

WHATCOM COUNTY HEARING EXAMINER

RE: Preliminary Long Subdivision)	LSS2000-0011
Shoreline Substantial Development)	SHR2003-0007
Administrative Appeal/SEPA)	APL2011-0008/SEP2001-0007
Application for)	
)	
<i>Mercedes Holdings/Canyon Holdings/</i>)	
<i>Peachwood Investments</i>)	
<i>"Sleepy Hollow Subdivision"</i>)	
)	
RE: Administrative Appeal/SEPA)	APL2011-0007/SEP2001-0007
Application for)	
)	
<i>Concerned Neighbors of Lake Samish</i>)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting preliminary approval for a cluster Long Plat consisting of 45 single-family lots and 3.59-acres of reserve/open space, on a 23.56-acre parcel of land on Summerland Road at Lake Samish. The Applicant is also requesting a Shoreline Substantial Development to install piping, pumps, and necessary controls to facilitate surface water withdrawal from Lake Samish to serve the Subdivision. The proposed development includes constructing a gravel access road, excavating a trench, constructing a small pump station, installing pumps and an intake pipe.

Associated with these permits are two appeals of a Mitigated DNS, issued for the permit applications.

Decision: Preliminary Long Subdivision Approval is denied based on the Applicant's failing to establish appropriate provisions have been made to provide potable water for the Subdivision. No Shoreline Permit is granted at this time. A Shoreline Permit would be moot considering the denial of Preliminary Long Subdivision Approval. However, should the Decision denying Preliminary Long subdivision Approval be overturned, the Hearing Examiner has concluded that, subject to appropriate conditions based on the current record, the requested Shoreline Permit can be approved.

Because of the potential the Hearing Examiner's Decision denying the permit based on failing to establish that appropriate provisions have been made for potable water for the proposed Subdivision, the Hearing Examiner has ruled on the SEPA Appeals.

The SEPA Appeal of Concerned Neighbors is upheld in part. Conditions of the Mitigated

Determination of Non-significance have been modified, as set forth in the Conclusions of Law above, and an Environmental Impact Statement required regarding issues related to fish habitat and stream-flow resulting from potential water withdrawals to serve the proposed Subdivision.

The SEPA Appeal of the Applicants of certain of the conditions in the MDNS is denied.

Additionally, the Hearing Examiner has ruled on numerous other issues raised during the processing of the permits and appeals. These rulings are set forth in the Conclusions of Law and are incorporated into this Decision by this reference.

FINDINGS OF FACT

I.

Background Information

Applicant: Mercedes Holdings, Inc., Canyon Holdings, LLC, Peachwood Investments, LLC

Property Location: Located at the intersection of West Lake Samish Drive and the northeast side of Summerland Road, and includes an approximately 2.5-acre waterfront parcel of land along Lake Samish, separated from the other approximately 21 acres by West Lake Samish Drive, Bellingham, Washington

Legal Description: Located within the E ½ of the SW ¼ of Section 26, T37N, R3E, W.M. Assessor's Parcel Nos. 153154, 193125, 215110 & 236085

Zoning: Rural Residential (RR2)

Comprehensive Plan: Suburban Enclaves

Subarea: Chuckanut-Lake Samish

Number of Lots: 45

Acreage: 23.56

Roads: 2.76-acres or 11.71%

Open Space: 3.59-acres or 15.23%

Water Supply: Lake Samish

Sewage Disposal: Water District No. 12

Fire Protection: Whatcom County Fire District No. 9

Law Enforcement: Whatcom County Sheriff's Office

Public Schools: Bellingham School District No. 501

Topography: Sloping from West to East. Maximum 12% slope

Vegetation: Deciduous and coniferous trees, shrubs, grass, and wet soil plants

Adjacent Land Use: Single-family dwellings

Variances: None requested

Shoreline Designation: Urban

Adjacent Water Body: Lake Samish

Statewide Significance: No

SEPA Reviews: Mitigated Determination of Non-significance issued April 11, 2011, was revised and reissued on May 4, 2011, for the subdivision application. The shoreline application is exempt from SEPA pursuant to WAC 197-11-800 (4).

Authorizing Ordinances: Revised Code of Washington Chapter 58.17
 Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
 Whatcom County Code Title 21, Subdivision Regulations
 Whatcom County Code Title 23, Shoreline Management Program
 State Environmental Policy Act (SEPA). Washington Administrative Code 197-11
 Whatcom County Environmental Policy Administration Chapter 16.08
 Whatcom County Code Chapter 12.08, Development Standards
 SMP 23.70.40, Hearing Examiner
 SMP 23.50, Applicability

Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
SMP 23.30.41	Urban Shoreline Area
SMP 23.60.170	Substantial Development Criteria
SMP 23.90	General Policies & Regulations
SMP 23.100.180	Utility Developments
SMP 23.110.	Definitions

Pursuant to the Revised Code of Washington (RCW) 58.17.110, in order to approve a preliminary

long subdivision, Whatcom County must find that appropriate provisions are made for the public health, safety, and general welfare, open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and shall consider all other relevant facts including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school, and the public use and interest will be served by the platting of such subdivision.

Legal Notices: Certificate of Mailing, Notice of Public Hearing, September 1, 2011
Certificate of Posting, Notice of Public Hearing, September 8, 2011
Affidavit of Publication Legal Notice of Public Hearing, September 8, 2011

Public Hearing Dates: February 9 and continued to September 19, 21, 30, October 3, 5, 10, and 14, 2011, and February 8, 2012; Record re-opened for hearing on July 11, 2012

Parties of Record and/or Persons Who Testified

Derek Stebner
c/o Jack and Bradley Swanson
Belcher Swanson, PLLC
900 Dupont Street
Bellingham, WA 98225

Darcy Jones, P.E.
Jones Engineering
4164 Meridian Street, Suite 200
Bellingham, WA 98226

Robert Montgomery, P.E.
Senior Water Resources Engineer
Anchor QEA
811 Kirkland Avenue, Suite 200
Kirkland, WA 98033

Richard Horner, PH.D.
230 NW 55th Street
Seattle, WA 98107

Brad Lincoln, P.E.
Gibson Traffic Consultants, Inc.
2802 Wetmore Avenue, Suite 220
Everett, WA 98201

Michael J. Read, P.E.
Transportation Engineering Northwest, LLC
PO Box 65254
Seattle, WA 98155

David Eric Johnson
889 North Lake Samish Drive
Bellingham, WA 98229

John Griffith
780 North Lake Samish Drive
Bellingham, WA 98229

David Schneider
118 Bear Creek Lane
Bellingham, WA 98229

Kyle Legare
Habitat Ecology & Design
1826 4th Street, Suite 202
Marysville, WA 98270

Philip Buri
Buri Funston Mumford, PLLC
1601 F Street
Bellingham, WA 98225

Tom Ehrlichman and Barbara Dykes
Salish Law, PLLC
909 Harris Avenue, Suite 201H
Bellingham, WA 98225

Mark Herrenkohl
321 Summerland Road
Bellingham, WA 98229

Steven Harper
121 Bear Creek Lane
Bellingham, WA 98229

Kolleen Kilpatrick
322 North Commercial #120
Bellingham, WA 98225

Kathy Ploeger
PO Box 30323
Bellingham, WA 98228

Barbara Vaughn
921 Autumn Lane, Unit 106
Bellingham, WA 98229

Pam Nolan

Gil Grove
1417 Roy Road
Bellingham, WA 98229

Eric Montgomery
644 West Lake Samish Road
Bellingham, WA 98229

Terry Klimpel
Samish Water District
2195 Nulle Road
Bellingham, WA 98229

Richard Johnson
WA State Dept of Fish and Wildlife
PO Box 1100
LaConner, WA 98257

Bruce Harris
135 Summerland Road
Bellingham, WA 98229

Dave Pros
1466 Roy Road
Bellingham, WA 98226

Bob Funkhouser
1826 Samish Lane
Bellingham, WA 98226

Tyler Schroeder, Amy Keenan, Chad Yunge, Lyn Morgan-Hill
Whatcom County Planning and Development Services

