Long Range Plan Update FSEIS November 2014 pages L-5.O-2 to L-
- 2 5.O-11
- 3 H-25 Sound Transit Long Range Plan Adopted Dec 18 2014 2015123_LRPupdate
- 4 H-26 Sound Transit Long Range Plan FSEIS Appendix A Nov 2014
- 5 H-27 Sound Transit 3 The Regional Transit System Plan for Central Puget Sound June
- 6 2016
- 7 H-28 Sound Transit 3 Appendix A - Detailed Description of Facilities and Estimated Costs
- 8 June 2016
- 9 H-29 Sound Transit System Expansion Implementation Plan December 2017
- 10 H-30 Sound Transit email May 8, 2018 in response to Snohomish County email April 30
- 11 2018

12 **I. PUBLIC COMMENTS**

- 13 I-1 Abelson, Winfield – March 27, 2014
- 14 I-2 Adams-Lee, Kathryn – March 14, 2018
- 15 I-3 Aken, Jeff – March 3, 2014
- 16 I-4 Antonik, Linda – February 24, 2014
- 17 I-5 Ashelman, Sheri – March 1, 2014
- 18 I-6 Bajema, Larry – February 28, 2014
- 19 I-7 Bakken, Jan – March 2, 2014
- 20 I-8 Bakken, Ole – March 15, 2018
- 21 I-9 Bannister, Mary and David – April 10, 2011
- 22 I-10 Bannister, David – February 18, 2014
- 23 I-11 Bannister, Mary – February 19, 2014
- 24 I-12 Mary Lou Block (Block, Peter) – February 20, 2014
- 25 I-13 Boucher, John and Marilyn – April 11, 2011
- 26 I-14 Braun, Sharon Ann – April 2, 2014
- 27 I-15 Brumett, Robin – April 2, 2014
- 28 I-16 Bucheit, Marcellus – March 3, 2014
- 29 I-17 Bundrant, Joe – August 15, 2017
- 30 I-18 Calandrillo, Steve – March 16, 2014
- 31 I-19 Casper, Denis – April 2, 2014
- 32 I-20 Catford, Julian – April 2, 2014
- 33 I-21 Catford, Teresa – April 2, 2014
- 34 I-22 Chang, Susan – February 18, 2014
- 35 I-23 Chapman, Maaren – February 15, 2014
- 36 I-24 Clements, Bill – February 26, 2014
- 37 I-25 Cohn, William – February 18, 2014
- 38 I-26 Corbett, Janice – March 3, 2014
- 39 I-27 Covarrubias, Janet – March 1, 2014
- 40 I-28 Crawford, John – February 22, 2014
- 41 I-29 Dabanian, Irene – April 1, 2014
- 42 I-30 Davis, Glenn – February 24, 2014

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

- 1 I-31 Davis, Jay – February 18, 2014
- 2 I-32 Davis, Martha – February 21, 2014
- 3 I-33 Dean, Karen – March 2, 2014
- 4 I-34 Delaney, Tom – January 4, 2014
- 5 I-35 Delaney, Tom – February 27, 2018
- 6 I-36 Dellino, Domenick – April 26, 2016
- 7 I-36 DeMarre, Harry – February 12, 2014
- 8 I-38 Ding, Donald – February 26, 2014
- 9 I-39 Eglick, Peter – March 3, 2014
- 10 I-40 Emmons, Charles – March 20, 2014
- 11 I-41 Ewing, Courtney – April 2, 2014
- 12 I-42 Ewing, Courtney – March 3, 2014
- 13 I-43 Feise, Greg – February 18, 2014
- 14 I-44 Fisher, Rick – February 4, 2014
- 15 I-45 Fleet, Jerry – March 3, 2014
- 16 I-46 Forsyth, Joan – April 2, 2011
- 17 I-47 Fraker, Richard – February 28, 2014
- 18 I-48 Franey, Ginger (Anie Franey) – April 2, 2014
- 19 I-49 Franey, Ginger (Anie Franey) – February 16, 2014
- 20 I-50 Frazier, Karen – March 2, 2014
- 21 I-51 French, Becki – February 26, 2014 a 06:36
- 22 I-52 French, Becki – February 26, 2014 b 06:37
- 23 I-53 Gammon, Richard – March 25, 2014
- 24 I-54 Garango, Johnny – February 24, 2014
- 25 I-55 Geary, Diane – March 3, 2014
- 26 I-56 Gilbert, Toni – March 15, 2018 (Duplicate of I-61)
- 27 I-57 Glascock, Jane – February 28, 2014
- 28 I-58 Goetz, Joni – July 19, 2011
- 29 I-59 Graham, Clayton – March 28, 2014
- 30 I-60 Graham, Clayton – April 1, 2014
- 31 I-61 Graham, Clayton – March 15, 2018
- 32 I-62 Grieve, Gene – July 13, 2011
- 33 I-63 Grosshans, Annie & Flanigan, Robert – March 2, 2014
- 34 I-64 Grosshans, Annie & Flanigan, Robert – March 3, 2014
- 35 I-65 Hanson, Katherine – February 18, 2014
- 36 I-66 Harrison, Joan – March 3, 2014
- 37 I-67 Hayes, Peter – January 12, 2014
- 38 I-68 Heaton, Ric – March 24, 2014
- 39 I-69 Hiatt, Zachary – April 2, 2014
- 40 I-70 Hiatt, Zachary – April 28, 2014
- 41 I-71 Hill, Sherry and Jeffrey – April 2, 2014
- 42 I-72 Hodson, Judith and W. Alan – April 2, 2014
- 43 I-73 Hohbach, Starla – January 25, 2011

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

- 1 I-74 Hohbach, Starla – April 3, 2011
- 2 I-75 Holbrook, Colleen – February 10, 2014
- 3 I-76 Holbrook, Colleen – March 8, 2018
- 4 I-77 Holloway, Sue – February 18, 2014
- 5 I-78 Holt, Caycee – May 25, 2011
- 6 I-79 Holt, Caycee – July 29, 2011
- 7 I-80 Holt, Caycee – March 30, 2014
- 8 I-81 Holzmeyer, Gil – February 22, 2014
- 9 I-82 Jamieson, Tom – March 20, 2014
- 10 I-83 Jamieson, Tom – April 2, 2014
- 11 I-84 Jardine, Lynnea – March 3, 2014
- 12 I-85 Jensen, Delores – April 1, 2014
- 13 I-86 John, John T. – March 8, 2018
- 14 I-87 Johnson, Art – March 18, 2014
- 15 I-88 Joki, James – February 18, 2014a
- 16 I-89 Joki, James – February 18, 2014b
- 17 I-90 Jorgensen, Robert II – March 24, 2014
- 18 I-91 Kato, C – March 25, 2014
- 19 I-92 Kelton, Emily – March 2, 2014
- 20 I-93 Kink, Richard – March 3, 2014
- 21 I-94 Kink, Richard – April 2, 2014
- 22 I-95 Kinter, Pat – March 3, 2014
- 23 I-96 Kleyn, Frank and Jennifer – March 25, 2011
- 24 I-97 Kosten, Michael – March 3, 2014
- 25 I-98 Kulseth, Greg – March 17, 2014
- 26 I-99 Kulseth, Greg – February 27, 2018
- 27 I-100 Kunkel, Rick – March 2, 2014
- 28 I 101 Lamb, Kathleen – April 2, 2014
- 29 I-102 Lamb, Kathleen – February 28, 2018
- 30 I-103 Lambrecht, Tom – May 6, 2013
- 31 I-104 Lambrecht, Tom and Barb – March 26, 2014
- 32 I-105 Landau, Hank – February 20, 2014
- 33 I-106 Landau, Hank – February 27, 2018
- 34 I-107 Leyde, Dan – March 25, 2014
- 35 I-108 Lilleness, Fran – February 18, 2014
- 36 I-109 Loge, Kenneth – January 15, 2014
- 37 I-110 Loyer-Nelson, Edie – February 18, 2014
- 38 I-111 Maas, Sue – March 3, 2014
- 39 I-112 Madayag, Kristina – February 26, 2014
- 40 I-113 Madden, Rod – February 19, 2014
- 41 I-114 Madden, Rod – April 2, 2014
- 42 I-115 Maguda, David – March 27, 2014
- 43 I-116 Mailhot, Tom – January 14, 2014

