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Case Number: 21-2-01599-31

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR SNOHOMISH COUNTY

SNO-KING WATERSHED COUNCIL,

Appellant,

NO. 21-2-01599-31

v.

SNOHOMISH COUNTY; PACIFIC  
RIDGE HOMES-DRH LLC; CHARLES  
E. BRYANT; JANICE M. BRYANT;  
JASON D. FRUHLING; JOHN L.  
SLOAN,

Respondents,

LAND USE PETITION

**1. Identity of Petitioner and Petitioner's Representative.**

1.1 The petitioner is Sno-King Watershed Council

Bill Lider  
Sno-King Watershed Council  
2526 205th Place SW  
Lynwood, WA 98036

1.2 The petitioner's representatives are:

Bryan Telegin and Alex Sidles  
Bricklin and Newman, LLP  
1424 Fourth Avenue, Ste. 500  
Seattle, WA 98101  
[telegin@bnd-law.com](mailto:telegin@bnd-law.com)  
[sidles@bnd-law.com](mailto:sidles@bnd-law.com)

1           **2. Identity of Decisions and Decision Maker.**

2       2.1. On January 19, 2021, the Snohomish County Hearing Examiner issued a final decision  
3 on an appeal under SEPA of a determination of non-significance (DNS) for the Ironwood subdivision,  
4 File No. 20-102399. The Examiner's DNS is appealed in this action. A copy of the Examiner's  
5 decision is included herewith as Attachment A.  
6

7       2.2 On March 22, 2021, the Snohomish County Council adopted Motion 21-112,  
8 affirming an earlier decision of the Snohomish County Hearing Examiner to approve the Ironwood  
9 subdivision, File No. 20-102399 PSD/SPA/WMD/REZO. The County Council's decision is also  
10 appealed in this action. A copy of the County Council's decision is included herewith as Attachment  
11 B.  
12

13       2.3 Snohomish County's address is:  
14           3000 Rockefeller Avenue  
15           Everett, WA 98201  
16

17       2.4 The Snohomish County Hearing Examiner's mailing address is:  
18           Hearing Examiner  
19           3000 Rockefeller Ave. M/S 405  
20           Everett, WA 98201  
21

22       2.5 The Snohomish County Council's mailing address is:  
23           County Council  
24           3000 Rockefeller Ave. M/S 609  
25           Everett, WA 98201  
26

27           **3. Identity of Required Parties**

28       3.1. The Hearing Examiner's decision identifies the following as the applicant:

29           Pacific Ridge – DRH, LLC  
30           17921 Bothell Everett Highway, Ste. 100  
31           Bothell, WA 98012  
32

1           3.2. The Hearing Examiner's decision identifies the following as owners:

2           Charles E. Bryant  
3           Janice M. Bryant  
4           22805 Atlas Rd.  
5           Bothell, WA 98021

6           Jason D. Fruhling  
7           22919 Atlas Rd.  
8           22810 Barker Rd.  
9           Bothell, WA 98021

10          John L. Sloan  
11          22806 Barker Rd.  
12          Bothell, WA 98021

13          3.3       The County Council's decision does not identify by name and address any applicant  
14          or owner. The County Council decision and permit applications describe the properties as 17710,  
15          17622 Clover Road; 17721 North Road; 109, 113, 117, 129, and 131 Bellflower Road, Bothell,  
16          Washington 98021. Pursuant to RCW 36.70C.040(2)(c), the owner of each these properties is  
17          identified in the Snohomish County assessor's records as Pacific Ridge. The Snohomish County  
18          Assessor provides the following addresses for Pacific Ridge, as taxpayer and owner of the properties  
19          listed above:

20          Pacific Ridge – DRH, LLC  
21          17921 Bothell Everett Highway, Ste. 100  
22          Bothell, WA 98012

23          Pacific Ridge – DRH, LLC  
24          17921 Bothell Everett Highway, # 100  
25          Bothell, WA 98012

26          Pacific Ridge – DRH, LLC  
27          17721 North Road  
28          Bothell, WA 98012-9135

1           **4.       Facts Demonstrating Standing**

2           On December 16, 2020, the Hearing Examiner denied Pacific Ridge's motion to dismiss Sno-  
3 King Watershed Council's appeal for lack of standing. In ruling that Sno-King Watershed Council  
4 does have standing, the Hearing Examiner found that members of Sno-King Watershed Council would  
5 suffer harm to concrete, particularized interests from the Ironwood subdivision due to the project's  
6 environmental impacts. The Examiner also found that Sno-King Watershed Council's organizational  
7 purposes were germane to the environmental issues.

8           Numerous members of Sno-King Watershed Council submitted declarations explaining that  
9 the Ironwood subdivision would intrude upon the privacy of their homes and reduce the local water  
10 quality that wildlife depend on (and which the members enjoy viewing). These interests are among  
11 those that the local jurisdiction was required to consider when making the decisions at issue in this  
12 case. A judgment in favor of Sno-King Watershed Council would substantially eliminate or redress  
13 the prejudice of the county's decisions to Sno-King Watershed Council by requiring modifications  
14 that would reduce the Ironwood subdivision's environmental impacts.

15           Sno-King Watershed participated in the administrative process at all levels: public comment,  
16 administrative appeal to the Hearing Examiner, and administrative appeal to the County Council in its  
17 quasi-judicial capacity. Sno-King Watershed Council has exhausted its administrative remedies to the  
18 extent required by law.

19           **5.       Statement of Error—County Council's Decision to Approve the Subdivision.**

20           **5.1      Wetland A Was Incorrectly Typed.**

21           In his recommendation to the Council (which the Council adopted in its decision), the Hearing  
22 Examiner incorrectly categorized Wetland A, a Category II wetland, as a lower-value Category III  
23 wetland, thus further increasing housing density on this site. *See* Hearing Examiner Decision, Findings

1 of Fact F.10 – F.15; § VI (A). These findings are not supported by substantial evidence but rather are  
2 contradicted by the evidence in the record. The failure to correctly type and adequately buffer Wetland  
3 A results in noncompliance with SCC 30.62A.

4       The wetland rating form was revised at least four times, in a concerted effort not to rate the  
5 wetland at the higher value it deserves—presumably to increase construction space by imposing a  
6 smaller buffer. In the last rating attempt, it was purported that a culvert was newly discovered that  
7 would lower the wetland’s rating score. In reality, however, the wetland should still have scored as a  
8 Category II.

9       The Council’s decision regarding wetlands should be reversed because it is not supported by  
10 substantial evidence. RCW 36.70C.130(1)(c).

11           **5.2     The Hydroperiod of Wetland A Will Not Be Maintained.**

12       The wetland hydroperiod will not be maintained, and low-impact development best  
13 management practices will not be used, in violation of the requirements in SCC 30.62A to protect  
14 wetlands.

15       Almost all stormwater discharge from proposed site design will be concentrated at point  
16 locations that deliver water to an elevation that is mostly below the onsite wetland area, robbing the  
17 wetlands of groundwater recharge and the critical timing of water delivery that would have otherwise  
18 been maintained prior to this development. Furthermore, the proposed stormwater treatment and  
19 detention plan is inadequate to maintain code required discharge limits under the County’s Drainage  
20 Manual. This will create significant adverse impacts including loss of shallow subsurface groundwater  
21 recharge that will impact summer base flows to North Creek resulting in higher water temperatures  
22 with lower oxygen levels.

Neither the Hearing Examiner nor the Council issued any findings on this issue. To the extent the Council's decision to approve the subdivision constitutes a finding that the hydroperiod will be maintained, that decision is not supported by substantial evidence, and should be reversed under RCW 36.70C.130(1)(c). To the extent the Council believed maintaining the wetland's hydroperiod was not required, that decision was an erroneous interpretation of law or a clearly erroneous application of the law to the facts, and should be reversed under RCW 36.70C.130(1)(b) and (d).

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

The Hearing Examiner failed to issue a ruling on the issue of whether Pacific Ridge used the correct soil type and time interval in its modeling under the Western Washington Hydrological Model. Pacific Ridge should have modeled the soil as Type B, not Type C.

Not a single Pilot Infiltration Test (PIT) was run, nor were any other tests run to determine infiltration capacity for the LID design for pervious pavements or rain gardens. The PIT testing also should have been done to determine whether Type C or Type A/B soil should be used for predeveloped condition modeling under the Western Washington Hydrologic Model. Instead, the Hearing Examiner relied on a baseless opinion by Pacific Ridge that none of the site is suitable for stormwater infiltration.

*See Examiner Decision, § VI (B).*

Type C soil may only be used for predeveloped modeling if it can be shown that its infiltration rate is less than 0.3 inches per hour. Drainage Manual, Volume III, Appendix III-B. The rock chambers have been incorrectly designed and modeled using Type C soil, rather than the Type A/B soil that should have been used. As a result of Pacific Ridge's use of the wrong soil type, Pacific Ridge designed an undersized detention pond that will increase in-flow durations significantly above the one-half predeveloped 2-year flow to the 2-year flow with more than a 10% increase from the 2-year to

1 the 50-year flow. This will result in significant downstream bank erosion and streambed incising that  
2 will not be mitigated under the County Code and is not in compliance with the County's Drainage  
3 Manual.

4 Modeling the soil as Type A or B, with an infiltration rate greater than 0.30 inches per hours,  
5 would have demonstrated that under existing conditions at the Project site, there is already substantial  
6 stormwater infiltration. Pacific Ridge's use of Type C soil made it appear as if the Project site already  
7 generates a great deal of stormwater runoff from impervious soils than is currently the case. Thus,  
8 modeling the wrong soil type makes it appear as if adding impervious surface in the course of the  
9 Ironwood Project will not greatly increase stormwater runoff. If the correct soil type had been  
10 modeled, it would have been apparent that the Project will substantially increase stormwater runoff in  
11 violation of the Stormwater Manual.  
12

13 Finally, the modeling used the wrong time interval. It should have used a 15-minute time  
14 interval, not a one-hour time interval. The design engineer never submitted unabridged Western  
15 Washington Hydrologic Model (WWHM) calculations; rather only edited calculations were submitted  
16 that did not show that omitted showing that the incorrect time step had been used in the modeling.  
17 Had the correct 15-minute time step been used in the WWHM, the design would have failed the  
18 modeling test.  
19

20 Although the Hearing Examiner never ruled on this issue, his conclusions in § VI (B) indicate  
21 his belief that impermeable soil is present on the site. This conclusion is not supported by substantial  
22 evidence.  
23

24 In addition, to the extent the Hearing Examiner's non-findings on the modeling issue constitute  
25 an endorsement of Pacific Ridge's erroneous modeling, the Hearing Examiner's decision is not  
26 supported by substantial evidence.

1       The County Council, in its decision, also did not address any of these issues, but rather adopted  
2 the Hearing Examiner's decision. Thus, like the Hearing Examiner, the Council's decision is not  
3 supported by substantial evidence and should be reversed under RCW 36.70C.130(1)(c).

4

5       **5.4      The Bioretention Cells Do Not Comply with the Code and Are Harmful to the**  
**Water Quality.**

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

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

10       ... any non-impervious surface subject to vehicular use, industrial activities (as further defined  
11 in the glossary of the Drainage Manual), or storage of erodible or leachable materials, wastes,  
12 or chemicals, and which receive direct rainfall or the run-on or blow-in of rainfall, use of  
13 pesticides and fertilizers, or loss of soil. Typical PGPS include permeable pavement subject to  
14 vehicular use, lawns, and landscaped areas, including golf courses, parks, cemeteries and  
sports fields (natural and artificial turf) (emphasis added).

15       Pacific Ridge proposes to construct five PGPS bioretention cells using lawn or nitrogen fixing  
16 clover and similar turf grasses, rather than the facultative plants referenced in the Drainage Manual  
17 Volume V, 7.3 Bioretention BMP's and Appendix 1 of the 2012 Low Impact Development Technical  
18 Guidance Manual for Puget Sound for recommended plant species for bioretention facilities. The  
19 PGPS bioretention cells are proposed as play fields and will be treated like a park so that it can be  
20 counted as fulfilling part of the project's open space requirements, rather than a stormwater treatment  
21 facility, similar to the Aravalli site that was approved by the Hearing Examiner on March 17, 2017.  
22 Yet the Hearing Examiner explicitly refused to admit evidence or consider Appellant's Exhibit N14,  
23 Aravalli Bioretention Ponds. The Hearing Examiner refused to allow testimony on the Aravalli  
24 development, dismissing this testimony as "irrelevant", even though it is the same construction  
25 technique being proposed for Ironwood.