Roger McCarthy, Division of Engineering/ Public Works

John Thompson, Division of Natural Resources/Public Works

Royce Buckingham, Whatcom County Civil Deputy Prosecutor

Exhibits

- 1 Letter dated January 14, 2011, from Brad Swanson re: Sleepy Hollow-Additional Materials, with attachments:
 - 1-1 Samish Water District, Letter of Service Availability, dated November 23, 2010
 - 1-2 Revised Plat Layout and Site Plan, January 13, 2011
- 2 Memorandum, dated October 26, 2010 from Michael Bobbink re: scheduling of hearing, with attached email correspondence among Staff and Parties
- 3 Email correspondence among Staff and Parties beginning in September through November 2010 re: scheduling of hearing
- 4 Letter dated December 21, 2009 from Philip Buri to Tyler Schroeder
- 5 Email dated April 14, 2009 from Magner to Schroeder re: Hearing Examiner direction for Sleepy Hollow Information and Process, with attached Schroeder Memo to Hearing Examiner [undated but stamped received April 13, 2009]
- 6 Email dated April 14, 2009 from Philip Buri re: submissions to Planning and Development Services on the Sleepy Hollow Notice
- 7 Letter dated April 14, 2009 from Philip Buri to Tyler Schroeder re: Sleepy Hollow
- 8 Brief in Opposition to Proposed Subdivision, Concerned Neighbors of Lake Samish, prepared by Philip Buri, dated January 20, 2004
- 9 In the Superior Court in the State of Washington, Cal Leenstra v Western Washington Growth Management Hearings Board, Whatcom County, Concerned Neighbors of Lake Samish's Brief in Support of Growth Board's Ruling, No. 03-2-02445-3, June 2, 2005
- 10 Cover letter, dated August 29, 2005 from Judge Snyder with attached Memorandum Decision , cause No. 03-2-02445-3, dated August 29, 2005
- 11 Letter dated July 8, 2008, from Brad Swanson to Tyler Schroeder re: Additional Materials, with attachments:
 - 11-1 Land Use Permit Application and Supplemental Application, dated July 2, 2008
 - 11-2 Shoreline Exhibit
 - 11-3 Deed
 - 11-4 Environmental Checklist
 - 11-5 Plat Layout/Utility Plan

- 12 Addendum to Preliminary Sleepy Hollow Drainage Report (2004), prepared by Jones Engineers, dated January 2, 2008
- 13 Friday Creek Flow Information, Letter dated February 14, 2005, from Montgomery Water Group, Inc., with attachments:
 - 13-1 Draft- For Review Purposes, Montgomery Water Group, Inc. dated October 6, 2004
 - 13-2 Memo dated January 23, 2004, from Chris Brueske, Engineering Manager to John Guenther, SEPA Administrator re: Whatcom County Lake Management District No. 1
 - 13-3 Instream Flows in the Lower Skagit River – Draft
 - 13-4 Samish (East Arm) (West Arm) Lake – Whatcom County: 1997, with Washington State DOB flow statistics sheet dated November 10, 2003, attached
- 14 PDS Supplemental Staff Report, dated 2008, submitted by Staff Dec 2010, with attachments:
 - 14-1 Letter dated April 30, 2008, from Brad Swanson re: Supplemental Staff Report
 - 14-2 Letter dated June 25, 2008, from Brad Swanson re: Additional materials
 - 14-3 Letter dated July 24, 2007, from Brad Swanson re: Sleepy Hollow
 - 14-4 Letter dated December 10, 2008, from Brad Swanson re: In Lieu Park Fees
 - 14-5 Letter dated April 30, 2008 from Brad Swanson re: SEPA Appeal, APL01-0009
 - 14-6 Letter, 10/13/2003, Swinomish Tribal Community to Marilyn Scott, Upper Skagit Indian Tribe
 - 14-7 Letter, 10/06/2003, Upper Skagit Indian Tribe to Skagit County Commissioner Ken Dahlstedt
- 15 Certificate of Mailing of Notice of Application, dated March 30, 2009
- 16 Legal Notice of Application, dated March 30, 2009
- 17 Application Processing Track Form, dated March 30, 2009
- 18 Mailing Labels
- 19 Technical Committee Distribution Memo dated March 30, 2009
- 20 Habitat Management Plan - Sleepy Hollow Development, by Habitat Ecology & Design, 01/18/2010
- 21 Staff Report, dated December 9, 2010, with Agency Comments attached
 - 21-1 TRC-Engineering Requirements, November 23, 2010
 - 21-2 Memo dated September 24, 2009, from Roger McCarthy, Development Engineer
 - 21-3 Letter dated January 21, 2009, from Michael McFarlane, Parks & Rec Dept
 - 21-4 Memo, dated November 30, 2010 from Kyle Dodd, Environmental Health
 - 21-5 CAO memo, dated October 12, 2009
 - 21-6 Shoreline memo, dated October 9, 2009, re: additional info required
 - 21-7 Memo, dated March 13, 2008, David Stalheim, re: extension of sewer outside UGAs
 - 21-8 Letter dated May 21, 2010 from Byron Gaines, Samish Water Distr re: Letter of Availability
 - 21-9 Samish Water District re: Letter of Sewer Service Availability, revised June 15, 2007, and issued January 5, 2009; stamped-received, Sept 23, 2009 by Belcher Swanson Law Firm
- 22 CAO Memo, dated February 1, 2011, re: Habitat Management Plan

- 22-1 CAO Memo, dated January 21, 2011, re: Habitat Management Plan
- 23 Certificate of Mailing of Notice of Public Hearing, dated January 24, 2011
- 24 Certificate of Posting, Notice of Public Hearing, dated January 24, 2011
- 25 Letter of Opposition, dated February 1, 2011, from Gerry and Joanne Bird
- 26 Envelopes, addressed to Tyler Schroeder, with Comment Letters attached
- 26-1 DOE, April 14, 2009
 - 26-2 Jonathan Seymour, April 14, 2009
 - 26-3 Joan Ellsworth, April 10, 2009
 - 26-4 Chris and Heather Lange, April 6, 2009
 - 26-5 Chris and Heather Lange, April 13, 2009
 - 26-6 Stan and Cindy Maasseer, April 6, 2009
 - 26-7 Sue Parrott, April 13, 2009
 - 26-8 Dan Bult, April 11, 2009
 - 26-9 Mark Herrenkohl, April 12, 2009
 - 26-10 Robert and Madeleine Smith, March 30, 2009
 - 26-11 Roger Werger, stamped received April 8, 2009
 - 26-12 Marcus and Jennifer Mindlin, April 6, 2009
 - 26-13 Concerned Neighbors of Lake Samish, April 12, 2009
 - 26-14 Gary and DeLaura McHenry, April 6, 2009
 - 26-15 Eleanor Day, April 6, 2009
 - 26-16 Anne-Marie Field
 - 26-17 James and Denise Beard, April 11, 2009
 - 26-18 Bruce and Kathy Brown, April 6, 2009
 - 26-19 Lowell Crow, April 13, 2009
 - 26-20 Joan Lossier, April 6, 2009
 - 26-21 Dennis Lossier, April 6, 2009
 - 26-22 Robert Sherry, April 6, 2009
 - 26-23 Tanya June Anderson, April 6, 2009
 - 26-24 Rebecca Falacy, April 6, 2009
 - 26-25 James Malin, April 9, 2009
 - 26-26 Returned PDS Form Comment Letter, "not deliverable"
 - 26-27 Kenneth Jackson, April 15, 2009
 - 26-28 Barbara Vaughan, April 14, 2009
 - 26-29 David Schneider and Danielle Kizer, April 14, 2009
 - 26-30 Dave Pros, April 14, 2009
 - 26-31 Email copy, Philip Buri, comments and supporting documents, April 14, 2009
 - 26-32 Wade Henley, April 14, 2009
 - 26-33 Laurie Henley, April 14, 2009
 - 26-34 Email, Barbara Vaughan, April 14, 2009
 - 26-35 Factual Errors in Sleepy Hollow Plat Layout Plan Documents Generated by Jones Engineers, prepared by Bruce Harris, April 13, 2009
 - 26-36 Lisa Troupe, April 6, 2009
 - 26-37 Mark and Dawn Vermeulen, April 6, 2009
 - 26-38 Gordon and Eileen Harang, April 10, 2009

