Rafe Wysham
Director

KITSAP COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

To enable the development of quality, affordable, structurally safe and environmentally sound communities.

Notice of Hearing Examiner Decision

2/26/2025

To: Interested Parties and Parties of Record

RE:

Project Name:	Meadowview Friends of Island Lake Administrative Appeal *(of Meadowview Preliminary Plat (PPLAT) #23-03239 and Meadowview Shoreline Conditional Use Permit (CUP-SHORELINE) SEPA Decision)*
Applicant:	Sequoia Spring III LLC 18300 Redmond Way Ste 120 Redmond, WA 98052
Application:	Administrative Appeal
Appellants:	David Shorett 1049 Hawley Way Bainbridge Island, WA 98110 & Donald Fenton 13103 Lake Shore Dr NW Poulsbo, WA 98370 & Friends of Island Lake *NO CONTACT INFORMATION PROVIDED*
Permit Number:	24-04549

The Kitsap County Hearing Examiner has **GRANTED** *in part* **and DENIED** *in part* SEPA Appeal **#24-04549 Meadowview Friends of Island Lake Administrative Appeal** *(of Meadowview Preliminary Plat (PPLAT) #23-03239 and Meadowview Shoreline Conditional Use Permit (CUP-SHORELINE) SEPA Decision)*

THE DECISION OF THE HEARING EXAMINER IS FINAL, UNLESS TIMELY APPEALED, AS PROVIDED UNDER WASHINGTON LAW.

The applicant is encouraged to review the Kitsap County Office of Hearing Examiner Rules of Procedure found at: https://www.kitsap.gov/dcd/HEDocs/HE-Rules-for-Kitsap-County.pdf.

Please note affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation. Please contact the Assessor's Office at 360-337-5777 to determine if a change in valuation is applicable due to the issued Decision.

The complete case file is available for review by contacting the Department of Community Development; if you wish to view the case file or have other questions, please contact help@kitsap1.com or (360) 337-5777.

CC:

Appellants: Bryan Telegin (Attorney, Telegin Law), bryan@teleginlaw.com; David Shorett, dshorett@comcast.net; Donald Fenton, dlfent@yahoo.com; Friends of Island Lake, *NO CONTACT INFORMATION PROVIDED*
Applicant: SEQUOIA SPRING III LLC, max@bluefern.com
Subject Property Owner: SEQUOIA SPRING III LLC, max@bluefern.com; Ben Paulus - Blue Fern, ben@bluefern.com
Applicant Authorized Representative: Duana Kolouškovᡠ(Attorney, Johns Monroe Mitsunaga Kolouškovᡠ, PLLC), kolouskova@jmmklaw.com; Peter Durland (Attorney, Johns Monroe Mitsunaga Kolouškovᡠ, PLLC), durland@jmmklaw.com; Anna Drumheller - Blue Fern, anna@bluefern.com
County Representative: Lisa Nickel, Kitsap County Prosecutor, lnickel@kitsap.gov
County Departments: DSE, PEP, DCD
Interested Parties:
Leslie Williams, law9111@comcast.net; Coleen Shoudy, ceshoudy@gmail.com; David McReynolds, 15885 Vincent Rd NW Poulsbo, WA 98370, Diane McReynolds, dianenorris@yahoo.com; John J & Toni T Center, jjccenter59@gmail.com; Joe Crawford, flyjdc@aol.com; Ronald Selvidge, selvidge22@gmail.com; Jasmine Bay, jazzbay@gmail.com; Garret Adkins, garret.s.adkins@gmail.com
Other: Michelle Branley, michelle@bluefern.com; Core Design, Inc, permits@coredesigninc.com

THE HEARING EXAMINER OF KITSAP COUNTY

IN RE: Meadowview Preliminary Plat (PPLAT) File no. 23-03239 Shoreline Conditional Use Permit (SCUP) File no. 23-03929 Consolidated Administrative Appeals 24-04549 and 24-04555	FINDINGS OF FACT, CONCLUSIONS O LAW AND FINAL DECISION

Summary

Sequoia Springs III, LLC has applied for approval of a preliminary plat and shoreline conditional use permit (SCUP) for a 329 single-family residential subdivision on 55.29 acres to be located at the southwest edge of Island Lake off of Camp Court NW, near its intersection with NW Island Lake Road.

The applications are approved subject to conditions. Mitigation measures have been added from an associated SEPA[1] appeal. One such measure requires walking paths along Island Lake Road. Another authorizes Kitsap County to remove the project site dock and revegetate its beach if the homeowners association of the project fails to keep people from

[1] SEPA is the Washington State Environmental Policy Act. SEPA is a review process used to determine if an environmental impact statement is necessary. It's objective is to provide for informed environmental decision making and to provide supplemental permitting authority to mitigate against environmental impacts.

using those facilities. A plat condition has been added to those recommended by staff requiring a code compliant infiltration feasibility analysis.

The proposal has generated intense opposition resulting in a consolidated multi-day SEPA appeal. As identified in the SEPA Appellants' closing brief, a primary concern of affected property owners was impacts to the water levels of Island Lake. Island Lake adjoins the project site. In the early 1990s the lake went through dramatic changes in water levels, resulting in dry beds extending beyond at least one dock and summer water levels below that of the previous 30 years. Ex. A4, p. 4, Ex. A11. The Appellants attribute the water level problems to adjacent development similar to that proposed for this review.

As a result of the water problems the Silverdale Water District entered into an agreement with Kitsap County to pump water into the lake from an underlying aquifer to maintain lake levels. The Water District pumps water out of the aquifer to serve customers throughout the area. Between 2021 and 2024 the Water District had to pump a yearly average of approximately 30 million gallons into the lake to maintain lake levels between May and September. Ex. A18. The proposed development will reduce recharge of an aquifer underlying the lake by 11-13 million gallons a year, more than a third of the water that the Water District has to pump back into the lake each year.

The Applicant's hydrogeologist, Mr. Kindred disagreed with the sentiment raised in Appellants' closing brief, stating that the water level problem was not caused by adjoining development. Mr. Kindred pointed out that development would increase flows into the lake. He identified that removal of forest for residential development results in decreased evapotranspiration and increases the total volume of runoff available for either groundwater recharge or discharge into surface water. Ex. F99, p. 1. Mr. Kindred also found that reduced aquifer levels didn't affect the lake level because the lake bed is located 12-30 feet above the top of the aquifer.

If not caused by new development, Mr. Kindred doesn't identify the cause of the reduced lake levels. A 1991 hydrological study commissioned by Kitsap County, the "Robinson and Noble" study, assessed the Island Lake water levels and noted in its introduction that "*[p]roposed causes for the decline include deficits in precipitation and increased withdrawals from the Island Lake Aquifer*." Ex. A4, p. 4. Beyond suggesting reduced precipitation or increased withdrawals, the record doesn't provide an explanation for the reduced water levels other than the Appellants' allegation that it's caused by adjoining development.

Although the Applicant has done little to identify the case of Island Lake water problems, that is not its responsibility. To prevail in the SEPA appeal on this issue the Applicant had to establish that its proposed development would not add to those problems. As detailed in the Findings of Fact (FOF) below, the Applicant established by substantial

evidence that the proposed development would not significantly affect lake levels. Appellants raised concerns about both lake flooding and lake depletion. As to the flooding, the Applicant established that surface flows would only add a nominal amount to lake levels. As to reducing water levels, the Applicant established that the depletion in aquifer levels caused by the development will have no impact on lake levels because the aquifer doesn't recharge the lake. As previously noted, the top of the aquifer is several feet below the bottom of the lake. The Applicant established that the aquifer flows to the west away from the lake.

The most vulnerable point in the Applicant's water level analysis is whether a decrease in the aquifer level would increase the Island Lake's leakage rate into the aquifer. Mr. Lubischer, a water resources engineer, testified that leakage rates of surface waters can increase when underlying aquifer levels decrease. Mr. Kindred doesn't dispute that this can happen in general. Instead, he concluded that this impact doesn't occur for Island Lake. His conclusion is at least partially based upon data in the Robinson and Noble study showing that between 1989 and 1990 lake levels were unaffected by aquifer levels. The Appellants presented no evidence to the contrary specific to Island Lake. Mr. Kindred's opinion on this issue is found to be the more compelling given it was substantiated by project specific evidence.

One major issue upon which the Appellants may prevail is requiring more infiltration best management practices (BMPs). More infiltration will serve the Appellants' objectives of better water quality treatment and less reduction in aquifer recharge. The Appellants have successfully established that the Applicant has failed to conform to the standards for assessing infiltration feasibility set by the County's stormwater manual. A condition of approval requires a code compliant feasibility analysis. Should any additional infiltration be required for the proposal that necessitates a significant project redesign, the Applicant will have to apply for a plat amendment.

The Applicant doesn't dispute that they have not used several procedures dictated by the County's stormwater manual to assess infiltration feasibility. Rather, the Applicant's geotechnical engineer, Ms. Decker, has taken the position that her professional judgment supersedes the requirements of the manual. Ms. Decker may well have very good reasons for her position. However, those reasons are not found sufficient to override the significant expertise that went into adopting the manual. In the absence of any evidence that waiving manual standards is necessary to address unique circumstances that the manual doesn't address, the professional judgment and policy priorities exercised in adopting the manual is found more compelling than Ms. Decker's opinion of how the manual should have been written.

The Appellants have also presented substantial evidence that the proposed development could result in significant adverse impacts to lake ecology by overuse of a dock and beach

located on the project site. To address this potential problem, the Applicant proposes to fence of this portion of the project site and post it with no trespass signs. There is good reason to be skeptical that such actions will be sufficient to keep the 800 residents of the new development out of the lake. To ensure that these actions are effective, a condition of approval requires that the CC&R's of the project include a covenant that authorizes Kitsap County to remove the dock and revegetate the beach if those amenities are used more than four times per month for three or more months in a row. If the homeowner's association at any point in the future wishes to have the covenant removed, it can apply for an amended shoreline conditional use permit that assesses open beach use and includes appropriate mitigation.

A final significant added condition of approval requires some modest pedestrian improvements to Island Lake Road. Its purpose is to mitigate against pedestrian safety impacts caused by a ten-fold increase in trips, from the current 300 vehicles per day to 3,000 trips per day. Concerned residents and the Appellants have established that Island Lake Road currently has no sidewalks and few shoulders and that the increase in traffic will create significant adverse pedestrian safety impacts. Requiring installation of sidewalks would be disproportionate to project impacts. However, installation of pedestrian pathways in reasonably available shoulder areas is a proportionate and necessary mitigation to off-set the safety hazards caused by the substantial increase in traffic generated by the proposal.

Exhibits

The following exhibits from the exhibit lists prepared by the hearing examiner clerk were admitted during the appeal hearing:

Exhibits F1-F102 of the Foundational Exhibits.
Exhibit B1-B11 of the Applicant Exhibits.
Exhibit A1-A92 of the Appellant Exhibits
Exhibit 1-83 of Plat Hearing Exhibits

Appendix A, the informal hearing transcript referenced below, is marked as Exhibit F103. The transcripts are not entered as evidence. They are marked as Ex. F103 to accommodate the County's record retention system.

Testimony

Computer generated informal transcripts of hearing testimony have been generated by Rev.com. The transcript is included in the record as Ex. F103 solely to facilitate County record keeping and shouldn't be construed as evidence admitted into the record. The transcript provides a roughly approximate transcription of hearing testimony provided. It

is not 100% accurate and is not intended to replace formal transcripts required for judicial review.

Findings of Fact

1. Applicant, Appellant, Decision Under Appeal. The Applicant is Sequoia Spring III LLC, 8300 Redmond Way, Ste 120, Redmond, WA 98052. The Appellants are Friends of Island Lake, Donald Fenton, Coleen Shoudy, and David Shorett. Appellants are represented by Brian Telegin, Telegin Law, 175 Parfitt Way SW, Suite N270, Bainbridge Island WA 98110. Appellants appeal a mitigated determination of nonsignificance (MDNS) issued for the preliminary plat under review, Meadowview Preliminary Plat No. 23-03239.

2. Hearing. A consolidated hearing was held on the subject preliminary plat, SCUP and MDNS appeal. The hearing dates were December 20, 2024, January 8, 2025, January 9, 2025, January 10, 2025, January 13, 2025 and January 17, 2025 and February 10, 2025.

3. Project/Site Description. Sequoia Springs III, LLC has applied for approval of a preliminary plat and SCUP for a 329 single-family residential subdivision on 55.29 acres to be located at the southwest edge of Island Lake off of Camp Court NW, near its intersection with NW Island Lake Road.

The site generally slopes west down to Island Lake located in the Northeast corner and Barker Creek to the east. Development proximate to steep slopes will be mitigated with rockery and retaining structures. The project proposes stormwater facilities located in the southeast boundary of the project with two detention ponds west of Barker Creek and associated wetlands. The project will extend domestic water utilities from Camp Court NW.

This proposal consists of three undeveloped parcels (total gross area of approximately 55.29 acres). An easement on a portion of an adjoining parcel, Parcel 102501-1-016-2004 will be used for stormwater management and is located just outside the UGA. Facilities located within this parcel will be conditioned for appropriate easements for use, rights, and access. Several structures are pre- existing onsite and are related to the property's prior use as a commercial/recreation resort facility. While camping and outdoor recreation were the primary uses within the facility's location, one mobile home, transient cabins, a clubhouse, livestock stables and other accessory structures exist on the project site. All existing structures in the project site will be demolished as a result of this proposal.

Surrounding uses are single-family homes zoned either urban low residential or rural residential.

An SCUP is required for the proposal because the proposal comprises a residential subdivision that is within the shoreline jurisdiction of Island Lake.

4. Expert Witnesses. The hearing included the testimony of numerous expert witnesses. Their testimony and opinions played a central role in evaluating the impacts of the proposal. Their credentials are listed below:

Holli Heavrin is Engineering Technical Manager, Senior Project Engineer, Project Manager and Partner at Core Design, Inc. Ms. Heavrin holds degrees in Construction Management and Mathematics from Central Washington University and Civil Engineering Technology from Yakima Valley College. Ms. Heavrin is a registered Professional Engineer with more than 18 years of experience in land development.

Carolyn Decker is the President and Senior Geotechnical Engineer at Terra Associates. Ms. Decker holds a bachelor's degree in Civil Engineering from Gonzaga University and has been a registered Professional Engineer in Washington for 14 years. Ms. Decker has testified as an expert witness in geotechnical engineering, geology and hydrogeology on multiple occasions. Ms. Decker visited the site multiple times in March 2021 and summer 2022.

Joanne Bartlett is the Senior Wetland Biologist with Ecological Land Services and Branch Manager of the Ecological Land Services Bremerton Branch. Ms. Bartlett holds a bachelor's degree in Biology from Central Washington University and is a Senior Professional Wetland Scientist (PWS) with the Society of Wetland Scientists. Ms. Bartlett has worked as a wetland biologist for more than 30 years, previously working for more than 20 years as a wetland biologist at Wiltermood Associates. Ms. Bartlett visited the site multiple times beginning in 2021 when she conducted the preliminary wetland delineation.

Kolten Kosters is a wetland scientist with Raedeke Associates, Inc. Mr. Kosters has a bachelor's degree in Geography and Land Studies and a master's degree in Resource Management from Central Washington University. Mr. Kosters has over 15 years of experience with wetland and stream studies and is a Senior Professional Wetland Scientist with the Society of Wetland Scientists.

Scott Kindred is the Principal Water Resources Engineer with Kindred Hydro, Inc. Mr. Kindred holds a bachelor's degree in Geology from Brown University and a master's degree in Civil Engineering from Massachusetts Institute of Technology. Mr. Kindred is a registered Professional Engineer with over 30 years of experience in hydrogeologic

characterization, surface water-groundwater interactions, floodplain restoration, and stormwater infiltration.

Jeff Schramm is a Principal and Transportation Engineer with TENW. Mr. Schramm holds a bachelor's degree in Civil Engineering from the University of Washington. Mr. Schramm has over 30 years of experience conducting traffic analysis and transportation studies for projects including residential development and schools. Mr. Schramm and TENW began working on the Meadowview Project in 2022 when they provided the initial traffic analysis and completed a more comprehensive TIA in March 2024.

Spenser Haynie is a Senior Project Manager with TENW. Mr. Haynie holds a bachelor's degree in Applied Mathematics from the University of Washington. Mr. Haynie has over 11 years of experience in traffic engineering analysis and transportation studies for projects including residential development and school projects.

Darren Gurnee is a Planning Supervisor with Kitsap County Department of Community Development and the Project Lead for the Meadowview project.

Steve Heacock is a Senior Environmental Planner with Kitsap County Department of Community Development. Mr. Heacock holds a bachelor's degree in Geology from Central Washington University, where he also studied biology and environmental studies. Mr. Heacock began working with conservation districts in 1991, and has worked for Kitsap County since 2007. His professional experience includes working with natural resources, protection enhancements, farm management plans, wetland and stream restoration projects

Dr. Sarah Cooke holds a master's degree in Botanical Taxonomy and a Ph.D. in Forestry Soils and Botany from the University of Washington, as well as bachelor's degrees in Geology and Biology and a master's degree in geobotany from McGill University. Dr. Cooke has been working as a wetlands consultant in the Pacific Northwest for more than 40 years, and specializes in habitat creation, restoration, and enhancement projects. Dr. Cooke is a fellow of the International Society of Wetland Scientists, and was on the development board for the Society of Wetland Scientists' wetland certification program. Dr. Cooke has also taught wetland delineation and wetland mitigation for the U.S. Army Corps of Engineers, the Washington State Department of Natural Resources, Portland State University, the Evergreen State College, and the University of Washington, and currently teaches wetland mitigation and design under the Washington State Department of Ecology's Coastal Training Program.

Dr. Robert Roseen is the Owner of Waterstone Engineering. Dr. Roseen holds a Ph.D. in Water Resource Engineering from the University of New Hampshire and a master's degree in Environmental Science and Engineering from Colorado School of the Mines.