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

9  
10     The Hearing Examiner in Condition 11.f requires, "A description of how the rock chambers  
11 will be maintained." The Department of Ecology has no accepted maintenance method for deep rock  
12 chambers nor has Pacific Ridge ever submitted a method as to how this non-standard, deep rock  
13 chamber BMP will be maintained or if it will even be approved by Ecology.  
14

15     No water quality treatment is provided under the current design to the West Basin runoff. The  
16 design shows the runoff from the pollution generating impervious surfaces (PGIS) driveways and  
17 yards running into the bottom of the deep rock chamber, bypassing any treatment that would be  
18 provided via the bioretention soil.  
19

20     For these reasons, the bioretention cells do not comply with the code. The Hearing Examiner's  
21 finding to the contrary, and the County Council's decision to adopt his findings, are not supported by  
22 substantial evidence, and represent an erroneous interpretation of the law, and a clearly erroneous  
23 application of the law to the facts. The Council's decision should be reversed under RCW  
24 36.70C.130(1)(b), (c), (d).  
25  
26

1           **5.5      The Vegetation Plan Does Not Comply with the Code.**

2           The Hearing Examiner erred in finding the Ironwood vegetation plan compliant with the code,  
3           SCC 30.42B, and 30.25. *See* Examiner Decision, § VI (E)(2)(d), (e). Ironwood's vegetation buffer  
4           relies on "stealing" credit from the Normandie Crest subdivision property, that Pacific Ridge does not  
5           own.  
6

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

16          To the extent the Hearing Examiner's finding, and the Council decision to adopt those  
17          findings, represent a belief that the Ironwood landscaping complies with the code, that decision  
18          represents an erroneous interpretation of the law and a clearly erroneous application of the law to the  
19          facts, and should be reversed under RCW 36.70C.130(1)(b), (d). To the extent the Hearing Examiner  
20          (and, by adoption, the Council) believed the proposed landscaping will achieve an equal or better  
21          effect than required landscaping, that belief is not supported by substantial evidence and should be  
22          reversed under RCW 36.70C.130(1)(c).  
23

1           **6. Statement of Error—Hearing Examiner’s Decision to Uphold the DNS.**

2           **6.1 The DNS Was Not Based on Information Reasonably Adequate to Reach a**  
3           **Determination. Instead, the DNS Was Wrongly Predicated on Code Compliance.**

4           The County’s DNS was based on the erroneous notion that the Ironwood Project would  
5           comply with the County’s regulations. For the reasons described above, it will not. While compliance  
6           with local codes may be grounds to issue a DNS (WAC 197-11-158(2)(c)), where there is *non-*  
7           *compliance* with local codes, it is grounds to issue a determination of significance. WAC 197-11-  
8           330(3)(e)(iii). At the very least, it is grounds to re-examine the Project’s environmental impacts, rather  
9           than simply relying on the DNS for both analysis and mitigation.  
10

11           The Hearing Examiner erred in finding that any non-compliance with the local code was not  
12           grounds for reversal of the DNS. *See* Conclusions C-6 and C-9. First, compliance with the code is  
13           required at this stage of permitting. Compliance may not be deferred to subsequent stages. Second, it  
14           is not accurate to say that “non-compliance with development regulations does not necessarily mean  
15           that significant adverse environmental impacts will result.” *Id.* Instead, non-compliance with the local  
16           code means environmental issues were insufficiently analyzed. WAC 197-11-330(3)(e)(iii). In such a  
17           scenario, the only possible actions are either a Determination of Significance (to trigger an  
18           Environmental Impact Statement), or else a demand to Pacific Ridge to provide more environmental  
19           information. *See* WAC 197-11-335. What is not permissible, however, is what has happened here: to  
20           issue a DNS predicated on code compliance, without further environmental review. *See* Decision  
21           Conclusions of Law C-6 –C-11.  
22

23           The impacts that should have been considered but were not include: the Project’s impacts to  
24           wetlands, including inadequate buffers plus the downstream-facing, 40-foot retaining wall that will  
25           reflect heat into wetlands, resulting in further degradation; downstream stormwater impacts resulting  
26

1 from inadequate retention and an erroneous calculation of existing infiltration rates; and the aesthetic  
2 impacts of the non-compliant vegetation buffer. All of these impacts are likely to be significant,  
3 requiring an Environmental Impact Statement under SEPA.

4       The Hearing Examiner's finding that the DNS is adequate is not supported by substantial  
5 evidence, represents an erroneous interpretation of the law, and a clearly erroneous application of the  
6 law to the facts. The Examiner's DNS decision should be reversed under RCW 36.70C.130(1)(b), (c),  
7 (d).

8           **6.2 Sno-King Watershed Council Was Deprived of an Opportunity to Rebut Pacific**  
9           **Ridge's Defense.**

10          Rebuttal testimony is specifically allowed to petitioners under Snohomish County Hearing  
11 Examiner Rule 5.3(d) and 5.5 ("an opportunity for rebuttal by the party with the burden of proof").

12          During the administrative hearing on the DNS, the Hearing Examiner prevented Sno-King  
13 Watershed Council's primary expert witness, William Lider, from fully rebutting the testimony of  
14 Pacific Ridge's experts. Mr. Lider's rebuttal testimony was limited to approximately four minutes—a  
15 wholly insufficient amount of time to rebut a half-day's worth of testimony by multiple Pacific Ridge  
16 experts.

17          The Hearing Examiner's decision to cut off Mr. Lider appears to have been driven by his  
18 interest in convening the public hearing on the subdivision immediately after the appeal hearing on  
19 the DNS. While the Hearing Examiner is allowed, under Rule 5.3(a), to impose "reasonable  
20 limitations" on testimony, including rebuttal testimony, the limitation to approximately four minutes  
21 was not reasonable in light of the number and complexity of the issues. Instead, the Examiner should  
22 have scheduled a brief, second day of testimony.

The Hearing Examiner's decision should be reversed because he did not follow a prescribed process in cutting off Mr. Lider's rebuttal testimony. RCW 36.70C.130(1)(a).

## **7. Prayer for Relief**

7.1. This court should find that the County Council's Motion 21-112, affirming the Hearing Examiner, relied on erroneous interpretations of the law and clearly erroneous applications of the law to the facts, and was not supported by substantial evidence. RCW 36.70C.130(1)(b), (c), (d).

7.2 This court should find that the Hearing Examiner's decision on the DNS appeal relied on erroneous interpretations of the law and clearly erroneous applications of the law to the facts, and was not supported by substantial evidence, and that the Hearing Examiner did not follow a prescribed process. RCW 36.70C.130(1)(a), (b), (c), (d).

7.3. This court should reverse the County Council's decision approving the Ironwood subdivision

7.4. This court should reverse the Examiner's decision upholding the DNS.

Respectfully submitted this 8th day of April, 2021.

## BRICKLIN & NEWMAN, LLP

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## **ATTACHMENT A**



## Snohomish County

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Peter Camp

## *Hearing Examiner*

**DECISION of the  
SNOHOMISH COUNTY HEARING EXAMINER**

## I. SUMMARY

**DATE OF** January 19, 2021

## **DECISION:**

**PLAT:** Ironwood  
17710, 17622 Clover Road  
17721 North Road  
109, 113, 117, 129, and 131 Bellflower Road  
Bothell, WA 98021

**APPLICANT:** Pacific Ridge -- DRH, LLC  
17921 Bothell Everett Highway, Ste.100  
Bothell, Washington 98012

**FILE NO.:** 20-102399 PSD/SPA/WMD/REZO

**APPEAL and REQUESTS:**

1. Appeal from SEPA threshold determination of no significant impact
2. Rezone of three of 11 parcels from R-9,600 to R-7,200
2. Preliminary plat of 88 lots on 15.99 acres, Planned Residential Development (PRD) official site plan, and Urban Residential Design Standards (URDS) administrative site plan
3. Landscaping Modification

<b>DECISION SUMMARY:</b>	1. SEPA appeal denied 2. Rezone of three parcels from R-9,600 to R-7,200 approved 3. Preliminary plat of 88 lots on 15.99 acres, PRD official site administrative site plan approved subject to conditions 4. Landscaping modification approved
--------------------------	--

## *Ironwood*

*20-102399 PSD/SPA/WMD/REZO*

***Decision Denying SEPA Appeal and Approving Rezone and Preliminary Plat, PRD Official Site Plan, URDS Administrative Site Plan, and Landscaping Modification Subject to Conditions.***

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**Ironwood**

20-102399 PSD/SPA/WMD/REZO

*Decision Denying SEPA Appeal and Approving Rezone and Preliminary Plat, PRD Official Site Plan, URDS Administrative Site Plan, and Landscaping Modification Subject to Conditions.*

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***Ironwood***

20-102399 PSD/SPA/WMD/REZO

*Decision Denying SEPA Appeal and Approving Rezone and Preliminary Plat, PRD Official Site Plan, URDS Administrative Site Plan, and Landscaping Modification Subject to Conditions.*

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**Ironwood**

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### III. BASIC INFORMATION

LOCATION:	17710 and 17622 Clover Road 17721 North Road 109, 113, 117, 129, and 131 Bellflower Road Bothell, Washington
ACREAGE:	15.99 acres
GMACP DESIGNATION:	Urban Low Density Residential
ZONING:	R-7,200 and R-9,600
UTILITIES:	
Water:	Alderwood Water and Wastewater District
Sewer:	Alderwood Water and Wastewater District
Electricity:	Snohomish County Public Utility Dist. No. 1
SCHOOL DISTRICT:	Edmonds School District No. 15
FIRE DISTRICT:	South Snohomish County Fire and Rescue
PDS STAFF RECOMMENDATION:	<ol style="list-style-type: none"><li>1. Deny the SEPA appeal</li><li>2. Approve the requested rezone</li><li>3. Conditionally approve the preliminary plat, proposed PRD official site plan, and URDS administrative site plan</li><li>4. Approve the landscape modification</li></ol>

2 Based on a preponderance of the evidence of record, the Hearing Examiner finds the following facts and makes  
3 the following conclusions of law and decision.

4

#### **A. REGULATORY REVIEW AND VESTING**

5  
6

Pacific Ridge applied for a stand-alone forest practices activity permit and associated land disturbing activity permit on December 17, 2019.<sup>1</sup> On January 22, 2020, Pacific Ridge applied for a pre-application concurrency

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<sup>1</sup> PDS file numbers 19-118531 LDA and 19-118577 FPA.

1 determination.<sup>2</sup> PDS issued a pre-application concurrency decision and associated SEPA threshold determination  
2 of no significant impact on March 8, 2020.<sup>3</sup> No appeal was taken from concurrency decision or DNS.

3 On February 18, 2020, Pacific Ridge – DRH, LLC applied to Planning and Development Services (PDS) to build a  
4 Planned Residential Development (PRD) subdivision of 88 lots on 11 parcels. PDS determined the application  
5 was complete as of the date of submittal but insufficient for review. Pacific Ridge submitted additional  
6 information on August 14, 2020 and applied for rezoning three of the parcels from R-9,600 to R-7,200;<sup>4</sup> the  
7 other eight parcels are already zoned R-7,200.

8 PDS initially issued the forest practices activity permit and associated land disturbing activity permit and a  
9 threshold SEPA determination of no significant impact<sup>5</sup> but withdrew them on August 12, 2020.<sup>6</sup> PDS also issued  
10 eight demolition permits.<sup>7</sup> The demolition permits and now withdrawn land disturbing and forest practice  
11 activity permits are relevant, but not material to the SEPA appeal and land use applications *sub judice*.

## 12 **B. OPEN RECORD HEARING**

13 The Hearing Examiner scheduled the open record hearing for December 22, 2020.<sup>8</sup> The Hearing Examiner  
14 accepted public comment in the evening of December 22, 2020.<sup>9</sup>

## 15 **C. THE RECORD**

16 The Hearing Examiner considered the testimony of William Lider, P.E., Diane Brewster, John Rubenkonig, Henry  
17 Wright, P.E., Merle Ash, Meryl Kamowski, Tyler Foster, P.E., Ryan Countryman, Emily Swain, Paul Dragoo, P.E.,

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<sup>2</sup> SCC 30.66B.175 (2006).

<sup>3</sup> Ex. G.4.

<sup>4</sup> Tax parcels 003730-003-017-01, 003730-003-017-02, and 003730-003-011-00. Ex. A.2.

<sup>5</sup> Ex. G.4.

<sup>6</sup> Exhibits G.5 and G.6.

<sup>7</sup> 20-111031 DEMO (parcel 003730-003-018-06), 20-111032 DEMO (parcel 003730-003-018-00), 20-111033 DEMO (parcel 003730-003-018-01), 20-111034 DEMO (parcel 003730-003-010-01), 20-111035 DEMO (parcel 003730-003-011-00), 20-111036 DEMO (parcel 003730-003-017-02), 20-111037-DEMO (parcel 003730-003-018-08), and 20-113060-DEMO (parcel 003730-003-018-03).

<sup>8</sup> To promote an orderly and efficient proceeding and considering all the circumstances, the Hearing Examiner allocated each side 3.5 hours of hearing time (the applicant and PDS shared 3.5 hours). In the morning, the appellant asked for more time and was advised that it could renew its request at the end of the hearing if it felt it had not been able to present material information. Appellant used almost 4.5 hours, did not renew its request, and was never cut off from examining witnesses.

<sup>9</sup> Two of appellant's expert witnesses from the SEPA portion of the hearing tried to testify during public comment; the Hearing Examiner disallowed the testimony because it was an attempt to bolster earlier SEPA testimony that would not be subject to cross-examination. Public comment is not subject to cross-examination.

1 Chris McKnight, Mike Picard, Elizabeth Moore, Brandon Baugh, Marjorie Fields, Stacy Randolph, Keith Loftin, Eric  
2 Adman, Geoff Kinsey, Silvia Stauffer, and John Mirante.

3 The Hearing Examiner considered exhibits A.1 through O.8, except for the following:

4 N.14, N.16, N.18, N.20, N.21, N.22, N.23, N.24, N.24A, N.26, N.34, N.38 slides 3, 9, 39 (irrelevant or no  
5 testimony explaining or using the exhibit)

6 N.27, N.33, N.38, N.39, N.40, N.41 (no testimony using or relating to exhibits)

7 N.37 (duplicate of N.38 in a different file format)

8 L.3, M.3 through M.16, N.43, N.44, O.9, O.10 (pleadings considered as argument and not evidence)

9 A recording of the hearing is available in the Office of Hearings Administration.

## 10 **D. PUBLIC NOTICE**

11 PDS notified the public of the open record hearing, SEPA threshold determination, and traffic concurrency and  
12 impact fee determinations.<sup>10</sup>

## 13 **E. BACKGROUND INFORMATION**

### 14 **1. Applicant's Proposal**

15 Pacific Ridge requests approval of: (a) a rezone of 3 parcels from R-9,600 to R-7,200; (b) a preliminary plat for an  
16 88-lot subdivision on 15.99 acres, an official PRD site plan, and URDS administrative site plan; and (c) a  
17 landscaping modification.

### 18 **2. Site Description and Surrounding Uses**

19 The site consists of 11 tax parcels developed with single family residences. The site contains a category III non-  
20 riparian wetland. An off-site type Ns stream flows through an off-site category II wetland off-site to the  
21 southeast. Swamp Creek lies more than 300 feet from the site.

22 Surrounding properties are developed with single family residences. to the north. Properties to the north, south,  
23 and west are zoned R-7,200 and R-9,600, while property to the east is zoned R-7,200.

### 24 **3. Comments and Concerns**

25 Neighbors, especially those in the adjacent Normandie Crest development, object to the proposal. Concerns  
26 about the requested landscaping modification are discussed below at page 26.