- 26-39 R. I. and Twila Rittenberg
26-40 Carrie Lanham, April 6, 2009
26-41 Eric McHenry, April 6, 2009
- 27 Samish Water District, Comprehensive Sewer Plan, November 2004
- 28 Lake Samish Water Monitoring Project, 2008 Final Report, prepared by Robyn Matthews and Joan Vandersypen, dated September 30, 2008
- 29 Chuckanut Lake Samish Subarea Comprehensive Plan, May 1986
- 30 Legal Notice of Public Hearing, January 27, 2011
- 31 Letter of Concern, dated January 29, 2011, Richard and Tracy McLellan
- 32 Letter dated February 3, 2011 from Tom Ehrlichman to Michael Bobbink, with attached letter dated February 3, 2011 from Ehrlichman to Sam Ryan
- 33 Letter dated February 7, 2011 from Tom Ehrlichman to Michael Bobbink re: Derek Stebner, Sleepy Hollow, Shoreline Permit, Short Plat, LSS2000-0011; SHR03-0007; APL01-0009 with attachments
33-36 Vicinity Map
33-37 Declaration of Wendy Harris, January 7, 2011
33-38 Declaration of Shane Roth, February 7, 2011
33-39 Land Use Application, Mercedes Holdings, dated July 2, 2000
33-40 Quit Claim Deed, dated August 4, 2008
33-41 Deed of Trust; Security Agreement; and Assignment of Leases/Rents/Proceeds, 1/22/2009
- 34 Concerned Neighbors of Lake Samish's Joinder in Motion to Dismiss or Continue Hearing, submitted by Philip Buri, February 8, 2011
- 35 Letter dated February 8, 2011, from Bradley Swanson, re: Motion to Dismiss or Continue Hearing
- 36 Memorandum, dated February 8, 2011, from Michael Bobbink to Swanson, Buri, Ehrlichman, Dykes, Buckingham, Schroeder re: Requests and Motions from Salish Law
- 37 Comment Letters [postal and email service]
Karly Olsen, February 8, 2011
Ryan Olsen, February 8, 2011
Art Vahratian, February 8, 2011
Mary and J.C. Hickman, February 8, 2011
Sharon Cody, February 7, 2011
Carrie Lanham, February 7, 2011
Greg Peck, February 7, 2011
Eric Overton, February 7, 2011
William Jones, February 6, 2011
Dawn Dietrich, February 6, 2011
Dea D'Acquisto-Conway, February 6, 2011
Jay Conway, February 6, 2011

Joan Ellsworth, February 6, 2011
Bruce Allen, February 6, 2011
Barbara Vaughan, February 5, 2004 [received Feb 7, 2011]
James and Denise Beard, February 5, 2011
Patrick and Barbara Curry, February 2, 2011
Barbara Curry, February 2, 2011
Gerry and Joanne Bird, February 1, 2011
Eric McHenry, January 30, 2011

- 38 Comment Letters [received prior to the public hearing on February 9, 2011]
Gary and DeLaura McHenry, January 31, 2011
Bill Vanderboom, February 1, 2011
Dan Bult, February 1, 2011
Laurie Henley, February 4, 2010 [stamped rec'd February 9, 2011]
Jeff and Malinda Shelman, February 7, 2011
- 39 Email, 02/10/2011, written authorization, submitted by Salish Law, on behalf of Sue Brown
- 40 MDNS, Revised and Re-issued, May 4, 2011, with April 11, 2011, attached, with Distribution List and Checklist attached

40A File of Exhibits submitted at Pre-Hearing Conference on August 24, 2011, "Sleepy Hollow"
Application LSS2000-001/SHR2003-0007, Applicants Mercedes Holdings, Inc./Canyon Holdings, LLC;
SEPA Appeals, filed by Concerned Neighbors of Lake Samish, APL2011-0007/SEP2001-0007, dated
04/21/2011 and by Mercedes Holdings/Canyon Holdings, APL2011-0008/SEP2001-0007, 05/13/2011

40A

- 1 SEPA Appeal Application filed April 21, 2011, by Concerned Neighbors of Lake Samish, with Statement of Appeal attached
- 2 SEPA Appeal Application filed May 13, 2011, by Mercedes Holdings, Inc. and Canyon Holdings, LLC with attachments
 - 2-1 Appellant's Statement
 - 2-2 Distribution List, SEP2001-0007 Revision dated May 4, 2011
 - 2-3 MDNS, Revised and Reissued, May 4, 2011
 - 2-4 Utility Plan
 - 2-5 Plat Layout
 - 2-6 WAC 197-11-660
 - 2-7 Chapter 16.08 State Environmental Policy Act (SEPA)
 - 2-8 Whatcom County Hearing Examiner Findings of Fact, Conclusions of Law, and Decision, City of Bellingham, Administrative Appeal, APL2008-0023
- 3 DNS, Revised and Reissued, May 4, 2011
- 4 MDNS, Revised and Reissued, April 11, 2011
- 5 Sleepy Hollow Plat Layout/Utility Plan (one sheet/double-sided)
- 6 Email from Brad Swanson to Tyler Schroeder, April 22, 2011 re: MDNS Condition 5

- 7 Letter dated April 22, 2011, from Brad Swanson to Tyler Schroeder re: MDNS Comments with attached Hearing Examiner Decision, APL2008-0023
- 8 SEPA Comment Letters
 - a. Richard McLellan, April 24, 2011
 - b. Tracy Bell, April 24, 2011
 - c. Eric McHenry, April 24, 2011 [email]
 - d. Richard McLellan [email] Tracy Bell April 24 comments
 - e. Tom Ehrlichman, April 25, 2011 [email with attached letter]
 - f. Wendy Cole (DFW), April 25, 2011 [email with attached letter, dated April 14, 2011 to Whatcom County Hearing Examiner]
 - g. Tim Hyatt (Skagit River System Cooperative), April 25, 2011 [email with attached letter, dated April 25, 2011 re: water withdrawal]
 - h. Jim Beard, April 25, 2011 [email]
- 41 Motion to Quash Request for Subpoena, submitted by Bradley Swanson, March 31, 2011, with Declaration of Service attached
- 42 Revised Habitat Management Plan, 03/17/2011, by Habitat Ecology and Design, Kyle Legare
- 43 Concerned Neighbors' Response to Motion to Quash, submitted by Philip Buri, April 12, 2011, with Declaration of Service and Exhibit "A," WA State Dept of Labor and Industries, "Hiring a Contractor," attached
- 44 Motion to Compel Testimony of Derek Stebner, submitted by Philip Buri, March 14, 2011, with Declaration of Service attached
- 45 Comment Letter, dated March 15, 2011, from Roger Werger
- 46 "Sleepy Hollow Applicable Regulations," list submitted by Tyler Schroeder [binder submitted March 15, 2011]

Exhibits submitted in preparation for Hearing on September 19, 2011

- 47 Hearing Examiner's Briefing Schedule Memorandum, dated August 24, 2011
- 48 Declaration of Philip Buri in Support of CNLS Memorandum on the Lack of Sewer Service, dated September 6, 2011, with attachment:
 - 48-1 Exhibit A – Samish Water District Letter of Sewer Service Availability, revised June 15, 2007, issued on June? 5, 2009 to Mercedes Holdings, Inc.
 - 48-2 Exhibit B – Whatcom County Hearing Examiner Decision, APL2008-0023, City of Bellingham, Appellant, dated January 16, 2009
 - 48-3 Exhibit C - Letter dated May 21, 2010, Samish Water District to Bradley Swanson
 - 48-4 Exhibit D - Revised and Reissued MDNS, May 4, 2011
 - 48-5 Concerned Neighbors' Memorandum on the Lack of Sewer Service, prepared by Philip Buri, dated September 6, 2011, with case law and statutes attached
- 49 Prehearing Brief regarding Sewer Extension, prepared by Tom Ehrlichman and Barbara Dykes, dated

