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**Snohomish County  
Departments of  
Planning & Development Services  
and Public Works**

## **Supplemental Staff Recommendation**

**Project Name:** Point Wells Urban Center

**Date of Original  
Recommendation:** April 17, 2018

**New Information Received  
from Applicant:** April 27, 2018

**Date of Supplemental  
Recommendation:** May 9, 2018

**Applicant:** BSRE Point Wells LP  
c/o Karr Tuttle Campbell  
701 Fifth Avenue, Suite 3300  
Seattle WA 98104

**Hearing Date:** May 16, 2018

**Type of Request:** Urban Center Site Plan and associated permits to develop in four phases a total of 3,085 residential units plus associated commercial uses and public amenities on 61 acres.

**File Numbers:** 11-101457 LU (Land Use permit for site plan)  
11-101461 SM (Shoreline Management permit)  
11-101464 RC (Retaining Wall – Commercial)  
11-101008 LDA (Land Disturbing Activity – grading)  
11-101007 SP (Short Plat)  
11-101457-000-00 VAR (Parking Variance [withdrawn 4/27/18])  
11-101457-001-00 VAR (Building Height Variance)  
11-101457 FHZ (Flood Hazard Permit)  
11-101457-000-00 WMD (EDDS Deviation for private roads)  
11-101457-001-00 WMD (Title 30 Deviation for landslide hazards)  
18-116078 CI (Code Interpretation SCC 30.70.140)

**Original Submittal Dates:** February 14, 2011 (LDA and SP)  
March 4, 2011 (LU, SM and RC)  
April 17, 2017 (VAR [for parking, withdrawn on 4/27/18])  
April 27, 2018 (FHZ, VAR [for Building Heights], 2 WMDs, CI)

**Dates of Re-Submittals:** April 17, 2017 (LU, SP, VAR [for parking, withdrawn on 4/27/18])  
April 27, 2018 (LU, SP, SM, RC, LDA)

**Recommendation:** Snohomish County continues to recommend DENIAL under SCC 30.61.220 for the following reasons:

1. Failure to Document Feasibility and Code Compliance of Second Access Road;
3. Failure to Provide Appropriate Building Setbacks for Tall Buildings from Lower Density Zones and Failure to Document Evidence for Access to High Capacity Transit for Building Heights Over 90 Feet;
6. Failure to Provide Adequate Parking;
7. Failure to Address Shoreline Management Regulations;
8. Failure to Comply with Code Provisions Regarding Critical Areas, Including Geologically Hazardous Areas, Wetlands and Fish and Wildlife Habitat Conservation Areas, and Critical Aquifer Recharge Areas.

Snohomish County will not continue to rely on the following grounds for its recommendation of DENIAL:

2. Failure to Provide Acceptable Traffic Report and Assumptions, Resulting in Noncompliance with Concurrency Requirements and Failure to Mitigate Traffic Impacts;
4. Failure to Satisfy Access to Public Transportation and Transit Compatibility;
5. Failure to Furnish Information on Contamination Necessary to Determine Approvability of Drainage Proposal and Compliance with Critical Areas Regulations.

## New Information Provided April 27, 2018

The Applicant provided new information to Snohomish County on April 27, 2018, including revisions to the following files:

- 11-101457 LU (Land Use permit for site plan)
- 11-101461 SM (Shoreline Management permit)
- 11-101464 RC (Retaining Wall – Commercial)
- 11-101008 LDA (Land Disturbing Activity – grading)
- 11-101007 SP (Short Plat)

The April 27, 2018, resubmittal package also included the following new files:

- 11-101457 FHZ (Flood Hazard Permit)
- 11-101457-001-00 VAR (variance for building heights)
- 11-101457-000-00 WMD (EDDS Deviation for private roads)
- 11-101457-001-00 WMD (Title 30 Deviation for landslide hazards)
- 18-116078 CI (Code Interpretation SCC 30.70.140)

Also on April 27, 2018, the Applicant provided information stating that an earlier variance request relating to parking (11-101457-000-00 VAR) was being withdrawn.

## Eight Major Areas of Conflict with Snohomish County Code Previously Identified

The eight major areas of substantial conflict with Snohomish County code identified in the April 17, 2018 Staff Recommendation were as follows:

- 1. Failure to Document Feasibility and Code Compliance of Second Access Road** (SCC 13.05.020, SCC 30.24.060 [2009], SCC 30.24.080 [2009], SCC 30.53A.512, SCC 30.62A.140 [2007], SCC 30.62A.150 [2007], SCC 30.62B.140(1)(a) & (1)(b) [2007], SCC 30.62B.320 [2007], SCC 30.62B.340 [2007], EDDS 3-01 (B)(5) [2010], EDDS Table 3-1 [2010], and EDDS Standard Drawing 3-050 [2010]);
- 2. Failure to Provide Acceptable Traffic Report and Assumptions Resulting in Noncompliance with Concurrency Requirements and Failure to Mitigate Traffic Impacts** (Title 13 SCC, Chapter 30.66B SCC, SCC 30.34A.080 [2010], SCC 30.66B.050(2))
- 3. Failure to Provide Appropriate Building Setbacks for Tall Buildings from Lower Density Zones and Failure to Document Evidence for Access to High Capacity Transit for Building Heights Over 90 Feet** (SCC 30.34A.040(1) & (2) [2010])
- 4. Failure to Satisfy Access to Public Transportation and Transit Compatibility** (SCC 30.34A.085 [2010] and DPW Rule 4227)
- 5. Failure to Furnish Information on Contamination Necessary to Determine Approvability of Drainage Proposal and Compliance with Critical Areas Regulations** (Chapter 30.62A SCC, Chapter

