

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.

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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.<sup>1</sup> 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.<sup>2</sup>
- 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.<sup>3</sup>

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<sup>1</sup> Ex. A.40.

<sup>2</sup> Ex. K.4.

<sup>3</sup> Ex. G.1.

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- 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.<sup>4</sup>
- 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.<sup>5</sup> 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."<sup>6</sup>
- 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.

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<sup>4</sup> Ex. G.2; Ex. P.11.

<sup>5</sup> Ex. G.5.

<sup>6</sup> Ex. K.13

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- 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.<sup>7</sup>
- 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.<sup>8</sup> 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.<sup>9</sup>
- 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.

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<sup>7</sup> Ex. K.19.

<sup>8</sup> Ex. K.31.

<sup>9</sup> Ex. K.32.

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- 1 F.36 BSRE wrote PDS on January 12, 2018 to request a fourth extension. BSRE  
2 asked for at least another two years.<sup>10</sup> 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.<sup>11</sup>
- 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.<sup>12</sup> 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.<sup>13</sup>
- 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.<sup>14</sup>
- 19 B. Variance request to allow tall buildings near low density zones.<sup>15</sup>
- 20 C. EDDS deviation request to allow private roads.<sup>16</sup>
- 21 D. Updated master permit application for Urban Center Development Plan  
22 and Shoreline Substantial Development Permit.<sup>17</sup>
- 23 E. Updated Point Wells development project narrative.<sup>18</sup>
- 24 F. Initial application for a flood hazard permit.<sup>19</sup>
- 25 G. Updated preliminary short subdivision submittal checklist.<sup>20</sup>

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<sup>10</sup> Ex. G.8.

<sup>11</sup> Ex. K.40.

<sup>12</sup> Testimony of Gray Rand.

<sup>13</sup> Testimony of John Bingham.

<sup>14</sup> Ex. A.28.

<sup>15</sup> Ex. A.29.

<sup>16</sup> Ex. A.30.

<sup>17</sup> Ex. A.31 (April 27, 2018).

<sup>18</sup> Ex. A.32 (April 24, 2018).

<sup>19</sup> Ex. A.33

<sup>20</sup> Ex. A.34.

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- 1 H. Supplement to Urban Center narrative.<sup>21</sup>  
2 I. Architectural plans for Urban Center site plan.<sup>22</sup>  
3 J. Secondary access road exhibit.<sup>23</sup>  
4 K. Initial coastal engineering assessment.<sup>24</sup>  
5 L. Updated critical areas report.<sup>25</sup>  
6 M. Updated targeted stormwater site plan reports.<sup>26</sup>  
7 N. Landslide area deviation request.<sup>27</sup>  
8 O. Updated subsurface conditions report.<sup>28</sup>  
9 P. Fire turning studies.<sup>29</sup>  
10 Q. Hydrogeologic report.<sup>30</sup>  
11 R. Remediation memo.<sup>31</sup>  
12 F.42 BSRE submitted more information the day before the open record hearing  
13 began:  
14 A. Updated Point Wells development project narrative.<sup>32</sup>  
15 B. Updated Shoreline Management Act consistency narrative.<sup>33</sup>  
16 C. Updated landslide area deviation request.<sup>34</sup>  
17 D. Urban Center development application supplement.<sup>35</sup>  
18 E. Revised phasing drawing showing transit station in Phase 1.<sup>36</sup>

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<sup>21</sup> Ex. A.35, superseded by A.38 submitted on May 15, 2018.

<sup>22</sup> Ex. B.7 (April 24, 2018).

<sup>23</sup> Ex. B.8.

<sup>24</sup> Ex. C.25 (April 23, 2018).

<sup>25</sup> Ex. C.30

<sup>26</sup> Ex. C.32 (April 27, 2018).

<sup>27</sup> Ex. C.27 (April 24, 2018).

<sup>28</sup> Ex. C.33 (April 20, 2018).

<sup>29</sup> Ex. C.23.