- September 6, 2011, with attachments:
- 49-1 Exhibit A: MDNS, Policy 2EE-4; Policy 2N-4; Footnote 2
 - 49-2 Exhibit B: Law: RCW 58.17.110; RCW 36.70B.060(3); WCC 21.05.090(2); WCC 20.80.212
 - 49-3 Exhibit C: Case Law
- 50 Certificate of Mailing Notice of Public Hearing, September 1, 2011
 - 51 Certificate of Posting Notice of Public Hearing, September 8, 2011
 - 52 Legal Notice of Public Hearing, September 8, 2011
 - 53 Applicant's Response Brief re: Sewer Service, submitted by Jack and Bradley Swanson, September 14, 2011, with attachments
 - 54 Applicant's Pre-Hearing Brief, submitted by Jack Swanson and Bradley Swanson, September 14, 2011
 - 55 Declaration of Service, Heather Calloway, September 14, 2011
 - 56 Concerned Neighbors of Lake Samish Memorandum on Water Quality and Water Quantity, submitted by Philip Buri, September 14, 2011, with attachments:
 - 56-1 Declaration of Philip Buri in Support of CNLS Memorandum on Water Quality and Water Quantity, dated September 14, 2011 with attachments:
 - Attachment A: Water Permit S1-26352
 - Attachment B: Richard Horner's Analysis, dated January 12, 2011
 - Attachment C: Wilson Engineering Memorandum dated March 7, 2011 re: Lake Samish Comprehensive Stormwater Plan: Programmatic Issues and Recommendations
 - Attachment D: Wilson Engineering Memorandum dated October 7, 2010 re: Lake Samish Comprehensive Stormwater Plan: Water Quality Monitoring – Review of Historical Monitoring and Recommendations for Future Monitoring Programs
 - Attachment E: Wilson Engineering Lake Samish Comprehensive Stormwater Plan, dated October 6, 2010 re: Hydrologic Modeling – Summary of Results and Recommendations
 - Attachment F: Richard Grout Letter dated February 8, 2011, to Byron Gaines of the Samish Water District re: potable water supply
 - Attachment G: Hall Beecher Letter, 05/24/2011 to Steven Harper re: Instream flows in Friday Creek
 - Attachment H: 2011 Samish Water Monitoring Project
 - 57 Declaration of Steve Ellsworth, dated January 24, 2011
 - 58 Declaration of Bruce W. Harris, January 19, 2011
 - 59 Declaration of Steven Harper, January 27, 2011
 - 60 Declaration of David Schneider, January 18, 2011
 - 61 Concerned Neighbors of Lake Samish Memorandum on Traffic, and Shoreline Jurisdiction, submitted by Philip Buri, September 14, 2011

- 62 Declaration of Philip Buri in Support of CNLS Memorandum on Traffic and Shoreline Jurisdiction, September 14, 2011, attachment:
62-1 Memorandum, February 7, 2011 from Michael Reed re: Review of Roadway Impacts
- 63 Declaration of David Eric Johnson, Summer Traffic in Vicinity of Lake Samish County Park, January 30, 2011
- 64 Declaration of John Griffith, Summer Traffic in Vicinity of Lake Samish County Park, Jan 23, 2011
- 65 Declaration of Allan Needler, Summer Traffic in Vicinity of Lake Samish County Park, Jan 23, 2011
- 66 Declaration of Lorraine Earle, Summer Traffic in Vicinity of Lake Samish County Park, Jan 31, 2011
- 67 Declaration of Dave Pros, Summer Traffic in Vicinity of Lake Samish County Park, January 23, 2011
- 68 Declaration of Elisa Barbone, Summer Traffic in Vicinity of Lake Samish County Park, Jan 24, 2011
- 69 Declaration of Janice Beaudin, Summer Traffic in Vicinity of Lake Samish County Park, Jan 23, 2011
- 70 Errata to Citizens' Prehearing Brief, submitted by Salish Law, cover memo, dated September 14, 2011 with attachments
70-1 Prehearing Brief re: Preliminary Plat, Short Plat, and Shoreline Permit, prepared by Tom Ehrlichman and Barbara Dykes
- 71 Concerned Neighbors' Reply on Lack of Sewer Service, prepared by Philip Buri, dated Sept 16, 2011
- 72 Email memo dated 09/16/2011 from Brad Swanson to Parties re: Sleepy Hollow Hearing Schedule
- 73 Citizens' Reply Brief re: Sewer Extension, prepared by Tom Ehrlichman and Barbara Dykes, 09/16/11
- 74 Samish Water District, Letter dated June 13, 2011 re: extension to "Letter of Service Availability," with attached Samish Water District, Letter dated May 21, 2010, re: one year extension approval to "Letter of Availability"
- 75 County Memorandum re: SEPA Authority, prepared by Royce Buckingham, dated Sept 20, 2011
- 76 Concerned Neighbors' Response to Applicant's Prehearing Brief, prepared by Philip Buri, 09/20/2011
- 77 Revised Site Plan, January 13, 2011 – LDES, Inc. [same as Exhibit No. 1-2]
- 78 Site Photos, submitted as part of Barbara Vaughan's testimony
- 79 Excerpt from Chuckanut Lake Samish Subarea: Approved May 2, 1986
- 80 Applicant's Response Brief re: Water Quality, Water Service, and Storm Drainage, prepared by Jack Swanson and Bradley Swanson, dated September 23, 2011, with attached Declaration of Service, Heather Calloway, September 23, 2011
80-1 Exhibit A County Council Agenda Bill No. 2006-300 and Ord. 2006-034

- 81 Supplemental Staff Report, September 26, 2011, with attachments:
 81-1 Red-line/Strike-out edits of Supplemental Staff Report, December 9, 2010
 81-2 Critical Areas Memo, from Lyn Morgan-Hill to Tyler Schroeder, September 22, 2011 re: Sleepy Hollow Revised Draft Mitigation Proposal, with attachments:
 81-2-1 Council Agenda Bill No. AB 2002-084F, ORD #2003-007, with amended Comp Plan Map and Zoning Map attached as Exhibit A
- 82 Email memo from John Thompson to Tyler Schroeder, September 27, 2011 re: Lake Samish Subzone, with attachments
 82-1 Council Agenda Bill No. AB2006-254A, ORD #2006-027
 82-2 Council Agenda Bill No. AB2006-300, ORD # 2006-034
 82-3 Memorandum from Bruce Roll, Public Works, to Pete Kremen and County Council Members, dated July 12, 2006, re: Ordinance Authorizing an Assessment to Provide Revenue for the Samish Watershed Subzone
- 83 Curbing Stormwater Pollution, January 21, 2010 [article]
- 84 Written Statement – Mark Herrenkohl
 84-1 table – atrophic stage for Lake Samish
- 85 Supplemental Declaration of David Schneider, September 28, 2011
 85-1 Vee Weir
- 86 Memorandum, dated September 30, 2011, from Bob Montgomery to Brad Swanson re: Sleepy Hollow Stormwater
- 87 Memorandum, dated September 29, 2011, from Bob Montgomery to Brad Swanson re: Water Demand-Effect on Lake Samish
- 88 Memo, dated October 2, 2011, from Bruce Harris re: Declaration of Service – water service extension
- 89 Letter dated August 25, 2006 from WA State Department of Health to Derek Stebner re: Pre-design Report for Proposed Water System
- 90 USGS Data Stream Flows 1944-1948 compared to DOE Data at hatchery 2004 to present (3 graphs)
- 91 Comment letter dated September 30, 2011 from Richard Herrman, with 13-color photos attached in envelope as Exhibit 91-1
- 92 Letter dated August 25, 2006 from Robert James of the WA State Department of Health to Derek Stebner re: Pre-design Report for Proposed Water System and elevated levels of Haloacetic acids
- 93 Adrik Short Plat file
 93-1 Customer Receipt
 93-2 Survey provided by Jones Engineers, July 2006, January 2007, and May 2007, Survey stamp dated June 23, 2007
 93-3 PDS Case Activities for SSS2005-00022
 93-4 Email betw Craig Ostrom and David Leighton, June 30 and July 27, 2010