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

- 1 I-117 Mailhot, Tom – March 3, 2014
- 2 I-118 Mailhot, Tom – April 2, 2014
- 3 I-119 Mailhot, Tom – January 27, 2015
- 4 I-120 Mailhot, Tom – September 11, 2015
- 5 I-121 Manolopoulos, Lynn – June 28, 2011
- 6 I-122 Massoni, Andrea – April 1, 2014
- 7 I-123 Mauer, George – March 25, 2011
- 8 I-124 Mayer, George – April 9, 2011
- 9 I-125 Mayer, George – March 14, 2018
- 10 I-126 McClelland, Robin – August 19, 2011
- 11 I-127 McClelland, Robin – February 18, 2014a
- 12 I-128 McClelland, Robin – February 18, 2014b
- 13 I-129 McClelland, Robin – February 26, 2014
- 14 I-130 McClurg, Rick – April 2, 2014
- 15 I-131 McCormick, Tom – May 20, 2014
- 16 I-132 McCormick, Tom – July 25, 2014
- 17 I-133 McCormick, Tom – March 17, 2015
- 18 I-134 McCormick, Tom – March 18, 2015 15.41
- 19 I-135 McCormick, Tom – March 18, 2015 15.56
- 20 I-136 McCormick, Tom – March 31, 2015
- 21 I-137 McCormick, Tom – May 5, 2015
- 22 I-138 McCormick, Tom – May 12, 2015
- 23 I-139 McCormick, Tom – May 14, 2015
- 24 I-140 McCormick, Tom – May 20, 2015
- 25 I-141 McCormick, Tom – June 9, 2015
- 26 I-142 McCormick, Tom – June 10, 2015
- 27 I-143 McCormick, Tom – June 11, 2015
- 28 I-144 McCormick, Tom – June 14, 2015
- 29 I-145 McCormick, Tom – June 17, 2015
- 30 I-146 McCormick, Tom – June 24, 2015
- 31 I-147 McCormick, Tom – July 8, 2015
- 32 I-148 McCormick, Tom – July 24, 2015
- 33 I-149 McCormick, Tom – August 14, 2015
- 34 I-150 McCormick, Tom – August 19, 2015
- 35 I-151 McCormick, Tom – August 21, 2015
- 36 I-152 McCormick, Tom – September 2, 2015
- 37 I-153 McCormick, Tom – October 12, 2015
- 38 I-154 McCormick, Tom – October 16, 2015
- 39 I-155 McCormick, Tom – October 21, 2015
- 40 I-156 McCormick, Tom – October 28, 2015
- 41 I-157 McCormick, Tom – October 30, 2015
- 42 I-158 McCormick, Tom – November 3, 2015
- 43 I-159 McCormick, Tom – November 4, 2015

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

- 1 I-160 McCormick, Tom – December 8, 2015
- 2 I-161 McCormick, Tom – January 6, 2016
- 3 I-162 McCormick, Tom – January 7, 2016
- 4 I-163 McCormick, Tom – January 11, 2018
- 5 I-164 McCormick, Tom – January 20, 2016
- 6 I-165 McCormick, Tom – February 24, 2016
- 7 I-166 McCormick, Tom – February 25, 2016
- 8 I-167 McCormick, Tom – February 26, 2016
- 9 I-168 McCormick, Tom – March 4, 2016
- 10 I-169 McCormick, Tom – March 9, 2016
- 11 I-170 McCormick, Tom – May 22, 2016
- 12 I-171 McCormick, Tom – June 8, 2016
- 13 I-172 McCormick, Tom – July 11, 2016
- 14 I-173 McCormick, Tom – July 18, 2016
- 15 I-174 McCormick, Tom – July 22, 2016
- 16 I-175 McCormick, Tom – August 12, 2016
- 17 I-176 McCormick, Tom - August 17, 2016 17.53
- 18 I-177 McCormick, Tom – August 18, 2016 15.00
- 19 I-178 McCormick, Tom – August 18, 2016 15.02
- 20 I-179 McCormick, Tom - August 19, 2016
- 21 I-180 McCormick, Tom – August 29, 2016
- 22 I-181 McCormick, Tom – December 29, 2016
- 23 I-182 McCormick, Tom – May 12, 2017
- 24 I-183 McCormick, Tom – June 3, 2017
- 25 I-184 McCormick, Tom – June 13, 2017
- 26 I-185 McCormick, Tom – June 15, 2017
- 27 I-186 McCormick, Tom – July 5, 2017
- 28 I-187 McCormick, Tom – July 18, 2017
- 29 I-188 McCormick, Tom – August 9, 2017
- 30 I-189 McCormick, Tom – August 11, 2017
- 31 I-190 McCormick, Tom – August 15, 2017
- 32 I-191 McCormick, Tom – August 16, 2017
- 33 I-192 McCormick, Tom – August 17, 2017 16.30
- 34 I-193 McCormick, Tom – August 17, 2017 16.24
- 35 I-194 McCormick, Tom – August 30, 2017
- 36 I-195 McCormick, Tom – September 22, 2017
- 37 I-196 McCormick, Tom – September 28, 2017
- 38 I-197 McCormick, Tom – October 10, 2017
- 39 I-198 McCormick, Tom – October 23, 2017
- 40 I-199 McCormick, Tom – October 27, 2017
- 41 I-200 McCormick, Tom – November 16, 2017
- 42 I-201 McCormick, Tom – December 12, 2017
- 43 I-202 McCormick, Tom – December 15, 2017

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

- 1 I-203 McCormick, Tom – December 20, 2017
- 2 I-204 McCormick, Tom – January 5, 2018 11.47
- 3 I-205 McCormick, Tom – January 5, 2018 16.26
- 4 I-206 McCormick, Tom – January 6, 2018 18.00a
- 5 I-207 McCormick, Tom – January 6, 2018 18.00b
- 6 I-208 McCormick, Tom – January 8, 2017 17.31a
- 7 I-209 McCormick, Tom – January 8, 2017 17.31b
- 8 I-210 McCormick, Tom – January 8, 2017 17.32a
- 9 I-211 McCormick, Tom – January 8, 2017 17.32b
- 10 I-212 McCormick, Tom – January 8, 2017 17.33a
- 11 I-213 McCormick, Tom – January 8, 2017 17.33b
- 12 I-214 McCormick, Tom – January 8, 2017 17.33c
- 13 I-215 McCormick, Tom – January 8, 2018
- 14 I-216 McCormick, Tom – January 20, 2018
- 15 I-217 McCormick, Tom – February 6, 2018
- 16 I-218 McCormick, Tom – February 14, 2018
- 17 I-219 McCormick, Tom – February 27, 2018
- 18 I-220 McCormick, Tom - February 28, 2018
- 19 I-221 McCormick, Tom – March 7, 2018
- 20 I-222 McCormick, Tom – March 13, 2018
- 21 I-223 Mercker, Janis – February 19, 2014
- 22 I-224 Meyer, Chuck – March 3, 2014
- 23 I-225 Meyer, Karen – March 2, 2014
- 24 I-226 Minogue, B -- March 3, 2014
- 25 I-227 Morris, Nancy – April 2, 2014
- 26 I-228 Neimi, Jan – February 24, 2014
- 27 I-229 Nicholson, Eileen – February 28, 2014
- 28 I-230 No Name – March 1, 2014
- 29 I-231 Noreen, Ken and Pearl – April 7, 2011
- 30 I-232 Noreen, Ken and Pearl – March 3, 2014
- 31 I-233 Osaki, David – March 29, 2014
- 32 I-234 Parken, Jean – March 31, 2014
- 33 I-235 Passey, David – April 1, 2014
- 34 I-236 Patterson, Jerry and Janice – February 28, 2014
- 35 I-237 Patterson, Jerry – November 23, 2015
- 36 I-238 Patterson, Jerry – December 4, 2015
- 37 I-239 Patterson, Jerry – April 11, 2016
- 38 I-240 Patterson, Jerry – August 17, 2017
- 39 I-241 Patterson, Jerry – March 14, 2018
- 40 I-242 Paulson, Gini – April 24, 2015
- 41 I-243 Paulson, Gini – May 3, 2015
- 42 I-244 Peterson, Eric and Janet – February 20, 2014
- 43 I-245 Peterson, Matt – March 3, 2014