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<sup>10</sup> Exhibits F.1 through F.6.

1 Some were concerned about disruption to wildlife. Construction will disrupt and displace wildlife, but only  
2 displacement or disruption of wildlife protected by law would legally justify denial of a development application.  
3 No legally protected wildlife inhabit the site.

4 Others objected to the density of the proposed development. The county is required by state law, however, to  
5 accommodate increasing population by increasing density in urban growth areas. Seeking to prevent sprawl, the  
6 Legislature adopted the Growth Management Act in 1990, requiring counties like Snohomish County to plan for,  
7 and accommodate, population growth within urban areas<sup>11</sup> and the areas immediately adjacent to urban areas.

8 The Growth Management Act (GMA or Act), chapter 36.70A RCW, was enacted in 1990 and  
9 1991 “in response to public concerns about rapid population growth and increasing  
10 development pressures in the state, especially in the Puget Sound region.”<sup>12</sup>

11 *King County v. Central Puget Sound Growth Management Hearings Bd.*, 142 Wn.2d 543, 546, 14 P.3d 133, 135  
12 (2000).

13 In a two-step process beginning in 1990, the Washington State Legislature passed a land use  
14 law, the Growth Management Act, with the express purpose of encouraging growth and  
15 reaching desired densities in urban areas by making available affordable housing for all residents  
16 of the state and by promoting a variety of housing types.<sup>2213</sup>

17 Mark F. O'Donnell & David E. Chawes, *Improving the Construction and Litigation Resolution Process: The 2005*  
18 *Amendments to the Washington Condominium Act Are A Win-Win for Homeowners and Developers*, 29 SEATTLE  
19 U.L. REV. 515, 520 (2006)

20 Washington State's Growth Management Act contains criteria that provide guidance for local  
21 government compliance. Counties, for example, must designate urban growth boundaries that  
22 contain urban growth. Within these boundaries they must designate “areas and densities  
23 sufficient to permit the urban growth that is projected to occur in the county or city for the  
24 succeeding twenty-year period,” and “may include a reasonable land market supply factor and  
25 shall permit a range of urban densities and uses.”<sup>14</sup>

26 Daniel R. Mandelker, *Implementing State Growth Management Programs: Alternatives and Recommendations*,  
27 45 J. MARSHALL L. REV. 307, 311-12 (2012). See also, Roger D. Wynne, *Washington's Vested Rights Doctrine: How*

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<sup>11</sup> As used here, urban means the intensity of the use of the land, not whether the area is within an incorporated municipality.

<sup>12</sup> Alan D. Copsey, *Including Best Available Science in the Designation and Protection of Critical Areas Under the Growth Management Act*, 23 SEATTLE U.L.REV. 97 (1999).

<sup>13</sup> 2004 Wash. Sess. Laws ch. 201 § 1; RCW 36.70A.020 (1991). “Growth Management Act” is the collective name for two statutes enacted by the Washington Legislature: the Growth Management Act, ch. 17, 1990 Wash. Sess. Laws 1st Spec. Sess. 1972, and the Growth Management Act Revised Provisions Act, ch. 32, 1991 Wash. Sess. Laws, 1st Spec. Sess., 2903. Black, *The Land Use Study Commission and the 1997 Amendments to Washington State's Growth Management Act*, 22 HARV. ENVTL. L. REV. 559, 560 n.2 (1998).

<sup>14</sup> Citing RCW §36.70A.110(2) (2011).

1      *We Have Muddled A Simple Concept and How We Can Reclaim It*, 24 Seattle U.L. Rev. 851, 856 (2001) (“Among  
2 other things, the GMA forced local governments to encourage more dense urban land use patterns in cities and  
3 to prohibit low-density ‘sprawl’ in unincorporated rural areas.<sup>615”</sup>)

4      Areas surrounding municipalities<sup>16</sup> are the natural zones for absorbing additional population. Absorption of  
5 increased population in the urban growth requires more intensive use of the land and therefore increased  
6 density.

7      Therefore, an area that was less dense in 1999 and is in urban growth area will eventually become denser and  
8 look less and less like it did in 1999. This increased density is mandated by state law to prevent sprawl, and the  
9 county has been obligated to follow this state law for decades. The legal and practical effect is that state law  
10 requires the county to increase density in the urban growth areas that that which existed when many moved  
11 into the area.

12     Some were concerned about the cumulative environmental impact of development, especially on North Creek.  
13 Ad hoc review of land use applications is not the appropriate venue for systemic concerns such as cumulative  
14 impacts. Those concerns are appropriately addressed in such fora as the decennial comprehensive plan update.  
15 Systemic concerns are not a legal basis for rejection of specific proposals that otherwise comply with existing  
16 development regulations.

17     Some mistakenly thought the on-site wetland will be destroyed. It will not, nor will any construction activity  
18 occur in the wetland. Wetlands are protected by county code and neither the on-site wetland nor the off-site  
19 wetland will be destroyed.<sup>17</sup>

20     The Hearing Examiner heard generalized objections to grading on the site because of downstream impacts.  
21 County code requires builders to obtain approval of and implement a stormwater pollution prevention plan to  
22 prevent silt transportation, erosion, and other negative impacts from grading and construction.

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<sup>15</sup> See RCW §36.70A.020(1) (2000) (goal of encouraging development in urban areas); RCW §36.70A.020(2) (2000) (goal of reducing ‘the inappropriate conversion of undeveloped land into sprawling, low-density development’). See also *City of Redmond v. Central Puget Sound Growth Hearings Bd.*, 136 Wash. 2d 38, 57-58, 959 P.2d 1091, 1100 (1998) (describing how ‘the GMA changed the normal course’ of land use planning in a way that thwarted the expectations of those who bought rural land hoping to develop it more intensely in the future); Eric S. Laschever, *An Overview of Washington’s Growth Management Act*, 7 PAC. RIM L. & POL’Y J. 657, 664-65 (1998).

<sup>16</sup> These are typically “urban growth areas”, i.e., areas designated in the County’s comprehensive plan for urban growth, including additional population and, ultimately, annexation into a municipality.

<sup>17</sup> See discussion below at page 18.

## IV. SEPA APPEAL

### A. FINDINGS OF FACT

- F.1 Pacific Ridge prepared a SEPA checklist for the proposal on July 31, 2020, and submitted a revised SEPA checklist to PDS on September 10, 2020
- F.2 PDS issued a SEPA threshold determination of no significant impact (DNS) on October 21, 2020.<sup>18</sup>
- F.3 In making the threshold determination, PDS determined that the requirements for environmental analysis, protection, and mitigation measures are adequately addressed in the County's development regulations and comprehensive plan adopted under chapter 36.70A RCW for the project's specific environmental impacts as provided by RCW 43.21C.240 and WAC 197-11-158.
- F.4 In making the threshold determination, PDS considered the project's specific environmental impacts related to stormwater and water quality. As required by SCC 30.61.122 (2016), PDS determined that compliance with the requirements of chapters 30.43C, 30.43D, 30.44, 30.62A, 30.62B, 30.62C, 30.63A, 30.63B, 30.63C, 30.65 and 30.67 SCC is adequate analysis and mitigation of the specific probable adverse environmental impacts of the proposal upon on-site and off-site changes to stormwater volume, release rate, erosion, sedimentation, stream channel stability, and water quality where applicable.
- F.5 SCC 30.61.122 (2016) provides that "when the [PDS] director determines that the requirements of chapters 30.43C, 30.43D, 30.44, 30.62A, 30.62B, 30.62C, 30.63A, 30.63B, 30.65 and 30.67 SCC ensure that the development activity will not result in any probable significant adverse environmental impacts, compliance with those requirements shall constitute adequate analysis and mitigation of the specific significant probable adverse environmental impacts of the development activity with regard to on-site and off-site changes to stormwater volume, release rate, erosion, sedimentation, stream channel stability and water quality, as provided by RCW 43.21C.240."
- F.6 One wetland (wetland A) is on-site within the eastern portion of the project site and extends off-site to the southeast. Another wetland (wetland B) and an unnamed stream are located off-site within 300-feet of the property. Wetland B is located off-site to the northwest. The unnamed stream is associated with the off-site portions of wetland A.
- F.7 Wetland A is a 0.97-acre Category III depressional and slope wetland with a moderate habitat score of 6 points. The standard buffer width for proposed high intensity land uses is 150 feet. Pacific Ridge proposes to reduce the buffer for wetland A from 150 feet to 110 feet under SCC 30.62A.320(1)(a) Table 2b using mitigation measure 1.
- F.8 In making the threshold determination, PDS considered the project's specific environmental impacts to critical areas, including to the on-site wetland (wetland A) and off-site wetland (wetland B) and an unnamed stream within 300-feet of the project site.

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<sup>18</sup> Ex. E.1.

- 1 F.9 PDS determined that the project complies with the requirements in chapter 30.62A SCC and the functions  
2 and values of the provided by the wetlands and stream would be maintained.
- 3 F.10 PDS determined compliance with the requirements of Chapter 30.62A SCC is adequate analysis and  
4 mitigation of the specific probable adverse environmental impacts of the proposal on wetlands, fish and  
5 wildlife habitat conservation areas, and their buffers.
- 6 F.11 The Watershed Council did not demonstrate that Pacific Ridge will be unable to comply with chap. 30.62A  
7 SCC.
- 8 F.12 SCC 30.62A.030 provides that, to the extent permitted by RCW 43.21C.240, critical area protective  
9 measures required by chapter 30.62A SCC shall also constitute adequate mitigation of adverse or  
10 significant adverse environmental impacts on wetlands, fish and wildlife habitat conservation areas and  
11 their buffers for purposes of SEPA.
- 12 F.13 PDS conducted site visits on February 24, 2020, April 28, 2020, September 8, 2020, and September 25,  
13 2020, to assess the conditions of wetland A. PDS observed shrub species on the property, such as vine  
14 maple, the height of which was observed to be taller than 20 feet. That height placed the vine maple in  
15 the category of tree according to both *Classifications of Wetlands and Deepwater Habitats of the United*  
16 *States* (Cowardin, 1979; Federal Geographic Data Committee, 2013) and *Washington State Wetland*  
17 *Rating System for Western Washington; 2014 Update* (Hruby, 2014). The Hearing Examiner finds PDS'  
18 staff's estimation of vine maple heights credible.
- 19 F.14 Due to their height, the shrub species observed in wetland A are classified as forested canopy for aerial  
20 coverage calculations.
- 21 F.15 Wetland A is categorized and classified correctly as a category III wetland.
- 22 F.16 The Ironwood site contains three contributing drainage basins: western, central, and eastern.
- 23 F.17 In a pre-development state, wetland A receives stormwater from the central basin. The proposed  
24 drainage plan does not propose to divert stormwater from wetland A.
- 25 F.18 A portion of wetland A is located on a slope and the remainder is located on flatter ground at the base of  
26 the ravine.
- 27 F.19 The predevelopment and post-development division between the central basin and the eastern basin  
28 upslope from the sloped portion of wetland A will remain unchanged. The sloped portion of wetland A  
29 will continue to receive the same stormwater flow in post-developed conditions as in predeveloped  
30 conditions.
- 31 F.20 Ironwood does not propose to use wetland A for stormwater water quality treatment or flow control.
- 32 F.21 Stormwater from the central basin discharges in concentrated form to the flatter portion of the wetland;  
33 after development, a portion of that contributory drainage is proposed to be discharged through a level  
34 spreader located outside of the wetland buffer in a pattern and location upslope and very near  
35 (approximately 80 feet) from the point at which the drainage now enters the wetland

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- 1 F.22 The proposed drainage and surface water plan for Ironwood will not likely dewater wetland A
- 2 F.23 If PDS determines wetland A requires hydration at any location during review of Ironwood's construction-
- 3 level drainage plans, the storm drainage outfall design can be modified without affecting the feasibility of
- 4 the design to meet the drainage code requirements or the approximate layout of the subdivision.
- 5 F.24 Pacific Ridge proposes a retaining wall to be situated adjacent to but outside of the buffer areas identified
- 6 for wetland A and off-site wetland B.
- 7 F.25 Chapter 30.62A SCC does not require additional setbacks from buffers for structures such as berms or
- 8 retaining walls.
- 9 F.26 Neither construction nor maintenance work for the retaining walls will take place in the buffer. Mitigation
- 10 is not required for non-existent impacts.
- 11 F.27 The Watershed Council did not demonstrate the proposed retaining wall, its maintenance, or its
- 12 construction will likely have significant adverse environmental impacts.
- 13 F.28 The buffer averaging technique utilized by Pacific Ridge is not buffer mitigation under the requirements of
- 14 chapter 30.62A SCC and therefore a mitigation plan under SCC 30.62A.150 is not required.
- 15 F.29 Pacific Ridge complied with the requirements of the Snohomish County Drainage Manual for determining
- 16 infiltration feasibility.
- 17 F.30 Pacific Ridge's geotechnical engineer determined stormwater infiltration is infeasible based on soil logs
- 18 indicating glacial till across the site. PDS relied on the determination of the geotechnical engineer,
- 19 consistent with the requirements of the Drainage Manual.
- 20 F.31 PDS does not require additional infiltration rate testing once a determination of infeasibility has been
- 21 made.
- 22 F.32 PDS interprets county code as determining the feasibility of LID techniques as applied to a proposed
- 23 subdivision configuration authorized by zoning and setback requirements, rather than configuring the
- 24 subdivision based upon the use of LID techniques.
- 25 F.33 The objective of the county's stormwater regulations to require and promote site planning principles that
- 26 make LID the preferred default and commonly used approach to site development. SCC 30.63A.010(p) is
- 27 an aspirational goal to be read in context with the operative requirement to use of low impact
- 28 development best management practices "as directed by the Drainage Manual." SCC 30.63A.010(o).
- 29 F.34 The proposed drainage system for Ironwood incorporates LID BMPs to the maximum extent feasible.
- 30 F.35 Pacific Ridge proposes to use two LID BMPs, BMP T5.13 Post-Construction Soil Quality and Depth and
- 31 BMP T77.30 Bioretention Cells consistent with the requirements of the Drainage Manual and Minimum
- 32 Requirement 5.
- 33 F.36 The Watershed Council did not prove by a preponderance of evidence that a significant adverse
- 34 environmental impact would likely result from a failure to incorporate any additional LID BMP.