Dr. Roseen is a registered Professional Engineer and was named a Diplomate of Water Resources Engineering by the American Academy of Water Resources Engineering. Dr. Roseen directed the Stormwater Center at the University of New Hampshire for 8 years and served as an expert reviewer on the Washington State Department of Ecology's stormwater work.

Joseph Lubischer is a retired water resources engineer. Mr. Lubischer holds a bachelor's degree and master's degree in Mechanical Engineering from Massachusetts Institute of Technology, and was a registered Professional Engineer in Washington and Oregon during his career. His professional experience includes working with hydrogeologic studies, geologic interpretations, rotations, perched groundwater systems, and soil permeability.

Rod Malcolm is a Biologist with the Suquamish Tribe of Indians where he conducts SEPA and NEPA permit review. Mr. Malcolm holds a bachelor's degree in Biology and has over 20 years of experience in restoration, habitat monitoring and salmon ecology. Mr. Malcolm visited Barker Creek twice, first in May 2023 when he walked the stream channel and then in October 2023 when he spoke to the Applicant and reviewed the habitat management plan.

5. **Adverse Impacts.** As conditioned, the proposal will not create any probable significant adverse environmental impacts. All project impacts have been thoroughly documented and assessed in dozens of public comment letters: dozens of hearing testimony and thousands of pages of exhibits from the SEPA appeal and thorough review by County permitting staff. Pertinent impacts are addressed in detail as follows:

5A **Lake Levels.** Substantial evidence establishes that the proposal will not have any material adverse impacts to the water levels of Island Lake.

Appellants raised concerns over both[2] flooding by the lake in winter months and loss of water in summer months. Concerns were specifically raised about loss of recharge to an underlying aquifer. The Applicant prepared a hydrology study prepared by Scott Kindred, Ex. B10. That study establishes that Island Lake water levels will not be materially impacted by the proposal. The study shows that the underlying aquifer is hydrologically separate from the lake and doesn't affect lake levels. The study further shows that surface flows to the lake are nominal and would not materially contribute to any flooding.

[2] The SEPA appeal itself did not raise flooding as an issue, but it was raised during the SEPA hearing as a concern.

As background, the northeast end of the project site abuts Island Lake and Barker Creek drains south from Island Lake parallel to the east boundary of the subdivision. The Island Lake basin is approximately 436 acres and the Barker Creek basin is 2,030 acres in size. The lake has a surface area of 46 acres. The project site takes up 55 acres with the majority of that acreage in the Island Lake drainage basin.

Based on the lack of erosion in the bottom of the swale and the absence of flowing water south of the lake during a wet season site visit by Mr. Kindred, it does not appear that Island Lake has a continuous surface water connection with Barker Creek.

Underlying the project site, Island Lake and Barker Creek is the Island Lake aquifer. The aquifer is designated as a Critical Aquifer Recharge Area I under the County's Critical Areas Ordinance. A water reclamation feasibility study conducted by the Silverdale Water District concludes that Island Lake leaks into the underlying aquifer at a rate of approximately 0.3 cubic feet per second (cfs).

Based on site plans dated June 20, 2023 and the Preliminary Storm Drainage Report dated February 23, 2024, stormwater runoff from the site will be captured and conveyed to detention ponds located on an adjoining parcel east of the subdivision, as shown on Figure 3. Flow from the detention ponds will be restricted to less than forested conditions and discharged at two locations near Barker Creek.

Hydrological impacts to Island Lake have been of considerable concern to surrounding residents because of a severe history of development impacts. In the 1980s and 90s after build-out of development north of the lake, water levels would go down so much that docks could be seen extending out to dry land. See Ex. 13. As outlined in the Applicant's hydrological study, Ex. B10, p. 4, as a result a multiagency agreement developed in the early 1990's resulted in the Silverdale Water District pumping groundwater from a well tapping the perched aquifer when the lake levels dropped below approximately 215.5. The Water District prepared a feasibility study in 2009 that indicates that the lake is augmented by an average flow of 180 gpm (0.40 cfs) in July and August and the lake level fluctuates approximately 3 ft from summer to winter. The Silverdale Water District feasibility study references anecdotal reports that the lake overflows to Barker Creek are infrequent and occur only in winter. The overflow elevation is 216.5 ft. The Silverdale Water District agreed to provide flow augmentation based on the observation that groundwater pumping by the water district was lowering the lake level.

According to the 2009 feasibility study, lake levels have been maintained at a relatively constant level since implementation of the agreement. Dr. Roseen disagrees, noting that water level monitoring by the Silverdale Water District from 2021 to 2024 indicates a trend in declining water levels. Dr. Roseen presented data illustrating the continued

downward trend in the most recent 4 years of monitoring showing a maximum reduction in elevation of approximately 1.5 feet between February of 2021 and 2024. Ex. 83, pdf. P. 78.

Mr. Kindred's Ex. B10 hydrogeological study establishes that the lake and affected areas of the stream are not fed by the underlying aquifer. An on-site well identified that the top of the aquifer was located at 186 amsl (average mean sea level). The lake's bottom elevation and the deepest proposed grading are both at least 30 feet above the top of the aquifer. Further, 52 test pits distributed throughout every portion of the project side did not encounter the aquifer. The test pits were dug to depths of 10-52 feet with some below the water level of Island Lake, did not encounter the aquifer. The 1991 Robinson and Noble report concluded that Island Lake leaks into the underlying aquifer at a rate of approximately 0.3 cubic feet per second (cfs). Ex. A4. From this data Mr. Kindred concluded that the lake and project site drains into the aquifer and not vice-versa.

Mr. Kindred also established that the Island Lake aquifer is found to drain into Cleark Creek, located to the east. This findings was based upon a 1998 USGS contour map, which shows subsurface impervious layers sloping to the east, away from Island Lake and Barclay Creek. Mr. Kindred notes that his findings are corroborated by base flow measurements of Barklay Creek. According to his Ex. B4 report, Barker Creek is perched upon an impermeable glacial till until it nears the mouth of Dyes Inlet. As noted in the report, the location of the till is consistent with the fact that baseflows are nonexistent near the project site and only start exceeding 0.1 cfs more than 12,000 feet from the project site. See Ex. B, Figure 6. The baseflow data was collected by the Silverdale Water District in 2003. Id. Mr. Kindred also identified eight well readings that are all consistent with his interpretation of the contour lines with the data points west of the lake showing groundwater levels less than the bottom of the lake. See Table 1, Ex. F99.

In critique of Mr. Kindred's assessment, Joseph Lubischer, a water resources engineer, opined that Mr. Kindred doesn't have sufficient data to conclude that the Island Creek aquifer waters flow to the west. According to Mr. Lubischer, the 100-foot contour lines of the 1998 USGS map used by Mr. Kindred are too broad to identify the flow patterns of the immediate area. Dr. Roseen agrees with this position. Ex. 83 pdf. P. 82. Mr. Lubischer identified that data from nearby wells and other geologic information should have been used for a more precise determination. Ex. 83. Mr. Kindred rebutted that he also found well readings from eight separate wells that are all consistent with his interpretation of the contour lines with the data points west of the lake showing groundwater levels less than the bottom of the lake. See Table 1, Ex. F99.

The Appellants' critique of Mr. Kindred's analysis is unavailing. The USGS report relied upon by Mr. Kindred essentially does only provide three topographical lines

spaced in 100-foot increments to establish flow direction. That may not be a significant amount of data, but in Mr. Kindred's professional opinion it is sufficient and he was able to corroborate those findings with the readings from eight other wells. Significantly, the Appellants provide no evidence to support a different flow path except in the limited fashion discussed below[3] by Dr. Roseen. Despite the plethora of data sources identified by Mr. Lubischer, the Appellants can cite to not evidence to support a contrary flow direction.

Dr. Roseen does identify a contrary interpretation of the 1998 USGS map, showing flows south of the project site recharging Barker Creek close to the project site. This interpretation is questionable given that groundwater doesn't start making a significant contribution to stream flows until several thousand feet south of the project site. The Island Lake aquifer would have to extend all the way down to this two mile area to serve as a direct source of the increased base flows. According to Figure 1 of the Robinson and Noble report, Ex. A4, the Lake Island aquifer is located north of Walker Street, which is more than a mile from the point where groundwater recharge becomes significant for Barker Creek. Absent a subsurface connection between the aquifer and the stream, it doesn't appear that the aquifer provides any water to Barker Creek.

Dr. Roseen's testimony on this issue is also telling because he limited his comments about the likely flow path to those that recharge Barkley Creek. As testified by Dr. Roseen:

> *I would expect that the leakage on the southern end of the lake is actually feeding Barker Creek. Again, not going to Clear Creek. Maybe some of it's going to clear Creek, maybe the top half. But I would be shocked if you were to tell me that the leakage on the southern end of Island Lake is not feeding Barker Creek.*
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> Tr.[4] 236.

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[3] Mr. Lubischer identifies a series of factors that suggest that the Kindred contour lines may be inaccurate. See Ex. B83, pdf. P. 59. Mr. Laubscher points out that from his review of well data that water levels around the lake vary up to ten feet per year and that water levels were measured by rounding to the nearest five or ten feet. He also noted that aquifer levels dropped by 30 feet from the mid-70s to 2022. None of this type of information substantially discredits the contour lines relied upon by Mr. Kendrick. Most notably, despite all these alleged inaccuracies, Mr. Laubscher was still not able to find any data that supported a finding that water flowed in a different direction than that identified by Mr. Kendrick. Further, the margin of error of plus or minus ten feet does nothing to bring into question a series of contour lines based upon 100-foot increments.

[4] "Tr." Reference page numbers of the Ex. F103 transcript.

Dr. Roseen only testifies that he'd be shocked if the southern end of the aquifer doesn't feed Barker Creek. He didn't make such a definitive conclusion on the northern portion of the acquifer. Dr. Roseen's testimony shows that the best Appellants could do to counter Mr. Kindred's conclusions was to provide an alternate interpretation of the contour lines relied upon by Mr. Kindred. Dr. Roseen didn't provide any explanation as to why his alternative was a better interpretation. Given that Mr. Kindred's interpretation was corroborated by independent well readings and that there's no appreciable creek flow in proximity to the aquifer, Mr. Kindred's interpretation is still found to be the most compelling and is supported by substantial evidence.

Given the evidence in the record on lake impacts, perhaps the most significant point raised by the Appellants was made Mr. Lubischer's opinion that even if the aquifer flows in a westerly direction below the lake, the level would still decline as the aquifer level declined. Mr. Lubischer's testimony on this subject was limited to the following exchange:

> *Mr. Telegin:: (00:20:11):*
>
> *And you talked about depressurizing the system. So what is the relationship between the aquifer level and lake leakage?*
> *Mr. Lubischer:: (00:20:19):*
>
> *Okay, well let me just clarify. When you talk about depressurization, you're usually talking about a confined aquifer. If you're talking about the water level, you're talking about an unconfined water level. This aquifer has been described as semi confined. So I'll try to stick to water level. When you drop the water level, those, even though you're maintaining the lake level, having adverse impacts elsewhere, even if they haven't been specifically measured. So your question again,*
> *Mr. Telegin:: (00:20:55):*
>
> *So what's the relationship between lowering the aquifer level and lake leakage?*
> *Mr. Lubischer:: (00:21:02):*
>
> *Well, if the lake level were up around 200, 2 10, you're only going to have the upper part of the lake leaking into the aquifer. When you drop that groundwater level, you're going to expose more of the sides of the lake for leakage into the unsaturated zone above that water table.*
> *Mr. Telegin:: (00:21:35):*
>
> *And so from a general perspective, I understand you correctly that as the aquifer level goes down, that might increase the rate of leakage out of the lake.*
> *Mr. Lubischer:: (00:21:46):*
>
> *Yes.*

Tr. 263.

The testimony above is significant because lake levels could be adversely affected by declining aquifer levels even if the aquifer is separated from the lake and the aquifer flows away from the late. In this regard it is also important to recognize that Mr. Kindred did find that the proposal would reduce aquifer recharge. Mr. Kindred's Ex. B10 report found the proposal would reduced the recharge rate from .11 cfs to .055cfs. As noted by the Appellants, this reduces flow rates to the Island Creek aquifer by 12,973,910 gallons per year, which is 43% of the average yearly water pumped back into Island Lake by the Silverdale Water District over the last four years. As noted by Mr. Kindred, however, this is also only 2.5% of the water pumped out of the aquifer by the Silverdale water District every year. Ex. B11, p. 2.

Despite the significance of lake levels to the Appellants' SEPA appeal, the testimony quoted above from Mr. Lubischer is the only evidence presented by the Appellants on the impact of lowering aquifer levels if Mr. Kindred is correct in his conclusions of a westerly aquifer flow. Dr. Roseen made no mention of a potential increase in leakage if aquifer levels go down despite providing extensive testimony about the connectivity between the lake and the underlying aquifer. See, e.g. Tr.[5] 232-236. The lack of comment on this issue is surprising given that Dr. Roseen testified that part of his expertise involves groundwater interactions. Tr. 172.

In contrast to Mr. Lubischer's testimony, Mr. Kindred testified that no matter how much the aquifer level was reduced, there would be no impact on lake levels. Tr. 211. Mr. Kindred's finding on this issue is substantiated by well data in the Ex. A4 Robinson Noble study, which Mr. Kindred testified showed that the rate of leakage out of the lake was the same no matter what the aquifer levels were below the lake. Tr. 492. Mr. Kindred's analysis was a little at odds with the 1991 lake study, Ex. A4. The study found that with the aquifer head at a lower level, the leakage from the lake did not noticeably increase, thereby concluding that "*the lake and aquifer may actually be independent of each other*." However, the study ultimately could only conclude that in the author's opinion, "*there is at most an indirect connection between lake levels and aquifer water levels so aquifer depletion caused by pumping the Kitsap County Parks Well will not have a one-to-one affect on the lake*."

Through Mr. Telegin's cross-examination Mr. Kindred did qualify his comments to a certain degree, clarifying that "*even if there is variability in the leakage rate based on the groundwater elevation, that variability is small.*" Tr. 493. He noted that the small variability is substantiated the fact that the Water District's augmentation of lake levels has been successful over the last thirty years, apparently meaning that pumping

[5] "Tr." refers to the page number of the computer generated transcript of proceedings, marked as Ex. 103.

water into the lake from the aquifer doesn't make the lake level recede as quickly as the aquifer water is pumped in. Id.

Mr. Lubsicher's testimony doesn't provide sufficient context to support his position that a reduction in the Island Lake aquifer could be affecting lake levels. A big unknown factor in his testimony is how much the aquifer levels may decline as a result of the proposal. As previously noted, the proposal will reduce recharge by 11-13 million gallons per year. However, also as previously noted that is only 2.5% of the amount withdrawn by the Silverdale Water District every year. Unless the Water District is pumping out most of the aquifer each year, this means that the reduction in recharge will be significantly less than 2.5% per year of the aquifer volume per year, which in turn would be significantly less than any reduction in aquifer level. On top of what would appear to be a very nominal amount of aquifer water level reduction, if any, is the absence of any information on the correlation between reduction in aquifer level and lake level.

Ultimately, identifying that lake levels can be affected by disconnected aquifer levels without any additional information doesn't provide much useful information as to whether there's any reasonable potential that Island Lake could be affected by reduced aquifer levels. The Appellants have provided no information on the strength of correlation between aquifer and lake levels or provided any information on how much the aquifer level could be affected by the proposal. The only specifically applicable data in the record is the 1989-1990 Robin Noble data, which for that time period establishes no correlation between aquifer levels and lake levels. Limited to this information, Mr. Lubischer's assertion that the lake levels could be affected by an aquifer reduction caused by the proposal is too remote and speculative to establish and reasonable basis for additional investigation.

Hydrological impacts caused by surface water flows are also not found to create any significant adverse impacts to the water quantities of Island Lake and Barclay Creek. Surface flows raise the specter of flooding impacts in winter as opposed to depletion of lake levels in summer. As noted in the Ex. B4 report, the increase in surface water discharge into Island Lake resulting from surface water flows is equivalent to 1.4 inches of additional rain per year on the 46-acre lake. Overall, the proposal will add 1.6 acres of impervious surface to the 436 acre Island Lake drainage basin. Ex. A11 identifies yearly rainfall levels for the project vicinity since 1991 through 2024. Annual rainfall ranges from 26.2 inches to 67.7 inches. Mr. Kindred further testified that the surface waters likely won't even make it to the lake because they'll infiltrate along the way. Given these factors, coupled with the existing outlet pipe of the lake, substantial evidence establishes that the surface waters of the proposal won't have a significant impact on lake levels.

5B. **Stream Impacts**. The proposal will not create any significant adverse impacts to Barker Creek.

5B1. **Background**. As background, Barker Creek commences just south of Island Lake. Island Lake has an outlet structure located on its southern end that releases lake water when lake water levels create a threat of flooding. The outlet structure empties into a pipe that empties into a swale located 500 feet south of the lake. The swale is the beginning of the Barker Creek drainage. Mr. Kindred notes in his hydrological study, Ex. B10, that the swale is dry for the first 1,300 feet. As testified by Ms. Heavrin, the project's stormwater outfall into the creek, from the project's bioretention ponds, is located about 1,200 feet south of and 1,700 feet downstream of the outfall of the outlet pipe. Tra. 66, Ex. F100, p. 8.

The only connection the project has to Barker Creek is composed of stormwater flows indirectly through the Island Lake outlet and directly from the project's proposed bioretention ponds. Beyond potential stormwater impacts, the proposal has no physical connection to the creek. All proposed development will be located outside of the 150 buffer of Barkley Creek. See Ex. F100, p. 2, Ex. B10, figure 3.