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

- 1 I-246 Petro, Ethan – April 1, 2014
- 2 I-247 Potter, Mary Lynn – April 2, 2014
- 3 I-248 Reed, Nancy & Bill – March 2, 2014
- 4 I-249 Reischling, Barry – February 4, 2014
- 5 I-250 Reischling, Barry – February 17, 2014
- 6 I-251 Rhodes, Blain – February 17, 2014 a 16:41
- 7 I-252 Rhodes, Blain – February 17, 2014 b 16:43
- 8 I-253 Rhodes, Blain – February 17, 2014 c 16:44
- 9 I-254 Rhodes, Blain – February 17, 2014 d 16:46
- 10 I-255 Richardson, Sheila – February 27, 2014
- 11 I-256 Robertson, Betty – February 27, 2014
- 12 I-257 Rojas, Carlotta – April 1, 2014
- 13 I-258 Scantlebury, Ginny – March 2, 2014
- 14 I-259 Scantlebury, Ginny – April 2, 2014
- 15 I-260 Scantlebury, Roy – March 2, 2014
- 16 I-261 Schalka, Julie – March 3, 2014
- 17 I-262 Schulz, Craig – February 16, 2014
- 18 I-263 Shaffer, Kathy – February 17, 2014
- 19 I-264 Shaffer, Kathy, Rhodes & Blaine – March 5, 2018
- 20 I-265 Shallbetter, Traci – February 3, 2014
- 21 I-266 Shallbetter, Traci – February 14, 2014
- 22 I-267 Shallbetter, Traci – March 3, 2014
- 23 I-268 Sherwood, John Jr. – April 11, 2011
- 24 SI-269 ill, Anina – March 3, 2014
- 25 I-270 Smith, Renee – March 3, 2014
- 26 I-271 Somers, Edward – February 19, 2014
- 27 I-272 Sova, Alex – April 10, 2011
- 28 I-273 Sova, Pavel – April 10, 2011
- 29 I-274 Sova, Pavel and Chase, Susannah – April 1, 2014
- 30 I-275 Stephens, Marianne – March 3, 2014
- 31 I-276 Sterling, Sharon – March 3, 2014
- 32 I-277 Stime, Randolph – April 1, 2014a
- 33 I-278 Stime, Randolph – April 1, 2014b
- 34 I-279 Stime, Randy – April 13, 2016
- 35 I-280 Stoel-Gammon, Carol – March 3, 2014
- 36 I-281 Sundquist, Doug – February 26, 2018
- 37 I-282 Surowiec, Lisa – April 2, 2014
- 38 I-283 Taibleson, Joyce – April 2, 2014
- 39 I-284 Tallman, Tracy – March 19, 2014
- 40 I-285 Tallman, Tracy – March 30, 2014
- 41 I-286 Tallman, Tracy – April 4, 2014
- 42 I-287 Taylor, Allison – March 2, 2014
- 43 I-288 Thomason, Marian – March 20, 2014

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

- 1 I-289 Tietze, Erich and Shandra – March 3, 2014
- 2 I-290 Trompeter, Ronald – June 29, 2011
- 3 I-291 Trompeter, Ronald – March 2, 2014
- 4 I-292 Tucker, Janis – March 3, 2014
- 5 I-293 Ward, Betty – February 2, 2014
- 6 I-294 Watkins, David – Windermere – February 22, 2018
- 7 I-295 Webster, George – January 6, 2014
- 8 I-296 Whitson, Tom – April 6, 2011
- 9 I-297 Whitson, Tom and Joyce – March 29, 2014
- 10 I-298 Wickward, Nancy – February 18, 2014
- 11 I-299 Wilcox, Austen - December 22, 2016
- 12 I-300 Will, Susan – May 21, 2014
- 13 I-301 Willard, Bill – March 3, 2014
- 14 I-302 Wilson, Barbara – February 28, 2014
- 15 I-303 Wittenberger, Donald – March 3, 2014
- 16 I-304 Wolfe, John – February 3, 2014
- 17 I-305 Wolfe, John – March 1, 2014
- 18 I-306 Wolfe, John – March 14, 2018
- 19 I-307 Woodfield, Marion – February 27, 2014
- 20 I-308 Woodfield, Marion – March 21, 2014 11.21
- 21 I-309 Woodfield, Marion – March 21, 2014 11.22
- 22 I-310 Young, Jay – August 15, 2017
- 23 I-311 Zinter, Anita – August 2, 2011
- 24 I-312 Zinter, Anita – February 19, 2014
- 25 I-313 Zufall, Kathryn – February 6, 2014
- 26 I-314 Zufall, Kathryn – March 7, 2018
- 27 I-315 Zufall, Kathryn – March 20, 2011
- 28 I-316 Biesecker, Adrian -- May 8, 2018
- 29 I-317 Brown, Michael -- May 9, 2018
- 30 I-318 Craig, Dick -- May 4, 2018
- 31 I-319 Ding, Donald -- May 5, 2018
- 32 I-320 Dreessen, Kristi -- May 7, 2018
- 33 I-321 Earl-Hubbard, Michele -- May 8, 2018
- 34 I-322 Fattizzi, Randi -- May 9, 2018
- 35 I-323 Gibbs, Diana and Samuel -- May 8, 2018
- 36 I-324 H., Jeff -- May 4, 2018
- 37 I-325 Haensly, Thomas -- May 6, 2018
- 38 I-326 Hauck, Robert -- May 8, 2018
- 39 I-327 Haugen, Judy -- May 4, 2018
- 40 I-328 Herbord, Paul -- May 7, 2018
- 41 I-329 Hull, Tom -- May 4, 2018
- 42 I-330 Johnson, Art -- May 6, 2018
- 43 I-331 Karis, Nancy -- May 6, 2018

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

- 1 I-332 Langdale, Michelle -- May 7, 2018
- 2 I-333 Madden, Rod -- May 6, 2018
- 3 I-334 McCallum, Ramun -- May 7, 2018
- 4 I-335 Ostrem, Renee -- May 4, 2018
- 5 I-336 Prewett, Don -- May 5, 2018
- 6 I-337 Tsoming, Susanne -- May 9, 2018
- 7 I-338 Twaddell, Barbara -- May 7, 2018
- 8 I-339 Winnick, Ken -- May 4, 2018
- 9 I-340 York-Erwin, Nancy -- May 7, 2018
- 10 I-341 Zinter, Anita -- May 7, 2018
- 11 I-342 Mayer, George -- May 6, 2018
- 12 I-343 Mercker, Janis -- May 9, 2018
- 13 I-344 Isabell, Pamela -- May 9, 2018
- 14 I-345 DeMeritt, Kathryn -- May 9, 2018
- 15 I-346 Pagan, Lisa -- May 10, 2018
- 16 I-347 McCormick GMHB-s 5172011 corrected FINAL decision
- 17 I-348 McCormick, Tom -- May 1, 2018
- 18 I-349 Blair, Moria -- May 10, 2018
- 19 I-350 Averill, Thomas -- May 11, 2018
- 20 I-351 Karr, Brad -- May 12, 2018
- 21 I-352 Goetz, Rick -- May 12, 2018
- 22 I-353 Laughlin, Karen -- May 12, 2018
- 23 I-354 Eckmann, Janice -- May 13, 2018
- 24 I-355 Higgins, Wendy -- May 13, 2018
- 25 I-356 Minogue, Barbara -- May 13, 2018
- 26 I-357 Weissman, Melissa -- May 13, 2018
- 27 I-358 McClurg, Rick -- May 13, 2018
- 28 I-359 Spencer, Chris -- May 13, 2018
- 29 I-360 Crawford, John -- May 13, 2018
- 30 I-361 Krepick, William -- May 13, 2018
- 31 I-362 Davis, Jeremy -- May 14, 2018
- 32 I-363 McCall, Gregory -- May 14, 2018
- 33 I-364 Bolton, Rhonda -- May 14, 2018
- 34 I-365 Landry, Elizabeth -- May 14, 2018
- 35 I-366 Grimley, Janet -- May 14, 2018
- 36 I-367 Holbrook, Colleen -- May 14, 2018
- 37 I-368 Parrish, Leslie -- May 14, 2018
- 38 I-369 Norden, Mai -- May 14, 2018
- 39 I-370 Haynes, Kevin -- May 14, 2018
- 40 I-371 Lin, Paul -- May 14, 2018
- 41 I-372 Grosshans, Annie -- May 14, 2018
- 42 I-373 Lewis, Paige -- May 14, 2018
- 43 I-374 Daily, Steve -- May 14, 2018