30.62C SCC, Chapter 30.63A SCC, SCC 30.62C.140 [2007], and SCC 30.63A.110 [2010], and the Snohomish County Drainage Manual, Vol. III, section 3.3.7 [2010])

6. **Failure to Provide Adequate Parking** (Chapter 30.26 SCC, SCC 30.26.020 [2007], SCC 30.26.065, SCC 30.34A.050 [2010] (recodified in SCC 30.26.032), SCC 30.26.085, IBC 1101.2, IBC 1104.1, IBC 1106.5, ICC A1171 Section 502.8)
7. **Failure to Address Shoreline Management Regulations** (Chapter 30.44 SCC, Chapter 30.62A SCC, Chapter 30.62B SCC, Former SCC 30.44.410, SCC 30.62A.150 [2007], SCC 30.62A.460 [2007], SCC 30.62B.140 [2007])
8. **Failure to Comply with Code Provisions Regarding Critical Areas, Including Geologically Hazardous Areas, Wetlands and Fish & Wildlife Habitat Conservation Areas, and Critical Aquifer Recharge Areas** (Chapter 30.62A SCC, Chapter 30.62B SCC, Chapter 30.62C SCC, specifically including SCC 30.62A.150 [2007], SCC 30.62A.160 [2010], SCC 30.62A.310 [2010], SCC 30.62A.320 [2010], SCC 30.62A.330 [2010], SCC 30.62A.340 [2010], SCC 30.62A.460 [2007], SCC 30.62B.130 [2007], SCC 30.62B.140 [2007], SCC 30.62B.320 [2007], SCC 30.62B.340 [2007], SCC 30.62B.350, and SCC 30.62C.140 [2007])

## Results of Preliminary Review of New Information Provided on April 27, 2018

What follows is Snohomish County's preliminary review of the new information submitted on April 27, 2018, as applicable to the eight major areas of substantial conflict with Snohomish County Code that were identified in the April 17, 2018, Staff Recommendation. This supplemental staff report focuses only on information obtained to date as related to the recommendation of denial under SCC 30.61.220. This report identifies areas of substantial conflict between the project as currently proposed (as of April 27, 2018) and applicable local regulations. This report does not constitute a formal review of the proposed project as revised on April 27, 2018. The absence of comment on any particular aspect of the project in this report does not indicate PDS would recommend project approval if all substantial conflicts identified to date are resolved.

## **1. Failure to Document Feasibility and Code Compliance of Second Access Road**

The April 17, 2018, Staff Recommendation identifies multiple code and design requirements that the then-proposed second access road failed to meet. While the resubmittal is an improvement over the previous application materials, the new information provided by the Applicant on April 27, 2018, still does not demonstrate the feasibility of the second access road with regard to several crucial elements. As a result, the application substantially conflicts with the County Code in regards to the proposed second access road.

The Snohomish County April 17, 2018, Staff Recommendation included seven items describing problems or missing information related to secondary access per the April 17, 2017, submittal of the project. On April 27, 2018, the Applicant submitted new plans and reports. After review of these new plans and reports, the items below remain in substantial conflict with applicable code requirements.

### **(1) [Missing and incomplete information identified in the April 17, 2018 Staff Recommendation]:**

A site plan that depicts the entirety of the proposed second access road from the project site to its connection with 116<sup>th</sup> Avenue West, including existing contours, finished grade, and property interests that will need to be acquired;

**Evaluation of 2018 Resubmittal.** The site plan still does not depict the entirety of the second access road to its connection with 116<sup>th</sup> Avenue West. Instead, the Applicant submitted a separate exhibit showing the secondary access road (Exhibit B-8). This exhibit does include existing contours and proposed finished grades. However, Exhibit B-8 does not depict the property interests that the proposed road would affect or give an adequate depiction of the connection to 116<sup>th</sup> Ave W. Much of the road would cover a parcel owned by the Applicant; however, this parcel is only 34.7 feet wide in the relevant section (Exhibit D-1), which is less than the road profile shown on Exhibit B-8 of 38.5 feet wide (26' driving area + 5.5' landscaping + 7' sidewalk). Exhibit B-8 is unclear about the location on which parcels the applicant proposes the additional 3.8 feet of road profile. To achieve the necessary road grade, Exhibit B-8 also shows recontouring beyond the parcel owned by the Applicant. This property information is required to demonstrate road feasibility and to ensure any project approval contains pre-conditions to acquire necessary property interests. This lack of information means that the project remains in substantial conflict with compliance with SCC 30.53A.512 Fire Apparatus Access and EDDS 3-01 (B)(5) [2010].

### **(2) [Missing and incomplete information identified in the April 17, 2018 Staff Recommendation]:**

Supporting documentation to show the feasibility of constructing the road as proposed, which includes a geotechnical analysis (SCC 30.62B.140(1)(b) [2007]);

**Evaluation of 2018 Resubmittal.** The new geotechnical engineering report (Exhibit C-24) provides some of the information necessary to show the feasibility of the proposed second access road.

However, several of the critical assumptions in this report do not have any engineering analysis or documentation to support the assumptions presented. Due to the late timing of the submittal, Snohomish County has not had time to review Exhibit C-24 in detail, but based on preliminary review does find that the proposal still lacks sufficient geotechnical analysis to demonstrate compliance with (SCC 30.62B.140(1)(b) [2007]). Please refer to Issue #8 for more details on this substantial conflict with code requirements.