5B2. **Island Lake Stream Impacts**. As to increased flows from Island Lake, substantial evidence establishes that those flows are nominal and will have no material impact on Barker Creek. As identified in Mr. Kindred's hydrological report, Ex. B10, the proposal does result in a small increase in flows towards Island Lake resulting from six dispersion trenches located in the northern portion of the project site. Tr. 75. However, Mr. Kindred noted that the dispersion trenches are located in permeable soils and its unlikely that the flows would make it all the way to the creek. Mr. Kindred further testified that if all the increased flow did make it to the lake, that would equate to about 1.5 inches of additional rain on the lake over the entire year, which would equate to a tiny fraction of an inch on any given day. Mr. Kindred noted that his site observations in February revealed 800 feet of dry swale between the lake outfall pipe and the beginning of the creek. Tr. 76. Given these conditions, Mr. Kindred concluded that the tiny amount of additional water that made it into the lake would not change the frequency or amount of overflow to the creek. Mr. Kindred's testimony and conclusions regarding overflow into the creek were compelling with no material evidence to the contrary. His testimony constitutes substantial evidence establishing that the project will have no or nominal impact on Barker Creek via increased stormwater run-off to Island Lake.

5B2. **Bioretention Discharge Stream Impacts**. Substantial evidence establishes that the project's direct stormwater discharge into Barker Creek will have no significant adverse impacts. As shown in Mr. Kindred's hydrological assessment, Ex. B10, p. 11, the project will increase stormwater flows into Barker Creek from 0.047 cfs to 0.15 cfs. As shown in Figure 6 of Mr. Kindred's study, stream flow is close to nonexistent at the

bioretention discharge point (about 18,000 feet from the mouth of the stream) and then slowly increases in volume until it reaches about 3.0 cfs at a point 2,000 feet from the mouth of the stream. In the absence of any adverse water quality or temperature impacts, the added water would appear to have a beneficial impact upon the stream by hydrating the dry upper reaches of the creek. The addition of 0.103 cfs to the lower reaches that flow up to 3 cfs would not appear to create any overflow problems. As testified by Mr. Kindred, 1 cfs is equivalent to three fire hoses at maximum pressure, Tr. 212, so 0.1 cfs would be the equivalent of water from a fire hose operating at 30%.

5B3. **Thermal Stream Impacts**. Substantial evidence establishes that the proposal will not result in significant adverse thermal impacts to Barker Creek.

Dr. Roseen raised the issue of thermal impacts in his post-hearing preliminary plat comments. Ex. 83, pdf. p. 88-91, see also Tr. 237-241. Dr. Roseen identifies that under the Clean Water Act that Barker Creek is listed as impaired for Aquatic Life - Core Summer Salmonid Habitat for dissolved oxygen and pH. He notes that thermal impacts from stormwater ponds will contribute to declines in dissolved oxygen. He cited to a study he co-authored in 2011 that found that retention ponds adversely affect stream temperatures. He noted that the proposal would cut groundwater recharge to the stream from the project site by half, which would significantly reduce the infiltration benefit of temperature modulation.

In his rebuttal, Ex. F99, p. 4, Mr. Kindred notes that Dr. Roseen fails to consider the temperature moderation provided by flow through the 150 ft stream buffer zone. Any stormwater discharged into this zone will migrate slowly through the forest duff and weathered soil in the buffer zone, which tends to maintain a temperature of 45-55 degrees year-round. Ms. Heavrin reflected those comments during her testimony and added that in addition to the 150 foot buffer, waters discharged from the bioretention ponds are separated from the buffers an additional 50 feet, enabling a 200 foot path for temperature modulation. Tr. 373-375. She noted that the buffers reduce temperature because the native canopy shades the area. The County's stormwater engineer, Steve Sullivan, also agreed, testifying that rain in the summer months is minimal and that "*[l]ogically speaking with that [minimal summer rain] and the 200 feet of buffer before it reaches the stream, the temperature would be whatever the air temperature is at that point*." Ms. Heavrin also displayed a quote from the 2024 DOE Manual, which provides as follows:

> *Protection of cold water streams, notably trout streams that are extremely sensitive to changes in temperature. Bioretention has been shown to decrease the temperature of run-off from certain land uses, such as parking lots (USEPA, 2013).*

2024 DOE Stormwater Manual, p. 894.

Dr. Roseen identified in his written rebuttal that bioretention facilities can in fact reduce temperature, but only those that infiltrate, not those with underdrains as proposed for this project. Ex. 83, pdf. p. 88-91. He presented some data supporting his conclusion. Ex. 83, pdf. p. 90. He explained that retention facilities with underdrain don't have the soil mass associated with infiltration to effectively lower temperature.

Balancing the evidence above, substantial evidence establishes that the proposal will not create significant impacts by increasing stream temperature. Dr. Roseen did establish that under-drained bioretention facilities likely do not reduce stormwater temperatures a identified in the 2024 DOE Manual. The Manual does not state that all bioretention results in lowered temperatures, but rather that "*[b]ioretention has been shown*" to result in lower temperatures. Given Dr. Roseen's studies and data, it's likely that the bioretention showing temperature reduction is bioretention discharging to infiltration as opposed to under-drain.

Although Dr. Roseen successfully addressed the 2024 Manual comments, he presented nothing compelling on the point made by Ms. Heavrin, Mr. Kindred and Mr. Sullivan that temperature would be reduced to ambient conditions by the stormwater flow in the 200 feet between the bioretention ponds and the stream. It is particularly persuasive that Mr. Sullivan agreed with the Applicant's assessment in this regard, given his status as a neutral third party reviewer.

It is also noteworthy that the County and Applicant reliance upon 200 feet of separation between the bioretention discharge and the stream may very well underrepresent the benefits of that separation. As shown in Figure 6 of the Kindred Ex. B10 hydrological report, stream flows are close to zero up until at least 15,000 feet from Island Lake. Dr. Roseen's concern about stream temperature is that abnormally high and low temperatures adversely affect fish. Ex. F83, pdf. p. 88. It's unclear what type of flows are necessary to support fish spawning, but Figure 6 of the Kindred report suggests that flows likely are not suitable for thousands of feet downstream from Island Lake, thus providing that additional space for additional temperature modulation. The Appellant's "salmonscape maps," Ex. 54, in fact show the documented presence of coho, fall chum and winter steelhead ending thousands of feet downstream from the bioretention ponds.

5B4. **Geomorphological Stream Impacts**. Dr. Roseen also asserted that the geomorphological impacts of the stormwater contribution should be evaluated because the addition represents a 300% increase in discharge from the project site. See Ex. F83, pdf p. 86. The potential for geomorphological impact is found too remote and speculative to justify further evaluation.

Mr. Kindred's uncontested modeling shows that average flow to the creek will increase from 0.047 cfs to 0.15 cfs (Ex. B10, Table 3). This will triple the average flow in the portion of the creek parallel to the southern half of the proposed project site.

Dr. Roseen acknowledged that he didn't know if the geomorphological impact of the increased flow would be negative. Tr. 242 (*I'm not saying it's going to have a negative effect.*."). As evidence to support his concern Dr. Roseen shows pictures of stream channels subject to different levels of surrounding impervious surface. As would be expected, more impervious surface appears to correlate with greater erosive impact and higher stream flows. However, all of the streams depicted in those photographs have flow rates that look to be significantly more than the 0.1 cfs increase in flow attributable to the proposal. There is nothing to reasonably suggest that a 0.1 cfs increase in flow, equivalent to 30% of a fire hose flow[6], could lead to any material geomorphological alteration of the upper reaches of Barker Creek. Even if this minor flow could contribute to the creation of a stream channel, cumulatively or on its own, there is nothing in the record to reasonably suggest that formation of a channel from flows in this portion of the Barker Creek reach would adversely affect fish habitat.

5B5. **6PPD Stream Impacts**. The proposal will not result in any significant adverse impacts to Barker Creek.

Appellants assert that the proposal will create probable significant adverse impacts by the discharge of N-(1,3-dimethylbutyl)-N'-phenyl-p-phenylenediamine (6PPD) into Barker Creek. 6PPD is a chemical that prevents automobile tires from degrading. It is determined that the impacts of 6PPD and from the project on its own are too remote and speculative to justify mitigation or further environmental review. Cumulative impacts are currently being addressed by the Washington State Department of Ecology (DOE).
D-1
As testified by Mr. Malcolm, 6PPD and its by-product, 6PPD-q, is highly toxic to Coho salmon and other fish. Tr. 276. He noted that a Washington Department of Ecology paper[7] did a review of the available literature and the word unknown appears many times in it. It found that the smallest microscopic tire particles are not expected to settle in the temporary pool areas of flow and treatment BMPs or in catch basement sumps. It is unknown whether microscopic tire particles are neutrally buoyant or if they're removed from additional stormwater management approaches. At the time of the writing of the document, it wasn't known as to what is the most lethal part of a 6PPD and 6PPD-q, how its carried in the environment, dissolved, attach to particles, et cetera. That information

[6] Mr. Kindred testified that one cfs is equivalent to three fire hoses flowing at maximum pressure. Tr. 212.
[7] WADOE (2022). 6PPD in Road Runoff Assessment and Mitigation Strategies, Environmental Assessment and Water Quality Programs, Washington State Department of Ecology Olympia, Washington.

is necessary to determine what stormwater BMPs can effectively mitigate against it. There's a lot of research going on to determine this right now, but those are some of the current unknowns.

The Applicant has taken several measures to control 6PPD and 6PPD-q as outlined in Ex. F47, p. 1. Source control BMPs, to generally keep larger pieces of tire of the storm system, can be managed with street sweeping, catch basin cleaning and storm drain cleaning. The roads within the site are proposed to be public right of way, therefore they would fall under maintenance of the county and would be properly and routinely maintained. For private roadways within the development, the Applicant proposes to add the source controls to the operations and maintenance manual of the site and will be required to be followed.

Flow Control BMPs to address 6PDD and 6PDD-q will be implemented as well. Per the DOE one of the most effective methods is the use of a detention pond, specifically with dead storage. The particles are dense so this is effective to mitigate the macroscopic particles. The project site as designed is implementing this strategy. Id.

Additionally, Runoff Treatment BMPs to address 6PDD and 6PDD-q will be implemented. The most effective method per the DOE manual is the use of a bioretention soil media. As a way to address 6PDD and 6PDD-q, the Applicant is voluntarily adding bioretention swales to provide a secondary layer of water quality treatment of all onsite stormwater, prior to its release to Barker Creek. This additional water quality step will mitigate the microscopic particles of the toxin, while the flow control BMP mitigates the macroscopic. Id. at p. 1-2. As further noted by Mr. Kindred in Ex. F99, p. 3, the waters treated in the bioretention ponds then go through further treatment by traversing through 150 feet of stream buffer before entering Barker Creek. At the hearing Mr. Kindred stated that "*we have quite clear evidence that that filtering water through soil results in removing the toxicity of six PPDQ to coho salmon*."

As testified by Mr. Malcolm, the effectiveness of BMPs in treating 6PDD and 6PDD-q is still largely unknown. In hearing testimony Dr. Roseen acknowledged that bioretention "…*does a good job for 6PPD, but it is nothing compared to infiltration*." Tr. 251. The 2022 report referenced by Mr. Malcolm above concluded unequivocally that infiltration was the best means of treating stormwater for 6PPD. At the hearing Mr. Kindred stated that "*we have quite clear evidence that filtering water through soil results in removing the toxicity of six PPDQ to co-host salmon*." Tr. 475.

Although the toxicity of 6PPD and the effectiveness of infiltration are fairly clear from the record, the impacts of the proposal are too remote and speculative to justify further mitigation. As identified in Figure 4 of Kindred's initial stormwater report, Ex. B10, the drainage basin to Barker Creek is 2,030 acres. The aerial photograph of the staff report,

Ex. F1, shows the drainage basin as largely developed. The 55 acres of the project site is less than 3% of the creek's drainage basin. Given the evidence in the record, there is no basis to conclude that the relatively modest contribution of the treated water from the project site will materially add to the hazards of the 6PPD and 6PPD-q already being introduced into the basin. Especially given the reasonable likelihood that the mitigation measures volunteered by the Applicant may already adequately treat water for 6PPD, it is highly speculative to conclude that more treatment is necessary. In a worst case assessment as required by WAC 1970-11-080(1), if the proposed treatment is not effective in mitigating 6PPD levels, the proposal's contribution of 6PPD to the overall Barkley Creek system is nominal. The comparatively minor impact of the proposal is reflective of the fact that the Applicant should not be burdened with solving a state-wide problem that the Department of Ecology with its significantly greater resources has been unable to resolve to this point.

As to cumulative 6PPD and 6PPD-q impacts, those impacts will be addressed once the Department of Ecology does finally have sufficient information to put together a complete set of BMP designed to address ppt as required under RCW 90.52.040 and RCW 90.48.010 to incorporate all known, available and reasonable methods of stormwater prevention, control and treatment (AKART) into the DOE Manual.

5B6. **Creek Access**. The proposal is not found to create any significant adverse impacts by increasing the number of people accessing the creek to fish and recreate.

The Appellants claim that the residences added by the development will increase the number of people accessing Barker Creek. As identified in Ex. F98, p. 11, the Applicant will place signage and fencing along the Creek in areas where it adjoins the project site. As further noted by the Applicant, this area may have little environmental significance since it runs dry most of the time with no defined creek channel. The Appellants assert that the reason people will be drawn to access the creek would be to fish it. As previously discussed in FOF NO. 5B3, the flows of the creek and WDFW salmonscape data show that there likely are no fish in Barker Creek close to the project site. There is nothing in the record to reasonably suggest that large numbers of project residents will flock to the lower reaches of Barker Creek to fish or that any such fishing activity would create significant adverse impacts to the creek.

5B7. **Daylighting Barker Creek**. Given the lack of any adverse impacts to Barker Creek, there is no basis for the County's SEPA condition requiring the daylighting of the creek at the Island Lake outlet.

The County provided no evidence of adverse impacts from the added flow during the Applicant's SEPA appeal hearing. Mr. Gurnee, the lead planner of the proposal, identified that daylighting the creek would benefit the creek by providing for water

filtration and slowing of water velocity. As previously noted, the County didn't provide any evidence to counter Mr. Kindred's conclusion that the proposal would not result in any material increases in flow from the lake. As such, daylighting the creek would not mitigate any impacts caused by increased flow from the lake. Further, since Island Lake currently generates nominal amounts of flows through the overflow pipe, it's doubtful that daylighting the creek would result in any significant environmental benefit even as to addressing existing conditions. Daylighting a dry pipe without introducing any flows serves little purpose.

Even if some material benefit could be squeezed out of daylighting the pipe, it could only be required of the Applicant to mitigate impacts it was creating by its downstream contribution to creek flow. However, as in FOF No. 5B1-5, the contribution of flow doesn't create any significant adverse impacts to the creek. As testified by Mr. Kindred, the impact of the added flow is likely positive. He identified that the bioretention treatment combined with the added infiltration of the creek buffer would serve to recharge the river with treated water that would dilute the contaminants in it from surrounding untreated water as well as temperature moderation from the subsurface flows. Tr. 58. Substantial weight is due to findings of the SEPA responsible official. However, there has to be some evidence to support it. In this case no such evidence was presented.

5C. **Island Lake Usage.** As conditioned, the proposal should not increase lake usage over current conditions and no adverse impacts from increased uses are thereby anticipate.

The Appellants assert that the existing dock and beach located on the project site will result in a significant increase in pubic lake usage, which in turn will result in several adverse impacts. The Applicant counters that the dock and beach will be fenced off with no trespass signs. To ensure that the dock and beach do not create an adverse increase in lake usage, a SEPA mitigation is being added that requires the Applicant to include a covenant on the project site that provides that the County may remove the dock and replat the beach at HOA expense if the HOA fails to keep residents from using the beach and dock, or the in the alternative the HOA would have to acquire approval of an amendment to its SCUP that addresses the increased lake usage.

As outlined in the Appellants' plat comments, Ex. 83, at present, only 31 homes have direct access to the lake. There is a public beach at the north end of the lake and a small public dock that is only capable of holding six to eight people. Small boats and paddle boards can be launched from a small boat launch. However, access has been limited through parking restrictions and disallowance of trailered boats. To this, the Meadowview Project would add 329 new homes—easily capable of housing 800+ people—all with direct physical access to the on-site beach amenities and dock, either by using future paths and access points if the County "ultimately requires" access to these amenities (as it says

it may do in the Staff Report), or by residents and members of the public simply traversing the protected areas of the vegetation.[8]

Island Lake has been closed multiple times in recent years due to high E. coli and Cyanobacteria levels. The Appellants included in their Ex. 83 comments a Health District beach advisory explaining that the E. coli outbreaks can be caused by wildlife and pets in the water, people swimming when they are sick with diarrhea, a large number of swimmers, infants swimming without swim diapers and/or and people entering the water without showering. Ex. 83, pdf. p. 163. These impacts are uncontested in the record. Further, Dr. Cooke noted that from her experience the accessibility of the beach facilities to the development is a "disaster waiting to happen" in terms of impacts to shoreline ecological function. See Ex. 83, p. 119-120.

The Applicant notes that the beach and dock will be fenced off from the development and posted with no trespassing signs. The Appellants reasonably counter that there is a significant likelihood that the fence and signs will be ignored. To ensure that this does not occur a condition of approval requires that the CC&R's of the HOA for the project site provide that if more than four trespasses per month occur for over a six month period that the HOA shall remove the dock or the County may do so at HOA expense. In the alternative the Applicant or HOA may apply for approval of an amended shoreline CUP that assesses and mitigates the added lake usage.