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

- 1 I-375 Nichols, Carla Town of Woodway -- May 14, 2018
- 2 I-376 Johnson, Norman -- May 14, 2018
- 3 I-377 Peterson, Janet -- May 14, 2018
- 4 I-378 Burkhardt, Dennis -- May 18, 2018
- 5 I-379 Hutt, Kevin and Aileen -- May 14, 2018
- 6 I-380 Niemi, Linda -- May 14, 2018
- 7 I-381 Scharff, Bert -- May 14, 2018
- 8 I-382 Funderburg, Leslie -- May 15, 2018
- 9 I-383 Mohn, Larry and Carol -- May 12, 2018
- 10 I-384 Whelan, Juliana -- May 11, 2018
- 11 I-385 Krepick, Donna -- May 15, 2018
- 12 I-386 Brewe, Kenneth -- May 15, 2018
- 13 I-387 Schilling, Jackie -- May 15, 2018
- 14 I-388 Robertson, Doug and Jan -- May 15, 2018
- 15 I-389 McCormick, Tom Memo re PDS Staff Report for Proposed Ordinance
- 16 I-390 Losee, Max -- May 15, 2018
- 17 I-391 Walston, Linnea -- May 15, 2018
- 18 I-392 McCormick, Tom -- May 15, 2018
- 19 I-393 Loyer Nelson, Edith -- May 15, 2018
- 20 I-394 Hansen, Bryce -- May 15, 2018
- 21 I-395 Weber, Karen -- May 15, 2018
- 22 I-396 Tallman, Tracy -- May 15, 2018
- 23 I-397 Chang, Susan -- May 15, 2018
- 24 I-398 Scantelbury, Ginny -- May 15, 2018
- 25 I-399 Landau, Hank -- May 15, 2018
- 26 I-400 York-Erwin, Nancy -- May 15, 2018
- 27 I-401 Strand, Michael -- May 15, 2018
- 28 I-402 Findley, Carlton -- May 15, 2018
- 29 I-403 McCormick, Tom Res 377 City of Shoreline -- May 16, 2018
- 30 I-404 McCormick, Tom Email King Co Metro -- May 16, 2018
- 31 I-405 McCormick, Tom RB Road AWDT Traffic Counts -- May 16, 2018
- 32 I-406 Jorgensen, Robert -- May 13, 2018
- 33 I-407 Mailhot, Tom re Public Testimony -- May 16, 2018
- 34 I-408 McCormick, Tom -- May 16, 2018
- 35 I-409 York-Erwin, Ralph Steven -- May 16, 2018
- 36 I-410 Weber, Ralph and Bonnie -- May 13, 2018
- 37 I-411 Tarry, Debra City of Shoreline -- May 16, 2018
- 38 I-412 Morris, Nancy -- May 16, 2018
- 39 I-413 Boone, Amy -- May 16, 2018
- 40 I-414 Gillespie, Darren -- May 16, 2018
- 41 I-415 Holm, Ray -- May 16, 2018
- 42 I-416 Phelps, Elaine -- May 17, 2018
- 43 I-417 McCormick, Tom Countryman conf call notes -- May 17, 2018

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

- 1 I-418 McCormick, Tom Community Transit email 2009 -- May 17, 2018
- 2 I-419 McCormick, Tom Tom Perkins Will drawings 2011 -- May 17, 2018
- 3 I-420 Klingbeil, Karil -- May 17, 2018
- 4 I-421 Mager, Ingrid -- May 17, 2018
- 5 I-422 Dellino, Domenick -- May 17, 2018
- 6 I-423 Schlenger, Julianne -- May 17, 2018
- 7 I-424 Erhardt, Fran -- May 17, 2018
- 8 I-425 McCormick, Tom BSRE Comments 2012 SEIS Addendum
- 9 I-426 McCormick, Tom BSRE 10-9-2012 Council letter
- 10 I-427 McCormick, Tom Draft Pt Wells Addm 4May2012
- 11 I-428 Krepick, William -- May 17, 2018
- 12 I-429 Malek, Jack -- May 17, 2018
- 13 I-430 Mager, Ingrid -- May 17, 2018
- 14 I-431 Sno-King Coalition Reqt POR -- May 17, 2018
- 15 I-432 Jensen, Delores -- May 18, 2018
- 16 I-433 Fryberg, Ray -- May 18, 2018
- 17 I-434 Holstad, Andrew -- May 18, 2018
- 18 I-435 Briggs, Karen -- May 18, 2018
- 19 I-436 Willard, Bill -- May 18, 2018
- 20 I-437 Tillman, Patricia -- May 19, 2018
- 21 I-438 Trompeter, Ronald -- May 20, 2018
- 22 I-439 McCormick, Tom -- May 21, 2018
- 23 I-440 McCormick, Tom - Alon Blue Square Israel 2010 Form 20-F
- 24 I-441 McCormick, Tom - Alon Blue Square Israel 2015 Form 20-F
- 25 I-442 McCormick, Tom - Alon USA 2016 Form 10-K
- 26 I-443 McCormick, Tom -- May 21, 2018
- 27 I-444 McCormick, Tom -- May 22, 2018
- 28 I-445 Casper, Denis -- May 23, 2018
- 29 I-446 McCormick, Tom - SSHI (Horton) v City of Olympia (WA Ct App 2013)
- 30 I-447 McCormick, Tom - Ecology from Mark Wells 2011 email string
- 31 I-448 McCormick, Tom - Ecology internal 2011 email re cleanup
- 32 I-449 McCormick, Tom -- May 23, 2018
- 33 I-450 McCormick, Tom -- May 24, 2018
- 34 I-451 McCormick, Tom FAR calculations 2018-05-24
- 35 I-452 Casper, Denis -- May 30, 2018

36 **J. [NOT USED]**

37 **K. SNOHOMISH COUNTY REVIEW**

- 38 K-1 Point Wells Traffic Pre-Submittal Review Form Dec 16, 2009
- 39 K-2 Urban Center Submittal Checklist Revised September 2010
- 40 K-3 Code Interpretation of 30.91F.455 Floor Area Ratio dated Oct 5 2010
- 41 K-4 Review Completion Letter dated April 12, 2013 (without attachments)