- (3) [Missing information identified in the April 17, 2018 Staff Recommendation]:** A drainage report showing how surface water would be conveyed from the roadway and landslide hazard areas, including any surface water conveyed within existing drainage easements that would be impacted by road construction and location (SCC 30.62B.320(1)(a)(iii) [2007]);

**Evaluation of 2018 Resubmittal.** Snohomish County finds that the resubmittal still does not comply with (SCC 30.62B.320(1)(a)(iii) [2007]) and remains in substantial conflict with this code provision. While there is new information regarding storm drainage along the surface of the second access road that per a new design on Sheet C-300, the newly revised drainage plans still do not depict conveyance of surface water associated with Wetland A (SCC 30.62B.140(1)(a) [2007]) or for drainage of the retaining wall systems below grade. Neither of the Targeted Stormwater Site Plans submitted on April 27, 2018 (Exhibits C-31 and C-32) adequately address the functionality of the proposed drainage for Chevron Creek. Exhibits C-31 and C-32 are both silent on surface water associated with Wetland A and on the drainage system recommended in for the retaining walls in the latest geotechnical engineering report by Hart Crowser (Exhibit C-26, pages 35-36).

- (4) [Missing information identified in the April 17, 2018 Staff Recommendation]:** Documentation supporting a deviation from the prohibition on development activities in a landslide hazard area (SCC 30.62B.340 [2007]);

**Evaluation of 2018 Resubmittal.** Please refer to Issue #8 for more details on this substantial conflict with code requirements.

- (5) [Missing information identified in the April 17, 2018 Staff Recommendation]:** A mitigation plan for impacts to Chevron Creek and Wetland A (SCC 30.62A.150 [2007]);

**Evaluation of 2018 Resubmittal.** Please refer to Issue #8 for more details on this substantial conflict with code requirements.

After review of the new plans and reports submitted by the Applicant on April 27, 2018, the items below no longer remain in substantial conflict with applicable code requirements.

- (6) [Missing information identified in the April 17, 2018 Staff Recommendation]:** Analysis of the impact of the second access road on Chevron Creek and the wetland identified as Wetland A in the April 17, 2017, Critical Areas Report (SCC 30.62A.140);

**Evaluation of 2018 Resubmittal.** The revised critical areas report submitted on April 27, 2018 adequately identifies the construction impacts to Chevron Creek and Wetland A (Exhibit C-30, page 76). Based on preliminary review, this issue no longer qualifies as an issue that presents a substantial conflict under SCC 30.61.220.

- (7) [Missing and incomplete information identified in the April 17, 2018 Staff Recommendation]:** Documentation of a road design that could be converted to a public road (SCC 30.24.060 [2009]), which means complying with EDDS (SCC 13.05.020); or requesting and receiving a deviation from EDDS when the applicable EDDS requirements call for a standard 50-foot right-of-way (EDDS Table 3-1 [2010]) with a 24-foot pavement width plus planter strip (5-feet) and sidewalk [7-feet] on each side of the road (EDDS Standard Drawing 3-050 [2010]), which create the pedestrian facilities required by SCC 30.24.080 [2009].

**Evaluation of 2018 Resubmittal.** The Applicant provided a revised design for the secondary access road on April 27, 2018 (Exhibit B-8) and provided an EDDS Deviation Request to allow private roads throughout the project (Exhibit A-30). Based on preliminary review, this issue no longer qualifies as an issue that presents a substantial conflict under SCC 30.61.220.



## ***2. Failure to Provide Acceptable Traffic Report and Assumptions, Resulting in Noncompliance with Concurrency Requirements and Failure to Mitigate Traffic Impacts***

**Prior Recommendation and Submittal of New Information by Applicant:** The April 17, 2018, Staff Recommendation concluded that the methodology utilized by the Applicant for the Point Wells Expanded Traffic Impact Analysis (2016 ETIA) relied on an unsupportable (i) internal capture rate, (ii) transit ridership assumption, and (iii) assumptions regarding the timing of phased development.

On April 27, 2018, the Applicant submitted revised plans and reports. Among the new documents received was the *DRAFT Point Wells Expanded Traffic Impact Analysis by David Evans and Associates* dated August 31, 2016 (Or 2016 ETIA, Exhibit C-28). Exhibit C-28 is exactly the same information as was provided in separate documents identified as Exhibits C-1 to C-12, but Exhibit C-28 compiles them into one place. The Applicant has provided no new documentation to support the assumptions underlying the 2016 ETIA.

The Snohomish County Department of Public Works (DPW) reviewed the new information provided by the Applicant and provided a review memo dated May 4, 2018, that describes DPW's concerns regarding the Applicant's proposal (Exhibit K-38). However, while preparing this Supplemental Staff Recommendation, the review team concluded that these issues primarily are related to SEPA mitigation rather than code compliance. Therefore, the County will not address this issue in the hearing under SCC 30.61.220, as it relates primarily to the adequacy of the EIS. However, the County notes that the SEPA responsible official oversees and directs the preparation of an EIS to ensure it adequacy. Traffic impacts to local roads, particularly within the City of Shoreline, cannot be adequately assessed in the EIS without addressing the County's concerns related to the assumptions utilized in the traffic study.

### ***3. Failure to Provide Appropriate Building Setbacks for Tall Buildings from Lower Density Zones and Failure to Document Evidence for Access to High Capacity Transit for Building Heights Over 90 Feet***

The April 17, 2018, Staff Recommendation identified two issues of code non-compliance relating to building heights. The new information provided by the Applicant on April 27, 2018, still does not (1) demonstrate appropriate building setbacks for tall buildings or (2) provide adequate documentation of evidence for access to high capacity transit in order to allow building heights over 90 feet. The Applicant did submit a new variance request with respect to building setbacks for tall buildings, but this request does not meet the criteria for approving such a variance.