- 93-5 Survey provided by Jones Engineers, July 2006, January 2007, and May 2007, Survey stamp dated June 23, 2007
- 93-6 Email betw Craig Ostrom and David Leighton, June 30, 2010 re: mailing
- 93-7 Email from Lee Carter to Tyler Schroeder, January 23, 2009 re: NOR
- 93-8 Handwritten note, July 26, 2010
- 93-9 Letter dated April 10, 2007 from Brad Swanson to Elaine Wick and Lee Carter re: Adrik Cluster Short Plat
- 93-10 Notice of Additional Requirements, Notice dated May 25, 2005 with attached Short Plat Application, dated April 26, 2005
- 93-11 Tech Meeting Notes, dated May 26, 2005 [handwritten]
- 93-12 Fax Cover Sheet to Brad Swanson from Elaine Wick, 6-12-07, with attached PDS case activities sheet
- 93-13 Email betw Elaine Wick, Oliver Grah and Lee Carter, May 30, 2007 and June 13, 2007
- 93-14 Letter dated April 10, 2007 from Brad Swanson to Elaine Wick and Lee Carter with attachments: Letter from Jones Engineers, dated April 4, 2007 re: Adrik's Short Plat Sight Distance, Drawing 505.E-1 and 505.E-3
- 93-15 Stebner Short Plat Maps [4 sheets: Existing Cond. (#1), Proposed Cond. (#2), Preliminary (#3), and Preliminary (#4)], Surveyor's Certificate, stamp dated November 23, 2005, Ben C. Morris, Larry Steele & Associates
- 93-16 Plat Map
- 93-17 Stebner Short Plat Preliminary Map, showing proposed access
- 93-18 Zoning Map
- 93-19 Plat Map
- 93-20 Notice of Additional Requirements, Notice Date: 5-25-05, issued by Elaine Wick
- 93-21 Memo, dated May 25, 2005 from Robert Mulrooney to Elaine Wick re: Preliminary Review
- 93-22 PDS Notice of Technical Committee Meeting, dated May 4, 2005 to Ali Taysi
- 93-23 Same notice as Exh 93-22, but with handwritten note from Linda Nielsen to Ali Taysi
- 93-24 PDS Notice of Short Plat Application from Elaine Wick, May 4, 2005, to Fire District No. 9
- 93-25 Memo dated May 4, 2005 to Tech Committee from Elaine Wick re: Agenda for 05/26/2005 Short Plat Technical Committee Meeting, handwritten requirements from Fire Marshal
- 93-26 County Health Department - Environmental Health Requirements to Gain Approval of Short Plat Applications, TRC Mtg Date: 5-26-05
- 93-27 Memo, dated May 4, 2005, same as 93-25 with handwritten notes from Doug Goldthorp, dated 5/25/05 and 5/29/05
- 93-28 PDS Determination by Elaine Wick to Chet Lackey/Mr. Taysi dated 7/12/2005 re: EXE2005-00268 Lot of Record history
- 93-29 Deed History Narrative for parcel # 370326 215190
- 93-30 Lot of Record Confirmation 1/10/02, application by Chet Lackey, dated 4/26/05
- 93-31 Quit Claim Deed, dated May 18, 2000
- 93-32 Handwritten note re: Samish Water District – sewer service/public water

- 94 Whatcom County Interim Transportation Concurrency Program – Roadway Capacity Analysis
- 95 1984 Lake Samish Background Document
- 96 Gibson Traffic Consultants, December 3, 2007: Sleepy Hollow TIA – 46 single-family residential units – Traffic Impact Analysis

- 97 Written Submission, David Schneider's presentation re: transportation
- 98 (1) Blanchard Hill/South Chuckanut Mountain Trail Map; (2) The Pacific Northwest Trail Map
- 99 Gibson Traffic Consultants, Inc. Memo, October 6, 2011, to Brad Swanson re: response to public comments at the end of the October 5, 2011 hearing
- 100 Appellant's Questions to be submitted to Derek Stebner, prepared by Philip Buri, October 6, 2011
- 101 Set of photographs re: Perils of Lake Samish Roads: A No-passing Zoning
- 102 Addendum to Declaration of Steven Harper, dated October 10, 2011
- 103 Brad Swanson letter, dated June 24, 2011 to Arlene Harris, DOE, re: Water Right Permits
- 104 PDS representation of potential Lake Samish build-out at present zoning with colored map attached [email cover from Tyler Schroeder to Parties, dated 10/11/2011]
- 105 ESA Listed Salmonids Checklist
- 106 Easement dated November 9, 1992 betw Mary Frey, a.k.a. Mary Provias and Whatcom County Lake Management District No. 1
- 107 Applicant's Memorandum regarding Standing, prepared by Jack Swanson, October 13, 2011
- 108 Letter, July 14, 2010 from Samish Water District to Bradley Swanson re: 673 W Lake Samish Drive
- 109 Fundamentals of Urban Runoff Management, 2nd Edition, 2007, Chapter 3, pages 3-63/64
- 110 Habitat Ecology and Design, Inc. letter dated October 13, 2011 to Whatcom County Hearing Examiner, regarding ESA Listed Species near Lake Samish
- 111 Response to Appellant's Questions to be Submitted to Derek Stebner, signed by Derek Stebner, October 12, 2011
- 112 Stormwater Loading Calculations for Sleepy Hollow, Conservative Calculations, Anchor QEA October 13, 2011
- 113 Stormwater Loading Calculations for Sleepy Hollow, Calculations Using Different Assumptions and More LID Practices, Anchor QEA October 13, 2011
- 114 WCC Chapter 16.32, "Establishing Regulations for Fertilizer Application on Residential Lawns and Public Properties within the Lake Whatcom and Lake Samish Watersheds"
- 115 AB 2002-084F, Proposed Amendments with Ord #203-007, with attachments:
115-1 Whatcom County Planning Commission Findings of Fact, Reasons for Action and Recommendations, with Staff Report, dated July 18, 2002, attached
115-2 Western Washington Growth Management Hearings Board, Case No. 03-2-0011 Final

- Decision and Order, Cal Leenstra v. Whatcom County and Concerned Neighbors of Lake Samish, Sept 26, 2003
- 115-3 Letter dated August 29, 2005 from Superior Court Judge Charles Snyder with attached Memorandum Decision No. 03-2-02445-3, dated August 29, 2005
- 116 Bruce Harris Comments, dated October 13, 2011
- 117 Dr. Richard Horner's outline for October 14, 2011 presentation
- 118 Estimation of Nonpoint Source Loadings of Phosphorus for Lakes in the Puget Sound Region, Washington, by Robert J. Gilliom, U.S. Geological Survey Water-Supply Paper 2240
- 119 Robert Montgomery, Anchor QEA, Vita
- 120 Low Impact Development: Technical Guidance Manual for Puget Sound, January 2005
- 121 Steve Hood, DOE, comments for hearing on the ordinance amending the Whatcom County Zoning Code, 5/10/2011
- 122 "Focus on Lake Whatcom," DOE Bellingham Field Office, March 2011, Publication No. 11-11-068
- 123 Wendy Cole, Dept of Fish and Wildlife letter, April 14, 2011, to Whatcom County Hearing Examiner re: Shoreline Substantial Development Permit, SHR2003-0007, Preliminary Long Subdivision, LSS2000-0011, "Sleepy Hollow," Lake Samish, Tributary to Friday Creek, Whatcom County
- 124 Email from Cal Leenstra dated April 19, 2011 requesting hearing notice
- 125 Letters dated April 19, 2011, one from Barbara Curry and one from Patrick and Barbara Curry re: Sleepy Hollow Development – Lake Samish
- 126 County Memorandum re: Multiple Plats, prepared by Royce Buckingham, 11/0 9/11, with attachments
- 126-1 Response to Appellant's Questions to be Submitted to Derek Stebner, signed by Derek Stebner, October 12, 2011
- 126-2 Code Interpretation, WCC 21.12.020, dated April 1, 2000, submitted by Roland Middleton and Approved by Sam Ryan
- 126-3 Declaration of Mailing, Terri Zemel, November 10, 2011
- 127 Memorandum from Michael Read, Transportation Engineering Northwest, LLC, November 4, 2011, re: Sleepy Hollow Subdivision – Hearing Supplement
- 128 Draft Preliminary Stormwater Plan: Sleepy Hollow Development, prepared by Anchor QEA, LLC, November 21, 2011
- 129 Preliminary Stormwater Plan, November 29, 2011, Anchor QEA, LLC
- 130 Letter dated December 8, 2011, from Roger McCarthy to Robert Montgomery
- 131 Motion to Dismiss Citizens for Lack of Standing, prepared by Bradley Swanson, February 1, 2012
- 132 Applicant's Supplemental Brief on Standing, prepared by Bradley Swanson, February 1, 2012, with