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- 1 F.37 PDS determined that Pacific Ridge submitted sufficient information to demonstrate the Ironwood project  
2 can comply with the drainage code, chapter 30.63A SCC and the Drainage Manual.
- 3 F.38 The proposed preliminary stormwater system complies with Minimum Requirement 1-9 or can comply  
4 with any minimal changes to detailed construction plans during construction plan review prior to LDA  
5 approval.
- 6 F.39 PDS reviewed the drainage plans for Ironwood to determine feasibility of the design to meet the  
7 requirements of the drainage code, chapter 30.63A SCC and the Drainage Manual for purposes of  
8 preliminary plat approval. Ironwood drainage plan's construction level details are reviewed for  
9 compliance with all applicable drainage regulations prior to LDA approval. This phased drainage review is  
10 authorized by SCC 30.63A.820.
- 11 F.40 Pacific Ridge's proposed use of clover is a construction related detail that does not impact the feasibility  
12 of the project to meet the requirements of chapter 30.63A SCC, the Drainage Manual or EDDS.
- 13 F.41 Neither the Drainage Manual nor the Engineering Design and Development Standards prohibit the use of  
14 micro-clover or white clover for lawns or bioretention cells.
- 15 F.42 Pacific Ridge's proposed use of clover in its bioretention cells is not likely to result in a significant adverse  
16 environmental impact.
- 17 F.43 Pacific Ridge's proposed use of deep rock chambers for stormwater storage is not likely to result in a  
18 significant adverse environmental impact.
- 19 F.44 PDS will review the construction details for the deep rock chamber design for compliance with all  
20 applicable drainage regulations, Drainage Manual and EDDS as part of the land disturbing activity permit  
21 review.
- 22 F.45 Any design modification required for the proposed deep rock chambers during the construction review  
23 phase will likely result in a smaller design and not affect the feasibility of the drainage system to comply  
24 with the requirements of county code, the Drainage Manual, and EDDS.
- 25 F.46 A planned residential development (PRD) in county land use terms allows a property owner to consolidate  
26 structures in a smaller area, which allows for more open space. Ironwood is a proposed PRD. Normandie  
27 Crest, the development adjacent to Ironwood the north is also a PRD.
- 28 F.47 PRD's allow for infill development within urban areas where the infrastructure and the public facilities for  
29 residential development already exist. Infill development can also alleviate the pressure to expand the  
30 UGA boundaries that would push urban sprawl and increased development and impervious surface into  
31 rural areas of the County.
- 32 F.48 A purpose of a landscape buffer in land use is to reduce friction between adjoining, differing uses.
- 33 F.49 All of the uses surrounding the Ironwood site are residential single-family dwellings.

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- 1 F.50 PRD's contain an additional requirement for perimeter buffer adjacent to other residential uses, but there  
2 is no minimum width requirement for the buffer specified in code. The *de facto* minimum perimeter  
3 buffer width is six feet considering the required setbacks for tree plantings.
- 4 F.51 For a portion of the Ironwood site's northern boundary adjacent to the Normandie Crest development,  
5 Pacific Ridge proposed a landscaping modification to use a six-foot tall board fence and tree plantings to  
6 provide adequate screening from the neighboring development. The modification request does not  
7 propose to eliminate the screening requirements but allow for the screening elements to be located  
8 outside of a separate perimeter buffer tract, as would normally be required for a perimeter buffer.
- 9 F.52 The Hearing Examiner finds the Watershed Council did not demonstrate by a preponderance of the  
10 evidence that Ironwood's landscaping modification would likely result in a significant adverse  
11 environmental impact.
- 12 F.53 The Hearing Examiner finds the Watershed Council did not prove by a preponderance of the evidence that  
13 Ironwood fails to comply with county development regulations that apply to this phase of the project, i.e.,  
14 preliminary plat approval.
- 15 F.54 PDS had reasonably sufficient information to perform an adequate review of the environmental impacts  
16 of the project.
- 17 F.55 PDS had reasonably sufficient information to make a threshold SEPA determination.
- 18 F.56 Any finding of fact in this decision which should be deemed a conclusion of law is hereby adopted as a  
19 conclusion of law.

20 **B. CONCLUSIONS OF LAW**

- 21 C.1 The Hearing Examiner only has jurisdiction over the issues explicitly identified in the notice of appeal and  
22 he does not have any authority to decide additional issues. Any evidence in the record of additional issues  
23 does not vest him with jurisdiction of those additional issues.
- 24 C.2 The purpose of a SEPA appeal is to determine whether the responsible SEPA official made a mistake in the  
25 threshold determination and whether significant adverse environmental impacts will likely result from the  
26 project. The Watershed Council did not demonstrate either a mistake by the responsible official or that  
27 significant adverse environmental impacts are likely.
- 28 C.3 The DNS, including any requirements or "the absence of a requirement," are entitled to substantial  
29 weight. RCW 43.21C.090. The burden is on the Watershed Council to prove its case; an agency's decision  
30 to issue a DNS and not to require an EIS is reviewed under the "clearly erroneous" standard. RCW  
31 43.21C.090; *Anderson v. Pierce County*, 86 Wn. App. 290, 302, 936 P.2d 432 (citing *Indian Trail Property*  
32 *Owner's Assoc. v. City of Spokane*, 76 Wn. App. 430, 442, 886 P.2d 209 (1994)).
- 33 C.4 The Watershed Council has the burden of proving clearly and definitely by a preponderance of evidence  
34 that the responsible SEPA official made a mistake.

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- 1 C.5 The Hearing Examiner reviews the DNS under the clearly erroneous standard. It is not enough that the  
2 Hearing Examiner might have made a different decision than the responsible official; the Hearing  
3 Examiner may only overturn the decision of the responsible official if the Hearing Examiner is left with the  
4 definite and firm conviction that a mistake was made. SCC 30.61.310(1).
- 5 C.6 Consideration of regulatory compliance is appropriate within the context of the preliminary subdivision  
6 application, but not as a part of a SEPA appeal. Regulatory compliance does not inherently equate to the  
7 absence of significant adverse environmental impacts, nor does lack of regulatory compliance inherently  
8 equate to the existence of significant adverse environmental impacts. SEPA Appeal Issue 2(e) alleges  
9 issues of regulatory compliance and is therefore dismissed. Portions of SEPA Appeal Issues 2(b), (c), (g),  
10 and (i) also issues of regulatory compliance, and are therefore dismissed.
- 11 C.7 Weighing the evidence, the Hearing Examiner does not have a firm and definite conviction that PDS  
12 mistakenly found that Ironwood, as proposed and conditioned, would probably cause significant adverse  
13 environmental impacts.
- 14 C.8 The Watershed Council did not prove by a preponderance of evidence that the DNS failed to consider  
15 possible unmitigated significant adverse environmental impacts resulting from the Ironwood proposal.
- 16 C.9 Generally, a SEPA appeal will not be affirmed by pointing only to potential non-compliance with county  
17 development regulations for two reasons. First, the lead agency determines SEPA significance at the  
18 threshold before engineering and construction plans are final. Land use design typically starts from the  
19 general and iterates to the more specific. Plat configurations, lot sizes, road placement, etc. are  
20 developed to the point of application, and preliminary plat consideration, evaluation of ability to comply  
21 with development regulations, and analysis of environmental impact. After this milestone, final  
22 engineering and construction drawings are prepared from the higher level, more conceptual design.  
23 Specific final and more exact elevations, locations, and sizes are submitted for more rigorous review for  
24 compliance with building codes and development regulations. The fact that the preliminary plans are not  
25 drafted to the same level of exactitude or detail does not necessarily mean that the preliminary plans will  
26 likely cause significant adverse environmental impacts. Second, non-compliance with development  
27 regulations does not necessarily mean that significant adverse environmental impacts will result. In other  
28 words, a SEPA appellant does not carry its burden of proof merely by establishing potential or actual non-  
29 compliance with the EDDS, Drainage Manual or title 30 SCC. A SEPA appellant must prove by a  
30 preponderance of evidence that a significant adverse environmental impact will likely result from the  
31 project, irrespective of compliance with title 30 SCC. Failure to comply with title 30 SCC may be evidence  
32 of impact but is not sufficient in and of itself.
- 33 C.10 The Watershed Council did not demonstrate probable significant adverse environmental impacts are likely  
34 to result either (a) from failure of Ironwood to comply with applicable codes and regulations or (b)  
35 notwithstanding the compliance of Ironwood with adopted codes and regulations.
- 36 C.11 The Watershed Council's appeal of the SEPA threshold determination is denied.
- 37 C.12 Any conclusion of law in this decision which should be deemed a finding of fact is hereby adopted as a  
38 finding of fact.

**Ironwood**

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## 1      V. REZONE (CHAP. 30.42A SCC)

### 2      A. CONSISTENCY WITH COMPREHENSIVE PLAN

#### 3      1. The Proposed Rezone is an Implementing Use for the Zone

4      The comprehensive plan contemplates R-7,200 zoning for properties such as the one at issue here. The future  
5      land use map of the comprehensive plan designates the area of the subject property for Urban Low Density  
6      Residential (ULDR) use. The subject property lies in a single-family residential zone.<sup>19</sup> The proposed zoning is an  
7      authorized implementing use for the zone.<sup>20</sup>

#### 8      2. The Proposed Rezone is Consistent with Land Use Policies

9      Whether the requested zone is an implementing use for the identified land use zone is not dispositive. The  
10     requested zone must also be consistent with the policies underlying the land use designation.

11     Urban Growth Areas (UGAs) were established to, “accommodate the majority of the county’s projected  
12     population and employment growth over the next 20 years.”<sup>21</sup> To achieve this, UGA residential densities must  
13     increase by concentrating and intensifying development in appropriate locations that have existing or planned  
14     public facility and service capabilities for such growth.<sup>22</sup> This site fronts on a constructed public road and any  
15     development will be served by public water and sewer.

16     Further, residential development within a UGA should have a minimum density of four to six dwelling units per  
17     acre.<sup>23</sup> The proposed rezone achieves the desired density range.

18     The county’s comprehensive plan also has a policy goal of ensuring that all county residents have the  
19     opportunity to obtain safe, sanitary, and affordable housing.<sup>24</sup> To achieve this goal, the county must ensure that  
20     a broad range of housing types is available in urban areas.<sup>25</sup> The policies implementing this goal and associated  
21     objectives include, “establishing a mix of densities in residentially zoned land that is served with adequate  
22     infrastructure based on the public’s housing preferences” and the encouragement of “expeditious and efficient

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<sup>19</sup> Urban zones consist of residential, commercial, and industrial zoning classifications in the urban growth areas. SCC 30.21.025(1)(a)(ii) (2019). “Single family residential zones consist of the following: (i) Residential 7,200 sq. ft. (R-7,200); (ii) Residential 8,400 sq. ft. (R-8,400); and (iii) Residential 9,600 sq. ft. (R-9,600).” Id. at 1(a).

<sup>20</sup> *Id.*; GPP LU-90.

<sup>21</sup> General Policy Plan (GPP) Land Use Objective LU 1.A.

<sup>22</sup> GPP Land Use Objective LU 2.A; GPP Population and Employment Objective PE 1.A and 1.A.2.

<sup>23</sup> GPP Land Use Policies 2. A.1. See also Objective LU-15, Goal LU-2.

<sup>24</sup> GPP Housing Goal HO 1.

<sup>25</sup> GPP Housing Objective HO 1.B.

1      infill development in UGAs.”<sup>26</sup> The county also has a policy of encouraging, “the integration of a variety of  
2      housing types and densities in residential neighborhoods.”<sup>27</sup>

3      **3. Other Relevant Factors**

4      Finally, if any other relevant factors outside of the Comprehensive Plan policies are apparent from the  
5      application documents or otherwise known to PDS, they must be identified and specified whether any of these  
6      other factors relate to the rezone decision or should be considered at the project level with the specific  
7      development proposal being made.<sup>28</sup> Pacific Ridge seeks rezoning of three of 11 parcels to create a subdivision  
8      of 88 single family residences. The other eight parcels are already zoned R-7,200. No other relevant factors  
9      outside of comprehensive plan policies are either apparent from the application documents or otherwise known  
10     to PDS.

11     The Hearing Examiner finds the proposed rezone is consistent with the county’s comprehensive plan policies.

12     **B. RELATIONSHIP TO THE PUBLIC HEALTH, SAFETY, AND WELFARE**

13     The proposed rezone bears a substantial relationship the health, safety, and welfare of the public. As noted  
14     above, an adequate supply of varied types of affordable housing is critical to the health and vitality of a  
15     community. Additionally, infilling and higher density helps the county achieve its growth management goals.  
16     Finally, any new construction must comply with current building codes and is safer than structures built decades  
17     ago, enhancing the safety of people residing in the dwelling units. For these reasons, the Hearing Examiner finds  
18     the proposed rezone bears a substantial relationship to the health, safety, and welfare of the public.

19     **C. CHANGE IN CIRCUMSTANCES**

20     The Hearing Examiner finds conditions justify the rezone. The subject site has been zoned R-9,600 since 1996.  
21     Numerous significant changes occurred since then, such as substantial population growth and development.

22     The immediate area is growing quickly with infill development. Population of the county has grown substantially  
23     since 1996. The county’s population when these parcels were zoned R-9,600 was 527,650, but today the  
24     population exceeds 844,500. Increased density allowed by the requested rezone not only fulfills the statutory  
25     mandate of the Growth Management Act but provides housing for the increase in population. Too, the pattern  
26     of development in the area has been that of increasing density and development.

27     The Hearing Examiner finds that circumstances changed since the property was zoned for 9,600 sq. ft. lots  
28     decades ago and concludes that the changed circumstances justify a rezone consistent with the county’s  
29     comprehensive plan.

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<sup>26</sup> GPP Housing Policy 1.D.1 and 1.D.3.

<sup>27</sup> GPP Housing Policies 2.B.1 (emphasis added).