<sup>30</sup> Ex. C.26.

<sup>31</sup> Ex. C.29.

<sup>32</sup> Ex. A.40.

<sup>33</sup> Ex. A.36.

<sup>34</sup> Ex. A.37.

<sup>35</sup> Ex. A.38.

<sup>36</sup> Ex. A.39, sheet A.056.

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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.<sup>37</sup>

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”).<sup>38</sup>

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.”<sup>39</sup>

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

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<sup>37</sup> Ex. R.4.

<sup>38</sup> Ex. U.1.

<sup>39</sup> *Id.*, 19:11-13.

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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.<sup>40</sup>

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

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).<sup>42</sup>

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 Letter<sup>43</sup>
- 18 B. Revised Master Permit Application<sup>44</sup>
- 19 C. Supplement to Urban Center Application<sup>45</sup>
- 20 D. Revised Point Wells Project Narrative<sup>46</sup>
- 21 E. Shoreline Narrative<sup>47</sup>
- 22 F. Architectural Plans<sup>48</sup>

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

- 1 G. Preliminary Short Plat<sup>49</sup>
- 2 H. Targeted Stormwater Site Plan for Short Plat<sup>50</sup>
- 3 I. Targeted Stormwater Site Plan for Urban Center<sup>51</sup>
- 4 J. Critical Areas Report<sup>52</sup>
- 5 K. Memo Re Calculation of Trip Generation<sup>53</sup>
- 6 L. Memo Re Updated Info for Expanded Traffic Impact Analysis<sup>54</sup>
- 7 M. Secondary Access Road Exhibit<sup>55</sup>
- 8 N. Fire Truck Turning Movements Exhibit<sup>56</sup>
- 9 O. Landslide Deviation Request<sup>57</sup>
- 10 P. Subsurface Conditions Report Addendum<sup>58</sup>
- 11 Q. EDDS Deviation Request for Private Roads<sup>59</sup>
- 12 R. Variance Application – Height over 90 Feet<sup>60</sup>
- 13 F.14 On December 16, 2019, BSRE submitted a nineteenth document: Variance
- 14 Application – Height Near Low Density Zones<sup>61</sup>
- 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

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<sup>49</sup> Ex. V.7.

<sup>50</sup> Ex. V.8.

<sup>51</sup> Ex. V.9.

<sup>52</sup> Ex. V.10.

<sup>53</sup> Ex. V.11.

<sup>54</sup> Ex. V.12.

<sup>55</sup> Ex. V.13.

<sup>56</sup> Ex. V.14.

<sup>57</sup> Ex. V.15.

<sup>58</sup> Ex. V.16.

<sup>59</sup> Ex. V.17.

<sup>60</sup> Ex. V.18.

<sup>61</sup> Ex. V.19.

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- 1 than allowed by county code.<sup>62</sup> 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.<sup>63</sup> Otherwise, the project proposal remains largely  
8 unchanged.<sup>64</sup>
- 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.<sup>65</sup>
- 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.<sup>66</sup>
- 15 F.19 WJA issued a Point Wells Development Floor Area Ratio (FAR) Review – Initial  
16 Findings Report, dated April 13, 2020.<sup>67</sup>
- 17 F.20 The Chief Engineering Officer denied BSRE's Landslide Hazard Deviation request in  
18 a decision dated May 14, 2020.<sup>68</sup>
- 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.<sup>69</sup>
- 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.<sup>70</sup>
- 27 F.23 PDS did not provide BSRE another project review letter or invite BSRE to submit  
28 another revised development proposal.

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<sup>62</sup> Ex. V.6.

<sup>63</sup> Phases 1, 2, 3.1, and 3.2. Ex. V.4, p. 8.

<sup>64</sup> Ex. V.1.

<sup>65</sup> Sleight Testimony, November 5, 2020; Davies Testimony, November 12, 2020.

<sup>66</sup> Brajcich Testimony, November 5, 2020.

<sup>67</sup> Ex. X.1.