- Washington State Supreme Court Decision, Knigh t v. City of Yelm, 2011 WL 6225261 (Wash., 2011), and Declaration of Service, Heather Calloway, February 2, 2012
- 133 Response to Richard Horner letter dated January 3, 2012, Anchor QEA, LLC, February 2, 2012, with attached #133-1: Table 3-13: Pollutant Loading (kg/ha-yr) Ranges for Various Land Uses, page 3-64 from *Fundamentals of Urban Runoff Management*
- 134 Letter dated January 3, 2012, from Richard R. Horner, Assessment of Post-Development Phosphorous Loading: Review of Sleepy Hollow Preliminary Stormwater Plan
- 135 Revised Habitat Management Plan, prepared by Habitat Ecology & Design, Kyle Legare, Jan 4, 2012
- 136 Anchor QEA Response, letter to Roger McCarthy, dated February 3, 2012, re: Mr. McCarthy's review comments of Preliminary Stormwater Plan
- 137 Gibson Traffic Consultants, Inc., memo, Feb 7, 2012: response to TENW memo, dated Nov 4, 2011
- 138 Memo, February 7, 2012 from Tom Ehrlichman to Tyler Schroeder re: Adrik Short Plat Questions re Sleepy Hollow
- 139 Letter, February 7, 2012, from Tom Ehrlichman to Examiner Bobbink re: Scheduling
- 140 Letter, February 7, 2012 from Tom Ehrlichman to Examiner Bobbink re: Opposition to Motion to Dismiss Citizens for Lack of Standing
- 141 Steve Harper comments at February 8, 2012 hearing
Attachment 1: Rainfall Data (inches) – 121 Bear Creek Lane, Jan 1994 – Dec 2011
Attachment 2: Photo of rain collector instrument used by Mr. Harper
Attachment 3: Memo (email) from Samish Water District to Steven Harper, Feb 7, 2012 re: yearly rainfall data 2010-2011
- 142 Letter dated February 7, 2012 from Richard Horner to Mark Herrenkohl re: Anchor QEA February 2, 2012 response to Horner letter dated January 3, 2012
- 143 Chapter 5: Surface Water Problems Identified in the Lake Whatcom Watershed, *Lake Whatcom Comprehensive Stormwater Plan*
- 144 City of Bellingham Lake Whatcom Stormwater Management Program: Evaluation of Stormwater Phosphorus and Recommended Management Options, prepared by Parametrix, October 2007
- 145 Attachment 1: Letter dated August 18, 2011 from Washington State DOE to Mercedes Holdings, Inc. re: Water Right No. S1-26352P
Attachment 2: Letter dated August 18, 2011, from WA State DOE to Mercedes Holdings, Inc. re: Water Right No. S1-26130P
Attachment 3: Letter dated August 18, 2011, from WA State DOE to Mercedes Holdings, Inc. re: Water Right No. S1-26033P
- 146 Letter dated Aug 1, 2006 from WA State DOE to Mercedes Holdings, Inc. re: Water Right Permit

#S1-26130P, S1-26033P, S1-26352P

- 147 Letter dated July 14, 2006 from Brad Swanson to Daniel Swenson, WA State DOE re: Water Right Permit Nos. S1-26033P, S1-26130P, S1-26352P
- 148 WA State DOE Permit, S1-26033, October 30, 1991; WA State DOE Permit, S1-26130, January 30, 1992; WA State DOE Permit, S1-26352, April 15, 1993
- 149 Whatcom County AB No. 149, with attached Ordinance #2003-007
- 150 Letter dated February 1, 2012 from Lyn Morgan-Hill to Brad Swanson re: Critical Area Requirements for LSS2000-0011, Sleepy Hollow
- 151 B&C Well Drilling and Pump Service, Inc., Estimate dated July 28, 2011, for Adrik Short Plat
- 152 Large Map: Preliminary Drainage Plan presented at February 8, 2012 hearing [same map as found as attachment to Exhibit 136]
- 153 Letter dated February 27, 2012, from Philip Buri to Hearing Examiner, requesting an extension of time for filing post-hearing brief
- 154 Memorandum dated February 28, 2012 from Hearing Examiner to Parties of Record regarding request for additional time to file briefs
- 155 Concerned Neighbors of Lake Samish Post Hearing Brief, prepared by Philip Buri, dated March 23, 2012, with attached Declaration of Service [155-1] and Courtesy Copy of Cited Case Law Notebook [155-2]
- 156 Applicant's Closing Brief, prepared by Bradley Swanson, dated March 23, 2012, with Case Law attached to Brief; and Declaration of Service [156-1]
- 157 Citizens' Post-Hearing Brief, prepared by Tom Ehrlichman, dated March 23, 2012, with Case Law included [large white binder]
- 158 Applicant's Closing Response Brief, prepared by Bradley Swanson, dated April 12, 2012, with Case Law and Declaration of Service attached
- 159 Supplemental Reply Brief re: Preliminary Plat, Short Plat, and Shoreline Permit, prepared by Tom Ehrlichman and Barbara Dykes, dated April 12, 2012, with Case Law attached
- 160 Email from Tyler Schroeder, 02/21/12, re: Staff Memo, including updated conditions and attachments:
 - 160-1 Staff Memo, 02/21/12, re: Sleepy Hollow SEPA Appeal / Plat Hearing Additional Information
 - 160-2 PDS written response to Tom Erlichman's questions sent via email on 2/7/2012
 - 160-3 Technical Review Committee Engineering Requirements, 2/14/2012
 - 160-4 Email from John Thompson, 10/12/2011 re: Sleepy Hollow Follow Questions
 - 160-5 Email from John Thompson, 11/2/2011 re: Sleep Hollow Follow Questions
 - 160-6 Email Travis Bouma to Schroeder and Thompson, 10/12/2011 re: Sleepy Hollow Questions

161 File containing Exhibits from Original Application, dated May 26, 1992, Applicant Steve LeCocq, File Nos. LSS92-0011, SBV98-0002, SHS92-0017 [formerly PLS92-0011] "Strader Place"

161

- 1 Staff Report, dated March 19, 1999, with attachments
 - 1-1 Letter dated April 18, 1999 from Richard and Kathleen Duffy
 - 1-2 Letter dated April 27, 1999 from K.P. and Li-Tsun Lin
 - 1-3 Letter, May 5, 1999 from Philip Buri re: hearing date for SEPA Appeal, APL98-0010
 - 1-4 Certificate of Mailing of Notice of Public Hearing, April 16, 1999
 - 1-5 Legal Notice of Public Hearing, April 22, 1999
 - 1-6 Public Hearing Agenda, May 5, 1999, Canceling Hearing
 - 1-7 PDS Application Checklist-Update Documents 1998, dated March 19, 1999
- 2 Memorandum dated July 28, 1997 from Roger Almskaar, Associated Project Consultants, re: Lake Access Easement Development, Shoreline Application, 92-0017
- 3 Memorandum, dated October 2, 1998 from Doug Campbell, Associated Project Consultants, re: Second Addendum to WC Shoreline Permit 92-0017
- 4 MDNS, SEP98-00133, dated September 13, 1998
- 5 TRC-Engineering Requirements, dated December 8, 1998, with attachment:
 - 5-1 Memorandum, dated August 10, 1998 from Doug Campbell and Brad Swanson to Ed Henken, re: Strader Place Traffic Mitigation
- 6 Vicinity Map – Site highlighted in yellow
- 7 Zoning Map – Site highlighted in yellow
- 8 Aerial Map
- 9 Determination of Completeness, dated August 19, 1998
- 10 Legal Notice of Application, Affidavit, dated August 26, 1998
- 11 Certificate of Mailing, Notice of Application, August 19, 1998
- 12 Letter dated June 12, 1998 from Gibson Traffic Consultants to Ed Henken re: West Lake Samish Drive Improvements
- 13 Stormwater Drainage Report, prepared by Associated Project Consultants, April 1998
- 14 Memorandum dated January 15, 1999 from Ed Henken and Michael Donahue requesting additional paragraph in Staff Report re: traffic mitigation fee for off-site road improvements
- 15 Memorandum dated October 1, 1998 from Ed Henken re: Mitigation Measures
- 16 Memorandum, dated July 28, 1997, from Doug Campbell re: Application update 1997