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

- 1 K-5 Point Wells Critical Areas Review Memo dated May 12, 2011
- 2 K-6 SnoCo Traffic Mitigation and Concurrency Review Comments dated June 7, 2011
- 3 K-7 Transit Compatibility Memo dated June 15, 2011
- 4 K-8 Transportation Demand Management Review Memo Dated September 6, 2011
- 5 K-9 Code Interpretation Files for 10-106077 30.91F.455 Archived March 20, 2014
- 6 K-10 Point Wells Submittal Drawings Request for Clarifications dated July 29, 2015
- 7 K-11 Snohomish County Response dated Sept 17, 2015 to draft Secondary Access Report
- 8 dated August 26, 2015
- 9 K-12 PDS Response to July 6, 2015 Traffic Assumptions Memo 20151014
- 10 K-13 Point Wells Application Extension Letter 20160331
- 11 K-14 Point Wells SnoCo Questions on distributions in Draft ETIA May 5, 2016
- 12 K-15 Point Wells PDS Comments on May 2016 Draft of ETIA dated May 27, 2016
- 13 K-16 Email Sept 19 2016 Regarding Preliminary Draft EIS Landslide Hazard Comments
- 14 K-17 Preliminary Comments on EIS Landslide Hazards September 19, 2016
- 15 K-18 Point Wells DEIS and Revised Application Letter Nov 15, 2016
- 16 K-19 Point Wells Resubmittal DEIS and Expiration Notice Letter dated May 2, 2017
- 17 K-20 Point Wells April 2017 Resubmittal and Preliminary Review Comments May 10, 2017
- 18 K-21 Traffic Review Comments -EO portion- dated May 23 2017 for April 17, 2017
- 19 Submittal
- 20 K-22 Grading and Drainage Review Comments dated June 15 2017 for April 17, 2017
- 21 Submittal
- 22 K-23 Fire Review Comments dated June 15 2017 for April 17, 2017 Submittal
- 23 K-24 Critical Areas and Shoreline Review Comments dated June 21, 2017 for April 17,
- 24 2017 Submittal
- 25 K-25 Traffic Review Comments -MB portion- dated June 23, 2017 for April 17, 2017
- 26 Submittal
- 27 K-26 Building Review Comments dated June 27, 2017 for April 17, 2017 Submittal
- 28 K-27 Flood Hazard Review Comments dated June 27, 2017 for April 17, 2017 Submittal
- 29 K-28 Traffic Review Comments -MU portion- dated July 12, 2017 for April 17, 2017
- 30 Submittal
- 31 K-29 Point Wells Short Plat Plan Markups Dated September October 6, 2017
- 32 K-30 Point Wells 20170417 Resubmittal drawings with markups October 6, 2017
- 33 K-31 Point Wells Review Completion Letter for Second Submittal October 6, 2017
- 34 K-32 Point Wells Resubmittal Deadline Letter October 6, 2017
- 35 K-33 PDS Letter to BSRE from Paul MacCready dated January 9, 2018
- 36 K-34 PDS Email to BSRE Regarding Traffic Assumptions Follow Up, November 17, 2016
- 37 K-35 PDS Email to BSRE and Attachment Regarding Parking, February 5, 2016
- 38 K-36 PDS Letter to BSRE Granting Extension, dated April 21, 2015
- 39 K-37 2018 04 26 SuppA-Zoning Code Variances Pt Wells Height
- 40 K-38 Point Wells DPW 3rd Review Memo 5-4-18
- 41 K-39 Point Wells LHA Deviation Memo 5-9-18
- 42 K-40 Letter from Director Mock to BSRE re Extension Request dated January 24, 2018

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 **L. DOCUMENTS CITED IN PROJECT REVIEW**

- 2 L-1 FEMA Flood Insurance Rate Map 53061C1292 E Dated Nov 8, 1999
3 L-2 FEMA Flood Insurance Rate Map 53061C1294 E Dated Nov 8, 1999
4 L-3 FHA Hydraulic Engineering Circular No 11 dated March 1989
5 L-4 Critical Area Site Plan at Brightwater AFN 200607030209
6 L-5 Email from Gary Huff to Peggy Sanders April 28, 2010
7 L-6 Snohomish County Department of Public Works Rule 4227
8 L-7 Notes from Conference Call on April 9, 2015 taken by Ryan Countryman
9 L-8 Notes from Conference Call on April 16, 2015 taken by Ryan Countryman
10 L-9 Notes from Conference Call on April 23, 2015 taken by Ryan Countryman
11 L-10 Notes from Conference Call on April 30, 2015 taken by Ryan Countryman
12 L-11 Notes from Conference Call on May 6, 2015 taken by Ryan Countryman
13 L-12 Notes from Conference Call on May 28, 2015 taken by Ryan Countryman
14 L-13 Notes from Conference Call on June 11, 2015 taken by Ryan Countryman
15 L-14 Notes from Conference Call on June 18, 2015 taken by Ryan Countryman
16 L-15 Notes from Conference Call on June 25, 2015 taken by Ryan Countryman
17 L-16 Notes from Conference Call on July 2, 2015 taken by Ryan Countryman
18 L-17 Notes from Conference Call on July 10, 2015 taken by Ryan Countryman
19 L-18 Notes from Conference Call on July 23, 2015 taken by Ryan Countryman
20 L-19 Notes from Conference Call on July 30, 2015 taken by Ryan Countryman
21 L-20 Notes from Meeting on December 4, 2017 taken by Ryan Countryman
22 L-21 Notes from Meeting on September 20, 2016 taken by Ryan Countryman
23 L-22 Everett—Seattle Final Environmental Impact Statement Appendix A2: Site Station
24 Screening, dated December 1999 by Sound Transit and the U.S. Department of
25 Transportation Federal Transit Administration.

26 **M. MISCELLANEOUS CORRESPONDENCE**

- 27 M-1 Email from David Killingstad - October 11, 2010
28 M-2 Email From David Killingstad - February 13, 2015
29 M-3 1-9-18 Letter From Snohomish County to BSRE
30 M-4 November 17 2016 PDS Email RE Traffic Assumptions Follow Up
31 M-5 Email exchange on October 6 2016 between Gary Huff and Ryan Countryman
32 M-6 Email from Darryl Eastin, August 12, 2011
33 M-7 Email chain from Darryl Eastin, ending July 29, 2014
34 M-8 PDS Early Notice to Applicant of Hearing, March 6, 2018
35 M-9 Resume Mike Swenson Seattle 12-14-17 - transpogroup
36 M-10 Resume John Bingham - HartCrowser
37 M-11 Resume Kevin Jeffers Resume - David Evans & Associates
38 M-12 Resume Peter Busby – Perkins Will
39 M-13 Resume Kay Kornovich – Perkins Will
40 M-14 Resume Dan Seng – Perkins Will
41 M-15 Resume Carsten Stinn – Perkins Will

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

- 1 M-16 Resume Mark Davies – SVR
- 2 M-17 Resume Kirk Harris – DEA
- 3 M-18 Resume Richard Pratt – DEA
- 4 M-19 Resume Victor Salemann – TSI
- 5 M-20 Resume Jack Molver – DEA
- 6 M-21 Resume Gray Rand – DEA
- 7 M-22 Resume Roy Jensen – Hart Crowser
- 8 M-23 Resume Julie Wukelic – Hart Crowser
- 9 M-24 Resume William Gerkin – Moffat & Nichol
- 10 M-25 Resume Rich Shipanski – EA Engineering
- 11 M-26 Resume Laurel Hunter – Peter Walker Partners
- 12 M-27 Resume Mark Dagel – Hart Crowser
- 13 M-28 Resume Brad Tong – Shiels Oletz Johnson
- 14 M-29 Snohomish County v Woodway Briefing

15 **N. STAFF RECOMMENDATION – DEPARTMENT OF PLANNING & DEVELOPMENT**
16 **SERVICES**

- 17 N-1 Staff Recommendation - April 17, 2018
- 18 N-2 Supplemental Staff Recommendation - May 9, 2018

19 **O. APPLICANT (BSRE) / RESPONDENT (PDS) EXHIBIT, WITNESS LISTS &**
20 **BRIEFS**

- 21 O-1 BSRE Point Wells, LP's Witness List - 4/30/18
- 22 O-1a BSRE Point Wells, LP's Supplemental Witness List - 5/8/18
- 23 O-2 Snohomish County Department of Planning & Development Services and BSRE's Joint
- 24 Exhibit List, - 5/4/18
- 25 O-2a Snohomish County Department of Planning & Development Services Supplemental
- 26 Witness List - 5/4/18
- 27 O-3 BSRE Hearing Examiner Opening Brief
- 28 O-4 Snohomish County PreHearing Brief
- 29 O-4a Appendix A-C