<sup>68</sup> Ex. X.2.

<sup>69</sup> Ex. X.3.

<sup>70</sup> Ex. Y.1.

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- 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.<sup>71</sup>
- 8 F.26 The Hearing Examiner issued a scheduling order on September 24, 2020.<sup>72</sup>
- 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 Methodology<sup>73</sup>
- 12 B. Variance Request Support Narrative and Diagrams<sup>74</sup>
- 13 C. Height Variance Request Support Narrative and Diagrams<sup>75</sup>
- 14 D. Woodway Highlands Storm Water As-Build Drawings<sup>76</sup>
- 15 E. Response Letter to Landslide Hazard Deviation Decision<sup>77</sup>
- 16 F. Response Letter to Supplemental Staff Recommendation No. 2<sup>78</sup>
- 17 G. Critical Areas Report – Supplemental Memorandum<sup>79</sup>
- 18 H. Geotechnical Justification and Response<sup>80</sup>
- 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.<sup>81</sup> A recording of the hearing is available from  
25 the Snohomish County Office of Hearings Administration.

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<sup>71</sup> Ex. Y.5.

<sup>72</sup> Ex. Y.6.

<sup>73</sup> Ex. Z.7.

<sup>74</sup> Ex. Z.9.

<sup>75</sup> Ex. Z.8.

<sup>76</sup> Ex. Z.10.

<sup>77</sup> Ex. Z.4.

<sup>78</sup> Ex. Z.5.

<sup>79</sup> Ex. Z.11.

<sup>80</sup> Ex. Z.6.

<sup>81</sup> See Appendix A.

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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).<sup>82</sup>

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.<sup>83</sup>

12 F.34 BSRE did not delineate the OHWM until March 2018.<sup>84</sup>

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.<sup>85</sup> 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.<sup>86</sup>

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).<sup>87</sup>

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).<sup>88</sup>

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<sup>82</sup> RCW 90.58.030(2)(d).

<sup>83</sup> Ex. A.40.

<sup>84</sup> Ex. T.6, Rand Testimony.

<sup>85</sup> Ex. V.6.

<sup>86</sup> Ex. V.10.

<sup>87</sup> Ex. V.10, p. 86 (Table 15).

<sup>88</sup> Ex. V.10, pp. 116-117.

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- 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.<sup>89</sup> 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.<sup>90</sup>
- 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.<sup>91</sup> 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.<sup>92</sup>
- 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.

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<sup>89</sup> Ex. Z.11.

<sup>90</sup> Pratt Testimony, November 12, 2020 Tape 2, 2:20-2:53.

<sup>91</sup> Ex. V.6, pp. 5, 21-23.

<sup>92</sup> Ex. V.6, pp. 21-23.

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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.<sup>93</sup> BSRE is willing to construct a platform and shows a platform in its  
14 current plans.<sup>94</sup> 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.<sup>95</sup> 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.”<sup>96</sup>

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<sup>93</sup> Ex. H.24.

<sup>94</sup> Ex. A.40, p.6; Ex. H.24, pp. 4-8.

<sup>95</sup> Ex. H.24, p.1.

<sup>96</sup> Ex. H.30.

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- 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.<sup>97</sup>
- 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.<sup>98</sup>
- 26 F.52 In its reactivated application of December 2019, BSRE delayed the Sounder station  
27 to the ultimate or penultimate phase of development.<sup>99</sup>
- 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.

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<sup>97</sup> 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.

<sup>98</sup> Ex. A.40, p. 6; Ex. H.24, pp. 4-8.

<sup>99</sup> 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.

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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.<sup>100</sup>

4 **b. Water Taxi**

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

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

7 F.57 BSRE's shoreline narrative provided that the water taxi would link Point Wells and  
8 the Edmonds multi-modal transportation facility.<sup>103</sup> 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.<sup>104</sup>

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.<sup>105</sup>

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.<sup>106</sup>  
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.<sup>107</sup>

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

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<sup>100</sup> Ex. V.6, pp. 5, 51-23.