In addition to the above code compliance issues, the April 17, 2018, Staff Recommendation made note of inconsistencies on the April 17, 2017, version of the architectural plans (Exhibit B-1) that prevented Snohomish County from being able to determine the proposed heights of several buildings. Snohomish County has not thoroughly reviewed the April 27, 2018, version of the architectural plans (Exhibit B-7) for this issue, but does acknowledge here that the newer architectural plans are clearer with respect to proposed building heights. However, while improved, this drafting issue was not one of the code compliance reasons cited as a basis in Snohomish County's earlier (or ongoing) recommendation of denial. It had been included in the April 17, 2018, Staff Recommendation because based on the 2017 version of the plans, several of the buildings could have been interpreted as being taller than 180 feet and, if so, this would have been another issue of substantial conflict with SCC 30.34A.040(1) [2010].

**Buildings Taller than 90 Feet.** SCC 30.34A.040(1) [2010] allows buildings taller than 90 feet "when the project is located near a high capacity transit route or station." While Sound Transit operates a commuter rail service on the lines owned by Burlington Northern Santa Fe (BNSF) that run through the Point Wells site, there is no station in the vicinity. The Applicant proposes to construct a Sound Transit rail station "in phase 3 based on the increased resident demand" (Exhibit A-32, page 7) but that does not explain how buildings taller than 90 feet would be permissible during phases 1 or 2. Snohomish County finds that the proposed timing conflicts with SCC 30.34A.040(1) [2010]. Further, there is no indication that a Sound Transit station at Point Wells is feasible at any time. As a result 22 of the high-rise structures proposed by the Applicant are non-compliant with the County Code and prohibited. The absence of any plans for high capacity transit means the project remains in substantial conflict with SCC 30.34A.040(1) [2010].

**Building Setbacks from Lower Density Zones.** SCC 30.34A.040(2) [2010] establishes building setbacks from lower density zones. The April 17, 2018, Staff Recommendation describes how the proposal fails to meet the setbacks required from lower density zones in SCC 30.34A.040(2).

The Applicant submitted request for a zoning code variance on April 27, 2018 (Exhibit A-29) to vary from SCC 30.34A.040(2) [2010] which was in effect on the vesting date in 2011. The Applicant seeks relief from building height and setback requirements. The late application date for this variance request

means that it was not possible to give proper notice per chapter 30.70 SCC for the request, or to consolidate a hearing on the variance with the hearing on the underlying permits. If the project is remanded, then the variance would be decided by the Hearing Examiner at a continued hearing and PDS would process the variance request. It is, however, possible to include PDS's analysis of the request as relevant information for the Hearing Examiner.

The requested variance is from SCC 30.34A.040(2)(a) [2010], which requires:

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

The Applicant proposes to build three towers on the upper bench along the eastern boundary of Phase 2, identified on the overall site plan as UP-T1, UP-T2, and UP-T3, that exceed the height limit imposed by SCC 30.34A.040(2) [2010].<sup>1</sup> The boundary abuts the Town of Woodway zones of R-14,500 and UR. These Woodway zones are equivalent to the Snohomish County zone of R-9600 because they are single-family residential zones (at the time of application for the Point Wells permits in 2011, the UR-zoned property in Woodway was still unincorporated and zoned R-9600). The proposed location of the three towers subjects them to the provision.

The criteria for reviewing variance requests are contained in SCC 30.43B.100. What follows is the text of each applicable section and an analysis of code compliance by PDS in italics.

(1) There are special circumstances applicable to the, such as size, shape, topography, location or surroundings, that do not apply generally to other properties or classes of use in the same vicinity and zone. *The Applicant fails to demonstrate how there are special circumstances applicable to the subject property or to the intended use. Most of the properties along Richmond Beach Drive are located between the railroad and steep slopes. None of the structures located there exceed the required height limit of the applicable zone. The proposed urban center would be the only one in the general vicinity. No other urban centers within the Southwest Urban Area have received variances to alter applicable height restrictions.*

(2) A variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other properties in the same vicinity and zone but which because of special circumstances is denied to the property in question. *The Applicant fails to demonstrate how meeting the required setbacks would deny them the same substantial property right or use possessed by other properties in the same vicinity and zone. The constraints on the property – streams, wetlands, steep slopes, and the*

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<sup>1</sup> As described in the April 17, 2018 Staff Recommendation, the two retail buildings in the Urban Plaza also exceed the heights allowed under SCC 30.34A.040(2) [2010] but the applicant did not address these buildings in the variance request. Snohomish County finds here that they still do not comply.

*railroad – are the same constraints endured by neighboring properties that meet the height restrictions of their zone. These constraints may be challenging for the Applicant, but the Applicant has not demonstrated how other site designs could not accomplish code compliance. Blocking view corridors is not a reason to exempt height restrictions in the code. Logically, reducing the height of a building would enhance the view and sunlight.*

(3) The granting of the variance will not be materially detrimental to the public welfare or injurious to the properties or improvements in the vicinity and zone in which the subject property is located. *The Applicant fails to demonstrate that exceeding the height limit is not materially detrimental to the public welfare or injurious to the properties or improvements in the vicinity and zone in which the subject property is located. The Applicant’s argument that the view corridor of adjacent properties would be blocked assumes only one alternative design. The Applicant has not demonstrated how other site designs could not accomplish code compliance.*

(4) The granting of the variance will not adversely affect the comprehensive plan. *The Applicant fails to demonstrate how the proposed variance will not adversely affect the comprehensive plan. This property is in an isolated pocket of unincorporated Snohomish County. The Applicant has not indicated whether they considered the Town of Woodway’s Comprehensive Plan or the City of Shoreline’s plan. The Applicant has not demonstrated that alternative designs are infeasible.*

In conclusion, PDS determines the Applicant does not demonstrate how the variance request meets the decision criteria. For this reason, the application remains in substantial conflict with SCC 30.34A.040.