30 **P. SUBMITTED DURING THE OPEN RECORD HEARING**

- 31 P-1 Applicant presentation video May 16, 2018
- 32 P-2 2018-0516 Point Wells Hearing presentation
- 33 P-3 Phasing Plan Sheet 1 A-056 – depicted from May 15, 2018 revision
- 34 P-4 Mailhot, Tom Written Testimony - May 18, 2018
- 35 P-5 Point Wells Site History
- 36 P-6 April 16, 2018 Huff Letter to Otten
- 37 P-7 March 15, 2018 Otten email to Kris Davis
- 38 P-8 February 5, 2018 PDS Letter to Huff

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement
Page 67 of 77

- 1 P-9 January 22, 2018 Ohlenkamp email to PDS
- 2 P-10 January 19, 2018 PDS Letter to Huff
- 3 P-11 May 15, 2014 PDS Letter to Huff
- 4 P-12 Snohomish County Management Master Program
- 5 P-13 Notes from meeting on November 13, 2017 taken by Ryan Countryman
- 6 P-14 Amended Ordinance No. 09-079
- 7 P-15 Sheet C-203 from Ex B-7
- 8 P-16 Sheet A-051 from Ex B-7
- 9 P-17 Schematic – Stable Shoreline Expansion Concept
- 10 P-18 Timeline – DEA - Related Chronology of Development of ETIA Report
- 11 P-19 Point Wells Project Timeline

12 **Q. RECORD LEFT OPEN FOR FINAL COMMENTS**

- 13 Q-1 Sno Co PDS Proposed Findings Conclusions
- 14 Q-2 Sno Co Post Hearing Brief
- 15 Q-3 BSRE Proposed Findings Conclusions
- 16 Q-4 BSRE Closing Brief
- 17 Q-5 City of Shoreline Geotechnical Comments
- 18 Q-6 City of Shoreline Traffic Comments
- 19 Q-7 City of Shoreline Comments June 1, 2018
- 20 Q-8 Mailhot, Tom Comments June 1, 2018
- 21 Q-9 McCormick, Tom Comments June 1, 2018

22 **R. RECONSIDERATION**

- 23 R-1 BSRE Point Wells, LP’s Motion for Reconsideration and Clarification dated July 9, 2018
- 24 R-2 Decision Denying Extension issued June 29, 2018
- 25 R-3 Decision on Reconsideration issued August 3, 2018
- 26 R-4 Amended Decision issued August 3, 2018
- 27 NOTE:
- 28 FINAL DECISION issued August 3, 2018.
- 29 FINAL DECISION appealed to Snohomish County Council on August 17, 2018.
- 30 See the Council’s record for additional information and/or exhibits.
- 31 LUPA filed in King County Superior Court – October 30, 2018

32 **S. DOCUMENTS RELIED ON BY SNOHOMISH COUNTY COUNCIL**

- 33 S-1 Appeal letter received August 17, 2018 Doug Luetjen of Karr Tuttle Campbell, Attorney
- 34 for BSRE Point Wells
- 35 S-2 Written argument received from Clayton P. Graham, Attorney for Party-of-Record
- 36 Bundrant, by email 09/07/18 @ 12:11 p.
- 37 S-2a Written argument received from Clayton P. Graham, Attorney for Party-of-Record
- 38 Bundrant, by U.S. Mail 09/10/18

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

- 1 S-3 Written argument received from Darcy Forsell, City of Shoreline, Party-of-Record, by
2 email 09/07/18
3 S-4 Written argument received from Tom McCormick, Party-of-Record, by email 09/07/18
4 S-5 Written argument received by Karr Tuttle Campbell, Attorneys for BSRE Point Wells,
5 LP, by email 09/07/18
6 S-5a Written argument received by Karr Tuttle Campbell, Attorneys for BSRE Point Wells,
7 LP, by U.S. Mail 09/10/18
8 S-6 Rebuttal from Karr Tuttle Campbell, Attorneys for BSRE Point Wells, LP, by email
9 09/14/18
10 S-6a Rebuttal from Karr Tuttle Campbell, Attorneys for BSRE Point Wells, LP, by U.S. Mail
11 09/17/18
12 S-7 Council Staff Report from Yorik Stevens-Wajda, Legislative Analyst, Council Staff -
13 10/02/18
14 S-8 Sign-in Sheet – Closed Record Appeal Hearing – 10/08/18
15 S-9 Written Statements provided by parties-of-record
16 S-10 Notice of Appeal Hearing – 8/24/18
17 S-11 Affidavit of Mailing – Notice of Closed Record Appeal Hearing – 8/24/18
18 S-12 Affidavit of Publication – Notice of Closed Record Appeal Hearing – 8/29/18
19 S-13 Letter to applicant/appellant regarding posting notice – 8/24/18
20 S-14 Notarized statement by applicant/appellant of posting notice on property – 8/29/18
21 S-15 Memo to Parties-of-Record re: time allotment for oral argument – 9/11/18
22 S-16 Minutes – Council Closed Record Appeal Hearing 10/03/18
23 S-17 Official Notice of Council Decision with Motion 18-360 Issued on 10/08/18
24 S-18 Affidavit of Mailing – Notice of Council Decision and Motion No. 18-360 – 10/10/18

25 **T. TRANSCRIPTS RELIED ON BY KING COUNTY SUPERIOR COURT**

- 26 T-1 Verbatim Report – Hearing Day 1 – May 16, 2018
27 T-2 Verbatim Report – Hearing Day 2 – May 17, 2018
28 T-3 Verbatim Report – Hearing Day 3 – May 18, 2018
29 T-4 Verbatim Report – Hearing Day 4 – May 21, 2018
30 T-5 Verbatim Report – Hearing Day 5 – May 22, 2018
31 T-6 Verbatim Report – Hearing Day 6 – May 23, 2018
32 T-7 Verbatim Report – Hearing Day 7 – May 24, 2018
33 T-8 Verbatim Report – Appeal Hearing – October 3, 2018

34 **U. KING COUNTY SUPERIOR COURT DECISION**

- 35 U-1 King County Superior Court Decision - June 18, 2019

36 **V. APPLICANT DECEMBER 2019 RESUBMITTAL AND NEW APPROVAL REQUESTS**

- 37 V-1 Point Wells Summary of Revisions Letter - December 12, 2019
38 V-2 Master Permit Application, revised December 12, 2019

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

- 1 V-3 Supplement to Urban Center Development Application - December 12, 2019
- 2 V-4 Point Wells Development Project Narrative, revised December 12, 2019
- 3 V-5 Shoreline Narrative for Point Wells Urban Center, revised December 11, 2019
- 4 V-6 Architectural Plans - December 12, 2019
- 5 V-7 Preliminary Short Plat - December 12, 2019
- 6 V-8 Targeted Stormwater Site Plan Report, for Short Plat, revised December 12, 2019
- 7 V-9 Targeted Stormwater Site Plan Report, for Urban Center, revised December 12, 2019
- 8 V-10 Critical Areas Report - December 2019
- 9 V-11 Memo: Calculation of Trip Generation with respect to Senior Housing at Point Wells –
- 10 December 9, 2019
- 11 V-12 Memo: Updated Information for the 2016 Expanded Traffic Impact Analysis -
- 12 December 9, 2019
- 13 V-13 Second Access Exhibit - December 12, 2019
- 14 V-14 Fire Truck Turning Movements - December 2, 2019
- 15 V-15 Landslide Deviation Request - December 12, 2019
- 16 V-16 Subsurface Conditions Report Addendum - December 12, 2019
- 17 V-17 EDDS Deviation Request for Private Roads - December 12, 2019
- 18 V-18 Variance Application – Height over 90' - December 12, 2019
- 19 V-19 Variance Application – Height near low density zones - December 16, 2019