In their Ex. 83 plat comments, the Appellants also claim that the Applicant failed to prepare a proper cumulative impacts analysis by failing to address development on the adjoining eastern waterfront parcel. The Appellants contention in this regard is limited to claiming that the adjoining development will increase use of the beach and dock of the project site. Ex. 83, pdf. p. 11 shows a footbridge that links the adjoining lot to the beach. To prevent any increase in use of the project's beach and dock a condition requires that the bridge be closed and posted with a no trespass sign. This condition in conjunction with the condition requiring removal of the beach and dock if usage exceeds specified levels should remove any potential for cumulative beach impacts. In point of fact since the proposal will result in reduced shoreline access from the prior camp use of the project site, the cumulative impacts in regards to human use of the lake will be an improvement. With elimination of the lake access concern, the Appellants have not identified any other

[8] Public records from the Kitsap Health District obtained by the Appellants indicate that the lake was closed due to high E. coli on the following dates between 2015 and 2024: July 2 to July 7, 2015; June 29 to July 11, 2016; July 12 to July 20, 2016; July 27 to August 31, 2016; July 11 to July 13, 2018; August 29 to September 18, 2019; September 3 to September 23, 2020; July 9 to July 14 2021; August 3 to August 11, 2021; June 10 to June 16 2022; June 24 to June 29, 2022; and July 8 to July 13, 2022. An excel spreadsheet showing these closure dates was previously submitted by Donald Fenton to Mr. Gurnee on January 2, 2025.

specific cumulative impacts that should have been addressed in the Applicant's shoreline cup assessment.

5D. **OHWM and Parcel Boundaries**. In Ex. 83 Section D the Appellants question the accuracy of the OHWM designation and the parcel boundaries depicted in the plat drawings, Ex. F50. The OHWM is found to be sufficiently accurate and the examiner has no jurisdiction to adjudicate the accuracy of parcel boundaries.

The Appellants identify discrepancies in the OHMW depiction from the critical area reports and what is depicted in the plat drawings. These discrepancies were appropriately addressed by Ms. Heavrin in Ex. F100. As identified by Ms. Heavrin, the Applicant determined that the OHWM had not initially been accurately mapped. As a result its environmental consultant did an additional site visit to provide a more accurate delineation and the Ex. F50 plat maps were based upon this improved delineation. The Appellants have not identified any inaccuracy in the final delineation used for the Ex. F50 plat drawings.

The Appellants also identify a legal description of the project site in Section D that suggests that the plat maps omit some of the parcel area subject to the preliminary plat request, specifically an "isthmus" area within the lake located along the upper northeast corner of the project site. The hearing examiner has no authority to adjudicate questions of title. *See Halverson v. Bellevue*, 41 Wn. App. 457 (1985)(City Council has no authority to resolve adverse possession claim). If the Appellants wish to have their property boundary issue resolved that will have to be addressed as part of a judicial appeal.

5E: **Critical Areas/No Net Loss**. According to the project habitat management plan (HMP), Ex. 44, The proposal will result in no net loss to critical areas including Island Lake.

Island Lake is designated a shoreline of the state, a Type S water. As outlined in FOF 5B1, Island Lake has an overflow device that feeds into the headwaters of Barkley Creek. As further noted in FOF 5B1, Barkley Creek only shows visible flow about 1,800 feet south of the overflow device. According to the HMP, Barclay Creek flows southerly through Wetland A, a linear slope wetland that extends south on the east adjacent property. The HMP finds no other critical areas on-site or within proximity to the project site.

The HMP, p.14, concludes that the proposal will result in no net loss of ecological function as follows:

> *This project is proposed outside all critical areas and buffers, most of which are offsite to the east so this greater distance between the critical areas and the*

proposed development than just the critical area buffers. The stormwater facility is proposed in upland just offsite to the east and is the closest of the proposed development to the Barker Creek/Wetland A complex but is outside the required stream and wetland buffers. Noise generated during construction of the stormwater facility could impact wildlife usage within the critical area but once construction is completed, it will be a passive feature that will provide additional buffer function for the proposed onsite development. Overall, this project imposes no impact to critical areas with regard to buffer reductions or temporary impacts and requires no buffer vegetation removal. Therefore, it achieves no net loss of wetland, stream, shoreline, and their required buffers without providing mitigation or restoration.

The no net loss conclusions of the HMP are well supported in the record and found to be a verity. The physical encroachment into shoreline jurisdiction is minor composed of a recreational area and trails located 100 feet and more from the Island Lake Shoreline. Off-site impacts to the lake and associated critical areas from stormwater have been thoroughly assessed in the remaining portions of FOF No. 5 and found nonsignificant. Potential usage of the lake should decline from prior camp ground use since under the conditions of approval the County will be authorized to remove the existing dock and revegetate the shoreline if any appreciable usage occurs as a result of the proposal.

5F. **Other Impacts**. Kitsap County received over 70 public comments addressing a wide range of project impacts. Except as identified in this decision, the impacts addressed in the public comment letters have been adequately addressed by the County's development regulations. The proposal complies with those development regulations as determined by staff, except as otherwise found in this decision. For that reason the impacts are found to be adequately addressed. The staff report includes a matrix that outlines the concerns raised by the public and how those concerns are addressed. The matrix is found to accurately identify how those impacts are addressed and is adopted by this decision, except to the extent inconsistent with the findings and conclusions herein.

Comments not adopted from the matrix include the following; (1) that conditions of approval will require the daylighting of Barker Creek, (2) that there will be occasional and temporary impacts to Barker Creek, and (3) that the proposal is compliant with the stormwater manual.

6. **Adequacy of Infrastructure/Public Services**. The project will be served by adequate and appropriate public infrastructure and public services. Preliminary infrastructure design has been reviewed by the County Public Works Department and the preliminary design concept has been determined to be supportable. Final design for streets, sidewalks, storm drainage facilities and sanitary sewer will be required to meet

County Design Standards and implemented prior to final plat approval. Infrastructure needs are more specifically addressed as follows:

6A. **Water and Sewer Service**. The Applicant has provided a Water Availability Certification from Silverdale Water District No. 16, Ex. 18, and Sewer Availability Agreement from Kitsap County Public Works, Ex. 12. The proposal provides for adequate water and sewer infrastructure and service.

6B. **Stormwater Drainage**. As conditioned, the proposal will be served by adequate and appropriate stormwater facilities and drainage ways because it conforms to the County's stormwater regulations.

6B1. **Background**. Kitsap County has adopted the Department of Ecology Stormwater Management Manual for Western Washington (SWMMWW). See KCC 12.04 – 12.32. The Manual effectively mitigates against stormwater impacts by requiring that the project site limit off-project site flows to those generated from the project site in a vacant, forested condition. Stringent water quality standards are also imposed, requiring that the water quality be treated with all known, available and reasonable methods of prevention, control and treatment. See RCW 90.52.040 and RCW 90.48.010. Public works staff have determined that the proposal meets the requirements of the manual as far as necessary for preliminary plat design. In the absence of any evidence to the contrary, staff's finding of consistency is found determinative except for the infiltration feasibility analysis as addressed below.

The Applicant has prepared a drainage report, Ex. 22, to propose stormwater facilities that conform to the requirements of the Manual. The proposed stormwater facilities include two bioretention ponds and five dispersion trenches for stormwater quantity control and bioretention swales and dead cell storage for stormwater quality control.

6B2. **Infiltration Feasibility**. The proposal fails to assess the feasibility of infiltration as required by the County's stormwater manual. Specifically the proposal uses a "design infiltration rate" to assess feasibility as opposed to the required "measured infiltration rate." The proposal also uses a "grain size analysis" to assess feasibility, which the manual prohibits within urban growth areas. The proposal is conditioned to use the measured infiltration rate as required and to use an authorized methodology for that assessment as opposed to using the prohibited grain size analysis.

6B2a. **Infiltration Feasibility Background**. The Appellants assert that the proposal fails to meet Minimum Requirement No. 5 of the manual, which require as follows:

> *Projects shall employ On-site Stormwater Management BMPs in accordance with the following project thresholds, standards, and lists to infiltrate,*

disperse, and retain stormwater runoff on site to the extent feasible without causing flooding or erosion impacts.

The project makes use of the List Approach. Using List No. 2 of Table I-4.3 of the manual. In that list, the applicant is required to evaluate the feasibility of the BMPs in the order listed for three different types of surfaces and use the first BMP that is considered feasible. The Applicant's stormwater controls for one of the three surfaces, "lawn and landscaped areas" is uncontested and found compliant with the stormwater manual. The SEPA Appellants have strongly contested the Applicant's proposed BMP for the other two surfaces, (1) "*roofs*," and (2) "*other hard surfaces*." For both of those surfaces the Applicant has found the preferred BMPs infeasible. The Appellants disagree.

In the case of the "roofs" surface the fist BMPs listed are a choice of either full dispersion or full downspout infiltration. The Applicant has found both options to be infeasible for most of the project site and instead will use the next BMP on the list, bioretention. The Applicant does propose to use six full dispersion trenches for the northern portion of the project site.

In the case of the "other hard surface" the Appellants forego the No. 1 preferred full dispersion and No. 2 permeable pavement BMPs and instead rely again on bioretention. As with the "roofs" surface, it does appear that full dispersion will be used for the northern portion of the project site.

6B2b. **Full Dispersion Feasibility**. Full dispersion is not feasible for all portions of the project for roofs and other hard surfaces.

The Applicant claims that full dispersion is not feasible for "roofs" or "other hard surfaces" because those tranches would take up too much space of the project site. Based upon calculations using the minimum density required of the project, the Applicant calculated that full dispersion for roofs for 158 lots would need 68 dispersion trenches that are each 50 feet long and 100 feet wide. Ex. 83, p. 4. The total area necessary for dispersion trenches would be 790,000 square feet, or roughly a third of the project site. Applying the same calculations for the proposed 329 units, two-thirds of the project site would have to be used for infiltration. Additional space would have to be added to accommodate separation requirements between the trenches and space would also have be reserved for the full dispersion of "other hard surfaces," i.e. roads and driveways. The Applicant also noted that the site's topography presents significant challenges, as dispersion trenches require flow paths with slopes under 20%, which the site's existing topography cannot accommodate.

The feasibility analysis advanced by the Applicant is consistent with Section 5.3.1 of the stormwater manual. That section requires an assessment of setbacks and site constraints

to evaluate dispersion feasibility. The manual doesn't identify at what point the setbacks and site constraints are too limiting to qualify full dispersion as infeasible. Section 4.2.5.3 identifies some "competing needs" that should be evaluated for feasibility as well, such as conflicts with federal and state laws and local zoning, health, and critical areas rules. As noted by the Appellants, none of these factors include maximizing profit. However, the factors aren't listed as exclusive. More important, Section 4.2.5.3 "competing needs" doesn't purport to serve as defining when the site constraints of Section 5.3.1 reach infeasible levels.

Ms. Heavrin testified that she placed five dispersion trenches in the northern portion of the site because the soils of that portion of the project site are more suited for that purpose. According to Table 2 of the staff report, Ex. F1, the Applicant is allowed up to 498 dwelling units and is only proposing 329. Given that infiltration in this area is not found necessary to protect aquifer recharge or to protect adjacent properties from flooding, the proposed dispersion trenches are an appropriate balancing of site constraints and economic feasibility. Further, given the strong policy considerations for promoting high density development in urban growth areas under the Washington State Growth Management Act, significant reductions in authorized density should be avoided if not necessary to prevent adverse hydrological impacts.

6B2c. **Permeable Pavement Not Feasible**. The second preferred BMP in Table I-4.3 for "other hard surfaces" is permeable pavement. Permeable pavement is not found feasible for the project site.

Ms. Heavrin notes that permeable pavement is not recommended for slopes over 6% and that a substantial portion of the project site exceeds this gradient. Ex. F100, p. 5. Dr. Roseen disagrees, citing to a couple studies, including one he co-authored, that he states do show that permeable pavement can be designed for slopes exceeding up to and exceeding 6%. See FN 4 and 5, Ex. 83, pdf. p. 65. The Appellants did not provide copies of the studies cited by Dr. Roseen and they are not readily available on the internet. In contrast Section 5.4.8.4 of the County's stormwater manual confirms the position of Ms. Heavrin, identifying that "*[t]he recommended maximum surface (wearing course) slope for permeable pavement BMPs is 6% to allow efficient storage of water within the subbase*." With or without the articles cited by Dr. Roseen, the recommendations of the County's adopted stormwater manual are found to take precedence and the Applicant is found to have correctly determined that permeable pavement is not feasible due to the slopes of the project site[9].

[9] Dr. Roseen at various times also disputed whether topographical constrains were a problem since they could be eliminated by grading. Ms. Decker testified that the project site could not be graded to avoid its stormwater BMP feasibility limitations. As noted by Ms. Decker, she's a geotechnical engineer and in the best position to assess topographical limitations.

6B2d. **Infiltration Feasibility Analysis Noncompliant**. The one area where the Applicant fails to support its feasibility analysis is in its evaluation of downspout full infiltration for the "roofs" surface. This infiltration BMP is preferred in Table I-4.3 over bioretention. The manual contains detailed standards for measuring infiltration rates and identifies what rates are to be considered feasible in Section 5.3.2. Most pertinent, the manual provides that soils at or above a "measured infiltration rate" of 5 inches per hour should be considered feasible for infiltration in infiltration trenches and drywells. See 5.3.2, Table II-5.5. Section 5.3.2 outlines five steps for assessing the infiltration rate and distinguishes between a "measured infiltration rate" and a "design infiltration rate." The Appellants correctly assert that the Applicant incorrectly applies the 5 inch per hour standard to the "design infiltration rate" instead of the required "measured infiltration rate." Dr. Roseen notes in Ex. F83 that the design infiltration is typically a small fraction of the measured infiltration rate. Ex. 83, pdf. p. 67.

Ms. Decker, who prepared the feasibility analysis, does not dispute that she used the "design infiltration rate" instead of the required "measured infiltration rate." She stated that in her professional judgment the "design infiltration rate" provides a more accurate assessment of infiltration rates. Ms. Decker may very well be correct in her view on the design infiltration rate, but it is still contrary to the requirements of the manual. A condition of approval requires that the Applicant's feasibility analysis be based upon the measured infiltration rate.

Another departure from the manual by Ms. Decker involved applying a hydraulic gradient factor to the computation of the measured infiltration rate as opposed to the design infiltration rate. Appendix G.4.2 adopts by reference Volume V, Section 5.4 of the Department of Ecology Stormwater Manual for a detailed approach in computing the design infiltration rate. The Ecology Manual applies the hydraulic gradient to the design rate, not the measured rate. Dr. Roseen identifies agrees that the hydraulic gradient only applies to the design rate. The issue of whether to apply the hydraulic gradient to the measured or design infiltration rate applies to all of the Section 5.3.2 five options for deriving the measured infiltration rate. A condition of approval requires that he hydraulic gradient not be used to compute the measured infiltration rate.

A third departure from the manual was Ms. Decker's use of a "grain size analysis" to measure infiltration rate. Step 3 of Section 5.3.2 provides five options for determining the "measured infiltration rate." The Applicant chose to do a "grain size analysis." For this option, Section 5.3.2 provides "see Table II-5.4 on page 189." Footnote d of Table II-5-4 provides that "*[g]rain size analysis is allowed for rural (outside the UA and UGA)*…" The project site is in a UGA. Therefore, the Applicant's use of grain size analysis is contrary to the Manual.

The County and Applicant do not dispute that Footnote d doesn't authorize grain size analysis for projects inside UGAs. In addressing Footnote d, Ms. Decker wrote that the grain size method is restricted because it overestimates the infiltration rate for formations that have been overridden with glacial advance. Ex. F101, p. 1. This is a puzzling statement since a UGA, a zoning construct that designates high density areas, doesn't appear to have any direct relationship to glacial advances. Mr. Sullivan, the County's public works reviewer of the Applicant's drainage analysis, testified that he didn't have a problem with the Footnote d restriction because the Applicant's analysis was only used for preliminary design. Trans. 433. In redirect on cross-examination, Ms. Decker also made a point of noting that infiltration analysis would be on-going after preliminary plat approval and would change as necessary to meet more precise field determinations. Tr. 513-514.

Mr. Sullivan's testimony that he viewed Ms. Decker's analysis as good enough for preliminary design suggests that a more code compliant analysis will be done for the final plat. Given that there is no express requirement for an additional full analysis and that Ms. Decker's analysis doesn't technically comply with Footnote d, a condition of approval will require that one of the authorized options in Step 3 of Section 5.3.2 be used to assess feasibility.

6B2e. **Noncompliance Not Excused by Professional Judgement**. Noncompliance with stormwater manual standards for assigning infiltration feasibility is not excused as an exercise of professional judgment.

In her February 10, 2025 cross-examination Ms. Decker relied[10] upon Appendix G.1 of the Manual, which provides as follows:

> *This appendix provides the minimum investigation requirements for infiltration Best Management Practices (BMPs). This information does not preclude the use of professional judgment to evaluate and manage risk associated with design, construction, and operation of infiltration BMPs.*
>
> *Recommendations that deviate from the minimum investigation requirements specified in this appendix shall be contained in a stamped and signed letter from a State of Washington licensed professional engineer, engineering geologist, geologist, or hydrogeologist, herein referred to as licensed professional, who has experience in infiltration and groundwater testing and*

[10] It was actually Appellants' counsel, Mr. Telegin, who brought up G.1. Ms. Decker repeatedly referred to exercise of professional judgement as her reason for avoiding manual feasibility requirements and Mr. Telegin in response brought up G.1. If Ms. Decker was relying upon any other professional judgement exception to the stormwater manual she did not identify it for this proceeding.

infiltration BMP design, and must provide rationale and specific data supporting their professional judgment.

At the outset it should be recognized that G.1 only applies to Appendix G. G.1 does not excuse the Applicant's use of the grain size analysis prohibited by Footnote d of Table II-5-4. Even if G.1 serves to justify the Applicant's reliance upon a design infiltration rate to assess feasibility and use of the hydraulic gradient to compute the measure infiltration rate, the Applicant's feasibility analysis still violates the County's manual by using grain size analysis.

In addition to not excusing grain size analysis, G.1 is not found to excuse the other two manual violations because Ms. Decker's professional judgement was not used for any unique project specific reasons. Rather, her judgment was solely based upon her disagreement with the terms of the manual. Ms. Decker testified that a lot of professionals agree with her methodology. However, the DOE Manual (upon which the County manual is based) is also based upon the opinions of a couple dozen engineers and other professionals, as well as a couple dozen stakeholder organizations. See Ecology Manual Acknowledgements. By statute, the DOE Manual is required to incorporate all known, available and reasonable methods of stormwater prevention, control and treatment (AKART) as required by RCW 90.52.040 and RCW 90.48.010. The Manual has been through decades of review and revision via the work of numerous qualified professionals to implement these requirements.