- 17 Vicinity Maps- Two maps/one showing site highlighted in orange
- 18 Public Comment Letters
 Al Timmer, March 11, 1999
 Robert LeCocq, January 12, 1999
 Gerald and Heidi Alford, February 9, 1999
 Charles/Robert/Stephen LeCocq and Families, February 10, 1999
 David and Janice Beaudin, February 9, 1999
 Herb and Vicki Barker, October 25, 1998
 Carol and Galen Biery, October 21, 1998
 Lorraine Stuehm, October 25, 1998
 Philip Buri, December 22, 1998
- 19 Agency Comments
 Doug Campbell and Brad Swanson, August 14, 1998
 Bellingham Public Schools, July 17, 1992
 WA State DOT, August 24, 1992
 Whatcom County Solid Waste, July 9, 1992
 Whatcom County Water District No. 12 Will Serve Letter, April 17, 1992
 Bellingham Public Schools, Resolution No. 1-95, Capital Facilities Plan 1998-2003
- 20 Original Master Application File, PLS1992-0011
 20-1 Land Use Application, date paid June 16, 1992
 20-2 MDNS, February 1, 1993
 20-3 Handwritten meeting notes, November 8, 1996
 20-4 Letter dated November 3, 1993, from Bob Carmichael re: SEPA Strader Place
 20-5 Handwritten Notes – DOE re: stormwater, bio-swale, waterfront 11/08/96
 20-6 Letter dated October 4, 1993 from Philip Serka
 20-7 Letter dated October 12, 1993, from Richard Duffy
 20-8 Letter dated September 16, 1993 from Philip Serka
 20-9 Letter dated March 22, 1994, from B. Eugene Omey
 20-10 Letter dated October 4, 1993, from Philip Serka
 20-11 Letter dated November 22, 1993, from Philip Serka
 20-12 Letter dated November 3, 1993 from Bob Carmichael
 20-13 Letter dated April 8, 1993, from Doug Campbell
 20-14 Memo, Oct 22, 1993 from SEPA Coordinator to Environmental Review Committee
 20-15 Strader Place Homeowners Association Waterfront Access Plan, August 19, 1993
 20-16 Letter dated September 16, 1993 from Philip Serka
 20-17 Water Front Access Plan-Easement Map, prepared by Associated Project Consultants
 20-18 Handwritten ERC Meeting Notes, November 3, 1993
 20-19 Memorandum dated September 15, 1997 from Associated Project Consultants and
 Memorandum dated January 12, 1993 from Roger McCarthy to Roland Middleton re:
 traffic and Quit Claim Deed for County Road, June 11, 1964
 20-20 Trip Generation and Distribution for the proposed Lake Samish Hills, prepared by
 Gibson Traffic Consultants, May 6, 1992
 20-21 Letter dated October 14, 1997, from Roger McCarthy re: Stormwater Design Report
 with attachments: Stormwater Management Manual for the Puget Sound Basin, DOE
 Public Review Draft, June 1991; Letter dated February 24, 1993 from Whatcom

- County re: SEPA DNS withdrawal; Letter dated February 11, 1993 from DOE re: Environmental Review; Letter dated May 15, 1992 from John Wong, Environmental Consultant, with Wetland Delineation graph, dated May 22, 1992
- 20-22 WC Shoreline Management Program, Chapter 23.90 exempt pages 64-66 with attachments: Army Corps Wetland Delineation, letter dated Jan 19, 1993; Phasing Plan graph prepared by associated Project Consultants
22(a) Preliminary Plat Map Figure 2 Predevelopment Drainage Basins; (d) Figure 3 Post-development Drainage Basins; (e) construction map- West Lake Samish Drive; (g) Vicinity Map Water Intake Shoreline Permit; (h) Preliminary Plat – Typical Cross Section Lake Samish Drive
- 20-23 Misc Letters: Tim Hostetler, April 2, 1993; Robert Carmichael, March 10, 1993; Douglas Campbell, May 26, 1992, with 1992 Mailing List and Strader Place Long Subdivision Application, dated May 29, 1992 and Memo, dated October 22, 1997 from Roger Almskaar request Corner Lot Variance attached; Deke Lussier, Bob Funkhouser, Concerned Neighbors of Lake Samish, dated August 17, 1998
- 20-24 Old Plans from 1992-1997: (a) Preliminary Plat 92-109; (b) West Lake Samish Drive 92-109A; (c) Preliminary Plat Lake Samish Drive 92-109; (d) Water Intake Shoreline Permit
- 21 Original Shoreline Substantial Development Permit Application file, SHS1992-0017
- 21-1 Application, dated June 15, 1992
- 21-2 Letter dated March 3, 1995 from Steve LeCocq re: second shoreline permit application
- 21-3 Letter Dec 24, 1993 from Bruce Harris re: Dock Construction /Beach Dev w/out permits
- 21-4 Letter dated November 3, 1993, from Robert Carmichael, re: SEPA
- 21-5 Letter dated November 1, 1993, from Bill Vanderboom Jr.
- 21-6 Letter dated September 16, 1993, from Philip Serka
- 21-7 Homeowners Assoc Waterfront Access Plan, August 19, 1993
- 21-8 Memo, May 11, 1993 from Matt Aamot re: public access shoreline hazard
- 21-9 Letter dated May 11, 1993 from Matt Aamot re: public access exemption
- 21-10 Letter dated May 6, 1993 from Richard Duffy
- 21-11 Letter May 2, 1993 from Bruce Harris re: Absolute Failure to provide evidence
- 21-12 Real Estate Advertisement, The Bellingham Herald, Saturday, May 1, 1993
- 21-13 Letter dated April 12, 1993 from Richard and Jackie White
- 21-14 Letter dated April 8, 1993 from Associated Project Consultants
- 21-15 Association Beach Proposed Use, April 5, 1993
- 21-16 Letter dated April 2, 1993 from David and Debbie Hewlett
- 21-17 Memo from Steve LeCocq, April 2, 1993
- 21-18 Letter dated March 25, 1993, Bob and Sally Funkhouser
- 21-19 Letter dated March 22, 1993, Bill Vanderboom, Jr. with photos attached
- 21-20 Letter dated March 19, 1993, from Richard Duffy
- 21-21 Letter Mar 15, 1993, Concerned Neighbors of Lake Samish, signature sheet attached
- 21-22 Letter dated March 10, 1993, Robert Carmichael
- 21-23 Letter dated February 27, 1993 from Bill Florea
- 21-24 Letter dated February 24, 1993 from Bill Florea
- 21-25 Letter dated February 18, 1994, Matt Aamot
- 21-26 PDS Distribution description, highlighting SHS92-0017 Stephen LeCocq
- 21-27 Memorandum, June 4, 1993 from Roger DeSpain

- 21-28 Memorandum, May 12, 1993 from Roger McCarthy
- 21-29 Memorandum, July 21, 1992, Ravyn Whitewolf
- 21-30 Memorandum, June 30, 1992, WA State DOT re: traffic generation
- 21-31 Memo July 1, 1992, County Health re: Public Water Supply System
- 21-32 Large Maps (a)Water Intake Shoreline Permit Vicinity Map, 92-109-C; (b) Figure 7 outflow from site-Alternative No. 1; (c) Figure 2-Predevelopment Drainage Basins; (d) Figure 8 Outflow from Site-Alternative #2; (e) Lake Samish Drive Revisions
- 21-33 Letter dated March 3, 1993 Eugene and Janet Vitalich

- 22 Preliminary Plat Maps – 1998 Plans

- 23 SEPA MDNS, SEP98-00233 Appeal File
 - 23-1 Appeal Application, dated September 21, 1998, Concerned Neighbors of Lake Samish, filed by Philip Buri
 - 23-2 Staff Report, dated April 15, 1999
 - 23-3 MDNS, dated September 13, 1999
 - 23-4 Memo, dated October 1, 1998 from Ed Henken re: Mitigation Measures
 - 23-5 missing exhibit
 - 23-6 Letter dated October 29, 1998 from Rob, Bob, and Steve LeCocq
 - 23-7 Letters of Concern:
 - Richard and Jacqueline White, Al Needler, John and Marion Griffith, Nov 1, 1998
 - Laurie Henley, October 29, 1998
 - Herb and Vicki Barker, October 25, 1998
 - Carol and Galen Biery, October 21, 1998
 - James Malin, September 11, 1998
 - Robert and Madeleine Smith, September 10, 1998
 - Tina Schwindt, September 10, 1998
 - Erin Schwindt, September 10, 1998
 - Bruce Harris, September 10, 1998 and March 22, 1993
 - Concerned Neighbors of Lake Samish, September 10, 1998 and March 15, 1993

- 162 File containing Exhibits from Administrative Appeal Application, dated April 23, 2001, filed by Concerned Neighbors of Lake Samish, APL2001-0007
 - 162**
 - 1 Application for Administrative Appeal, filed April 23, 2001, Charles Van Gorder
 - 2 Letter dated April 23, 2001 from Charles Van Gorder
 - 3 Letter dated May 15, 2001 from Charles Van Gorder
 - 4 Memorandum in Support of Administrative Appeal, dated June 25, 2001, submitted by Charles Van Gorder, with attachments
 - 4-1 Letter dated November 29, 2000, PDS Brendan Madden
 - 4-2 Notice of Application
 - 4-3 Interoffice Memo, dated March 22, 2001, from Roland Middleton
 - 4-4 Memo, dated April 10, 2001, from Roland Middleton
 - 4-5 Memo, dated February 5, 2001 from Marilyn Bentley
 - 4-6 Sleepy Hollow Development MUL, February 5, 2001, Stanford Consulting

- 4-7 Letter, December 21, 2000, from Petur Sim re: CAO Requirements
- 4-8 Letter, July 22, 1999, from WA State Dept of Fish and Wildlife re: Revised Proposal
- 4-9 Letter, March 5, 2001, WA State Dept of Fish and Wildlife re: SEPA
- 4-10 Sleepy Hollow Development Environmental Assessment, Stanford Consulting, March 15, 2001 and ATSI Description of Streams, March 12, 2001