#### ***4. Failure to Satisfy Access to Public Transportation and Transit Compatibility***

The April 17, 2018, Staff Recommendation concluded that the Applicant had not provided evidence that the development proposal complies with regulations that require access to public transportation, and therefore the proposal substantially conflicts with SCC 30.34A.085 [2010] and DPW Rule 4227.

On April 27, 2018, the Applicant submitted a document that provides a general overview of its plan to provide supplemental transit service (Exhibit G-15, Exhibit D). The Applicant does not identify a transit provider, but commits to contracting with a public transit provider, a private transit service, or operating its own transit service. In a review memo dated May 4, 2018, (Exhibit K-38), DPW expresses concern with the lack of detail and failure to identify a service provider. Exhibit D attached to Exhibit G-15, provided by the Applicant appears to provide the minimum necessary to respond to the substantial conflict with SCC 30.34A.085, and commits the Applicant to providing access to public transportation under SCC 30.34A.085(3).

## ***5. Failure to Furnish Information on Contamination Necessary to Determine Approvability of Drainage Proposal and Compliance with Critical Areas Regulations***

While the Applicant provided new information on April 27, 2018, including several previously missing reports and an entirely new drainage design, Snohomish County finds that this new information still does not provide adequate information on contamination, drainage, or compliance with critical area regulations.

### **Contamination**

On April 27, 2018, the Applicant provided a new memorandum on the subject *Point Wells Urban Center, Environmental Remediation Approach* from Hart Crowser dated April 20, 2018 (Exhibit C-29). This memo describes a proposed cleanup approach, past accidental releases of contaminants at the site, and an overview of the nature and extent of contamination on the inland area of the site. However, the report also acknowledges at page 10:

The site has not been characterized adequately at present to allow a detailed cleanup action to be identified. In particular, there is little information on potential contamination beneath the storage tanks and other infrastructure or in intertidal and subtidal sediments west (outside) of the current seawall. In addition, the potential groundwater-to-surface water and groundwater-to-sediment contaminant transport pathways have not been evaluated.

The Environmental Remediation Memo (Exhibit C-29) provides two approaches for estimating how much contaminated soil would on the lower bench area would need removal for remediation purposes. The more conservative (larger) estimate is 435,000 cubic yards (page 8). This is similar to the figure of 460,000 cubic yards of cut for remediation on the updated Land Disturbing Permit Master Application and Checklist provided to Snohomish County on April 27, 2018 (Exhibit A-28). Per Exhibit C-29, this represents removal on an average of the top 5-feet of soil on the lower bench.

The Environmental Remediation Memo (Exhibit C-29) indicates that the investigation and cleanup of the site will be done under an Agreed Order or Consent Decree in accordance with The Model Toxics Control Act regulations (chapter 174-340 WAC). In May 2013, the County contemplated a coordinated approach to conducting SEPA review for the MTCA cleanup and the proposed development. However, five years later, the Environmental Remediation Memo does not describe any current remediation efforts. Here, the Applicant is proposing to phase development of the project with phased site remediation. It is not possible to evaluate the environmental impacts of the proposed development with no knowledge of how phased remediation will be conducted. The Applicant is proposing that the County allow thousands of people to occupy residential structures on the same site as an active MTCA cleanup. The impacts of the remediation activities upon proposed land uses is squarely within the purview of the County's SEPA authority.

The County determines this is an issue for SEPA review, and does not relate directly to a current substantial conflict with the Snohomish County Code. However, given the lack of progress made on site

remediation by the Applicant since the County's consideration of a coordinated SEPA process in 2013, it is not likely that a reasonable permit application extension would be sufficient to allow completion of an adequate Draft EIS.

### **Drainage and Critical Areas**

The April 27, 2018, resubmittal includes an entirely new drainage concept for the development. As proposed now, the drainage system would collect surface water, treated it when necessary, and then discharge directly to Puget Sound via existing outfalls. Prior versions of the plans had proposed to infiltrate surface water on site and to maintain existing conveyance of offsite water that enters the project area. Snohomish County requested additional information on contamination, in part, because the prior infiltration plans would not have been permissible without acceptable cleanup. Per the April 27, 2018, revisions, the Applicant has concluded that infiltration would not have been feasible due to a high water table and therefore did not directly respond to Snohomish County's request for information on contamination to establish the viability of infiltration.

In its preliminary review of the revised drainage plans, the County determines that the targeted stormwater site plan reports (Exhibits C-31 and C-32) and the revised civil plans attached to the urban center application do not substantially conflict with the Snohomish County Code.

Please refer to Issue #8 for a discussion of critical areas.

## 6. Failure to Provide Adequate Parking

The April 17, 2018, Staff Recommendation identified several substantial conflicts with the proposed parking plans, which included the location and amount of parking, lack of accessible parking, and inadequate parking variance request.

The Applicant submitted revised Architectural Plans on April 27, 2018, (Exhibit B-7) and new information relevant to parking in the updated project narrative (Exhibit A-32). These revisions are responsive to prior requests that the Applicant provide plans for parking levels that were missing. With missing information provided and drafting errors corrected, it may be that the plans meet the general parking lot development standards in SCC 30.26.065, however, substantial conflicts with the parking requirements remain with regard to the inadequate number of stalls and accessibility to parking.

### Inadequate Number of Stalls

The Urban Center Site Plan (Exhibit B-7) fails to provide adequate parking by falling at least 546 stalls short of the minimum number required for the proposed residential units. This deficiency represents a clear and substantial conflict with the County Code. This substantial conflict is due to the Applicant's proposal to use a parking ratio of 0.5 parking stalls for 1,093 of the 3,085 units when at least 1.0 parking stall per unit is required.