20 **W. AGENCY AND PUBLIC COMMENTS [FOR CONTINUED HEARING]**

- 21 W-1 Brock, John – February 7, 2020
- 22 W-2 Brown, Michael – January 24, 2020
- 23 W-3 Davis, Jeremy – January 4, 2020
- 24 W-4 Davis, Jeremy – January 10, 2020
- 25 W-5 Dorman, Alan – January 25, 2020
- 26 W-6 Eckmann, Janice – January 25, 2020
- 27 W-7 Finn, Sean – January 22, 2020
- 28 W-8 Graham, Clayton – February 13, 2020
- 29 W-9 Haensly, Tom – January 26, 2020
- 30 W-10 Heaton, Ric – January 25, 2020
- 31 W-11 Holbrook, Colleen – January 11, 2020
- 32 W-12 Holm, Ray – January 24, 2020
- 33 W-13 Hutt, Aileen – February 10, 2020
- 34 W-14 Jorgensen, Robert – January 14, 2020
- 35 W-15 Krepick, Bill – December 27, 2019
- 36 W-16 Krepick, Bill – January 24, 2020
- 37 W-17 Laffitte, Frederic and Janet – February 10, 2020
- 38 W-18 Lamebull, Zach – February 12, 2020
- 39 W-19 Landau, Hank – January 28, 2020
- 40 W-20 Markle, Rachael – February 12, 2020
- 41 W-21 McCormick, Tom – December 3, 2019
- 42 W-22 McCormick, Tom – December 17, 2019

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement
Page 70 of 77

- 1 W-23 McCormick, Tom – December 20, 2019
- 2 W-24 McCormick, Tom – December 26, 2019
- 3 W-25 McCormick, Tom – February 4, 2020
- 4 W-26 McCormick, Tom – February 5, 2020
- 5 W-27 McCormick, Tom – February 11, 2020
- 6 W-28 McCormick, Tom – February 12, 2020
- 7 W-29 McCormick, Tom – April 10, 2020
- 8 W-30 Moe, David – January 13, 2020
- 9 W-31 Nichols, Carla – February 12, 2020
- 10 W-32 Nicholson, Eileen – January 12, 2020
- 11 W-33 Proctor, Joan – February 4, 2020
- 12 W-34 Stansberry, Matthew – February 4, 2020
- 13 W-35 Trompeter, Ron – February 11, 2020
- 14 W-36 Tsoming, Susanne – January 24, 2020
- 15 W-37 Tucker, James – January 28, 2020
- 16 W-38 Udjus, Leif – January 24, 2020
- 17 W-39 Veldman, Henry and Anita – February 2, 2020
- 18 W-40 Walter, Karen – February 11, 2020
- 19 W-41 Wolfe, John – February 12, 2020
- 20 W-42 Woodfield, Marion – February 12, 2020
- 21 W-43 York-Erwin, Nancy – January 13, 2020
- 22 W-44 Zyskowski, Jason – February 25, 2020
- 23 W-45 McCormick, Tom October 12 2020
- 24 W-46 Krepick, Bill October 16 2020
- 25 W-47 Brock, John October 20 2020
- 26 W-48 Taibleson, Joyce October 20 2020
- 27 W-49 McCormick, Tom October 21 2020
- 28 W-50 Holbrook, Colleen October 23 2020
- 29 W-51 Rice, Darren October 23 2020
- 30 W-52 Ostlund, Jan and Gary October 27 2020
- 31 W-53 McCormick, Tom October 28 2020
- 32 W-54 McCormick, Tom October 29 2020
- 33 W-55 Email from Tom McCormick re Notice Issue 10 30 2020
- 34 W-56 Doman, Alan Deborah 10 30 2020
- 35 W-57 Johnson, Vivian 11 1 2020
- 36 W-58 Email from Tom McCormick re Notice Issue (additional) 11 1 2020
- 37 W-59 Lancaster, Greg 11 2 2020
- 38 W-60 Krepick, Bill 11 2 2020
- 39 W-61 Krepick, Donna 11 3 2020
- 40 W-62 McCormick re Notice Issue 11 3 2020
- 41 W-63 Gilbert, Toni 11 3 2020
- 42 W-64 Hempstead, Ben 11 3 2020
- 43 W-65 Jorgensen, Robert 11 4 2020

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

- 1 W-66 Scantleberry, Roy Ginny 11 4 2020
- 2 W-67 City of Shoreline CAO Comments 11 4 2020
- 3 W-68 City of Shoreline, Planning Comments 11 4 2020
- 4 W-69 City of Shoreline, Traffic Comments 11 5 2020
- 5 W-70 McCormick, Tom 11 5 2020
- 6 W-71 City of Shoreline, Geotechnical Review 11 5 2020
- 7 W-72 Krepick, Bill 11 4 2020
- 8 W-73 Hutt, Aileen Kevin 11 5 2020
- 9 W-74 Mayor Nichols 11 5 2020
- 10 W-75 McCormick, Tom Public Comment 11 13 2020
- 11 W-76 McCormick, Tom 11 18 2020
- 12 W-77 McCormick, Tom 11 16 2020
- 13 W-78 Hauck, Robert 11 16 2020
- 14 W-79 Gildow, Christine 11 17 2020
- 15 W-80 Taylor, Allison 11 17 2020
- 16 W-81 Prewett, Don 11 17 2020
- 17 W-82 Casper, Denis 11 17 2020
- 18 W-83 Crawford, John 11 17 2020
- 19 W-84 Nelson, Edie Loyer 11 17 2020
- 20 W-85 Haensly, Sharon 11 18 2020
- 21 W-86 Ding, Donald 11 18 2020
- 22 W-87 Nicholson, Eileen 11 18 2020
- 23 W-88 Mohn, Larry Carol 11 18 2020
- 24 W-89 Eckmann, Janice 11 18 2020
- 25 W-90 Zufall, Kathryn 11 19 2020
- 26 W-91 Simonson, Larry 11 20 2020
- 27 W-92 Weber, Karen 11 20 2020
- 28 W-93 Boyd, Deborah E 11 20 2020
- 29 W-94 Powers, Jacqueline 11 20 2020
- 30 W-95 Higgins, Mary Ann
- 31 W-96 McCormick, Tom_2020-02-24 complaint (1)
- 32 W-96a McCormick, Tom 2020-03-20 answer and counterclaims
- 33 W-96b McCormick, Tom 2020-04-03 response to counterclaims
- 34 W-96c McCormick, Tom 11 22 2020
- 35 W-97 Doubleday, Mike 11 23 2020
- 36 W-98 Keefe, Killy 11 23 2020
- 37 W-99 Makratzakis, Demetre 11 23 2020
- 38 W-100 Thom, Phillip Marion 11 23 2020
- 39 W-101 McClelland, Keith Robin 11 23 2020
- 40 W-102 Schulz, Craig Ann 11 23 2020
- 41 W-103 Petersen, Tom 11 23 2020
- 42 W-104 Patterson, Jerry 11 23 2020
- 43 W-105 Ngan Betty 11-24-2020

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

- 1 W-106 Strand, Michael J 11 23 2020
- 2 W-107 Gerhard, Pete 11 24 2020
- 3 W-108 Casper, Denis 11 24 2020
- 4 W-109 Bannister, Mary E 11 24 2020
- 5 W-110 Dellino, Domenick J 11 24 2020
- 6 W-111 Lind, Laura 11 24 2020
- 7 W-112 John, John 11 24 2020
- 8 W-113 Pearce, Curt 11 24 2020
- 9 W-114 Ollestad, Onnolee 11 24 2020
- 10 W-115 Arrington, Brian D 1 24 2020
- 11 W-116 Bannister, David 11 24 2020
- 12 W-117 Bajema, Larry 11 24 2020
- 13 W-118 Noreen, Pearl 11 22 2020
- 14 W-119 Thayer, Constance J 11 21 2020
- 15 W-120 Guse, Susan 11 21 2020
- 16 W-121 McHenry, Jack 11 21 2020

17 **X. SNOHOMISH COUNTY REVIEW, STAFF RECOMMENDATION AND SUPPORTING**
18 **DOCUMENTS**

- 19 X-1 Point Wells Development Floor Area Ratio (FAR) Review – Initial Findings Report, WJA
- 20 Design Collaborative, April 13, 2020.
- 21 X-2 Landslide Hazard Deviation Decision, Snohomish County Planning and Development
- 22 Services, May 14, 2020
- 23 X-3 Supplemental Staff Recommendation No. 2, Snohomish County Planning and
- 24 Development Services, May 27 2020
- 25 X-4 Letter from Department of Ecology to BSRE dated August 29 2018
- 26 X-5 Snohomish County Witness List dated 10-15-20
- 27 X-6 Sno Co Post Hearing Brief 12 18 2020
- 28 X-7 Sno Co FOF and COL 12 18 2020 (see G drive for Word version of same file)
- 29 X-8 BSRE_Closing_Brief_12_18_2020
- 30 X-9 BSRE_Proposed_Findings_of_Fact_and_Conclusions_of_Law_12_18_2020 (see G
- 31 drive for Word version of same file)