<sup>28</sup> Snohomish County Council Motion 07-447 (August 8, 2007).

1      **D. MINIMUM ZONING CRITERIA (CHAPTERS 30.31A THROUGH 30.31F SCC)**

2      The criterion does not apply.

3      **VI. PLANNED RESIDENTIAL DEVELOPMENT**

4      **A. CRITICAL AREAS REGULATIONS (CHAPTERS 30.62, 30.62A, 30.62 B, AND 32.62C SCC)**

5      Wetland A is the only critical area on the site. It is almost an acre, extends off-site, and is a category III slope and  
6      depressional wetland. Off-site, a .21 category II depressional wetland (wetland B) is nearby as well as an  
7      unnamed stream. The stream begins 32 feet south of the assemblage within the off-site portion of wetland A.<sup>29</sup>

8      As a category III wetland with a moderate habitat score of 6, wetland A requires a buffer of 150 feet.<sup>30</sup> Pacific  
9      Ridge proposes to reduce the buffer to 110 feet by implementing mitigation measures allowed by county  
10     code.<sup>31</sup> Pacific Ridge will reduce the buffer of wetland A by 7,383 sq. ft. and will mitigate that reduction by  
11     adding 7,447 sq. ft. of buffer for a total increase of 64 sq. ft. of on-site buffer area. The additional area will be  
12     similar in composition to the existing buffer and provide similar functions.

13     Wetland B is a category II wetland with a low habitat score of 4, requiring a buffer of 100 feet.<sup>32</sup> Pacific Ridge  
14     proposes to reduce the buffer to 75 feet by implementing mitigation measures allowed by county code. Pacific  
15     Ridge will reduce the buffer of wetland B by 388 sq. ft. and mitigate the reduction by adding 611 sq. ft for a net  
16     increase of buffer of 223 sq. ft. This addition will also be similar in composition to the existing buffer and provide  
17     similar functions.

18      **B. DRAINAGE AND GRADING (CHAPTERS 30.63A, 30.63B, AND 30.63C SCC)**

19     Infiltration of stormwater is not feasible because relatively impermeable unweathered glacial till was  
20     encountered in test pits three to five feet below ground surface.<sup>33</sup> The site has three basins. Stormwater will be  
21     collected and conveyed to bioretention cells for water quality treatment and then to rock chambers for flow  
22     control. Some stormwater will infiltrate through the bottom of the rock chambers. Overflow from the rock  
23     chambers will be discharged in a controlled manner.<sup>34</sup> Rock chambers must be kept clear of debris and

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<sup>29</sup> The county's on-line map portal shows a potential stream in the center of the site. The map infers potential watercourses from topography and not from on observation or inspection on the site. PDS staff visited and walked the site and did not find a stream.

<sup>30</sup> SCC 30.62A.320(1)(a) Table 2b (2015).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Exhibits C.7 and C.8.

<sup>34</sup> Stormwater from the east basin will discharge through a control structure to the municipal separate storm sewer system in Clover Road, while overflow from the west basin rock chamber will discharge through a control

1 particulates that could clog the system. In addition to bio-retention cells that will screen debris and particulates  
2 from entering the rock chamber, filter fabric blankets to catch debris and particulates will also be installed.<sup>35</sup>  
3 Rock chambers are not a detention or infiltration method listed in the county's drainage manual. The drainage  
4 manual does not, however, prohibit using facilities not listed in the manual.<sup>36</sup> Approval will be conditioned on  
5 Pacific Ridge's providing information to PDS demonstrating how the rock chambers will be maintained and the  
6 feasibility of maintenance.

7 More than 5,000 sq. ft. of pollution generating impervious surfaces will be created, triggering a requirement to  
8 comply with minimum requirements 1 through 9.

Req't	Description	How Fulfilled?
1	Stormwater Site Plan	A stormwater site plan and report adequately address the on-site stormwater requirements. <sup>37</sup>
2	Stormwater Pollution Prevention Plan (SWPPP)	A satisfactory SWPPP was provided. <sup>38</sup>
3	Water Pollution source control for new development or redevelopment	Satisfied because residential projects typically do not have to provide water pollution source control after the project is completed.
4	Preservation of natural drainage systems	Natural drainage systems will be preserved to the extent feasible. No adverse downstream impacts have been identified.
5	On-site stormwater management	On-site stormwater management has been adequately addressed according to the drainage manual.

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structure to the municipal separate storm sewer system in North Road. Stormwater from the central basin will discharge to a type 1 catch basin in an existing swale within wetland A's buffer. The catch basin will function as a "bubble up" facility. Ex. C.2, pp. 5-6, 16-18.

<sup>35</sup> Ex. C.5, §1.2.8.

<sup>36</sup> "It is not the intent of this manual to preclude alternative engineering solutions to design situations. \* \* \* Alternatives to standard plans, specifications, and design details found in this manual will be accepted if they meet or exceed the performance of these standards as determined by the county. Engineers are encouraged to be innovative. The burden of proof, however, is on the engineer to document that his/her innovations meet or exceed the performance of the standards." Drainage Manual, vol. 1, §1.1 (2016). The Hearing Examiner takes official notice of the county's drainage manual. H. Ex. R. Proc. 5.6(i) (2019).

<sup>37</sup> Exhibits C.2 and C.4.

<sup>38</sup> Ex. C.3.

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6	Runoff treatment	Water quality treatment will occur in bio-retention cells.
7	Flow control requirements for new development or redevelopment	Flow control is adequately addressed by the proposed stormwater management system.
8	Detention or treatment in wetlands or wetland buffers	No detention or treatment will occur in wetlands or buffers.
9	Inspection, operation, and maintenance requirements	Operation and maintenance information is included in the drainage report. <sup>39</sup>

1     **C. MITIGATION**

2     **1. School Impact Mitigation (Chapter 30.66C SCC)**

3     Approval of the development will be conditioned upon the payment of school impact fees.<sup>40</sup> For building  
 4     permits issued on or before February 18, 2025, the impact fee shall be zero, because the fee schedule in effect  
 5     on February 18, 2020 did not require any mitigation. For building permits issued after February 18, 2025, the  
 6     impact fee shall be determined by the fee schedule in effect at the time of building permit application. The  
 7     impact fees must be paid prior to building permit issuance, except as allowed by SCC 30.66C.200(2). Credit shall  
 8     be given for 11 existing lots.

9     **2. Park and Recreation Impact Mitigation (Chapter 30.66A SCC)**

10    Prior to building permit issuance for each unit, Pacific Ridge must pay park and recreation impact fees.<sup>41</sup> For building  
  11   permits issued on or before February 18, 2025, the impact fee shall be \$1,630.22 per dwelling unit. For  
  12   building permits issued after February 18, 2025, the impact fee shall be determined by the fee schedule under  
  13   SCC 30.66C.100 in effect at the time of building permit application. The impact fees must be paid prior to  
  14   building permit issuance, except as allowed by SCC 30.66A.020(4).

15    **D. TRANSPORTATION (TITLE 13 SCC, EDDS 3-02, AND SCC 30.66B.420)**

16    **1. Area Transportation**

17    **a. Concurrency Determination (SCC 30.66B.120)**

18    County ordinances prescribe the measures and tests which a development must meet in order to proceed, and  
  19    this project meets those measures and tests. If forecasted levels of service will cause any arterial unit to go into

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<sup>39</sup> Ex. C.5.

<sup>40</sup> SCC 30.66C.100 (2017).

<sup>41</sup> SCC 30.66A.020 (2010). The project site lies in the Nakeeta Beach park service area. SCC 30.66A.040(1) (2005).

1 arrears, the project is not concurrent and cannot be approved. Conversely, the project must be approved if it  
2 will not cause a county arterial unit to go into arrears. Public Works reviewed the proposal and traffic study in  
3 light of projects in the pipeline and deemed the project concurrent.<sup>42</sup> No review was sought of the concurrency  
4 determination.<sup>43</sup>

5 **b. Inadequate Road Conditions (IRC) (SCC 30.66B.210)**

6 An Inadequate Road Condition (IRC) is a road condition determined by the County Engineer to jeopardize the  
7 safety of road users; it is not traffic congestion.<sup>44</sup> Irrespective of the existing level of service, a development  
8 which adds at least three evening peak hour trips to a place in the road system that has an IRC must eliminate  
9 the IRC in order to be approved.

10 The development will not affect any IRCs in TSA D with three or more evening peak hour trips, nor will it create  
11 an IRC. Therefore, it is expected that mitigation of an IRC will not be required and no restrictions to building  
12 permit issuance, certificate of occupancy, or final inspection will be imposed under chapter 30.66B SCC.

13 **c. Impact Fees**

14 *i. County*

15 The proposed development must mitigate its impact upon the future capacity of the Snohomish County road  
16 system by paying a road system impact fee.<sup>45</sup> The road system impact fee will be the product of the net average  
17 daily trips (ADT) generated by the development<sup>46</sup> multiplied by the amount for the transportation service area  
18 identified in SCC 30.66B.330 for each trip.

**Road System Impact Fee Calculation**

1.	Number of dwelling units (DU)	88
2.	ADT per DU	9.44
3.	New ADT (Line 1 x Line 2)	830.72
4.	TDM Credit (Line 3 x 5%)	41.54
5.	Gross New ADT (Line 3 – Line 4)	789.18
6.	ADT Credit for Existing Trips (11 existing DU x line 2)	75.52

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<sup>42</sup> Ex. G.4.

<sup>43</sup> SCC 30.66B.180 (2006).

<sup>44</sup> SCC 30.91I.020 (2003).

<sup>45</sup> SCC 30.66B.310 (2003).

<sup>46</sup> ADT is calculated using the latest edition of the Institute of Traffic Engineers' Trip Generation Report.

7.	Net New ADT (Line 5 – Line 6)	713.66
8.	TSA D Mitigation Rate per ADT	\$267
9.	Total Impact Fee (Line 7 x Line 8)	\$190,547.22
10.	New DU	88
11.	Mitigation Fee per DU (Line 9 ÷ Line 10)	\$2,165.31

1        *ii. Other Jurisdictions*

2              a. State Highway Impacts (SCC 30.66B.710)

3 When a development's road system affects a state highway, mitigation requirements will be established using  
4 the county's SEPA authority consistent with the terms of the interlocal agreement between the county and the  
5 Washington State Department of Transportation (WSDOT). This is consistent with the county's SEPA policy<sup>47</sup>  
6 through which the county designates and adopts by reference the formally designated SEPA policies of other  
7 affected agencies for the exercise of the county's SEPA authority. The interlocal agreement calls for mitigation  
8 payments to WSDOT if projected traffic from a development will affect any WSDOT projects in the project site's  
9 TSA listed on Exhibit C to the interlocal agreement. The proposed development will not likely generate three or  
10 more daily trips affecting a project in TSA D on Exhibit C of the interlocal agreement. No mitigation payment will  
11 be therefore be due to WSDOT.<sup>48</sup>

12              b. Other Jurisdictions (SCC 30.66B.710)

13 Trips generated from this development will affect the roads of the city of Mill Creek, which has an interlocal  
14 agreement with the county. Approval will be conditioned upon Pacific Ridge's payment of \$29,343.60 to Mill  
15 Creek.

16        *iii. Transportation Demand Management (SCC 30.66B.630)*

17 Transportation demand management (TDM) is a strategy for reducing vehicular travel demand, especially by  
18 single occupant vehicles during commuter peak hours. TDM offers a means of increasing the ability of  
19 transportation facilities and services to accommodate greater travel demand without making expensive capital  
20 improvements. New developments like this within an urban growth area must comply with county code's TDM  
21 requirements.

22 County code requires fulfillment of a 5% TDM goal for a proposed development in an urban growth area, either  
23 by submitting a plan when it files its application that has features that could remove up peak hour trips or by  
24 paying an amount equal to \$6,500 multiplied by 5% of the evening peak hour trips. In addition, this

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<sup>47</sup> SCC 30.61.230(9) (2012).

<sup>48</sup> Ex. K.3

1 development will add three or more directional peak hour trips to 164<sup>th</sup> St. SW, an arterial unit designated at  
2 ultimate capacity. This increases the TDM obligation to 10%.

3 Pacific Ridge submitted a TDM plan with its initial application and will receive a five percent credit on its traffic  
4 mitigation fee to the county. Pacific Ridge will fulfill the remaining 5% TDM obligation by paying \$25,740.00  
5 (\$292.50 per dwelling unit).<sup>49</sup>

6 **2. Project Site**

7 **a. Right of Way**

8 The proposed development fronts on Clover Road and Bellflower Road, neither of which are arterials. These  
9 roads should have 30 feet of right of way from the center line on the development's side. The right of way on  
10 both roads varies from 20 to 30 feet. Approval will be conditioned on dedication of up to ten feet of additional  
11 right of way on both roads' frontages to achieve the 30-foot width. The dedication is adequately shown on the  
12 preliminary plat.

13 In addition, approval will be conditioned on the dedication of a minimum width of 25 feet between Lots 32/33  
14 within the development's panhandle from road A to North Road, currently labeled as Tract 996. The preliminary  
15 plat must be revised and submitted with the application for a land disturbing activity permit.

16 **b. Road System, Access, and Circulation**

17 The development will access the public road network by Bellflower Road and Clover Road. Atlas Road and Barker  
18 Road. Sight distance at the access point on Bellflower Road meets EDDS requirements. The sight distance at the  
19 access point on Clover Road does not, but the county Traffic Engineer approved a deviation.

20 The county Traffic Engineer also requires the panhandle between road A and North Road between lots 32 and  
21 33 (labeled as tract 996 on the preliminary plat) to become county right of way to allow future development to  
22 the west to have access through Ironwood instead of the substandard access point on North Road. Approval will  
23 be conditioned on construction of 25 feet of pavement between lots 32 and 33 from road A and extending to  
24 the western property lines of those lots, where bollards must be installed, and a 15-foot wide gravel drainage  
25 maintenance access can be constructed. When the parcels to the west development, their access to North Road  
26 will be restricted to fire access only and the parcels will access the county road network through Ironwood.