SCC 30.34A.050 [2010] required parking as follows:

Use	Minimum	Maximum	Bicycle Parking
Restaurants	2 stalls/1000 nsf	8 stalls/1000 nsf	2 spaces minimum
Retail	2 stalls/1000 nsf	4 stalls/1000 nsf	2 spaces minimum
Office	2 stalls/1000 nsf	4 stalls/1000 nsf	2 spaces minimum
Residential (units >1000 sq ft each)	1.5 stalls per unit	2.5 stalls per unit	2 spaces minimum
Residential (units <1000 sq ft each)	1 stall per unit	1.5 stalls per unit	2 spaces minimum
Senior Housing	.5 stalls per unit	1 stall per unit	2 spaces minimum
All other uses	See SCC 30.34A.050(5)		2 spaces minimum

**Figure 1 – Table 30.34A.050(1) [2010]**

The project is vested to the parking ratios in Table 30.34A.050(1) [2010] above. When this table was recodified as SCC 30.26.032 in 2013, the term "Senior Housing" was replaced with "Retirement Apartments or Retirement Housing." The term "Senior Housing" was undefined in Snohomish County Code in 2010. However, the County Council adopted legislation in 2013 clarifying that "Senior Housing" for the purpose of compliance with parking regulations encompass both "Retirement Apartments" and "Retirement Housing."

Retirement Apartments and Retirement Housing have been defined in the County Code since 2003 as follows:



**30.91R.180 Retirement apartments.**

"Retirement apartments" mean dwelling units exclusively designed for and occupied by senior citizen residents 62 years of age or older in accordance with the requirements of state and/or federal programs for senior citizen housing. There is no minimum age requirement for the spouse of a resident who is 62 years of age or older.

**30.91R.190 Retirement housing.**

"Retirement housing" means dwellings exclusively designed for and occupied by senior citizen residents 62 years of age or older, in a building with central kitchen facilities providing meals for the residents. There is no minimum age requirement for the spouse of a resident who is 62 years of age or older.

The Applicant provided new information on the senior housing proposal in the Supplement to the Urban Center Application. The Applicant proposes to define "senior housing" as "designed for occupancy by families or individuals where at least one adult shall have attained the age of fifty-five (55) years" (Exhibit G-15, page 4). Under the Applicant's definition of "senior housing," which is not consistent with the definitions of either "retirement apartments" or "retirement housing," a family consisting of two adults, two children of driving age, and an aging grandparent could qualify as "senior housing." In this scenario, even assuming the grandparent does not drive at all, a family requiring up to four parking stalls would have access to only one-half a parking stall. The Applicant's proposed definition of "senior housing" substantially conflicts with SCC 30.34A.050 [2010], resulting in a deficiency of 546 parking stalls.

**Accessible Parking**

As stated in the April 17, 2018 Staff Recommendation, SCC 30.26.085 requires that an applicant be able to comply with the accessibility requirements of the International Building Code, Chapter 11 (IBC 11). The revised plans submitted on April 27, 2018 still do not show compliance as follows:

- Buildings must be designed with the ability to be accessible (IBC 1101.2), yet many buildings lack elevator access to the parking garages and they do not have accessible surface parking allocated to them.
- Parking must include barrier free and van accessible parking (IBC 1106.5). The plans label would-be van parking stalls but these would-be van parking stalls do not meet the dimensional requirements for van parking.
- Garage design must show a minimum vertical clearance for accessibility (ICC A1171 Section 502.8). The garages propose a 10-foot floor to ceiling height. Snohomish County requested a detail on the plans showing typical overhead clearance below the proposed ENVAC pneumatic garbage lines attached to the ceilings of the parking garage. The April 27, 2018 revised plans do not provide this detail. New information from the applicant increases the likelihood of problems with vertical clearance. The revised drainage plans now show 12-inch storm drain pipes also attached to the garage ceilings. Other new information describes a district heating system that would include piping hot water through plumbing of unknown dimensions from the energy

center to individual buildings. This brings the number of utility lines attached to garage ceilings to at least three types of utilities. Without information on support structures for these utilities and proposed dimensions for the ENVAC tubes and the hot water lines, the applicant has failed to show compliance with ICC A1171 Section 502.8.

The Applicant has not adequately addressed the accessibility requirements for parking, and as a result, the application substantially conflicts with SCC 30.26.085.

### **Parking Variance**

The Applicant has withdrawn its request for a parking variance with the April 27, 2018, submittal as identified in Exhibit G-13, page 29).

## **7. Failure to Address Shoreline Management Regulations**

The April 17, 2018, Staff Recommendation identified the proposed project was in substantial conflict with numerous code provisions relating to management of the shorelines. Based on new information submitted by the Applicant, and further review of shoreline regulations in effect in 2011, the following substantial conflicts remain.

### **Commercial Uses on the Pier Not Allowed**

The pier is located in the Conservancy Environment. Conservancy Environment Regulation #1 provides: *“Commercial development shall be prohibited on conservancy shorelines except for those low intensity recreational developments which do not substantially change the character of the Conservancy Environment.”* Conservancy Environment Regulation #2 provides: *“Any commercial structure, except one which requires or is dependent on direct, contiguous access to the water, shall be set back from the OHWM by a minimum of 100 feet.”* The Applicant provides that the “focal point of the shoreline will be the re-purposed 1000’ existing pier” (Exhibit A-32 at 31). The pier is further described as a water dependent building that will have the existing structures renovated, potential incorporating “a small craft rental, fishing supplies, café use, public art, and access to a boat launch, it could also offer a potential docking location for a local ferry service.” To the extent these proposed uses are considered commercial development, they are prohibited.

### **Residential Development Dependent on Shoreline Protection Measures Not Allowed**

General regulation #5 for residential development provides: *“Residential development shall not be approved for which flood control, shoreline protection measures, or bulkheading will be required to protect residential lots unless a variance is obtained.”* Here, the Applicant has provided plans for shoreline protection for residential development (see Coastal Engineering Assessment, Exhibit C-25, p.47-50). The Applicant has not provided a variance application.