<sup>101</sup> Ex. V.1, p. 2.

<sup>102</sup> Ex. V.2.

<sup>103</sup> Ex. V.5, p. 2.

<sup>104</sup> Ex. Z.11, p. 2.

<sup>105</sup> Ex. Z.32.

<sup>106</sup> Ex. V.6, pp. 21-23.

<sup>107</sup> Ex. V.6, pp. 5, 21-23.

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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.<sup>108</sup>

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.<sup>109</sup>

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.<sup>110</sup>

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).

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<sup>108</sup> Exs. V.18, Z.8.

<sup>109</sup> SCC 30.43B.100(1)

<sup>110</sup> Exs. C.24, pp. 12-24; V.10, pp. 2-9.

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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.<sup>111</sup>

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).

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<sup>111</sup> Ex. V.18.

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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%.<sup>112</sup>

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.<sup>113</sup>

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.<sup>114</sup>

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.<sup>115</sup> 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.<sup>116</sup>

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:

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

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

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

<sup>115</sup> Brajcich Testimony, November 5, 2020, Tape 2 18:00 – 30:00.

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

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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.<sup>117</sup>

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.<sup>118</sup>

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.<sup>119</sup>

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

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<sup>117</sup> Ex. V.4, p. 6.

<sup>118</sup> Ex. Z.8, referring to view impact analysis of Ex. K.37.

<sup>119</sup> 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.

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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.<sup>120</sup> 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.<sup>121</sup>

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.<sup>122</sup> 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).<sup>123</sup>

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.<sup>124</sup> 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.<sup>125</sup> 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

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<sup>120</sup> Ex. V.6.

<sup>121</sup> Ex. V.6, p. 12.

<sup>122</sup> Ex. N.2, pp. 1, 11.

<sup>123</sup> Ex. N.1, p. 9.

<sup>124</sup> Ex. V.6, p. 21.

<sup>125</sup> Ex. K.4, p. 4.

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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.<sup>126</sup> 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).<sup>127</sup> Since then, the town of Woodway annexed the property and  
22 zoned it Urban Restricted and R-14,500.<sup>128</sup>

## 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.<sup>129</sup> 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.<sup>130</sup> To comply  
29 with the county code to which BSRE's application vested, the service buildings

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<sup>126</sup> Ex. V.19.

<sup>127</sup> Ex. N.2, pp. 1, 11.

<sup>128</sup> Ex. N.1, p. 9.

<sup>129</sup> 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).

<sup>130</sup> Ex. Z.6.

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

3 F.110 A variance must satisfy four criteria.<sup>132</sup>

4 **a. Special Circumstances**

5 F.111 BSRE must first demonstrate.<sup>133</sup>

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.<sup>134</sup>

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.<sup>135</sup> 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.<sup>136</sup>

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).

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<sup>131</sup> 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.

<sup>132</sup> SCC 30.43B.100.

<sup>133</sup> *Id.* at (1).

<sup>134</sup> Exs. V.19, Z.9.

<sup>135</sup> Exs. V.19, Z.9.

<sup>136</sup> "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

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

2 F.117 BSRE must also show:<sup>137</sup>

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.<sup>138</sup> BSRE also cited setback requirements in  
8 the neighboring city of Shoreline as an alternative to preserve development  
9 density.<sup>139</sup>

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,<sup>140</sup> 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.<sup>141</sup> Further, it is possible to design an urban center on this site that meets the  
22 FAR standards without a variance.<sup>142</sup>

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).

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<sup>137</sup> SCC 30.43B.100(2).

<sup>138</sup> Ex. V.19.

<sup>139</sup> Ex. Z.9.

<sup>140</sup> See F.72 *et. seq.* beginning at page 19 *supra*.