Ms. Decker's unilateral determination that the provisions of the Manual are deficient given this background is not particularly compelling. The weight of Ms. Decker's opinion is further diminished by the fact it has not been subject to peer review. Further, the County's stormwater engineer, Mr. Sullivan, could only testify in response to manual compliance issues that Ms. Decker's analysis was good enough for preliminary design. Trans. 433. Mr. Sullivan also testified that he viewed design and measured infiltration rates as interchangeable. Tr. 432. That position is clearly erroneous. This suggests that the geotechnical aspects of stormwater review are not within his area of expertise or at least that he did not focus on that issue in his review of the project's geotechnical analysis. Dr. Roseen in Ex.83 is adamant that Ms. Decker's departures from the requirements of Appendix G have resulted in an incorrect infiltration rates.

G1 requires that the basis for the exercise of professional judgement to be documented by rational and specific data. Ms. Decker's justification is solely based upon her opinion that the feasibility requirements overall are not as accurate as her methodology. She identifies no reasons why the proposed development may involve different stormwater issues than those contemplated in the manual. As such, Ms. Decker has pitted her judgment against the judgment and policy choices made by numerous experts in the

adoption of the manual. In this context, without more, Ms. Decker's exercise of professional judgement is not supported by substantial evidence.

In addition to serving as a factual issue, the exercise of professional judgment also violates the manual as a matter of statutory interpretation. G.1 can arguably be construed as only allowing waivers under professional judgement if necessary to address unique conditions of a project. Statutes should be construed consistently with the constitution when reasonable to do so. *State v. C.J*, 148 Wn. 2d 672, 692 (2003). A statute which either forbids or requires the doing of an act in terms so vague that men [and women] of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law. *See Anderson v. Issaquah*, 70 Wn. App. 64, 75 (1993).

Under the Applicant's application of Appendix G.1, a developer can waive any part of Appendix G they wish anytime they can find an engineer who disagrees with the manual and is willing to document their position. In short, under the Applicant's interpretation Appendix G only applies to the extent that a licensed engineer doesn't reasonably disagree with it. Ms. Decker's opinion of Appendix G establishes that reasonable minds can and do differ as to the applicability of its terms. Further, under the Applicant's interpretation the fact that how Appendix G will be applied depends on what engineer is hired to apply it also renders it a guessing game as what will be required for a specific project. In this regard the blank check approach advocated by the Applicant renders G1 unconstitutionally vague.

6C. Parks/Open Space. Per KCC 16.24.040H1a requires ,390 square feet of open space per lot, equating to a minimum of 128,310 square feet (2.94 acres) for the proposed 329 lots. The project proposes 10.76 acres of passive and active recreational open space, which meets this requirement.

KCC Chapter 4.110 – Impact Fees, provides for the imposition of impact fees on new development for Parks and Opens Space. These fees are designed to mitigate for the additional demand placed by the project upon the County's park system. All required fees are required to be paid during building permit review as required by KCC Chapter 4.110.

6D. Transportation. As conditioned, the proposal provides for adequate streets and sidewalks.

6D1. Background. Camp Court NW, near its intersection with NW Island lake Road, provides direct vehicular access to the project site. Nine local access public roadways, ten private drives, and three cul-de-sacs provide access to the lots internal to the project site. No private roads are proposed. The proposal includes sidewalks on both sides that

comply with Kitsap County Road Standards. Conditions of approval require ADA standards for all sidewalks and intersections.

County permitting staff have determined that all proposed roads comply with Kitsap County Road Standards. Staff Report, p. 15. A pedestrian path would extend from rights of way on the project site to Emerald Heights Elementary School and Thackery Place. These pedestrian connections exist within a dedicated easement maintained in perpetuity. Staff have also found that the proposal includes off-street and on-street parking consistent with KCC 17.490 regarding number of parking spaces and design.

6D2. Traffic Congestion. The streets serving the proposed development meet the County's level of service (congestion) standards and thus are construed as having adequate capacity for the proposal.

Public comment letters raised concern over traffic impacts. The Applicant prepared an updated Traffic Impact Analysis (TIA) completed by TENW in March 2024 that projects 3,018 new daily trips on NW Island Lake Road, west of Camp Court Road, up from approximately 300 current daily trips. Ex. F46, p. 251. The Applicant maintains that the proposed streets meet future traffic demands and comply with Kitsap County Road Standards. Ex. F1, p. 15. The TIA indicates that all off-site study intersections will operate at Level of Service D or better in 2025, and are anticipated to have adequate capacity throughout the full buildout of the project according County standards. Ex. F46, p. 4.

6D2. **Single Access** The potential adverse public safety impacts of a single access point are successfully mitigated by the alternative measures approved by the Kitsap County Fire Marshal.

The Appellants contend that the single access point via the extension of Camp Court NW, which intersects with NW Island Lake Road, poses a public safety risk, particularly given the project site's location in a high fire hazard Wildland/Urban Interface/Intermix zone and the presence of overhead power lines. Ex. F59, p. 5.

Section 4.1 (1) of the County's road standards require two access points for projects that exceed 1,000 average daily trips "*unless other mitigating measures are approved by the County Fire Marshal*." Mr. Gurnee testified that the fire marshal has approved one access point provided that all of the homes of the proposal are sprinklered. Tr. 18.

For this issue, the KCC sets acceptable levels of safety for fire access. The single access point, as mitigated by the Fire Marshal's approval, does not result in significant adverse public safety impacts.

6D3. **Pedestrian Safety** While the project does provide for adequate roads and sidewalks within the development, the Applicant fails to account for how the increase in daily trips on Island Lake Road will impact pedestrian safety.

The Appellants assert that Island Lake Road lacks sidewalks and has narrow shoulders, creating a dangerous environment for pedestrians. Trans. 292. They argue that the TIA inadequately addresses pedestrian safety impacts and fails to consider the cumulative impact of increased traffic on existing road deficiencies. Ex. F 95, p. 33.

The project does provide for adequate streets, roads, and sidewalks within the subject property, meeting all applicable county standards. However, the Appellants correctly highlight the lack of adequate pedestrian pathways and shoulders on Island Lake Road and the potential safety risks due to the increased traffic volume. Section I of Ex. 83 well documents a lack of sidewalks and shoulder along Island Road Way. Mr. Center testified that there's a school bus stop on this stretch of road. Tr. 292. Coupled with a ten-fold increase in traffic, the lack of pedestrian improvements is a legitimate safety concern that is exacerbated by the proposal. In response to public comments, the staff report at page 68 identifies that off-site curb/gutter/sidewalk street improvements would be made by the Applicant along Island Lake Road to Lakeridge Court to mitigate against this impact. However the staff report didn't impose this condition. Ms. Heavrin identified in her testimony that improving Island Lake Road had originally been discussed but had subsequently been dropped when it was found that children wouldn't be walking the road to go to school. Tr. 423-24.

It is acknowledged that the County probably lacks the proportionality required under constitutional takings cases to require full sidewalk improvements along Island Lake Road. *See, e.g., Nollan v. California Coastal Commission*, 483 U.S. 825 (1987). However, the addition of pedestrian pathways along the roadway is a reasonable and proportionate response to the Island Lake Road safety problems exacerbated by the proposal. These walking paths shall consist of cleared and graded pathways, sufficient to provide safe passage for pedestrians. This requirement shall be qualified by not requiring the clearing of landscaped or private areas outside of the existing right-of-way.

6E. **Schools**. KCC Chapter 4.110 – Impact Fees, provides for the requirement for new developments to offset the impact to public schools through the collection of impact fees payable to the district. All required fees are required to be paid as stipulated in KCC Chapter 4.110. Ms. Heavrin testified that school buses would stop within the development project, the streets of which have sidewalks. Tr. 55. However, the record is unclear as to how certain such a location is set. A condition of approval requires

verification on the school bus location and additional improvements as necessary to assure safe walking conditions if the bus stop ends up off-site.

6F. **Shoreline Access**. The project provides visual but no pedestrian access to the Island Lake shoreline. However, public access to Island Lake exists immediately north at the Kitsap County Island Lake Park. This access combined with the visual access meets the intent of public access per KCC Title 22. Trail and viewing platform improvements occur outside of the 100-foot vegetative buffer, but within the 200-foot shoreline jurisdiction. On-street parking and the pedestrian network provide direct access to these improvements.

CONCLUSIONS OF LAW

Procedural:

1. **Authority of Hearing Examiner.** KCC 21.04.100 classifies SCUPs and preliminary plats as Type III permits. Appeals of Type III permits are heard and decided upon by the hearing examiner as outlined in KCC 21.04.290. SEPA appeals are consolidated with the preliminary plat and SCUP applications as required by KCC 21.04.190A and WAC 197-11-680.

Substantive:

2. **Zoning/Shoreline Designation.** The proposal is within the Silverdale Urban Growth Area and its shoreline portion is in the Urban Conservancy shoreline designation.

3. **SEPA Appeal Review Criteria.** The relevant inquiry for purposes of assessing whether the City responsible official staff correctly issued a DNS is whether the project as proposed has a probable significant environmental impact. *See* WAC 197-11-330(1)(b). WAC 197-11-782 defines "probable" as follows:

> *'Probable' means likely or reasonably likely to occur, as in 'a reasonable probability of more than a moderate effect on the quality of the environment' (see WAC 197-11-794). Probable is used to distinguish likely impacts from those that merely have a possibility of occurring, but are remote or speculative. This is not meant as a strict statistical probability test.*

If such impacts are created, conditions will have to be added to the DNS to reduce impacts so there are no probable significant adverse environmental impacts. In the alternative, an environmental impact statement would be required for the project. In assessing the validity

of a DNS, the determination made by the County's SEPA responsible official shall be entitled to substantial weight. WAC 197-11-680(3)(a)(viii).

At hearing the Appellants suggested that the County had to establish a sufficient level of SEPA review prior to issuance of a threshold determination and that any deficiencies in such review could not be remedied by consideration of those impacts during the SEPA appeal process. That is not found to be the case. SEPA review might have been deficient in regards to hydrological impacts, but those impacts have now been sufficiently reviewed in the course of his appeal proceeding.

As noted by the Appellants, the record "*must indicate that the agency has taken a searching, realistic look at the potential hazards and, with reasoned thought and analysis, candidly and methodically addressed those concerns*." *Conservation Nw. v. Okanogan Cnty*., 2016 WL 3453666 at 31 (June 16, 2016) (quoting Found. on Econ. Trends v. Weinberger, 610 F. Supp. 829, 841 (D.D.C May 31, 1985)). However, cases such as *Conservation Nw* do not stand for the proposition that those impacts can only be addressed prior to issuance of a threshold determination. The lead SEPA agency in *Conservation Nw* argued that certain impacts did not have to be assessed at all and the court disagreed.

Cases such as *Conservation Nw* are distinguishable from this case, where all impacts the Appellants allege should be assessed ultimately have been addressed during this administrative appeal review, if not prior to issuance of a threshold determination. As noted by the Appellants, the standard for SEPA review is the clearly erroneous standard in light of the entire record: "*[r]ather, we review the entire record and determine whether, based on the entirety of the evidence, we are 'left with the definite and firm conviction that a mistake has been committed*.'" *Wild Fish Conservancy v. Washington Dep't of Fish & Wildlife*, 198 Wn.2d 846, 866, 502 P.3d 359 (2022), citing *PT Air Watchers*, 179 Wn.2d 919, 926 (emphasis added). This standard is applied to the whole County review process, which includes the Examiner's open record review process.

Supporting the Applicant's position that the "entire record" subject to SEPA review includes the appeal proceedings is *Moss v. City of Bellingham*, 109 Wn. App. 6, 15, 31 P.3d 703 (2001), where the court found that a DNS had been issued prematurely before all SEPA mitigation measures had been imposed. The court still found no deficiency in SEPA review because all impacts had been thoroughly addressed during the SEPA review process:

> *it is difficult to see how the appellants were prejudiced.… the record indicates that the project received a considerable degree of scrutiny. … While all of the required mitigation measures should have been imposed before the DNS was*

> *issued, the appellants still have not shown that the approved project, as it was mitigated, remains above the significance threshold.*

Moss, 109 Wn. App. At 25.

In this case all of the Appellant's alleged appeal issues have been thoroughly assessed either by the SEPA responsible official during the threshold determination process or in the course of this SEPA appeal. As required, Kitsap County has taken a "*searching, realistic look at the potential hazards and, with reasoned thought and analysis, and, with reasoned thought and analysis, candidly and methodically addressed those concerns*."

At hearing the County testified that SEPA can only be used to mitigate impacts addressed by the County's regulations. The County's closing brief took the opposite approach, identifying that SEPA should only mitigate impacts that aren't addressed by the County's regulations. The position taken in the County's brief is found to be the correct approach.

As identified in the County's closing brief, RCW 43.21C.240 thoroughly addresses how SEPA authority is to be exercised within the context of existing development regulations. As clearly spelled out in that statute, SEPA is indeed required to serve as a "gap filler" for development regulations, avoiding areas that are already addressed by development standards and addressing areas left by gaps in development standards:

> *…Through this project review process: (i) If the applicable regulations require studies that adequately analyze all of the project's specific probable adverse environmental impacts, additional studies under this chapter will not be necessary on those impacts; (ii) if the applicable regulations require measures that adequately address such environmental impacts, additional measures would likewise not be required under this chapter; and (iii) if the applicable regulations do not adequately analyze or address a proposal's specific probable adverse environmental impacts, this chapter provides the authority and procedures for additional review…*

RCW 43.21C.240.

As pointed out in the Applicant's closing brief, the County's regulations do identify when hydrological reports are required and they are not required for residential development. KCC 19.600.615 identifies when hydrological studies are required. Those reports, as identified in KCC 19.700.730 identify that the studies must address both water quality

and water quantity[11]. Importantly, KCC 19.600.615 does not require hydrological studies for residential development in Category I Aquifer Recharge Areas.

Although the County's critical aquifer regulations require hydrological reports for some uses and not for others, that doesn't necessarily mean that the County Commissioners made a determination that proposals that significantly affect an aquifer don't have to mitigate those impacts. It is important to recognize that RCW 43.21.240 as quoted above does not waive SEPA review every time an impact is addressed by a development regulation. Rather, that standard is qualified by the term "adequately," i.e. reports are not required if existing reporting requirements "adequately" analysis impacts and mitigation is not required if development regulations "adequately" mitigate impacts. If a residential proposal has a reasonable potential to seriously adversely affect an aquifer, the County's critical area regulations can reasonably and legitimately be considered inadequate, thus justifying SEPA assessment and mitigation as necessary.

In this case, the County's aquifer recharge regulations can be reasonably characterized as inadequate to address quantity impacts on aquifers for large scale residential development in the face of evidence of potential impact. Although ultimately not the outcome in this case, a large scale development could conceivably significantly adversely affect an aquifer and thereby significantly affect neighboring wells, lakes and other waterbodies. To unconditionally conclude that no matter what the impact, the aquifer impacts of residential development are adequately mitigated by County regulations that require nothing borders on the absurd.

Given the historical problems with Island Lake water levels and the numerous SEPA public comments regarding lake and stream impacts[12], the County had ample reason to require the Applicant to assess hydrological impacts[13].

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[11] The Appellants assert in their closing brief that the required hydrological studies don't address water quantity but this is incorrect. The introductory sentence to KCC 19.700.730 expressly provides that the hydrological report shall address impacts on "both the quality and **quantity** of water transmitted to the aquifer." (emphasis added). The content requirements of KCC 19.700.730 are largely directed at water quality impacts, but at the least KCC 19.700.730A(8) can be construed as requiring a quantity analysis. The subsection requires a discussion of "the effects of he proposed development on the groundwater resource."

[12] See, e.g., Ex. A54 at 1 (comment by Krista Lyon), 3 (Krista Kelly), 11 (Mike Shoudy), 13 (Jeffrey Stockdale), 49 (Judy Kaylor), 76 (Karen Mittet), 77 (Peter Bieber), 81 (Chris Fry), 83 (Donald Fenton), 90 (Doug Hayman), 98 (Diane Reynolds), 102 (Nina Morse), 109 (Paul Fry), 115 (Tom and Kathleen Wadlow), 122 (David Shorett), 234 (Jana Otto), 254 (Bob and Cindy Allpress), 258 (Wayne Gulla), and 260 (Mark Schmitt).

[13] It must be emphasized however, that the County's critical area regulations are not found adequate to address groundwater quantity impacts "in the face" of evidence that adverse impacts will occur. In the absence of any such evidence the regulations are fairly clear that the Commissioners did not find such an

4. **SCUP Required**. The Applicant has requested a ruling on whether a shoreline conditional use permit is required for the proposal given that no lots or structures are proposed within shoreline jurisdiction. An SCUP is required for the proposal.

As background, part of the shoreline jurisdiction of Island Lake encroaches onto the project site. That Applicant has created a separate open space tract for that encroachment. The shoreline within that tract will be completely fenced off and signage will prohibit access to the shoreline. However, there will be public trails and recreational areas placed outside of the shoreline buffer and fencing but within shoreline jurisdiction. Table 22.600.105 requires SCUPs for residential subdivisions in the Urban Conservancy and Rural Conservancy shoreline designations.