27 Ramps at intersections must comply with minimum Americans with Disabilities Act (ADA) standard requirements  
28 for grades and landings as detailed in the county's Engineering Design and Development Standards (EDDS) §4-  
29 05(D) and WSDOT Standard Plans F-40 series. A detail of each ADA ramp will be required in the construction  
30 plans.

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<sup>49</sup> 5% x 79.20 new PM peak-hour trips x \$6,500 = \$25,740.00.

1 EDDS §4-15 requires removal or relocation of fixed obstructions to create a horizontal clear zone.

2 c. Deviations

3 Pacific Ridge requested a deviation from EDDS for the Clover Road access point because the site is on the inside  
4 of a horizontal curve. Pacific Ridge noted that the available sight distance from ten feet from the edge of the  
5 traveled way still provides a minimum stopping sight distance of 155 feet, based on the design speed of the  
6 road. The county Traffic Engineer approved the deviation.<sup>50</sup>

7 The county Traffic Engineer also approved a deviation from EDDS to allow a 28-foot curb-to-curb road for the  
8 public road connection through the proposed development between Bellflower Road and Clover Road.<sup>51</sup>

9 d. Frontage Improvements (SCC 30.66B.410)

10 Full urban frontage improvements are usually required where a project abuts a public road.<sup>52</sup> The proposed  
11 project fronts on Bellflower and Clover Roads. Approval will be conditioned on Pacific Ridge constructing asphalt  
12 concrete pavement that is 18 feet wide from the center line to the face of the curb, a cement concrete curb and  
13 gutter, a five-foot-wide planter strip, and a five-foot-wide concrete sidewalk.<sup>53</sup>

14 Neither road is included in the transportation impact fee cost basis. The cost of improvements will therefore not  
15 be credited against the impact fee.

16 Frontage improvements are not required on North Road because the county recently completed a corridor  
17 improvement project on North Road.

18 e. Bicycle

19 Pacific Ridge does not need to construct a bicycle path because neither Bellflower Road nor Clover Road are  
20 identified as bicycle routes on the County Wide Bicycle Facility System Map. North Road is identified as a bicycle  
21 route, but the recent corridor improvement project constructed a bicycled facility on North Road.

22 f. Pedestrian Facilities (RCW 58.17.110 and 58.17.060)

23 The development cannot be approved unless school children have safe walking conditions.<sup>54</sup> High school  
24 students will walk to Lynnwood High School on North Road, while elementary and middle school students will  
25 meet school buses at the intersections of North Road and 174<sup>th</sup> St. SW and 181<sup>st</sup> St. SW respectively. Approval  
26 will be conditioned on Pacific Ridge's construction of an off-site pedestrian facility to allow safe walking  
27 conditions. The off-site facility will extend from the western edge of frontage improvements on Bellflower Road

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<sup>50</sup> Ex. G.2.

<sup>51</sup> Ex. G.3.

<sup>52</sup> Snohomish County Department of Public Works Rule 4222.020(1).

<sup>53</sup> Pacific Ridge should match the curb location of Clover Road to the development to the north.

<sup>54</sup> RCW 58.17.060(2) (1990); RCW 58.17.110(2) (1995).

1      west to the intersection of Bellflower Road and North Road. A continuous pedestrian facility exists on North  
2      Road.

3      **E. DESIGN (URBAN RESIDENTIAL DESIGN STANDARDS (CHAPTER 30.23A SCC) AND PLANNED**  
4      **RESIDENTIAL DEVELOPMENT (CHAPTER 30.42B SCC))**

5      **1. Urban Residential Design Standards (Chapter 30.23A.SCC)**

6      This project must comply with several overlapping ordinances, including URDS<sup>55</sup> (which apply to new residential  
7      developments located within urban growth areas), subdivisions regulated under chapter 30.41A SCC, and  
8      PRDs.<sup>56</sup> The proposed project meets the development standards applicable to the underlying site development  
9      plan. As conditioned, the site plan complies with URDS and PRD requirements.

10     The proposed development complies with the requirements of chapter 30.23A SCC that must be met at the  
11     preliminary plat stage. Approval will be conditioned upon complete fulfillment with applicable URDS  
12     requirements prior to building permit issuance, e.g., design standards.<sup>57</sup>

13     **2. Planned Residential Development (Chapter 30.42B SCC)**

14     **a. Density (SCC 30.42B.040)**

15     Pacific Ridge proposes a PRD of 88 dwelling units, which complies with chapter 30.42B SCC requirements  
16     regarding the maximum number of dwelling units per acre. The development area is 450,002 sq. ft.<sup>58</sup> Division of  
17     the development area by the minimum lot size of the underlying zone (R-7,200),<sup>59</sup> then multiplication by 120  
18     percent,<sup>60</sup> yields a maximum of 116 dwelling units. Pacific Ridge proposes 88 dwellings. The proposed density is  
19     less than the maximum density of nine dwelling units per acre allowed by ordinance.

20     **b. General Design Criteria (SCC 30.42B.100)**

21     The proposal complies with general design criteria. All requirements of the underlying zone have been applied  
22     to this project. This PRD is accompanied by an application for a preliminary subdivision and Pacific Ridge  
23     appropriately proposed the construction of single-family residential units in an R-7,200 zone.

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<sup>55</sup> Chap. 30.23A SCC.

<sup>56</sup> Chap. 30.42B SCC.

<sup>57</sup> SCC 30.23A.040 (2009).

<sup>58</sup> Ex. B.2.

<sup>59</sup> SCC 30.42B.040(2)(b) (2007).

<sup>60</sup> SCC 30.42B.040(2)(d) (2007).

1    c. Open Space (SCC 30.42B.115)

2    The proposed development complies with the open space requirements of SCC 30.42B.115 (2013). A minimum  
3    of 20% of the gross site area, or 139,347 square feet, must be left as open space and Pacific Ridge intends to  
4    leave 198,824 sq. ft. open. The open space will be permanently established in clearly designated separate  
5    tracts.<sup>61</sup> Approval will be conditioned on recording covenants, conditions, and restrictions to provide for  
6    maintenance of the total open space in a manner which will assure its continued use as open space.

7    Usable open space for active or passive recreation must be at least 52,800 square feet.<sup>62</sup> Pacific Ridge provides  
8    67,865 sq. ft. Pacific Ridge complies with the requirement of at least 40% of usable open space in a single tract  
9    with tract 998.

10    No areas of on-site recreation space will be less than 20 feet wide.<sup>63</sup>

11    d. Landscaping

12    The proposed project complies with the landscaping requirements of chapters 30.42B and 30.25 SCC. Ten  
13    percent of the site (69,673 sq. ft.) must be landscaped and Pacific Ridge proposes to landscape 94,259 sq. ft.

14    e. Landscape Modification (SCC 30.25.040 (2009))

15    County code prescribes perimeter landscaping tracts for PRDs. SCC 30.25.036(2) (2014).<sup>64</sup> Pacific Ridge  
16    proposed a modification to the prescribed landscaping along the northern property boundary. Property abutting  
17    the northern perimeter is developed with the Normandie Crest subdivision, a PRD that has a ten-foot  
18    landscaping easement on its southern perimeter.

19    Pacific Ridge argues that a landscaped perimeter tract already exists, i.e., Normandie Crest's ten-foot  
20    landscaping easement, and therefore Ironwood does not need one. Pacific Ridge proposes to provide the trees  
21    that would otherwise be in the perimeter tract in clusters in backyards of the Ironwood lots on the northern  
22    perimeter and to install a solid fence or repair existing fences where appropriate. Normandie Crest homeowners  
23    object, saying that if they had to have a ten-foot landscaping easement, so should Ironwood. Neither argument  
24    is very persuasive, either as a matter of logic or law.

25    Normandie Crest offered to work with Pacific Ridge to find a mutually acceptable landscaping plan. Although  
26    the Hearing Examiner cannot compel such an effort, he strongly encourages adjoining landowners to work  
27    together as often as possible for mutually beneficial development. Normandie Ridge reasonably points out that  
28    installation of a fence adjacent to another fence creates problems. It might make more sense to for the  
29    Ironwood HOA to be jointly responsible for the maintenance and repair of the Normandie Crest fence and, if

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<sup>61</sup> SCC 30.42B.115(1)(e) (2017).

<sup>62</sup> Six hundred square feet per dwelling unit ( $600 \times 88 = 52,800$  sq. ft.). SCC 30.42B.115(2)(b) (2017).

<sup>63</sup> *Id.* at (2)(c).

<sup>64</sup> N.B. SCC 30.25.020(1) Table 1 does not require perimeter landscaping between single family residential developments.

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1 possible, for agreement on plantings and maintenance of vegetation to maintain the visual screen that seems to  
2 be the purpose of the perimeter landscape.

3 County code allows modification of prescriptive landscaping requirements if the proposed landscaping: (a)  
4 represents and equal or better results than would be achieved by strictly following the requirements of the code  
5 and (b) the proposed landscaping fulfills the purposes of chapter 30.25 SCC as described in SCC 30.25.010(1)  
6 (2014).<sup>65</sup>

7 County code does not clearly state the purposes of either perimeter landscaping or perimeter tracts, especially  
8 when two PRDs abut each other. Previous versions of the code imply that the purpose of the landscaped  
9 perimeter is to screen the PRD visually from adjacent single family residences, though why visual screening of  
10 single family residences in a PRD from single family residences in an adjacent non-PRD subdivision is not  
11 intuitively obvious. Note, too, that Normandie Crest is a PRD. The need to screen one PRD visually from another  
12 PRD is also not obvious and neither the need nor purpose are described in the code or the recitals of ordinances  
13 amending the code.

14 The proposed modification plants trees in clusters in backyards rather than separate tracts and substitutes solid  
15 fencing for understory vegetation. The code question is whether the proposed modification provides visual  
16 screening between Normandie Crest and Ironwood that is equal or better than a separate tract with an  
17 understory of shrubs? The Hearing Examiner finds that planting trees in clusters in backyards is equivalent in  
18 visual screening to planting clusters of trees in a separate tract or easement. Solid fencing, whether installed or  
19 repaired and irrespective of who installed it, is equal to or better than understory vegetation in terms of visual  
20 screening. The proposed modification fulfills the purpose of visually screening the two developments from each  
21 other.

22 The proposed landscape modification satisfies the criteria established by county code and is therefore approved.

23 **f. Tree Canopy (SCC 30.42B.125 and SCC 30.25.016)**

24 Pacific Ridge complies with the requirement for projected tree canopy coverage of at least 30% of the gross site  
25 area in 20 years by retaining 105,152 sq. ft. of existing canopy and planting new trees that will create at least  
26 103,897 sq. ft. of canopy for a total of 209,049 sq. ft. of tree canopy. Approval will be conditioned on  
27 implementation of the approved landscaping plan and tree protection measures.

28 The preliminary landscape plan<sup>66</sup> has minor discrepancies that should be resolved in the final landscaping  
29 submitted to PDS with Pacific Ridge's application for a land disturbing activity permit. The planting list shows 30  
30 vine maples will be planted, but the preliminary landscaping plan only shows 28 locations for new vine maples.  
31 Twenty-eight vine maples will be insufficient to meet the required 30% canopy coverage. In addition, the tree  
32 canopy worksheet<sup>67</sup> description of retained canopy (105,417 sq. ft.) is inconsistent with the preliminary

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<sup>65</sup> SCC 30.25.040(2) (2009).

<sup>66</sup> Ex. B.3.

<sup>67</sup> Ex. C.14.

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1 landscaping plan<sup>68</sup> (150,152 sq. ft.). Approval of the final landscaping plan must occur on or before issuance of  
2 the land disturbing activity permit.

3 **g. Roads, Access, Circulation, Pedestrian Facilities and Parking (SCC 30.42B.140)**

4 The PRD has been designed to provide adequate road access, connection and circulation to minimize traffic  
5 congestion, provide connection to adjoining neighborhoods where feasible, ensure adequate utility services, and  
6 provide emergency vehicle access. The configuration and design of the roads and access facilities in this  
7 development are in accordance with chapters 30.24 SCC, 30.66B SCC, and 30.53A SCC and EDDS. Access to the  
8 dwelling units within the PRD will be by public road. The county engineer has determined the project will  
9 provide adequate connection to county roads. The PRD has been designed to provide adequate and safe  
10 pedestrian access to and circulation within the development by sidewalks.

11 A PRD must have at least two parking spaces per dwelling unit plus one-half parking space per dwelling unit for  
12 guests.<sup>69</sup> Pacific Ridge complies with this requirement.

13 **h. Bulk Regulations (SCC 30.42B.145)**

14 The proposed site plan complies with the dimensional standards<sup>70</sup> for single family residential development,  
15 including lot width, lot area, setbacks, and lot coverage.

16 **3. Fire**

17 The Fire Marshal's Office reviewed the proposed development. Approval will be conditioned on implementing  
18 the Fire Marshal's recommendations, such as addressing requirements, specifications for fire protection based  
19 upon the size of dwelling units, requirements for final certificate of water availability and fire flow related to fire  
20 hydrants, and specifications for fire hydrant installation. Fire lane signage will be installed by county forces  
21 because they will be installed on public, not private, roads.

22 **4. Utilities**

23 Adequate provisions have been made for utilities, which will be installed underground.

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<sup>68</sup> Ex. B.3.

<sup>69</sup> SCC 30.42B.140(2) (2009); SCC 30.26.030(1) Table 1 (2018).

<sup>70</sup> SCC 30.42B.145 Table 1 (2013).