### **Shoreline Jurisdiction Not Depicted Correctly**

The 200-foot shoreline jurisdiction is not correctly depicted on plans (see, e.g., sheets Ex-2 & C-010). The Mean Higher High Water (MHHW) was used rather than the Ordinary High Water Mark (OHWM) for determining the landward extend of Shoreline jurisdiction. This may affect limitations on development activities occurring within shoreline jurisdiction such as building heights. The only place where it is appropriate to use the MHHW is where field indicators for determining the OHWM are not discernable. However, the Applicant has delineated the OHWM for this project, so use of the MHHW for determining shoreline jurisdiction is not appropriate.

### **No Analysis of Applicable Shoreline Master Program Regulations**

The Applicant has not submitted any substantive discussion regarding applicable Shoreline Master Program Regulations, including at minimum; boating facilities, breakwaters, bulkheads, commercial development, jetties and groins, public access, recreation, residential development, and shoreline stabilization (see 1993 Shoreline Management Master Program for specific requirements). The Applicant has provided scant details regarding shoreline modifications, and no information regarding

reconstruction of the pier, including the demolition of two pedestrian bridges and construction of a new pedestrian bridge. The County simply does not have enough information regarding the shoreline elements of the proposed project to review the shoreline permit application for a Shoreline Substantial Development Permit.

As detailed above, the proposed project is in substantial conflict with numerous code provisions relating to shoreline management.

## ***8. Failure to Comply with Code Provisions Regarding Critical Areas, Including Geologically Hazardous Areas, Wetlands and Fish & Wildlife Habitat Conservation Areas, and Critical Aquifer Recharge Areas***

The April 17, 2018, Staff Recommendation explained the proposed project was in substantial conflict with numerous regulations pertaining to critical areas on the site, including geologically hazardous areas, wetlands and fish and wildlife habitat conservation areas, and critical aquifer recharge areas. Some of those substantial conflicts have been resolved, however, many substantial conflicts remain.

### **GEOLOGICALLY HAZARDOUS AREAS**

#### **Landslide Hazard Areas Deviation Request:**

The proposed project would locate significant development features within landslide hazard areas and landslide hazard area setbacks, including the secondary access road, the proposed Sounder rail station, and all of the buildings in the Urban Plaza phase. The code provides that development activities are not allowed in landslide hazard areas or their required setbacks unless a deviation is granted (SCC 30.62B.340 [2007]). A deviation request must demonstrate (1) there is no alternate location for the structure on the property; and (2) “alternative setbacks provide protection which is equal to that provided by the standard minimum setbacks.” SCC 30.62B.340.

The Applicant submitted a memorandum by Hart Crowser dated April 24, 2018, regarding *Landslide Area Deviation Request Support Information Point Wells Redevelopment* (Exhibit C-33). The Applicant also submitted a *Subsurface Conditions Report* by Hart Crowser dated April 20, 2018 (Exhibit C-33). These documents were reviewed by PDS Chief Engineering Officer Randolph R. Sleight PE, PLS. Mr. Sleight concludes the Hart Crowser memorandum and report fail to demonstrate the criteria for granting a deviation under SCC 30.62B.340 are met (see Sleight Memo dated May 9, 2018; exhibit number to be assigned).

As to the secondary access road, the Hart Crowser memorandum provides only a conclusory statement that construction of the road can only be located in a landslide area. The memorandum does not explain whether other options for locating the road were considered or eliminated to demonstrate that the proposed location is the safest and least impactful option. As to the remainder of the development activities proposed to be located within a landslide hazard area or its setback, the memorandum is completely silent as to criterion SCC 30.62B.340(2)(b)(i).

Additionally, the *Subsurface Conditions Report* does not demonstrate that alternative setbacks (in this case no setbacks), provide protection equal to that provided by standard setbacks (SCC 30.62B.340(2)(b)(ii)(A)). The report identifies the need to construct a significant retaining wall system (created to retain a soil height of 60 feet) and to resist lateral sliding from both a deep seated slide and a shallow slide event both for static and seismic conditions. However, Mr. Sleight explains in detail how the report does not demonstrate the wall is feasible to resist a significant landslide with potential slope run-outs described on page 24 of the report or that it will provide the protection the report claims. Simply put, the report does not show its work. For that reason, Mr. Sleight determined the proposed

project results “in increased risk of property damage, death or injury,” in substantial conflict with SCC 30.62B.320(1)(b)(i).”

This project is vested to landslide hazard areas regulations in effect in 2011. Those regulations require setbacks from landslide hazard areas equal to *one-half the height of the slope*. In 2015, as part of its periodic update of regulations required by the Growth Management Act (RCW 36.70A.130), the County revised its landslide hazard areas regulations. In part based on information learned from the Oso landslide that killed 43 Snohomish County residents on March 22, 2014, the new regulations define a landslide hazard area as including both the landslide hazard and a setback equal to *two times the height of the slope*. SCC 30.91L.040. That regulation does not apply to the proposed project. However, it emphasizes the importance of strictly adhering to the deviation criteria contained in SCC 30.62B.320(2) as of 2011 for projects vested to earlier versions of landslide hazard areas regulations. Based on the documentation submitted by the Applicant in support of a deviation request from landslide hazard areas requirements, PDS concludes the project is in substantial conflict with SCC 30.62B.320 and .340.