The Shorelines Hearings Board ("SHB") and reviewing courts have held that when assessing impacts in shoreline jurisdiction, the entire project must be considered, including components that straddle the line between shoreline and non-shoreline areas. S*ee, e.g., Citizens to Stop the SR 169 Asphalt Plant v. King County*, SHB No. 22-077, Findings of Fact & Conclusions of Law and Order at 44, ¶ 24 (April 12, 2023) (citing *Laccinole v. City of Bellevue*, SHB 03-025 (Mar. 10, 2024), *Merkel v. Port of Brownsville*, 8 Wn. App. 844 (1973), and *Preserve Our Islands v. King Cnty*., SHB 04-009 (Nov. 3, 2004)). In *Merkel* the court was faced with the argument that references in the Shoreline Management Act to lands adjacent to shoreline jurisdiction don't apply to permit review but rather only apply to adoption of shoreline policies and regulations. The court disagreed, ruling as follows:

> *To accept [such an] argument would require us to close our eyes to the obvious interrelation of this project upon the wetlands and adjacent uplands areas. There is nothing in the record before us to indicate that the contemplated construction has ever been anything but one project. . . The frustrating effect of such piecemeal administrative approvals upon the vitality of these acts [SEPA and SMA] compels us to answer in the negative.*

Merkel, 8 Wn. App. 844, 850–51.

In its Ex. 83 plat comments the Appellants appropriately rely upon *Citizens to Stop the SR 169 Asphalt Plant* to identify that all project impacts are pertinent to shoreline review

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analysis necessary. If the Commissioners had found such assessment necessary for all development they would of course have required such reports just as they did for other types of development. In this regard, in the absence of any evidence of adverse impacts to Clear Creek, the evidence presented that the aquifer flows to Cleark Creek as opposed to Barker Creek doesn't trigger any hydrological study as to the impacts to the Cleark Creek drainage basin.

to the extent they impact the shoreline. The *Citizens* case involved an asphalt plant where the only portion of the 25-acre project site that was in shoreline jurisdiction was a 0-60 foot strip along the northern boundary of the project site. There, Lakeside proposed to relocate access to the proposed asphalt plant, relocate highway drainage ditches, and add an acceleration and deceleration lane, stop sign, guardrail, and landscaping. Citizens, FOF No. 9. Outside this shoreline jurisdiction, Lakeside proposed an office, asphalt plant, materials storage areas, paved circulation and parking areas, along with sewer, water, dry utilities, stormwater control facilities, and removal of petroleum contaminated soils that exceed Model Toxics Control Act (MTCA) cleanup levels. Id. at FOF No. 8.

Despite the fact that the Lakeside improvements within shoreline jurisdiction were only a very small part of the total proposed development, the SHB ruled that the entire proposal was subject to shoreline review:

> *A shoreline permit application must describe the full, unified, and integrated physical project, both within and without of the shoreline jurisdiction. Laccinole v. City of Bellevue, SHB 03-025, p. 20 (March 10, 2004). This allows the local government to review the project to determine to what extent those portions of the project outside the project may adversely impact the shoreline of the state. Laccinole, SHB 03-025, pp. 20-21. SMA jurisdiction extends to improvements that are entirely outside of the shoreline jurisdiction area, not just those straddling the boundary. Merkel v. Port of Brownsville, 8 Wn. App. 844, 850–851, 509 P.2d 390 (1973); Preserve Our Islands v. King Cnty., SHB No. 04-009, p. 40, CL 2 (Nov. 3, 2004).*

Citizens, COL No. 24.

Just as in the *Citizens* case, the shoreline jurisdiction portion of the project site is a fairly narrow strip of land that constitutes just a fraction of the development project and only involves ancillary use – in the case of Lakeside that was access and in the case of the proposal plat the ancillary use is recreational.

The Applicant relies upon *Batchelder v. Seattle*, 77 Wn. App. 154 (Wash. Ct. App. 1995) for the proposition that subdividing a shoreline parcel out of a project area does not subject the entire project to shoreline review. In *Batchelder* a property owner short platted a water front lot into four lots. The City approved the subdivision and an associated shoreline development permit. On appeal the trial court reversed the trial court, finding that the City improperly approved the short plat to avoid application of its shoreline setback requirement. 77 Wn. App. At 157. Unfortunately, the *Batchelder* case is entirely unclear as to how shoreline setback requirements were found to be circumvented by the Applicant. In any event, the Court of Appeals reversed on the basis that *Merkel* did not apply because the shoreline permit was considered concurrently with

the short plat application. On that basis the court found no piecemeal review that was prohibited by *Merkel*.

Ultimately there is nothing in the *Batchelder* case that expressly states that the short platted lots located outside of shoreline jurisdiction were not subject to shoreline review. There is nothing in that decision that supports the position that the shoreline open space tract can be separated from the rest of the subject development proposal. As in the *Citizen* SHB decision, the open space tract is a part of the proposed development. It is part of the original lots comprising the subdivision area and it provides recreational amenities that serve the entire project site.

6. **Review Criteria**. The review criteria for shoreline conditional use permits are governed by KCC 22.500.100D3. The staff report applies pertinent shoreline master program regulations at pages 30-40. The staff's analysis on application of these regulations is adopted by reference to the extent consistent with this decision. References to daylighting Barker Creek are not adopted. It is also noted that the shoreline buffer now observed by the Applicant will be 100 feet instead of the 85 referenced in the report.

The criteria of approval for preliminary plat approval is fairly diffuse, with compliance in general required with all the requirements of applicable chapters of Title 16 KCC. *See* KCC 16.04.080. Chapter 16.40 KCC specifically addresses preliminary plat applications. KCC 16.40.030 requires conformance to the general standards of Chapter 16.04 and 16.24 KCC. The staff report assesses all pertinent Title 16 KCC subdivision standards and the findings and conclusions of the staff report in this regard are adopted by reference to the extent consistent with this decision. This decision will address the primary focus of preliminary plat review, which as required by RCW 58.17.100 is adequacy of infrastructure and mitigated environmental and community impacts. The requirements of RCW 58.17.110 are largely duplicated in the opening paragraph of KCC 16.04.080, which is quoted below in italics and applied via a corresponding conclusion of law.

Applicable review criteria for the SCUP and preliminary plat application are quoted below in italics and applied via corresponding conclusions of law:

Shoreline Conditional Use Permit

KCC 22.500.100D3a: *Shoreline CUPs shall be granted only after the applicant can demonstrate compliance with WAC 173-27-160 and this section as follows:*

a. *That the proposed use is consistent with the policies of RCW 90.58.020 and this program;*

RCW 90.58.020 provides in pertinent part: *It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.*

7. Criterion Met. The criteria quoted above are met. As outlined in the staff report at pages 30-40, the proposal is consistent with applicable Kitsap County Shoreline Master Program regulations and is therefore found consistent with the policies of "this program." As outlined in FOF No. 5, the proposal results in no significant adverse impacts to Island Lake, results in no net loss of ecological function and provides for public visual access of the shoreline. For these reasons the proposal is found to conform to the policies of RCW 90.58.020.

KCC 22.500.100D3b: *That the proposed use will not interfere with the normal public use of public shorelines and does not conflict with existing water-dependent uses;*

8. Criterion Met. The criterion quoted above is met. No encroachment is proposed closer than 100 feet from the shoreline and a condition of approval requires the existing dock to be removed if the proposal results in increased lake usage from the project site.

KCC 22.500.100D3c: *That the proposed use of the site and design of the project are compatible with other authorized uses within the area and with uses planned for the area under the Comprehensive Plan and this program;*

9. Criterion Met. Surrounding land uses include single family residential development to the north, south, west, and across the shoreline to the northeast. This development complies with the comprehensive plan for parcels with the Urban Low Residential zoning designation. The physical encroachment into the shoreline is limited to passive recreational use with a 100-foot shoreline buffer, which is fully compatible with surrounding low intensity development.

KCC 22.500.100D3d: *That the proposed use will not result in significant adverse effects or a net loss to the shoreline ecosystem functions in which it is to be located;*

10. Criterion Met. The criterion is met for the reasons identified in Finding Fact No. 5.

KCC 22.500.100D3e: *That the public interest suffers no substantial detrimental effect;*

10. Criterion Met. The criterion is met because the proposal will not create any significant adverse impacts to shoreline ecological functions or the surrounding community as determined in Finding of Fact No. 5 while at the same time providing for public access to the shoreline and enabling urban development as encouraged under the policies of the Washington State Growth Management Act.

KCC 22.500.100D3f: *That consideration has been given to the cumulative impact of additional requests for like actions in the area and shall not result in substantial adverse effects or net loss of shoreline ecosystem functions. For example, if CUPs were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the use preference policies and shall not produce substantial adverse impacts to the shoreline environment. Consideration shall be demonstrated through preparation of a cumulative impacts report, if requested, that substantially conforms to the applicable provisions of Chapter 22.700 (Special Reports);*

11. Criterion Met. The HMP includes a cumulative impact analysis. This analysis indicates that additional requests that meet Kitsap County Code will not result in net loss of shoreline ecosystem functions. The cumulative impacts are further found to not be significant for the reasons identified in FOF No. 5C.

KCC 22.500.100D3g: *Other uses which are not classified or set forth in this program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program;*

12. Not applicable. Residential subdivision use is directly addressed in the SMP and authorized in the urban conservancy shoreline designation with a conditional use permit by KCC Table 22.600.105.

KCC 22.500.100D3h: *Uses which are specifically prohibited by this master program may not be authorized pursuant to this section.*

13. Criterion Met. No prohibited uses are proposed.

Preliminary Plat

KCC 16.04.080: *For all types of land segregations, appropriate provisions shall be made for the public health, safety and general welfare, including but not limited to: open spaces, drainage ways, streets or roads, alleys, other public ways, nonmotorized access,*

road and pedestrian connectivity, parking, transit stops, fire protection facilities, potable water supplies, sanitary sewage wastes, solid wastes, landscaping, parks and recreation, playgrounds, sites for schools and school grounds, sidewalks or other planning features that assure safe walking conditions for students who only walk to and from school. The public use and interest will be served by the proposed land segregation. The following general requirements shall be met for all land segregations proposed under this title. In addition, all specific requirements relevant to each individual type of land segregation are found in their respective chapters of this title.

14. Criterion met. The criterion quoted above is met. The proposal provides for adequate infrastructure and public services for the reasons identified in Finding of Fact No. 6. The public use and interest is served because the proposal creates no significant adverse impacts as determined in Finding of Fact No. 5 while also encouraging development at urban densities within an urban growth area as encouraged by the Washington State Growth Management Act. Public health, safety and welfare are provided for all the foregoing reasons.

APPELLANTS' SEPA APPEAL ISSUES

The Appellants' SEPA appeal issues are quoted in italics and applied via corresponding Conclusions of Law:

Issue 1. *The Meadowview MDNS fails to identify all conditions imposed by Kitsap County under SEPA, and on which the MDNS relies…*

15. Issue Denied. Steven Heacock, the SEPA responsible official, clarified that the conditions listed on the MDNS are all the conditions of the MDNS.

Issue 2. *The MDNS concludes that compliance with various non-SEPA elements of the Kitsap County Code will reduce the Meadowview project's adverse environmental impacts to a level of non-significance. These non-SEPA elements of the code include KCC Title 12 (stormwater code), Title 19 (critical areas), and Title 22 (shoreline master program). However, in order to lawfully make such a determination, the county must first "[i]dentify the specific probable adverse environmental impacts of the project." WAC 197-11-158(2)(b). The County must then "determine" whether those specific impacts have been "[i]dentified in the comprehensive plan, subarea plan, or applicable development regulations." Id. at (2)(b)(i). Only then can the County evaluate whether those impacts will be adequately addressed by non-SEPA elements of the code. WAC 197-11-158(2)(b)(i–ii). Here, the MDNS identifies several elements of the code with which the Meadowview project must comply as conditions of approval under SEPA. But there is no indication that the county has first identified the specific adverse impacts which those code elements are intended to mitigate or to avoid. For example, the MDNS notes that*

several comments have been submitted concerning "impacts to Island Lake and Barker Creek including water quantity, quality, and temperature." However, the MDNS fails to indicate that the county has actually identified what those impacts are likely to be, what elements of the project (or MDNS conditions) those impacts are likely to be caused by, or how, exactly, those impacts will be reduced to a level of non-significance by following the non-SEPA elements of the Kitsap County Code cited in the MDNS.

Impacts on stream temperature (and related pollutant parameters) are an example of this. Barker Creek is known to provide important spawning and/or rearing habitat for several cold-water fisheries, including fall Chinook, coho (a federal candidate species), fall chum, and Puget Sound steelhead (listed as threatened under the federal ESA). Downstream from the proposed Meadowview project, Barker Creek is listed on Washington's 303(d) list for low dissolved oxygen, a parameter that is linked directly to in-stream water temperature (as water temperature rises, dissolved oxygen goes down). Barker Creek is also listed as a "water of concern" for pH, and has a long history of impairments caused or exacerbated by stormwater runoff and discharges. In turn, the Meadowview project contains several elements that are likely to increase the temperature of Barker Creek, including discharge from the large retaining ponds, significantly reduced stream buffers, and daylighting of the creek as it leaves Island Lake (a requirement that is certainly beneficial in principal, but may nevertheless raise stream temperatures if not appropriately carried out). Yet, not only do the application materials fail to address potential temperature impacts, Appellants are aware of no provision within the non-SEPA elements of the Kitsap County Code that would regulate or mitigate such impacts, leaving SEPA as the only regulatory vehicle for the County to impose meaningful and effective mitigation measures. These impacts are likely to be significant and are not addressed or adequately addressed by the proposed mitigation measures.

Nor are any mitigation measures identified to shield other properties from increased light, noise, and glare from the Meadowview Project.

16. Issue Denied. Issue No. 2 asserts that the County failed to sufficiently identify project impacts before evaluating them. The numerous studies comprising the foundational exhibits identify that most pertinent impacts were thoroughly identified and assessed by the SEPA responsible official. To the extent that any impact wasn't adequately identified for purposes of making a SEPA threshold determination, that omission was remedied by this appeals review as outlined in COL No. 3. The most significant omission was failing to adequately assess lake level impacts as addressed in COL No. 3. However, the failure to asses that issue was remedied by its thorough consideration in this appeal.

Issue 3. *The Meadowview MDNS notes that "[t]he Department received multiple comments regarding the potential impacts to a Critical Aquifer Recharge Area Type I."*

The MDNS goes on to note that certain non-SEPA elements of the Kitsap County Code do not require a hydrological study for residential development—specifically, KCC 19.600.615 and 19.600.620. However, as the Washington legislature has stated, a "primary role of environmental review under [SEPA] is to focus on the gaps and overlaps that may exist in applicable laws and requirements related to a proposed action." Laws of 1995, ch. 347, § 201(2) & notes following RCW 43.21C.240 (emphasis added).

Here, the proposed Meadowview project is proposed to be built within a Category I Critical Aquifer Recharge Area, where "the potential for certain land use activities to adversely affect groundwater is high." KCC 19.600.610.A. Accordingly, if the local development code does not require a hydrological study for impacts on the aquifer, that is precisely where the county's SEPA review should have focused, especially in light of the long history of problems with the Island Lake aquifer caused by nearby development. As it appears the county has not required such a study, the MDNS should be reversed. The Meadowview MDNS should be reversed and a new threshold determination should be issued after a hydrological study has been performed to evaluate impacts on the aquifer, or, alternatively, after the county has fully complied with the provisions of WAC 197-11-080 for incomplete or unavailable information, including production of a worst-case analysis. Presently, the Silverdale Water District is in the process of conducting a study on the Island Lake aquifer, which may significantly change the county's understanding of the aquifer and the potential for impacts from the Meadowview Project.

17. Issue Granted in Part. As determined in COL No. 3 the County should have required a hydrological study. However, it's failure to do so was remedied by the Applicant's subsequent preparation of such a study, Ex. B10 and detailed consideration in this appeal process.

Issue 4. *Notwithstanding the lack of analysis and information described above, the Meadowview project is likely to result in significant adverse environmental impacts on the Island Lake aquifer and Barker Creek. Impacts to Island Lake include lowering of the lake level caused by increased ground water withdrawals and impeding recharge of the aquifer. The Meadowview project proposes the use of stormwater ponds, dispersion trenches located within the 85-foot reduced lake buffer, and bioswales, none of which provide substantive groundwater recharge. In the absence of BMPs for groundwater recharge the entire Meadowview footprint (55 acres) will largely become unavailable for groundwater recharge, further exacerbating both lake levels and aquifer recharge.*

Impacts to Barker Creek include but are not limited to significant adverse impacts on water quality, quantity, and temperature including thermal impacts (which in turn will adversely affect dissolved oxygen and pH) caused by discharges from the proposed stormwater ponds, impervious surfaces, and dispersion trenches, as well as pollution caused by fertilizers and pesticides from yard care, detergents and phosphorus from

washing cars and decks and driveways, zinc, and copper from building materials, PAHs from driveways, seal coating, 6PPD Quinone from car tires, and increased fine sediment, nutrients, pathogens, and metals. These impacts on water quantity, quality, and temperature are in turn likely to have significant adverse impacts on aquatic species in Barker Creek, including cold-water salmonids. Additional stormwater discharges to Island Lake may adversely affect water quality through increased sedimentation and pollutant loads. Additional recreational use of the lake similarly may adversely affect water quality.

These impacts on Island Lake, the Island Lake aquifer, and Barker Creek are likely to be significant in their own right, as well as cumulatively with impacts caused by other past, present, and future changes to the natural landscape surrounding Island Lake.

18. Issue denied. All the impacts identified above are addressed in FOF No. 5 and not found to constitute probable significant adverse impacts.

Issue 5: *In addition to impacts on aquatic resources, the Meadowview project would also result in the substantial destruction of nearly 55 acres of old second-growth forest. This area provides important habitat to terrestrial species. Removal of this habitat is a significant adverse impact on the natural environment surrounding Island Lake, of which the project site currently represents a significant percentage.*

Relatedly, the State of Washington and Kitsap County have both mapped a seasonal stream on the proposed Meadowview Project site which will be destroyed. The applicant has provided insufficient evidence for its conclusion that this stream does not exist—a conclusion at odds with historic observations of the area. Nor has Kitsap County required any further on-site evaluation to determine conclusively if this stream exists.