## 1 VII. CONCLUSIONS

- 2 1. The Hearing Examiner has authority to approve SEPA appeals,<sup>71</sup> site-specific rezones,<sup>72</sup> preliminary  
3 subdivisions,<sup>73</sup> Planned Residential Developments official site plans,<sup>74</sup> and Urban Residential Design Standards  
4 administrative site plans when consolidated permit review is requested by the applicant.<sup>75</sup>
- 5 2. Having given substantial weight to the decision of the responsible SEPA official, the Hearing Examiner is  
6 not left with a firm and definite conviction that the SEPA official was mistaken in issuing his threshold  
7 determination of no significant impact and the Watershed Council did not demonstrate that significant adverse  
8 environmental impacts were likely. The SEPA appeal is therefore denied.
- 9 3. The Hearing Examiner concludes that Pacific Ridge satisfied the criteria in county code.
- 10 4. The proposal is consistent with the Growth Management Act comprehensive plan, county code, the type  
11 and character of land use permitted on the project site, the permitted density, and applicable design and  
12 development standards.
- 13 5. The Hearing Examiner concludes the proposed rezone is consistent with the comprehensive plan, it  
14 bears a substantial relationship to the public health, safety, and welfare, the minimum zoning criteria found in  
15 chapters 30.31A through 30.31F do not apply, and circumstances have changed. SCC 30.42A.100 (2014).
- 16 6. The Hearing Examiner concludes that applicant Pacific Ridge met its burden by a preponderance of  
17 evidence that the proposed landscaping modification: (a) represents equal or better results than would be  
18 achieved by strictly following the requirements of the development code and (b) the proposed landscaping  
19 fulfills the purposes of chapter 30.25 SCC as described in SCC 30.25.010(1) (2014).<sup>76</sup>
- 20 7. Having considered all relevant facts, including the physical characteristics of the site, sidewalks and  
21 other planning features and with fulfillment of the conditions imposed below, the Hearing Examiner finds the  
22 proposed subdivision will serve the public interest and it makes appropriate provision for the public health,  
23 safety, and general welfare, for open spaces, drainage ways, streets, alleys, other public ways, transit stops,  
24 potable water supplies, sanitary wastes, parks and recreation, playgrounds, sites for schools and school grounds,  
25 fire protection and other public facilities.<sup>77</sup> As conditioned, the proposed subdivision meets the general  
26 requirements of SCC 30.41A.100 (2006) with respect to health, safety and general welfare of the community.  
27 The proposed lots will not be subject to flood, inundation or swamp conditions. The proposed subdivision

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<sup>71</sup> SCC 30.61.300(4) (2010)

<sup>72</sup> SCC 30.72.020(2) (2015).

<sup>73</sup> SCC 30.72.020(5) (2015); SCC 30.72.025 (2012).

<sup>74</sup> SCC 30.72.020(6) (2015); SCC 30.72.025 (2012).

<sup>75</sup> SCC 30.23A.100(2)(a) (2017). Pacific Ridge requested consolidated permit review.

<sup>76</sup> SCC 30.25.040(2) (2009).

<sup>77</sup> SCC 30.41A.100 (2006).

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1      conforms to applicable zoning codes and the comprehensive plan. Provisions for adequate drainage have been  
2      made. Local utilities confirmed the availability of water, sewer, and electrical service to the project.

3      8. The Hearing Examiner concludes that adequate public services exist to serve the proposed project.

4      9. Any finding of fact in this decision which should be deemed a conclusion of law is hereby adopted as a  
5      conclusion of law.

6      10. Any conclusion of law in this decision which should be deemed a finding of fact is hereby adopted as a  
7      finding of fact.

## 8      **VIII. DECISION**

9      Based on the foregoing findings of fact and conclusions of law, the Hearing Examiner:

- 10     1. Denies the SEPA appeal.
- 11     2. Approves the requested rezone from R-9,600 to R-7,200;
- 12     3. Approves the preliminary plat and Planned Residential Development official and URDS administrative  
13     site plans subject to the conditions below; and
- 14     4. Approves the landscaping modification.

### 15      **CONDITIONS**

#### 16      **General**

- 17     1. The preliminary plat received by PDS on August 14, 2020 revised according to condition 11(c) shall be the  
18     approved preliminary plat map under chapter 30.41A SCC for the development. Any discrepancies between  
19     the approved preliminary plat map and title 30 SCC shall be resolved in the favor of Title 30 SCC.
- 20     2. The Planned Residential Development official site plan revised according to condition 11(c) shall be the  
21     approved official site plan under chapter 30.42B SCC for the development. Any discrepancies between the  
22     approved site plan and title 30 SCC shall be resolved in the favor of title 30 SCC. Further revisions to the  
23     revised plan shall be processed pursuant to SCC 30.23A.100(6) and SCC 30.42B.220.
- 24     3. The revised URDS administrative site plan revised according to condition 11(c) shall be the approved Urban  
25     Residential Design Standards administrative site plan pursuant to chapter 30.23A SCC. Any discrepancies  
26     between the approved administrative site plan and Title 30 SCC shall be resolved in the favor of title 30 SCC.  
27     Further revisions to the revised plan shall be processed pursuant to SCC 30.70.210 (2017) or SCC 30.70.220  
28     (2017).
- 29     4. The preliminary landscape plan received on July 29, 2020 (Ex. B.3) shall be the approved preliminary  
30     landscape plan.
- 31     5. Trees planted to meet requirements of SCC 30.25.016(3) may not be removed except when determined in  
32     writing by a certified arborist to constitute a hazard.

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- 1     6. All water, sewer, electrical and communication distribution and service lines shall be underground except as  
2     may be allowed per SCC 30.23A.110(1) or 30.23A.110(2).
- 3     7. Tree protective fencing will be installed around the drip line of retained trees during development activities  
4     as displayed on the approved landscape plan.
- 5     8. Nothing in this approval excuses Pacific Ridge, owner, lessee, agent, successor, or assignee from compliance  
6     with any other federal, state, or local statutes, ordinances, or regulations applicable to this project.

7     **Prior to Commencement of Site Work**

- 8     9. No on-site development or construction work except surveying and marking may occur until the required  
9     permits for site work are obtained.
- 10    10. Pacific Ridge shall obtain one or more of the following permits as needed:
- 11      a. Land disturbing activity permit as required by chaps. 30.63A and 30.63B SCC; and
- 12      b. Forest practices activity permit.
- 13    11. The application and plan set for the land disturbing activity permit shall include:
- 14      a. CAPA signage specifications;
- 15      b. Measures to protect the on-site trees to be retained and tree protection fencing as required by SCC  
16      30.25.016(7);
- 17      c. A revised preliminary plat and site plan that displays to the satisfaction of the county the new public  
18      right-of-way as dedicated along the panhandle between Lots 32 and 33 from North Road and extending  
19      east to the westerly north/south public road within this development;
- 20      d. A final landscape plan that must be approved by the county prior to issuance of the land disturbing  
21      activity permit. The final landscape plan shall comply with chap. 30.25 SCC, conform generally to the  
22      preliminary plan, and be revised as necessary to display compliance with the tree canopy requirements  
23      of SCC 30.25.016 and the PRD perimeter landscaping requirements of SCC 30.25.036. Any changes made  
24      to the preliminary plat map shall be included within the final landscape plan, and additional groundcover  
25      and shrubs shall be added, where possible, along the northern property boundary;
- 26      e. The final landscape plan shall include the proposed privacy fencing as mentioned on page 8 of the *Critical*  
27      *Area Study and Buffer Mitigation Plan for Ironwood* dated February 4, 2020, drafted by Wetland  
28      Resources, Inc;
- 29      f. A description of how the rock chambers will be maintained.
- 30      g. A corrected stormwater site plan which provides matching predeveloped and mitigated (post-developed)  
31      drainage sub-basin areas, as required under SCC 30.63A.520.
- 32      h. Construction plans shall display detail of each ADA ramp.
- 33      i. Revised civil drawings that include the buffer averaging and retaining wall revisions proposed in the  
34      *Addendum to the Critical Area Study and Buffer Mitigation Plan for Ironwood (20-102399 PSD)* dated  
35      October 22, 2020 drafted by Wetland Resources Inc.

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- 1      12. Before issuance of the land disturbing activity permit:
- 2        a. The final landscaping plan must be approved by PDS on or before issuance of a land disturbing activity  
3            permit.
- 4        b. Pacific Ridge shall have paid the county:
- 5            i. For installation of signs and striping (SCC 13.10.180); and
- 6            ii. Landscape review and inspection fees (Chap. 30.86 SCC).

7      13. Before any work on the site other than surveying and marking, Pacific Ridge must have temporarily marked  
8            the boundary of all Critical Area Protection Areas (CAPAs) required by chapter 30.62A SCC and the limits of  
9            the proposed site disturbance outside of CAPAs, using methods and materials acceptable to the county.

#### **Final Inspection of Land Disturbing Activity Permit**

11 Prior to final inspection of the land disturbing activity permit:

12     14. All CAPA boundaries shall have been permanently marked on the site prior to final inspection by the county,  
13            with both CAPA signs and adjacent markers which can be magnetically located (e.g., rebar, pipe, or 20 penny  
14            nails). Pacific Ridge may use other permanent methods and materials provided they are first approved by  
15            the county. Where a CAPA boundary crosses another boundary (e.g., lot, tract, plat, or road), a rebar  
16            marker with surveyors' cap and license number must be placed at the line crossing.

17     15. CAPA signs shall have been placed no greater than 100 feet apart around the perimeter of the CAPA.  
18            Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed  
19            in any lot that borders the CAPA, unless otherwise approved by the county biologist. The design and  
20            proposed locations for the CAPA signs shall be submitted to PDS Permitting for review and approval prior to  
21            installation.

22     16. The features of the mitigation plan and CAPA fencing shall have been installed or constructed and approved  
23            by PDS.

#### **Final Plat -- Text**

25 The following text shall be written on the face of the final plat.<sup>78</sup>

26     17. Chapter 30.66B SCC requires new lot mitigation payment for each single-family residence (twice the amount  
27            for each duplex) of: (1) \$2,165.31 to the county for mitigation of impacts on county roads for a total of  
28            \$190,547.22; (2) \$292.50 to the county for Transportation Demand Management for a total of \$25,740.00;  
29            and (3) \$29,343.60 to the city of Mill Creek for mitigation of impacts on city roads. Credit for certain  
30            expenditures may be allowed against said payments to the extent authorized by county code. Payment of  
31            these fees is due prior to or at the time of building permit issuance for each single-family residence unless  
32            deferment is allowed pursuant to chapter 30.66B SCC. Proof of payment to the city shall be provided to the

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<sup>78</sup> Numbering of paragraphs is for convenience and reference only.

1 county. Notice of these mitigation payments shall be contained in any deeds involving this subdivision or the  
2 lots therein.

3 18. The lots within this subdivision will be subject to school impact mitigation fees for Edmonds School District  
4 No. 15. No impact fee shall be assessed for building permits issued on or before February 18, 2025 because  
5 no amount is listed in the base fee schedule in effect on February 18, 2020. For building permits issued after  
6 February 18, 2025, the impact fee shall be determined by the fee schedule in effect at the time of building  
7 permit application. The impact fees must be paid prior to building permit issuance, except as allowed by SCC  
8 30.66C.200(2). Credit shall be given for 11 existing lots. Lots 1 through 11 shall receive credit.

9 19. The dwelling units within this development are subject to park impact fees per newly approved dwelling unit  
10 as mitigation for impacts to the Nakeeta Beach Park Service Area of the County parks system, in accordance  
11 with Chapter 30.66A SCC. For building permits issued on or before February 18, 2025, the impact fee shall be  
12 \$1,630.22 per dwelling unit. For building permits issued after February 18, 2025, the impact fee shall be  
13 determined by the fee schedule under SCC 30.66C.100 in effect at the time of building permit application.  
14 The impact fees must be paid prior to building permit issuance, except as allowed by SCC 30.66A.020(4).

15 20. A homeowners' association used for purposes of tract ownership and maintenance responsibility for tracts  
16 established pursuant to chapter 30.42B SCC shall remain in effect unless and until alternative ownership and  
17 maintenance responsibility is authorized by the department. The homeowners' association shall have by-  
18 laws and other documents, including covenants, approved by the county and recorded with the county  
19 auditor, guaranteeing maintenance of commonly owned tracts and restricting use of the tracts to that  
20 specified in the approved PRD official site plan. Membership in the homeowners' association and payment  
21 of dues or other assessments for maintenance purposes shall be a requirement of lot ownership and shall  
22 remain an appurtenance to and inseparable from each lot.

23 21. All open space shall be protected as open space in perpetuity. Use of the open space tracts within this  
24 subdivision is restricted to those uses approved for the planned residential development as shown on the  
25 approved site plan and the approved landscape plan. Covenants, conditions, and restrictions as recorded  
26 with the plat, and as may be amended in the future, shall include provisions for the continuing preservation  
27 and maintenance of the uses, facilities, and landscaping, within the open space as approved and  
28 constructed.

29 22. Trees to be planted to meet the tree canopy requirements of SCC 30.25.016(3) (locations indicated on the  
30 approved landscape plans for the project) may not be removed without prior approval from the Department  
31 of Planning and Development Services and submittal of documentation from a certified arborist stating that  
32 removal of any of the trees is necessary to prevent an imminent safety hazard. Any trees removed without  
33 authorization shall be subject to a fine as determined under Chapter 30.85 SCC.

34 23. Any dwelling in excess of 3,600 square feet shall meet the minimum required fire flow of Appendix B of the  
35 International Fire Code in effect at the time of building permit application. If the required fire flow cannot be  
36 met, installation of an NFPA 13D automatic fire sprinkler system will reduce the required fire flow by 50%.

37 24. Dwelling units on lots 1 and 2 shall be equipped with NFPA 13D automatic fire sprinkler systems.

38 25. All critical area protection areas shall be left permanently undisturbed in a substantially natural state. No  
39 clearing, grading, filling, building construction or placement, or road construction of any kind shall occur,  
40 except removal of hazardous trees.

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1    **Final Plat – Graphical Elements**

2    The final plat shall show the following:

3    26. PRD perimeter landscaping easements;

4    27. Easements for shared driveways, which shall have a minimum driving surface of 10 feet; and

5    28. CAPAs and buffers.

6    29. A 10-foot right-of-way dedication along the property frontage with Bellflower Road to total 30-feet from the  
7    right-of-way centerline, or as determined by the department of Public Works.

8    30. A 10-foot right-of-way dedication along the property frontage with Clover Road to total 30-feet from the  
9    right-of-way centerline, or as determined by the department of Public Works.

10   31. A minimum 25-foot width right-of way dedication along the East/West panhandle between Lots 32 and 33  
11   from North Road and extending east to the westerly north-south public road.