32 **Y. ADMINISTRATIVE DOCUMENTS SUBMITTED FOR THE RECORD**

- 33 Y-1 Letter to the Hearing Examiner requesting a Pre-hearing Conference from Matthew
- 34 Otten, DPA, dated 6-5-20
- 35 Y-2 BSRE Point Wells, LP's Motion to Stay Hearing dated 6-24-20
- 36 Y-3 Snohomish County's Response in Opposition to BSRE's Motion to Stay the Hearing
- 37 dated 7-2-20
- 38 Y-4 BSRE Point Wells, LP's Reply in Support of its Motion to Stay Hearing dated 7-9-20
- 39 Y-5 Order Denying Stay issued 9-15-20
- 40 Y-6 Scheduling Order issued 9-24-20

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

- 1 Y-7 Email from Matt Otten to HE re Notice Issue 10 30 2020
- 2 Y-8 Email from Matt Otten to HE re Notice Issue 11 2 2020
- 3 Y-9 BSRE Opening Brief 11 2 2020
- 4 Y-10 PDS Pre Hearing Brief 11 2 2020
- 5 Y-11 Order re Notice 11 3 2020
- 6 Y-12 Affidavit of Mailing
- 7 Y-13 Click2Mail Order Receipt
- 8 Y-14 Emailing of Postcards
- 9 Y-15 Mailing List
- 10 Y-16 Notice of Open Record Hearing Updated
- 11 Y-17 Notice of Open Record Hearing
- 12 Y-18 PON Radius Map
- 13 Y-19 Public Notice Payment Agreement
- 14 Y-20 POR Register
- 15 Y-21 Signed Public Notice verification Seng, Dan 11 4 2020

16 **Z. JOINT EXHIBITS SUBMITTED 10 29 2020 FOR THE RECORD [FOR CONTINUED**
17 **HEARING]**

- 18 Z-1 BSRE Witness List 10 22 2020
- 19 Z-2 Joint Exhibit List 10 29 2020
- 20 Z-3 PDS and BSRE Joint Exhibit List 10 29 2020
- 21 Z-4 Exhibit X-2 MIG Response
- 22 Z-5 Exhibit X-3 MIG Response
- 23 Z-6 Geot Justification-Response to County 5-2020 Comments 10.29.20
- 24 Z-7 2020-1029 FAR Calculation Methodology
- 25 Z-8 2020-1029 Height Variance Request Support Narrative
- 26 Z-9 2020-1029 Variance Request Support Narrative and Diagrams
- 27 Z-10 WOODWAY HIGHLANDS
- 28 Z-11 Point Wells Supplement Memo 2020-10-29
- 29 Z-12 8.6.20 Sound Transit Capital Program Realignment Project Next Steps
- 30 Z-13 8.27.20 Sound Transit Capital Program Realignment Project Next Steps
- 31 Z-14 9.10.20 Sound Transit Capital Program Realignment Staff Recommend Paused
- 32 Actions
- 33 Z-15 Brajcich-WJA Resume
- 34 Z-16 Dan.Seng_2019_MASTER
- 35 Z-17 Mark Davies Resume
- 36 Z-18 Pratt-Final
- 37 Z-19 Pt Wells John Bingham Resume 10-20-20
- 38 Z-20 1.17.20 Attached MacCready to Luetjen Ltr
- 39 Z-21 04.14.20 Dobesh-Suhadolnik-Countryman Email
- 40 Z-22 5.1.20 McCormick to Countryman-MacCready Shoreline Area News Email
- 41 Z-23 5.26.20 Attached St. Romain to Countryman and Otten Ltr

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement
Page 74 of 77

- 1 Z-24 5.27.20 Attached Otten to St. Romain Ltr
- 2 Z-25 5.29.20 Countryman Email to Parties of Record
- 3 Z-26 7.17.19 Seng to Somers 7.15.19 Ltr
- 4 Z-27 7.19.20 Attached McCrary to Seng Ltr
- 5 Z-28 7.28.20 Attached St. Romain to Otten Ltr
- 6 Z-29 8.6.20 Attached Otten to St. Romain Ltr
- 7 Z-30 8.16.19 Countryman to Seng Email
- 8 Z-31 9.18.20 Malek Email to Countryman Re PW Docket
- 9 Z-32 10.12.20 McCormick to Countryman DNR email re water taxi
- 10 Z-33 10.23.19 Email from Otten to St. Romain
- 11 Z-34 10.25.19 Attached St. Romain to Otten Ltr
- 12 Z-35 11.11.20 St. Romain email re Notice regarding the Court of Appeals Status

13 **2018 OPEN RECORD HEARING**

14 **Counsel**

15 Gary Huff, Esq., Dino Vasquez, Esq., & Jacque St. Romain, Esq., Karr Tuttle Campbell,
16 Seattle, Washington, for BSRE
17 Matthew Otten, Esq. & Laura Kisielius, Esq., Snohomish County Prosecutor's Office, for
18 PDS

19 **Witnesses**

20 Dan Seng, Perkins Will
21 Carsten Stinn, Perkins Will
22 Ryan Countryman, PDS
23 David Killingstad, PDS
24 Randy Middaugh, PDS
25 Randy Sleight, P.E., PDS
26 John Bingham, PE, HartCrowser
27 Mark Davies, SVR
28 Gray Rand, David Evans & Assoc.
29 Jack Molver, David Evans & Assoc.
30 Kirk Harris, David Evans & Assoc.
31 William Gerkin, Moffat & Michol
32 Doug Luetjen, Karr Tuttle Campbell

33 **Public Comment**

34 Debra Tarry
35 Kendra Dedinsky
36 Rachael Markle
37 Julie Taylor, City of Shoreline

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement

1 Margaret King, Esq., City of Shoreline
2 Dennis Casper
3 Zachery Lamebull
4 George Mayer
5 Paul Hammond
6 Ken Workman
7 Bill Krepick
8 Jerry Patterson
9 Darrell Ash
10 Amely Wurmbrand
11 Susan Chang
12 Tom Petersen Robert Gregg
13 Tom Mailhot
14 Tom McCormick

15 **2020 OPEN RECORD HEARING**

16 **Counsel**

17 Jacque St. Romain, Esq., & Dino Vasquez, Esq., Karr Tuttle Campbell, Seattle,
18 Washington, for BSRE

19 Matthew Otten, Esq., Snohomish County Prosecutor's Office for PDS

20 **Witnesses**

21 Ryan Countryman, PDS
22 Jeffrey Brajcich, WJA Design Collaborative
23 Randolph Sleight, Chief Engineering Officer, PDS
24 Ryan Countryman, PDS
25 Dan Seng, Perkins & Will Assistant Principal/Project Manager
26 N. John Bingham, PE, Hart Crower, Geotechnical Engineer
27 Mark Davis, PE, MIG, Civil Engineer
28 Rick Pratt, Biologist, David Evans & Associates

29
30 **Public Comment**

31 Tom Mailhot
32 Mayor Carla Nichols
33 Bill Krepick
34 Tom McCormick
35 Keith McClelland
36 Curt Pearce
37 Tom Peterson

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI

Decision Denying Applications Without Environmental Impact Statement
Page 76 of 77

- 1 Pete Gerhard
- 2 Pearl Noreen
- 3 Betty Ngan
- 4 Jerry Patterson

In Re Point Wells Urban Center

11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP11-101457 FHZ, 11-101457 SHORE, 11-101457-002-00 VAR, 11-101457-003-00 VAR, 11-101457-000-00 WMD, 11-101457-001-00 WMD, 18-116078 CI