This natural forested area will, in turn, be replaced with a massive new housing development with significantly increased noise, light, glare, and increased use of Island Lake by boaters, swimmers, and others, disrupting both the natural and built environments of Island Lake and adjacent lands, including aesthetic impacts and impacts on views. As above, all of these impacts are likely to be significant both in their own right, as well as cumulatively with impacts caused by other past, present, and future changes to the natural landscape surrounding Island Lake.

19. Issue Denied**.** The project site is zoned for the proposed use and its impacts in regards to noise, light and glare those typically associated with residential use of the authorized density and thus found to be contemplated and found acceptable in the assigned zoning designations. The trees are not protected by County standards and thus can be removed as proposed. The Appellants did not present any evidence to counter the findings of the HMP that no protected stream is on the property. The HMP findings were based

upon site evaluation by a qualified professional and are determinative in the absence of any compelling evidence to the contrary.

Issue 6. *The Meadowview project is likely to result in significant adverse traffic, traffic-safety, and public safety impacts. Among other things, the Meadowview project violates the county's Fire Code requirement that more than one access be provided for developments with 100 or more homes.*

Additional risks to the public include the location of overhead power lines across Camp Court NW at its intersection with NW Island Lake Road. If the power line were to fall there, all access to Meadowview and existing homes on Camp Court would be blocked. Future locations of the overhead lines need to be clarified and appropriate measures taken to safeguard the public.

The project area is listed as a "high fire hazard Wildland/Urban Interface/Intermix zone" according to County staff notes. The acknowledged fire hazard raises the possibility of having to evacuate the subdivision. Fallen trees, downed power lines and poor visibility due to smoke could strand residents and hinder emergency responders. Relying on a single access for so many homes risks blockages to an evacuation.

The steep slope of Island Lake Road raises safety concerns during freezing periods for the ability of eastbound traffic to slow or stop at Camp Court NW. The TIA notes a slope of "approximately 10 percent in the eastbound direction" which may underestimate the actual slope east of Granite Lane. But even ten percent is a challenge to vehicles stopping reliably and safely in freezing conditions. This is especially concerning since the TIA shows that 95 percent of project trips will come downhill on Island Lake Road to turn right onto Camp Court NW.

The lack of sidewalks on Island Lake Road presents growing risks to pedestrians with the addition of project trips. Based on the TIA, almost 2,900 new daily trips will be added to NW Island Lake Road west of Camp Court Rd. Given that the road now carries only about 300 daily trips, that's almost a ten-fold increase. The lack of shoulders on Island Lake Road leaves pedestrians with no room to dodge the added traffic.

20. Issue Granted in Part. As outlined in FOF No. 6D3, pedestrian improvements will be required to improve pedestrian safety along Island Lake Road. The issue is otherwise denied for the reasons identified in FOF No. 6D.

Issue 7. *By locating the proposed sewage station just outside the proposed 50-foot buffer of the daylighted section of Barker Creek—and within the standard 150-foot buffer for the*

creek—the Meadowview project threatens significant adverse impacts on water quality. These impacts are not addressed in the Meadowview MDNS.

21. Issue Denied. The Civil Plans show the lift station outside of all buffers. Exhibit F50 at 24. Also, Mr. Gurnee testified that the sewer lift station is located outside the 150-foot buffer and will be designed to comply with Kitsap County Code. Tr. 164.

Issue 8. *It is unclear if the County will be requiring a 150-foot buffer along the daylighted section of Barker Creek, or if this buffer will be only 50 feet. If the latter, this violates the minimum buffer requirement of 150-feet at KCC 19.300.315 for Type F waters. Nor may DCD unilaterally reduce that buffer by more than 50 percent without a variance issued pursuant to KCC 19.100.135.*

22. Issue Denied. Daylighting of the creek is not required.

Issue 9. *The applicant misclassified Wetland A as a slope wetland when it should have been classified as a riverine wetland. Proper classification and use of the correct wetland rating form likely would have resulted in a higher rating with larger buffers.*

23. Issue Abandoned. Appellants did not litigate this issue during the appeal and it is considered abandoned.

Issue 10. *There is no analysis of the likely significant adverse impacts caused by the proposed reduced 85-foot buffer adjacent to Island Lake. Nor has the applicant met the requirements for a reduced buffer under KCC 22.400.120(b)(2).*

23. Issue Moot. The Applicant stated on the last day of the appeal hearing that it had decided to no longer pursue the 85-foot reduced standard buffer from the edge of Island Lake but rather is going to comply with the 100-foot full standard buffer required for the Urban Conservancy shoreline.

Issue 11. *Regarding all of the impacts described in this appeal, the MDNS is not based on adequate information and analysis to meet Kitsap County's procedural duty under SEPA to undertake a searching, well-documented assessment of potential impacts. The County also violated SEPA by failing to comply with the provisions of WAC 197-11-080 for incomplete or unavailable information, including production of a worst-case analysis.*

24. Issue Denied. All issues raised by the Appellants were adequately assessed either during the threshold review process or during this appeal process. When necessary, a

worst case analysis was performed as required by WAC 197-11-080, specifically in FOF 5B5 for the 6PPD analysis.

Issue 12: *Finally, Appellants incorporate and raise as claims all comments made by Mr. Fenton and Mr. Shorett in the comment letters included herewith as Attachments B, C, and D.*

25. Issue Denied. The only issue found in the comment letters not already addressed in the other appeal issues was phasing. This issue was not pursued during the course of the appeal and is considered abandoned.

Applicant SEPA Appeal Issues

Issue 1. *Mitigation Measure 7 – Daylighting of Barker Creek – Is Not Appropriate Project Mitigation*

26. Issue Granted. SEPA Mitigation Measure No. 7 is stricken because the proposal does not create any adverse impacts that need to be mitigated by Mitigation Measure No. 7.

Issue 2. *Refutation of Project Parcel Listing.*

27. Issue Granted in Part. The Applicant asserts that Parcel 102501-1-016-2004 should not be included in the SEPA description as part of the project site because it is not owned by the Applicant is just an adjoining parcel upon which the Applicant will place stormwater facilities under an easement. The SEPA project description will be revised to make clear that Parcel 102501-1-016-2004 is only used to accommodate some of the Applicant's stormwater facilities under an easement.

DECISION

The preliminary plat and shoreline conditional use permits are approved with the conditions listed below for the reasons identified in the Conclusions of Law above. The MDNS is also modified as outlined below for the reasons identified in the Conclusions of Law:

A. Planning/Zoning

~~1. Review the linked Hearing Examiner decision for final conditions of approval. The Staff Report conditions below are only recommended conditions to the Hearing Examiner and may not be valid.~~

2. The decision set forth herein is based upon representations made and exhibits contained in the project application(s). Any change(s) or deviation(s) in such plans, proposals, or conditions of approval imposed shall be subject to further review and approval of the County and potentially the Hearing Examiner.
3. The authorization granted herein is subject to all applicable federal, state, and local laws, regulations, and ordinances. Compliance with such laws, regulations, and ordinances is a condition to the approvals granted and is a continuing requirement of such approvals. By accepting this/these approvals, the applicant represents that the development and activities allowed will comply with such laws, regulations, and ordinances. If, during the term of the approval granted, the development and activities permitted do not comply with such laws, regulations, or ordinances, the applicant agrees to promptly bring such development or activities into compliance.
4. The names of the roads in this land segregation shall be approved by Community Development prior to final subdivision approval.
5. All required permits shall be obtained prior to commencement of land clearing, construction and/or occupancy.
6. Landscaping shall be installed and maintained in conformance with the requirements of Kitsap County Code (KCC) 17.500. Landscaping shall be installed and inspected prior to requesting a final inspection, or guaranteed by means of an assignment of funds or bonded in the amount of 150 percent of the cost of installation.
7. Any and all signage design and location (including exempt signs) shall comply with KCC 17.510, and be reviewed and approved by the Department of Community Development prior to installation. Signage may require a separate permit.
8. The uses of the subject property are limited to the uses proposed by the applicant and any other uses will be subject to further review pursuant to the requirements of the KCC. Unless in conflict with the conditions stated and/or any regulations, all terms and specifications of the application shall be binding conditions of approval. Approval of this project shall not, and is not, to be construed as approval for more extensive or other utilization of the subject property.
9. This permit application approval shall automatically become void if no development permit application is accepted as complete by the Department of Community Development within four years of the Notice of Decision date or the resolution of any appeals.
10. Any violation of the conditions of approval shall be grounds to initiate revocation of permit approval(s).

11. KPHD will require sewered building clearance prior to building permit issuance. The applicant shall provide either binding water letters or proof or a construction agreement for a main extension prior to sewered building clearance approval.
12. Artificial outdoor lighting shall be arranged so that the lighting is fully recessed or fully shielded from side view and directed downward and away from surrounding properties. No more than one foot-candle of illumination shall leave the property boundary. Lighting shall be the minimum necessary for safety purposes and be compatible with surrounding properties.
13. Provide an irrigation plan at SDAP submittal.
14. A final landscaping plant is required at SDAP submittal.
~~15. All roof-mounted air conditioning or heating equipment, vents, ducts, or other equipment shall not be visible from any abutting lot, or any public street or right-of- way as feasible.~~
16. A Construction Agreement must be entered into between the Developer and Silverdale Water District to build an extension of the water system, all the conditions of the agreement must be satisfied, and all charges must be paid.
17. A Forest Practices Application shall be reviewed and approved by Kitsap County DCD prior to the commencement of any conversion logging of the site. Any proposal to thin or log existing forested areas outside of the project area are subject to the requirement of a timber harvest conversion option harvest plan with Kitsap County DCD to the extent required by County or state regulations.
18. Building Site Applications will be required prior to building permit issuance.
19. Prior to any logging, clearing, or grading of the site, the applicant shall flag all buffer areas including ~~perimeter buffers, roadway buffers, open space perimeters~~, lake, creek and wetland buffers and request an inspection from the DCD. DCD must approve buffer flagging prior to commencement of any on site work.
20. All critical area buffers ~~and open space~~ shall be considered no-cut natural vegetation areas. Any removal of vegetation within the buffer or open space areas shall require prior approval from the DCD. These areas shall be depicted on the face of the plat and marked "Existing Natural Vegetation to Remain".
21. A physical barrier, ie, split rail fence, shall be constructed on all lots which abut open space or buffers. Fencing need not be sight obscuring but should clearly identify the open space/buffer boundary.
22. The final construction drawings shall include detail plans for pedestrian walkways, paths, and road improvements.

23. A Homeowner's Association and protective Covenants, Conditions and Restrictions shall be established prior to final approval to ensure the perpetual maintenance of private roads, storm drainage facilities, recreational facilities and common Open Space. ~~Further, conditions shall be placed within the Protective Covenants, Conditions and Restrictions which prohibit the use of chemical fertilizers and encourage the use of organic fertilizers and the use of native vegetation in the landscaping designs of individual lots. The use of pesticides and herbicides within the plat shall be prohibited unless professionally applied subject to any regulations in effect at the time of application.~~ The Washington State Legislature adopted updated HOA rules through the Washington Common Interest Ownership Act March 6, 2018, that went into effect July 1, 2018.

    ~~The revised rules clarify and impose requirements operating budgets and maintaining cash reserves. (See 16.04.080.E for possible revisions.)~~
24. A Hydraulic Project Approval (HPA) may be required for the drainage features proposed with associated shoreline permit application. Prior to SDAP approval, the applicant shall submit an approved HPA from the Washington State Department of Fish and Wildlife (WDFW) or documentation from WDFW specifying that an HPA is not required.
25. The required SDAP shall demonstrate how the project complies with conditions of approval imposed by the associated shoreline permit.
26. The ~~shared-use~~ <u>pedestrian</u> paths <u>identified for public use</u> must be shown in an easement dedicated to the public on the Final Plat. These are limited to the pedestrian connection shown in Tract OS 12 and Tract OS 17 only.
27. Per WAC 173-175, the construction of pond berms that will impound a volume of ten acre-feet or more of water requires review and approval by the Department of Ecology. This approval must be completed prior to issuance of the associated SDAP.
28. Final plat approval will require all wells be decommissioned by a licensed well driller and the septic tanks abandoned per KPHD code. Sewer and water availability will be required for all lots prior to final plat approval.
~~29. A stream previously tightlined is still considered a stream via KCC (refers to WA 222- 16-030) and requires vegetative buffers with the associated 15-foot building setback. The project shall daylight the stream (Barker Creek) up to Island Lake as discussed in the Habitat Management Plan (HMP) authored by Ecological Land Services on June 26, 2023. This includes design and mitigation plantings to establish the~~

~~required 150-foot native vegetative buffer and 15-foot building setback.~~

30. The SDAP review process must confirm that no more, or less, material amount of water shall leave the lake as a result of this improvement.
31. Landscaping for the north, west, and southern borders of the project require partial separation buffers consistent with KCC Section 17.500.027 A. A solid fence or combination of semi-solid fence and vegetation must partially screen the development from adjacent urban residential properties.
32. The face of the final plat shall include a note as follows: Fences shall be maintained in perpetuity to comply with the partial separation buffer requirements of the project.
33. The east border and all stormwater facilities require a solid screen buffer consistent with KCC Section 17.500.027 B. The associated SDAP must show detailed plant spacing, schedule, and implementation notes. All installations must comply with KCC Section 17.500.030 Installation and maintenance.
34. Concurrency capacity reservation certificates must be acquired through the Public Works Department.
35. Critical area ~~B~~buffers or setbacks shall remain undisturbed natural vegetation areas except where the buffer can be enhanced to improve its functional attributes. Refuse shall not be placed in buffers.
36. A 150-foot native vegetation buffer shall be retained along the perimeter of the stream as depicted on the approved site plan and in accordance with the Critical Areas Report authored by Ecological Land Services on February 16, 2023 (Revised 6/26/2023 and 4/17/2024) and Habitat Management Plan authored by Ecological Land Services on June 26, 2023 (Revised on 4/17/2024). In addition, a building or impervious surface setback line of 15 feet is required from the edge of the buffer.
37. Danger Trees—Minor pruning, removal, or elimination of danger trees in the buffer may be allowed, subject to approval by the DCD. (360)337-5777
38. Bald Eagles—Approval is conditioned for compliance with the Federal Bald and Golden Eagle Protection Act and the National Bald Eagle Management Guidelines. The applicant is responsible for following all federal setbacks, construction windows and obtaining any federal permits as necessary through the US Fish and Wildlife Service.

39. Prior to final inspection and occupancy, the common boundary between the stream/wetland buffer and the adjacent land shall be permanently identified with critical area buffer signs. A total of 45 Critical Area Ordinance (CAO) signs on the western buffer edge ~~and 45 Critical Area Ordinance (CAO) signs on the eastern buffer edge~~ shall be placed along the designated boundary spaced approximately 50-feet apart, visual from sign to sign. Signs must be attached to existing trees with diameter breast height greater than 4 inches. Alternative methods include 4x4 posts, metal posts or split rail fencing. Signs may be requested with any inspection prior to final, but not at final inspection. The consulting habitat biologist shall place the signs.
40. Vegetation planting shall occur as specified in the approved mitigation or enhancement plan produced in support of this permit. Planting of native vegetation shall occur within the first dormant season once the permitted project has been constructed and approved. When planting is complete, the applicant shall submit an as-built plan to DCD for approval prior to requesting the final inspection. Any assignment of savings, financial surety or other like security for performance of the buffer mitigation plan shall be released if planting requirements are satisfied upon completion of the site inspection and as-built approval.
    Monitoring and maintenance of the planted area shall be conducted for five years, and extended if necessary, after DCD staff approves planting. Monitoring includes live and dead vegetation counts and records of all maintenance activities.
    Maintenance activities can be defined as, but are not limited to, removal practices on invasive or nuisance vegetation and watering schedules. Monitoring information shall be summarized in a report with photographs depicting conditions of the vegetation and overall site. Monitoring reports are due to DCD annually. If more than 20 percent of the plantings do not survive within any of the monitoring years, the problem areas shall be replanted, and provided with better maintenance practices to ensure higher plant survival. The construction of the permitted project is subject to inspections by DCD. Extensions of the monitoring period may be required if original conditions are not met. All maintenance and construction must be done in full

compliance with KCC, including the Kitsap County Critical Area Ordinance (Title 19 KCC) and Shoreline Master Program (Title 22 KCC). Any corrections, changes or alterations required by DCD Inspector shall be made prior to additional inspections. Any assignment of savings, financial surety or other like security for maintenance of the buffer mitigation plan shall only be released if monitoring requirements are satisfied in the final year of the monitoring term.

Mitigation Planting Bond. A performance bond, assignment of savings, or other like security has been required by the department in an amount necessary to provide for future site monitoring and possible corrective action required for compensatory mitigation projects (one and one-half times the estimated cost of mitigation). Once the project is completed and a maintenance bond is established, the performance bond will be released. The maintenance bond, as determined by the wetland specialist/habitat biologist, will be released upon success of the project, as determined by the metrics in the mitigation plan, and no earlier than five years after completion of the mitigation project or as otherwise established. If the approved mitigation is not completed or fails to meet its success standards, the property owner must agree to a property access release form, with forfeiture of funds after the specified monitoring period. An 85-foot native vegetation buffer must be maintained landward of Ordinary High Water on parcel 102501-2- 004-2006. A 130- foot native vegetation buffer must be maintained landward of Ordinary High Water on parcel 102501-1-016-2004. Both are and shall be depicted on the approved site plan for any subsequent permits. In addition, a building or impervious surface setback line of 15 feet is required from the edge of the buffer.

~~41. The project shall install a culvert of sufficient size in Barker Creek to allow fish passage and to pass the water flows in a flooded condition.~~

42. Development shall be subject to the conditions of the geotechnical report associated with this permit and on file at the Department of Community Development, authored by Terra Associates on July 28, 2022 <u>as subsequently amended and updated</u>.