12   **Final Plat -- Approval**

13   Approval of the final plat shall not occur until the following conditions have been fulfilled:

14   32. Pacific Ridge shall have established a homeowners' association as a Washington corporation (profit or non-  
15   profit) for the purposes of tract ownership and maintenance and provide a copy of the filed articles of  
16   incorporation to PDS. The articles of incorporation must provide that if the homeowners' association is  
17   dissolved, each lot shall have an equal and undivided ownership interest in the tracts previously owned by  
18   the association and shall have responsibility for maintaining the tracts.

19   33. Pacific Ridge shall have submitted to PDS covenants, deeds, homeowners' association bylaws, and any other  
20   documents guaranteeing maintenance and common fee ownership of open space, any community facilities,  
21   any private roads and drives, and any other commonly owned, maintained, or operated property. The  
22   homeowners' association shall remain the owner of tracts unless tract ownership in common by all lots in  
23   the subdivision is authorized pursuant to a final plat alteration. The covenants, conditions, and restrictions  
24   must restrict use of the tracts to the uses specified in the approved preliminary plat and require compliance  
25   with county regulations and conditions of final subdivision approval. The covenants, conditions, and  
26   restrictions shall state that they are binding upon and inure to the benefit of the homeowners' association,  
27   the owners of all lots within the subdivision, and all others having any interest in the tracts or lots. The  
28   covenants, conditions, and restrictions shall state that the county is an intended beneficiary of the  
29   covenants, conditions, and restrictions with the right to enforce them. These documents shall be submitted  
30   in a form acceptable to the director of PDS and accompanied by a certificate from an attorney licensed to  
31   practice law in the State of Washington that they comply with the requirements of chapter 30.42B SCC.

32   34. Pacific Ridge shall have provided the Fire Marshal with a final certificate of water availability verifying all  
33   hydrants have been installed, are charged and operational, and that minimum required fire flow can be met.

34   35. The following improvements constructed by Pacific Ridge shall have been inspected and accepted or  
35   approved:

36      a. The features on the approved TDM plan.

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- b. Urban frontage improvements along the parcel's frontage on Bellflower and Clover Roads to the satisfaction of the county.
  - c. Public Road improvements between Lots 32 and 33 from their western property line and extending east to the north/south public road.
  - d. Pedestrian facilities from the development on Bellflower Road and extending west to the intersection of Bellflower Road and North Road or other location that has been accepted by the school district and county.
  - e. The pedestrian facilities and recreational amenities depicted on the approved official site and landscape plans unless deferral of the improvements is allowed by PDS and a bond or other performance security is submitted in an amount and form satisfactory to PDS.
  - f. Bollards or a vehicular barrier on the road network element between Lots 32 and 33 to restrict cut through vehicular traffic to North Road.

## Building Permits

40. Plans submitted for building permits shall:

  - a. Comply with urban residential design standards of SCC 30.23A.040;
  - b. Comply with applicable bulk regulations of chap. 30.23 SCC and chap. 30.42B SCC, including maximum heights, setbacks, and maximum lot coverage; and
  - c. Show at least two parking spaces per dwelling unit and that each has a minimum unobstructed area of 19 feet by 8.5 feet.
  - d. Show each driveway to be at least 19 feet by 17 feet to accommodate guest parking.

41. Adequate fire flow must be available from hydrants for dwelling units larger than 3,600 sq. ft. The amount of fire flow required for such dwellings is determined by Appendix B of the International Fire Code in effect at the time of building permit application. If the available fire flow is inadequate, the minimum required fire flow may be reduced by 50% by installation in the dwellings of NFPA 13D automatic fire sprinkler systems.

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1     42. Prior to building permit issuance:

- 2       a. Pacific Ridge shall have recorded the final plat with the Snohomish County Auditor except for model  
3           homes authorized by SCC 30.41A.500 *et seq.*
- 4       b. Pacific Ridge shall have paid the traffic, parks, and school mitigation fees described in conditions 17, 18,  
5           and 19.

6     **Prior to Occupancy**

7     43. Prior to occupancy of the first dwelling:

- 8       a. All fire hydrants shall have a four-inch Storz steamer port and the bonnets and caps of the hydrants  
9           painted green to reflect the level of fire flow service.
- 10      b. Pacific Ridge shall have installed blue street reflectors on the hydrant side of the center line of roads to  
11           allow approaching emergency vehicles to locate each hydrant.
- 12      c. All fire lane signage shall have been installed per the approved site plan.
- 13      d. All required common area landscaping shall have been installed, inspected, and approved per chapter  
14           30.25 SCC and in conformance with the approved final landscaping plan, unless deferral of improvements  
15           is allowed by PDS and a bond or other guarantee of performance is submitted to PDS. A qualified  
16           landscape designer shall certify that all landscaping is installed per the approved plan.
- 17      e. The fence along the northern property line approved by the landscape modification shall be installed as  
18           shown in the final landscape plan.

19     44. Prior to occupancy of each dwelling, all required landscaping for the lot of the dwelling shall have been  
20           installed, inspected, and approved per chapter 30.25 SCC and in conformance with the approved final  
21           landscaping plan, unless deferral of improvements is allowed by PDS and a bond or other guarantee of  
22           performance is submitted to PDS. A qualified landscape designer shall certify that all landscaping is installed  
23           per the approved plan.

24     **Expirations**

25     45. Approved preliminary plats are valid for the period provided in SCC 30.70.140(1), which is currently five (5)  
26           years and must be recorded within that time period unless an extension has been properly requested and  
27           granted pursuant to SCC 30.41A.300.

28     46. Approved site plans expire five years from the date of approval becomes final unless: (a) actual construction  
29           has begun on some permanent structure, utility, or facility or (b) an extension is approved pursuant to SCC  
30           30.70.140.

31     47. Decision issued this 19<sup>th</sup> day of January, 2021.

Peter B. Camp

Peter B. Camp  
Hearing Examiner

**Ironwood**

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## **IX. EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES**

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Hearing Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see chapter 30.72 SCC and the respective Hearing Examiner and Council Rules of Procedure.

### **RECONSIDERATION**

Any party of record may request reconsideration by the Hearing Examiner by filing a petition for reconsideration **no later than January 29, 2021**. A petition for reconsideration must be filed in writing with the Office of Hearings Administration, 2<sup>nd</sup> Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington. The petition can be delivered by mail to Office of Hearings Administration, M/S 405, 3000 Rockefeller Avenue, Everett WA 98201 or by email to Hearing.Examiner@snoco.org. Irrespective of method of delivery, a petition for reconsideration is deemed filed when it is delivered by the close of business on the deadline or if the email is timestamped on or before the deadline. There is no fee for filing a petition for reconsideration. The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing. SCC 30.72.065.

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

The grounds for seeking reconsideration are limited to the following:

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

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

***Ironwood***

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1      **APPEALS**

2      The decisions regarding the rezone, preliminary subdivision, or landscaping modification may be appealed to the  
3      County Council. Such an appeal must be filed by an aggrieved party of record **on or before February 2, 2021.**  
4      Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the  
5      reconsideration petition has been decided by the Hearing Examiner. An aggrieved party need not file a petition  
6      for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is  
7      filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues  
8      raised in the petition for reconsideration.

9      Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of  
10     Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue,  
11     Everett, Washington (Mailing address: M/S 604, 3000 Rockefeller Avenue, Everett, WA 98201), and shall be  
12     accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each appeal filed; PROVIDED,  
13     that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case  
14     where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

15     Appeals may be accepted electronically by the Planning and Development Services Department and paid for by  
16     credit card over the phone as follows:

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

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

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

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

***Ironwood***

20-102399 PSD/SPA/WMD/REZO

*Decision Denying SEPA Appeal and Approving Rezone and Preliminary Plat, PRD Official Site Plan, URDS Administrative Site Plan, and Landscaping Modification Subject to Conditions.*

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

3 The decision on the appeal of the SEPA threshold determination is a final decision of the Hearing Examiner but  
4 may be appealed by filing a land use petition in the Snohomish County Superior Court. If no party to the appeal  
5 requests reconsideration, the petition to the Superior Court **must** be filed with the Superior Court Clerk **no later**  
6 **than 21 days after a final decision is issued by Snohomish County.** The date of issuance is calculated by RCW  
7 36.70C.040(4). If a request for reconsideration is filed by any party to the appeal, the Superior Court action **must**  
8 be filed no later than twenty-one days after the reconsideration decision is issued. The date of issuance of any  
9 reconsideration decision is calculated by RCW 36.70C.040(4). For more information about appeals to Superior  
10 Court, including, but not limited to, required steps that must be taken to appeal this decision, please see the  
11 Revised Code of Washington, Snohomish County Code, and applicable court rules.

12 The cost of transcribing the record of proceedings, of copying photographs, video tapes, and oversized  
13 documents, and of staff time spent in copying and assembling the record and preparing the return for filing with  
14 the court shall be borne by the petitioner. SCC 2.02.195(1) (b) (2013). Please include PDS file number in any  
15 correspondence regarding this case.

16 Staff Distribution:

17 Department of Planning and Development Services: Sarah Titcomb

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

***Ironwood***

20-102399 PSD/SPA/WMD/REZO

*Decision Denying SEPA Appeal and Approving Rezone and Preliminary Plat, PRD Official Site Plan, URDS Administrative Site Plan, and Landscaping Modification Subject to Conditions.*

## **ATTACHMENT B**

SNOHOMISH COUNTY COUNCIL  
SNOHOMISH COUNTY, WASHINGTON

**OFFICIAL NOTICE OF COUNCIL DECISION**

In re the Appeal of the January 19, 2021, Decision of the Hearing Examiner, approving the project of Ironwood; a rezone of three of 11 parcels from R-9,600 to R-7,200; preliminary plat of 88 lots on 15.99 acres; Planned Residential Development (PRD) official site plan; Urban Residential Design Standards (URDS) administrative site plan; and landscaping modification; File No. 20-102399 PSD/SPA/REZO/WMD for property located at 17710, 17622 Clover Road; 17721 North Road; 109, 113, 117, 129, and 131 Bellflower Road, Bothell, Washington 98021.

NOTICE IS HEREBY GIVEN, that on March 17, 2021, a closed record appeal hearing, in this matter, was held and the County Council directed staff to draft a written motion upholding the Hearing Examiner's decision.

FURTHER NOTICE IS GIVEN, that on March 22, 2021, the Snohomish County Council approved a written motion consistent with the oral direction provided at the March 17, 2021, closed record appeal hearing, attached hereto as Council Motion No. 21-112.

FURTHER NOTICE IS GIVEN, that unless otherwise provided by law any person having standing who wishes to appeal this decision must do so by filing a land use petition in Superior Court in accordance with the provisions of Chapter 36.70C RCW and SCC 30.72.130.

FURTHER NOTICE IS GIVEN, that affected property owners may request the Snohomish County Assessor to make a change in valuation for property tax purposes notwithstanding any program of revaluation.

DATED this 22<sup>nd</sup> day of March, 2021.

  
\_\_\_\_\_  
Debbie Eco, CMC  
Clerk of the Council

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

MOTION NO. 21-112

AFFIRMING THE HEARING EXAMINER'S DECISION IN THE CLOSED RECORD  
APPEAL OF IRONWOOD, FILE NO. 20-102399 PSD/SPA/WMD/REZO

WHEREAS, Pacific Ridge – DRH, LLC applied to Snohomish County for approval of a rezone of three of eleven parcels from R-9,600 to R-7,200, a preliminary plat of 88 lots, a planned residential development official site plan, an urban residential design standards administrative site plan, and a landscaping modification on property located in unincorporated Snohomish County near 17721 North Road; and

WHEREAS, the Snohomish County Hearing Examiner held an open record hearing on December 22, 2020; and

WHEREAS, the Snohomish County Hearing Examiner issued a decision on January 19, 2021, denying the SEPA appeal, approving the requested rezone, approving the preliminary plat and planned residential development official and urban residential design standards administrative site plans subject to specific conditions, and approving the landscaping modification; and

WHEREAS, Sno-King Watershed Council appealed the decision of the Hearing Examiner to the County Council under SCC 30.72.070 on February 2, 2021; and

WHEREAS, through written argument dated February 23, 2021, Pacific Ridge – DRH, LLC requested summary dismissal of the appeal in its entirety based on the County Council's lack of jurisdiction over threshold determinations issued under the State Environmental Policy Act (SEPA); and

WHEREAS, the County Council granted the request to summarily dismiss the issue or issues raised by the Sno-King Watershed Council alleging error with the Hearing Examiner's Decision to affirm the Determination of Non-Significance issued under SEPA and denied the request to summarily dismiss the remaining appeal issues through oral motion on March 8, 2021; and

WHEREAS, through the County Council's oral motion on March 8, 2021, the summary dismissal request by Pacific Ridge – DRH, LLC was granted in part, and denied in part; and

WHEREAS, the County Council held a closed record appeal hearing on March 17, 2021, to consider the appeal on the remaining non-SEPA issues; and

WHEREAS, after considering the appeal based upon the record and the argument of the appellant, the applicant, and parties of record, the County Council directed council staff to prepare a written motion to affirm the Hearing Examiner's January 19, 2021, decision and adopt the findings and conclusions therein;

NOW, THEREFORE, ON MOTION:

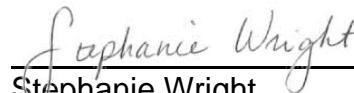
Section 1. The Snohomish County Council makes the following findings of fact and conclusions:

1. The County Council adopts the findings and conclusions of the Hearing Examiner in the January 19, 2021, decision regarding Ironwood, File No. 20-102399 PSD/SPA/WMD/REZO.

Section 2. The County Council affirms the decision of the Hearing Examiner dated January 19, 2021, regarding Ironwood, File No. 20-102399 PSD/SPA/WMD/REZO.

DATED this 22<sup>nd</sup> day of March, 2021.

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

  
\_\_\_\_\_  
Stephanie Wright  
Council Chair

ATTEST:

  
\_\_\_\_\_  
Debbie Eco, CMC  
Clerk of the Council

D-1