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

<sup>142</sup> See finding of fact F.85 on page 22

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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.”<sup>143</sup>

5 F.125 BSRE provided section diagrams of views illustrating the impact of increased  
6 building heights on neighboring properties.<sup>144</sup> 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.<sup>145</sup> 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

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<sup>143</sup> SCC 30.43B.100(3).

<sup>144</sup> Ex. Z.9, pp. 4-5.

<sup>145</sup> Ex. Z.9, p. 2.

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1 asked BSRE to address this issue.<sup>146</sup> 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).<sup>147</sup>

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.<sup>148</sup>

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.<sup>149</sup>

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.<sup>150</sup> 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

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<sup>146</sup> Ex. K.4, p. 7.

<sup>147</sup> Ex. K.39.

<sup>148</sup> Ex. V.15.

<sup>149</sup> Ex. X.2.

<sup>150</sup> Ex. Z.6, p. 7.

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1 considered when weighing it.<sup>151</sup> 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.<sup>152</sup> 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.<sup>153</sup>

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.<sup>154</sup>

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.<sup>155</sup>

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.<sup>156</sup>

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<sup>151</sup> See H. Ex. R. of Proc. 5.6(b) (2019).

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

<sup>153</sup> Ex. V.15.

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

<sup>155</sup> Ex. V.15, pp. 10-11.

<sup>156</sup> Ex. K.4, p. 7.

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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.<sup>157</sup>  
3 Virtually the entire site is subject to high liquefaction.<sup>158</sup> The subsurface conditions  
4 report defers characterization of the liquefaction hazard for proposed buildings until  
5 design,<sup>159</sup> 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.<sup>160</sup>

16 F.149 Days before the hearing, BSRE amended its report to show a safety factor of 1.1 for  
17 dynamic conditions.<sup>161</sup> 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.<sup>162</sup> 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.<sup>163</sup>

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.<sup>164</sup>

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

<sup>158</sup> Ex. B.7, Sheet 051.

<sup>159</sup> Exs. C.33, p. 36; V.15; V.16.

<sup>160</sup> Ex. V.16.

<sup>161</sup> Ex. Z.6, p. 11.

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

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

<sup>164</sup> Exs. V.16, Z.6.

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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.<sup>165</sup>

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.<sup>166</sup>

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.<sup>167</sup>

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.<sup>168</sup> 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.

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<sup>165</sup> Ex. Z.4, p. 3.

<sup>166</sup> Ex. Z.6, p. 10.

<sup>167</sup> Ex. V.4, p. 6.

<sup>168</sup> Ex. Z.4; Z.5.

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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.<sup>169</sup>

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.<sup>170</sup> 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.<sup>171</sup> 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.<sup>172</sup>

14 F.162 BSRE did not provide civil or drainage plans for the Sounder station.<sup>173</sup> 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.<sup>174</sup> 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

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

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

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

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

<sup>173</sup> Ex. Z.4, p. 4.

<sup>174</sup> Ex. X.2.

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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.<sup>175</sup>

3 F.165 Most, if not all, of the site is susceptible to liquefaction in an earthquake.<sup>176</sup> 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.<sup>177</sup>

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.<sup>178</sup>

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.<sup>179</sup>

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.<sup>180</sup>  
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.

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<sup>175</sup> Ex. K.4, p. 7.

<sup>176</sup> Exs. T.5 (Sleight Testimony); B.7, Sheet 051.

<sup>177</sup> Ex. V.16, pp. 8 – 11.

<sup>178</sup> Ex. V.6.

<sup>179</sup> Ex. K.14.

<sup>180</sup> Ex. Z.6.

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- 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.<sup>181</sup> 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.<sup>182</sup>
- 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

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<sup>181</sup> Exs. X.2, X.3.

<sup>182</sup> 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.

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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.<sup>183</sup> 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.<sup>184</sup> 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

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

<sup>184</sup> 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.)

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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).

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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.<sup>185</sup> 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.

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<sup>185</sup> SCC 30.34A.040(1).

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- 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.<sup>186</sup> 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.<sup>187</sup> 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,<sup>188</sup> well after BSRE’s development application vested. Water taxi and

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<sup>186</sup> 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).