43. Critical Aquifer Recharge Area.

All development in Kitsap County is subject to conditions of Section 19.600.615 Development Standards and subsection A. Category I Critical Aquifer Recharge Areas:

1. and uses identified in Table 19.600.620 are prohibited in Category I Critical Aquifer Recharge Areas, unless a waiver is granted by the department; and
2. Requests for waivers for activities listed in Table 19.600.620 shall include a hydrogeological report (See Chapter 19.700, Special Reports) that includes a detailed risk-benefit analysis that considers credible, worst-case scenarios. The hydrogeological report shall evaluate, where applicable, potential impacts of a proposed land use or activity on both groundwater and surface water quality and quantity. The waiver will be evaluated and treated as a special use review and be reviewed by the department, the health district, affected tribes, and the affected water purveyors.

~~44. A note on the final plat shall not allow further subdivisions of the parcels after the final plat is approved.~~

45. Geologic hazards that may impact a parcel shall require a notice to title for each parcel affected.

~~46. Each parcel in the platted development must purchase and/or renew a Kitsap Transit Orca card, or the equivalent transit authority. This note shall be added to the face of the final plat.~~

47. Walking trails and pedestrian connections, when not sidewalks, shall be a resilient all-weather surface (see Attachment G: Trail Detail) that requires no (or very nominal) care:
    1. All trail construction shall include standard Clearing Limits as follows:

    Brush and branches above 36" above ground level shall be removed to a height of 8' within 3' of trail. All vegetation below 36" height shall be cut back to the width of the trail. Fallen Logs shall be cut flush at the edge of the trail.

    2. Clearing within the designed trail corridor: Remove all roots and organic debris to a depth of 6" prior to importing crushed rock. Establish design cross-slope in subgrade materials, slope or crown as directed. In areas of significant tree roots, excavate ONLY 4" to subgrade and compact. Provide 4" base course and 2" top course per specifications. Roll compact edges of finish path and

blend back to adjacent grade. Finish grade path will be flush or slightly elevated/crowned above adjacent surfaces.

1. Import crushed rock following departmental approval of prepared trail bed. Taper edges at a 45-degree angle into the subgrade. Top course shall be flush with finish grade. Provide complete mechanical compaction. Where complete mechanical compaction is impracticable or impossible, compact by hand with appropriate weighted implement.
2. Perform site restoration and re-vegetation immediately upon completion of trail and/or related drainage work or as directed by the Engineer.

48. The project shall include off-site improvements to Camp Court NW, and the intersection of Camp Court NW and Island Lake Road, as identified in the Traffic Impact Analysis document. All applicable SDAP and ROW permitting requirements shall apply.
49. Landscaping is required to conceal all retaining walls throughout the project site.
50. The project shall retain existing trees where reasonably feasible ~~possible~~.
51. The number of road trees shall equal 1 tree per 25 lineal feet of roadway. Street trees shall comply with 17.500, 17.700 Appendix A, and the tree species listed in the Kitsap County Road Standards Appendices.
52. The project shall comply with 17.490 for all parking requirements, including the number of spaces and design of off-street parking. This includes compliance with bicycle parking requirements (17.490.070) and electric vehicle parking requirements (17.490.080). All parking spaces must be located within 300 feet of the use they intend to serve.
53. The project shall supply sidewalks to connect all parking spaces to the sidewalk network or to community facilities they serve.
54. The project must provide durable trail access up to the property boundary, using construction details noted earlier, to Thackery Place, Emerald Heights Elementary School, and throughout the open space tracts. These trails must be maintained by the Homeowners Association. Trail requirements of this condition may be modified as authorized in Condition No. 102 and 103.
55. The project shall incorporate a public transit access location, as

depicted on the site plans, centrally located and ADA accessible to anyone within this development.

Development Engineering

GENERAL

56. Construction plans and profiles for all roads, storm drainage facilities and appurtenances prepared by the developer's engineer and easements for access, construction and maintenance of stormwater facilities on parcel 102501 -1-016-2004 shall be submitted to Kitsap County for review and acceptance. No construction shall be started prior to said plan acceptance.
57. Approval of the preliminary plat shall not be construed to mean approval of the total number of lots or configuration of the lots and tracts. These parameters may be required to be revised for the final design to meet all requirements of Kitsap County Code Titles 11 and 12.

STORMWATER

58. The information provided demonstrates this proposal is a Large Project as defined in Kitsap County Code Title 12, and as such will require a Full Drainage SDAP from Development Engineering.
59. Should the proponent propose phasing of the project, a phasing plan shall be submitted to Development Engineering for review and approval. The phasing plan shall, as a minimum, address the following items: Time tables indicating the anticipated time between initial site grubbing/grading activity and the completion of construction, including site stabilization of that specific phase; and the extent of drainage improvements to be installed during the various phases.
60. Stormwater quantity control, quality treatment, and erosion and sedimentation control shall be designed in accordance with KCC Title 12 effective at the time the SDAP application is deemed fully complete. The submittal documents shall be prepared by a civil engineer licensed in the State of Washington. The fees and submittal requirements shall be in accordance with Kitsap County Code in effect at the time of SDAP application.
61. Any project that includes off-site improvements that create additional hard surface such as lane widening, sidewalk or

shoulder installation or intersection channelization shall provide stormwater mitigation in accordance with Kitsap County Code Title 12.

62. The site plan indicates that greater than 1 acre will be disturbed during construction. This threshold requires a National Pollutant Discharge Elimination System (NPDES) Stormwater Construction permit from the State Department of Ecology. More information about this permit can be found at: http://www.ecy.wa.gov/programs/wq/stormwater/construction/ or by calling Alyssa Brewer at 564-669-4922, email alyssa.brewer@ecy.wa.gov. This permit is required prior to issuance of the SDAP. Processing time for NPDES permit is a minimum of 37 days.
63. Per WAC 173-175, the construction of pond berms that will impound a volume of ten acre-feet or more of water requires review and approval by the Department of Ecology. This approval must be completed prior to issuance of the SDAP.
64. The application indicates that a significant quantity of grading material will be exported from the site. Prior to issuing the SDAP an approved fill site(s) must be identified.
    - Any fill site receiving 150 cubic yards or more of material must obtain an SDAP.
    - Fill sites receiving 5,000 cubic yards or more, or located within a critical area, must have an engineered SDAP.
    - For any fill site receiving less than 150 cubic yards, the SDAP holder shall submit to Kitsap County Department of Community Development load slips indicating the location of the receiving site and the quantity of material received by said site.
65. The application indicates that a significant quantity of grading material will be imported to and/or exported from the site. Typically, this means five or more trucks entering/leaving the site per hour. Because of this a vehicle wheel wash must be included as an element of the siltation erosion control plan.
66. All retention facilities shall be a minimum of 200 feet from any slope steeper than 30%. This distance may be reduced based on a geotechnical engineering report. That analysis shall be prepared by a Civil Engineer licensed in the State of Washington,

knowledgeable in the practice of soils engineering and mechanics. The analysis shall address the effects of groundwater infiltration, seepage, potential slip planes, and changes in soil bearing strength. The proposed facilities shall be designed following the recommendations of the geotechnical analysis.

67. The impervious area per lot accounted for in the overall drainage facilities installed shall be indicated on the face of the final plat, along with the following note: Additional impervious surfaces created on an individual lot beyond the amount accounted for in the overall drainage facilities shall be mitigated in accordance with Kitsap County Code Title 12 and may require a Site Development Activity Permit.
68. The following shall be added to the face of the Final Plat, under the heading Notes and Restrictions:
    - Maintenance of roof and yard drains and appurtenances shall be the responsibility of the individual homeowners.
    - All runoff from roof and yard drains must be directed so as not to adversely affect adjacent properties.
    - All lots are obligated to accept road drainage at the natural locations after the grading of streets is complete.
    - No owner or occupant may obstruct or re-channel the drainage flows after location and installation of drainage swales, storm sewers or storm drains. It is expressly understood that any alteration of the water flow shall be completed only after approval by Kitsap County Department of Community Development.
69. The Final Plat shall include the following under the heading Easements:
    - All storm sewer easements are granted to Kitsap County for operations and maintenance of storm drainage facilities.
    - A permanent storm drainage easement is granted to Kitsap County for the purpose of operation and maintenance of storm drainage facilities on and across all Tracts.
70. The following condition shall be added to the face of the Final Plat: At the time of submittal of a building permit for any lot within this plat, soil amendment is required for all disturbed areas not covered by hard surface.
71. Prior to recording the Final Plat, soil amendment is required over all disturbed areas within Tracts that are not covered by

hard surface; provided, that in the event completion of a Recreational Tract has been bonded, soil amendment shall be completed prior to expiration of the bond covering that work.

72. All publicly maintained drainage systems outside public dedicated right of way shall be located either in a tract dedicated to Kitsap County or in an easement, granted to Kitsap County, for ingress, egress, operations and maintenance of the stormwater facilities contained therein.
73. Upon completion of the storm drainage facilities, the developer will be required to post a two-year maintenance bond for the facility. The developer will be responsible for providing regular and adequate maintenance during this two-year period and supportive maintenance records. At the end of this time, the County will inspect the system and, when the facility is acceptable and 80% of the homes have been completed, the County will take over maintenance and operation of the system. Wording to this effect must appear on the plat and in the covenants before final recording. Areas proposed to be maintained by the County that are not in the right- of-way must be shown as a separate tract/s or drainage easement/s with Kitsap County being designated as the grantee.
74. If the project proposal is modified from that shown on the site plan approved for this permit application, Development Engineering will require additional review and potentially new conditions.

TRAFFIC AND ROADS

75. At building permit application, submit Kitsap County Public Works Form 1601 for issuance of a concurrency certificate, as required by Kitsap County Code 20.04.030, Transportation Concurrency.
76. Prior to recording the Final Plat, vehicular access shall be constructed to provide access to all proposed lots.
77. Public roads shall not exceed 12% grade or less depending on the road classification per Kitsap County Road Standards.
78. The interior roads of the proposed plat shall be designed and constructed in accordance with Kitsap County Code 11.22 and the Kitsap County Road Standards for a local access road or an approved higher standard. Roads shall be publicly maintained and the right-of-way dedicated to Kitsap County as proposed.

79. The interior roads of the proposed plat shall be designed and constructed in accordance with Fire Marshal standards for emergency vehicular access.
80. The following shall appear on the face of the Final Plat, under the heading Conditions:
    - All lots shall access from interior roads only.
    - The property owners within the plat shall be responsible for maintenance of all landscaping within the existing and proposed right of way including any structures other than roadway, storm drainage facilities and traffic signage. Maintenance shall include, but not be limited to, mowing of lawn areas.
    - All traffic control devices on public and private roads shall comply with the Manual on Uniform Traffic Control Devices as amended by the Washington Administrative Code. This is in accordance with 23 Code of Federal Regulations (CFR), Part 655.
81. The developer shall request that the Board of Kitsap County Commissioners transfer tax title lands into the Kitsap County road system as indicated on the preliminary plat, and said lands shall have been transferred prior to construction plan acceptance.
82. Sidewalk ramps shall conform to the current requirements of the Americans with Disabilities Act per WSDOT standard plans at the time of construction.
83. The property owners shall be responsible for maintenance of all landscaping within the existing and proposed right-of-way including any structures other than roadway, storm drainage facilities, and traffic signage. Maintenance shall include, but not be limited to, mowing of lawn areas. A note to this effect shall appear on the accepted construction plans. In addition, Development Engineering reserves the right to require that covenants be recorded to address special maintenance requirements depending on final design.
84. Interior plat roads shall be constructed to current County standards and deeded as public right-of-way.
85. Provide surveyed cross-sections at 50-foot intervals along the parcel frontage on existing fronting roads where access is proposed. The cross-sections shall show existing and proposed pavement, shoulders, ditches and slopes. The cross-sections shall also depict centerline of pavement and right-of-way, the right-of-way lines, and easements.

86. The Site Development Activity Permit shall include plans for construction of the road approach between the edge of existing pavement and the right-of-way line at all intersections with county or state rights-of-way. Approaches to county rights of way shall be designed in accordance with the Kitsap County Road Standards as established in Chapter 11.22 of the Kitsap County Code. Approaches to state rights of way shall be designed in accordance with current WSDOT standards. Existing approaches may need to be improved to meet current standards.
87. Any required sidewalk shall be constructed prior to roadway paving. This note shall appear on the face of the final construction drawings.
88. The developer's engineer shall certify that there is adequate entering sight distance at all project intersections with County rights of way or State rights of way. Such certification shall note the minimum required sight distance, the actual sight distance provided, and a sight distance diagram showing the intersection geometry drawn to scale, topographic and landscaping features, and the sight triangle. The sight distance shall meet the requirements of the Kitsap County Road Standards for County rights of way and shall meet WSDOT standards for state rights of way. The certification shall also note necessary measures to correct and maintain the minimum sight triangle. The required information shall be submitted with the SDAP, or with the commercial building permit application if a SDAP is not required.
89. All work, equipment and materials for traffic signal and street lighting installations shall meet and be in compliance with all requirements of the Kitsap County Road Standards, Project Contract Provisions of Plans and Specifications accepted for construction by Kitsap County, Manual on Uniform Traffic Control Devices (MUTCD), National Electrical Manufacturer’s Association (NEMA), National Electrical Code (NEC), Washington State Department of Transportation (WSDOT) Standard Specifications and Standard Plans, and the Occupational Safety and Health Administration (OSHA).
90. Any work within the County right-of-way shall require a Public Works permit and possibly a maintenance or performance bond. This application to perform work in the

right-of-way shall be submitted as part of the SDAP process. The need for and scope of bonding will be determined at that time.

SURVEY

91. A Final Short/Large Lot/Subdivision Plat shall be prepared by a licensed Land Surveyor in compliance with KCC Title 16.
92. All private roads shall be labeled as tracts and constructed in accordance to Fire Code requirements. Ten-foot widths for utility easements shall be provided on each side of private road tracts.
93. All potential park areas, common open space, buffers and stormwater management areas shall be labeled as separate tracts. The ownership and maintenance responsibility shall be addressed on the face of the final plat, as well as in the CCRs.

PUBLIC WORKS SEWER

94. Kitsap County sanitary sewer is available for the project. The applicant needs to submit a complete set of sewer plans, profiles, and specifications designed in accordance with Kitsap County Public Works - Sewer Utility Division Standards and Regulations.
95. A Sewer Availability Agreement account(s) must be kept current and in good standing through the approval date for this permit.

SOLID WASTE

96. Prior to SDAP approval, applicant shall provide documentation from the solid waste/recycling service provider that their requirements for this project have been met. Waste Management Northwest can be reached at pnwcmservices@wm.com or 1-800-592-9995; their website is http://wmnorthwest.com/kitsap/index.html *OTHER*
97. This project includes the construction of rock walls or other retaining facilities that either exceed four feet in height or sustain a surcharge. A separate building permit with an engineered design is required for such walls. This note shall be placed on the face of the final construction drawings.
98. Rock and retaining walls shall meet all applicable setback requirements of Vol. II, Chapter 9 of the Kitsap County Stormwater Drainage Manual.

B. Fire Safety

99. Fire apparatus access shall be clear and unobstructed at all times during construction.

100. Plans have been redlined for hydrant relocation. Final plan shall reflect changes.

Hearing Examiner Added Conditions:

101. In assessing infiltration feasibility, as identified in Finding of Fact No. 6B2d the Applicant shall use the measured infiltration rate, shall not apply the hydraulic gradient to compute the measured infiltration rate and shall not employ grain size analysis. If infiltration proves feasible the project shall be redesigned accordingly. The Applicant shall revise its feasibility analysis and implement any design revisions prior to SDAP and final plat approval.

102. The Applicant shall resolve any property ownership gap existing between project boundaries and the pedestrian access proposed for Thackery Place prior to SDAP and final plat approval. The pedestrian connection may be removed if it cannot be reasonably resolved and permitting staff does not require any reasonable alternatives.

103. The pedestrian connection to Emerald Heights Elementary School shall be redesigned prior to final plat and SDAP approval to prevent unsafe access to elementary school grounds. Permitting staff may require fencing, alternative routes or other measures to protect school children from general public access.

MDNS Revisions

Reference to Parcel 102501-2-001-2009 in the MDNS within the table "Location of proposal" is stricken Instead a footnote is to be added to "Location of proposal" that provides as follows: *The proposal includes stormwater facilities serving the project site that are located on an easement encumbering Parcel 102501-2-001-2009.*

Condition No. 7 of the MDNS is stricken and replaced with the following three conditions:

7. The Applicant shall install walking paths along one side of Island Road NW from the project site to Lakeridge Circle NW in areas where sufficient undeveloped right of way is available, excluding privately landscaped areas. These walking paths shall consist of cleared and graded pathways sufficient to provide safe passage for pedestrians.

8. If not done so already, the Applicant shall acquire verification from North Kitsap School District No. 400 that all school bus stops will be located on site. If any bus stop is not located on site the Applicant shall install off-site improvements to the extent necessary as determined by permitting staff to assure safe walking conditions toa

and from the school bus stop(s).

9. The CC&Rs of the HOA required for the proposal shall include a covenant authorizing Kitsap County to remove the project site dock and revegetate its beach if the beach and/or dock are used a total more than eight times per month for three consecutive months. The HOA shall be given the option to remove the dock and revegetate itself first within 120 days prior to the County exercising this option. The HOA shall also be given the option of applying for an amendment to this approved shoreline conditional use permit that would authorize use of the beach and dock.

ORDERED this 25th day of February 2025.

Phil Olbrechts

Kitsap County Hearing Examiner

Appeal Right and Change in Valuation

Pursuant to KCC 21.04.100 and KCC 21.04.110, this preliminary plat decision and consolidated SEPA appeal decision is a final land use decision of Kitsap County and may be appealed to superior court within 21 days as governed by the Washington State Land Use Petition Act, Chapter 36.70C RCW.

The shoreline conditional use permit approval is subject to Washington State Department of Ecology (DOE) approval as governed by Chapter 90.58 RCW. The final decision of DOE may be appealed to the Washington State Shoreline Hearings Board as further governed by Chapter 90.58 RCW.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.