### **Geotechnical Report:**

By deferring important studies to the design stage of the project, the *Subsurface Conditions Report* by Hart Crowser dated April 20, 2018, does not meet the requirements of SCC 30.62B.320. (Exhibit C-33). It is appropriate for an applicant to provide specific details regarding the *design* of structures at a later stage in the permitting process, such as the time of building permit review. However, at this state in the permitting process, the applicant must demonstrate the *feasibility* of the structures. The Subsurface Conditions Report does not demonstrate the feasibility of structures, and instead indicates that feasibility will be studied later.

For example, page 21 of the report states additional slope stability evaluations will be needed to assess other proposed areas of development of design. This highlights the problem that geotechnical studies have been conducted only for parts, but not all, of the project. A complete geotechnical analysis needs to be conducted for the entirety of the project. For instance, the area immediately west of the railroad tracks will be excavated to elevation 6, and will encounter groundwater at approximately 8 feet (see Exhibit C-33, Figure 8). This will require dewatering of at least this portion of the site. The geotechnical report does not provide any detail regarding how dewatering will be conducted, and has provided no analysis regarding whether excavation and dewatering activities will destabilize the immediate area, causing potential risk of land failure under the existing railroad tracks. This information must be provided now, rather than at building design stage.

As another example, the report discusses on pages 27-28 the types of soil found in the upper and lower benches of the project site. This discussion was “without consideration of liquefaction-susceptibility” (page 27). The report admits that “because the site is potentially liquefiable, the soil is Site Class F” (page 28). Without conducting the requisite studies and stating the findings of those studies in the geotechnical report, it cannot be concluded that the construction of residential towers in a potential liquefaction zone is even feasible.

As a final example, on page 35 of the report, it is acknowledged that “groundwater pore pressures are a key factor in estimating slope stability.” The report recommends additional investigation or analyses

“be performed to estimate how groundwater pore pressures vary perpendicular to the bluff face and along its length.” These studies bear directly on the feasibility of constructing the secondary access road and a 60-foot retaining wall designed to resist lateral sliding from both a deep seated slide and a shallow slide event both for static and seismic conditions. The report must demonstrate how and where the hillside must be dewatered before the feasibility of constructing the retaining wall and the secondary access road can be ascertained.

Because the Subsurface Conditions Report defers critical studies regarding landslide and seismic hazards to the design stage of the project, after permit approvals have been issued, PDS concludes the report is in substantial conflict with the requirements of SCC 30.62B.320 and SCC 30.62B.350.

## **WETLANDS AND FISH & WILDLIFE HABITAT CONSERVATION AREAS**

The County has reviewed materials submitted by the Applicant on April 28, 2018, including the *BSRE Point Wells, LP Redevelopment Project Critical Areas Report* by David Evans and Associates, Inc. dated April 2018 (Ex. C-30). The following substantial conflicts with applicable requirements remain.

### **Habitat Management Plan**

The applicant is required to provide a habitat management plan meeting the requirements of SCC 30.62A.460. The Habitat Management Plans (HMPs) described in the 2018 *Critical Areas Report* (Exhibit C-30) provides very little discussion on mitigation measures for impacts to critical species. The HMPs need to include more detail on impacts and mitigation measures for each of the species.

### **Critical Area Site Plan**

The applicant is required to provide a critical area site plan providing permanent identification, protection, and recording of critical areas under SCC 30.62A.160. This has not been provided. Additionally, PDS is unable to confirm stream classification and buffers based on the 2018 *Critical Areas Report* (Exhibit C-30). For the purpose of water typing, artificial barriers to fish migration need to be treated as though they do not exist. In these situations, the stream channel segments must be typed solely based on whether or not they meet the physical criteria for “fish habitat” under WAC 222-16-010.

### **Marine Shoreline Buffer**

The applicant is required to provide a 150-foot marine shoreline buffer under SCC 30.62A.320(1)(a) [2010]. The buffer must be measured from the Ordinary High Water Mark (OHWM). SCC 30.62A.320(1)(b) [2010]. The Applicant provides a 150-foot marine shoreline buffer, but measures it from Mean Higher High Water and not the OHWM. Based on Sheet C-203 (Exhibit B7), accurate depiction of the marine shoreline buffer conflicts with the location of the esplanade and several residential structures in the South Village.

### **New Shoreline Stabilization**

SCC 30.62A.330(2)(a)(i) [2007] provides that projects shall be sited and designed to prevent the need for shoreline or bank stabilization and structural flood hazard protection measures for the life of the development. Further, shoreline stabilization measures are only allowed to protect an existing primary

structure. SCC 30.62A.330(2)(b) [2007]. The only way this may be approved is through Innovative Development Design (SCC 30.62A.350 [2010]). There is no Innovative Development Design proposal by the Applicant on this issue.

### **Buffers and Innovative Development Design**

The Innovative Development Design proposal for buffer reduction described in the April 2017 and April 2018 Critical Areas Reports is conclusory and is based on generalized environmental benefits of the project. The discussion in the report does not demonstrate how the proposal provides protection at least equivalent to the treatment of the functions and values of the critical areas that would be obtained by applying the standard prescriptive buffers to those critical areas. Further, the proposal does not clearly define which buffers are proposed to be altered and by how much. The Innovative Development Design criteria in SCC 30.62A.350 [2010] have not been satisfied and the project substantially conflicts with critical areas buffer requirements.

### **CRITICAL AQUIFER RECHARGE AREAS**

The project site is within a critical aquifer recharge area (CARA) with high groundwater sensitivity. The April 17, 2018, Staff Recommendation identified the Applicant's failure to submit a hydrogeologic report meeting the criteria of SCC 30.62C.140 [2007]. Subsequent to the staff recommendation, the Applicant submitted a *Hydrogeologic Report* by Hart Crower dated April 20, 2018 (Exhibit C-26). Based on PDS's preliminary review of this document, it appears the report meets the applicable criteria and there no longer remains a substantial conflict with chapter 30.62C SCC.