<sup>187</sup> *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).

<sup>188</sup> Amended Ordinance No. 13-007.

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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 variance<sup>189</sup> 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).<sup>190</sup>

17 C.18 BSRE does not and cannot satisfy the second criteria either factually<sup>191</sup> 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 VZoning 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.<sup>192</sup> SCC 30.43B.100(3).

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<sup>189</sup> *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.).

<sup>190</sup> Finding of fact F.65 at page 18 through finding of fact F.69 at page 19.

<sup>191</sup> Finding of fact F.70 at page 19 through finding of fact F.87 at page 21.

<sup>192</sup> Finding of fact F.88 at page 21 through finding of fact F.93 at page 21.

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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.<sup>193</sup>

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 building<sup>194</sup> 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.<sup>195</sup>

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

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.<sup>197</sup> 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.

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<sup>193</sup> Finding of fact F.94 at page 21 through finding of fact F.98 at page 22.

<sup>194</sup> 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.

<sup>195</sup> See findings of fact F.99 et seq. starting on page 22.

<sup>196</sup> SCC 30.43B.100 (2003).

<sup>197</sup> Finding of fact F.116 on page 25 through finding of fact F.122 on page 26.

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- 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.<sup>198</sup> 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.<sup>199</sup> 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.<sup>200</sup>

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<sup>198</sup> 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.

<sup>199</sup> 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.

<sup>200</sup> SCC 30.62B.340(2)(b).

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- 1 C.33 PDS advised BSRE in April 2013 that development activities were not allowed within  
2 a landslide hazard area or its setback.<sup>201</sup>
- 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.<sup>202</sup> On reactivation,  
6 BSRE submitted a new deviation request on December 12, 2019.<sup>203</sup>
- 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.”<sup>204</sup> The  
20 subsurface conditions report addendum,<sup>205</sup> the targeted stormwater site plans,<sup>206</sup>  
21 landslide deviation request,<sup>207</sup> and response documents<sup>208</sup> 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.

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<sup>201</sup> Ex. K.4, p. 7.

<sup>202</sup> Ex. A.37.

<sup>203</sup> Ex. V.15.

<sup>204</sup> SCC 30.62B.140(2)(j).

<sup>205</sup> Ex. V.16.

<sup>206</sup> Exs. V.8, V.9.

<sup>207</sup> Ex V.15.

<sup>208</sup> Exs. Z.4, Z.5, Z.6.

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- 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.<sup>209</sup> BSRE later amended  
5 its report to show a safety factor of 1.1 for dynamic conditions by altering the soil  
6 cohesion values.<sup>210</sup>
- 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.<sup>211</sup> 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.<sup>212</sup> Further, BSRE's

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<sup>209</sup> Ex. V.16.

<sup>210</sup> Ex. Z.6, p. 11.

<sup>211</sup> Ex. V.16, p. 9.

<sup>212</sup> See findings of fact F.170 on page 33 through F.183 on page 34..

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1 hands are not clean.<sup>213</sup> 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.<sup>214</sup> Finally, BSRE assertion of bad faith by PDS is an equitable  
4 defense but the Hearing Examiner lacks any equitable powers.<sup>215</sup>

### 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 29<sup>th</sup> day of January, 2021.

10 Peter B. Camp

11 Peter B. Camp

12 Snohomish County Hearing Examiner

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<sup>213</sup> *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).

<sup>214</sup> *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.'").

<sup>215</sup> "[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).

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1 **IV. RECONSIDERATION AND APPEAL PROCEDURES**

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

6 **RECONSIDERATION**

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

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

25 The grounds for seeking reconsideration are limited to the following:

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

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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, 2<sup>nd</sup> 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](mailto: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.

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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

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# 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

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- 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

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- 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

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- 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

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*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

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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

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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

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*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

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*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*

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- 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

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*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

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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

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- 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**

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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

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- 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

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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

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

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