- 5 Letter dated May 22, 2001 from Mark Herrenkohl

- 6 Whatcom County Planning and Development Services, dated June 27, 2001, Appeal of Administrative Decision, submitted by Roland Middleton

- 7 Letter dated June 23, 2001 from Bob Funkhouser

- 8 Le Cocq Deed, April 1936

- 9 Le Cocq Deed, February 24, 2000

- 10 Agenda Bill 2000-160 with Ord #2000-056 attached

- 11 Supplemental Memo in Support of Appeal, 07/11/2001, submitted by Charles Van Gorder

- 12 Letter dated July 12, 2001 from Bruce Harris re: 1992 Critical Areas Stream Buffer Standards

- 13 Letter dated July 10, 2001 from Jack Swanson, with attachments

- 14 Letter, July 12, 2001 from Jack Swanson re: Mr. Van Gorder's Supplemental Memorandum

- 15 Original Strader Place File, LSS92-0011, SBV 98-0002, SHS92-0017

- 16 Hearing Examiner's Decision, APL2001-0007, dated July 25, 2001

- 17 Appeal to County Council from Hearing Examiner's Decision
 - 17-1 Letter, August 2, 2001, Charles Van Gorder to Magner
 - 17-2 Letter, August 2, 2001, Charles Van Gorder to County Council
 - 17-3 Appeal Form, August 2, 2001
 - 17-4 Parties of Record
 - 17-5 Council Decision, dated November 6, 2001
 - 17-6 Memorandum in Support of Appeal, dated September 14, 2001, Charles Van Gorder
 - 17-7 Opponent's Memo in Support of Hearing Examiner's Dec, 10/01/2001, Jack Swanson
 - 17-8 Council Letter, dated August 30, 2001

- 18 Western Washington Growth Management Hearings Board, Cal Leenstra v. Whatcom County and Concerned Neighbors of Lake Samish, Case No. 03-2-0011 Final Decision and Order, September 26, 2003

- 163 File containing Exhibits from Application, dated May 22, 2003, Applicant Derek Stebner, File No. LSS2000-0011/SHR2003-0007, "Mercedes Holdings," with Administrative SEPA Appeal Application, dated May 15, 2001, filed by Concerned Neighbors of Lake Samish, APL2001-0009

Land Use/Shoreline Application

- 1 Application for Land Use Permits, Derek Stebner, dated May 22, 2003, with attachments
 - 1-1 Letter, dated June 30, 2003 from Jones Engineers, re: Request for Modification
 - 1-2 Letter, dated December 15, 2003, Charles Van Gorder
 - 1-3 Memo, dated January 7, 2004 from Marilyn Bentley
 - 1-4 Assessor's Records, Deed, Legal Description
 - 1-5 Supplemental Application, SHR2003-0007
 - 1-6 Determination of Completeness, June 5, 2003
 - 1-7 Letter of Authorization
 - 1-8 PDS Application Processing Track, June 6, 2003
 - 1-9 Sewer Service Agreement, July 11, 2000
 - 1-10 Property Owners Address List
 - 1-11 Agency Distribution List
 - 1-12 Application Checklist, July 3, 2003
- 2 Legal Notice of Application, dated June 11, 2003
- 3 Legal Notice of Application, dated July 9, 2003
- 4 Staff Report, dated December 5, 2003
- 5 Agency/Staff Comments
- 6 Memo from Roland Middleton to Marilyn Bentley, dated April 10, 2001, with attachments re: buffer requirements
- 7 Letters of Concern
 - Philip Buri, November 21, 2003
 - Charles Van Gorder, November 21, 2003
 - Kathy Ploeger, July 22 and July 9, 2003
 - Lowell Crow and Family, July 14, 2003
 - Charles Van Gorder, June 25, 2003 to Marilyn Bentley and John Gunther
 - Charles Van Gorder, June 25, 2003 to Magner
 - Gary Simon, February 28, 2001
 - Bruce Harris, December 20, 2000 and October 10, 2000
 - Terry Klimpel, October 9, 2000
 - Eric and Kimberly McHenry, December 20, 2000
 - Ruth Holbrook, December 20, 2000
 - Ted Thygesen, WA Dept Fish and Wildlife, January 25, 1999
 - Theodore Muller, Dept Fish and Wildlife, July 22, 1999
 - Bob Warinner, WA Dept Fish and Wildlife, March 5, 2001
 - Jim Bucknell, Water Rights Permit, June 30, 2003
- 8 Certificate of Mailing, Notice of Public Hearing, dated 12/30/03
- 9 Certificate of Posting, Notice of Public Hearing, dated January 1, 2004
- 10 Legal Notice, Notice of Public Hearing, dated January 8, 2004

- 11 Letter dated June 25, 2003, from Charles Van Gorder to Magner
- 12 Letter, 07/22/2003, from Kathy Ploeger on behalf of Concerned Neighbors to Marilyn Bentley
- 13 Letter dated November 21, 2003 from Charles Van Gorder to Michael Bobbink
- 14 Letters, Nov 21 & Dec 3, 2003 from Philip Buri to Michael Bobbink re: scheduling hearing
- 15 Staff correspondence emails re: scheduling
- 16 Site Plan: Lake Access Easement
- 17 Aerial Map
- 18 Plat Map
- 19 Zoning Map
- 20 Utility Layout graphics
- 21 New List of Property Owners within 300-feet June 30, 2003
- 22 New Site Plan, prepared July 1, 2003 by Jones Engineers
- 23 Letter dated January 19, 2004 from Concerned Neighbors of Lake Samish, Mark Herrenkohl, re: Water Quality Impacts, to Michael Bobbink
- 24 Letter dated January 11, 2004 from Concerned Neighbors of Lake Samish, Steven Harper, re: WA State Growth Management Act, Whatcom County Comprehensive Plan, and Samish Bay Watershed Nonpoint Action Plan Compliance Concerns, to Michael Bobbink
- 25 Letter dated January 19, 2004 from Concerned Neighbors of Lake Samish, Bruce Preszler, re: Soil imposes limitations on development, to Michael Bobbink
- 26 Letter dated January 12, 2004 from Concerned Neighbors of Lake Samish, Kathy and John Ploeger, re: Traffic/Safety Impacts, to Michael Bobbink
- 27 Materials dated January 2004 from Concerned Neighbors of Lake Samish, Bruce Harris, re: Water and Stormwater Runoff Facts and Findings
- 28 Concerned Neighbors of Lake Samish, Brief in Opposition to Proposed Subdivision, submitted January 20, 2004, by Philip Buri
- 29 Exhibits to Brief in Opposition to Proposed Subdivision, by Philip Buri
 - 29-A Western Washington Growth Management Hearings Board, Leenstra v. Whatcom County and Concerned Neighbors of Lake Samish, Final Decision and Order, Case No. 03-2-0011, September 26, 2003
 - 29-B WA State Dept of Fish and Wildlife Letter dated January 14, 2004 re: SEPA Appeal

- of MDNS, Plat of Sleepy Hollow and In-Lake Water Withdrawal System; Lake Samish, Tributary to Friday Creek, Whatcom County
- 29-C Letter dated June 17, 2002, from Allan Needler, Concerned Neighbors of Lake Samish re: Lake Samish Recreation Concerns-Change of Conditions Support for Down Zoning of Lake Samish
 - 29-D SEP01-0007 Environmental Checklist
 - 29-E Letter dated July 23, 2003, from Bruce Harris re: Public Comment
 - 29-F Excerpt from The Practice of Watershed Protection: Article 36 re: urban soils impacts on a watershed
 - 29-G Abstract, Forest Cover, Impervious-Surface Area, and the Mitigation of Stormwater Impacts, Derek Booth, David Hartley and Rhett Jackson, published in *Journal of the American Water Resources Assoc*, v. 38:835-845 (2002)
 - 29-H Letter dated January 20, 2004 from Mark Herrenkohl re: Water Quality Impacts
 - 29-I WA State DOE Assignment of Application or Permit to Appropriate or Store Water, application dated August 23, 2002
 - 29-J Graph "Record cfs flows below LMD #1, 06/16 to 07/26/03, prepared by Bruce Harris
 - 29-K Letter, 07/22/1999, WA Dept of Fish and Wildlife re: revised Strader Place Proposal
 - 29-L Soil Survey of Whatcom County Area, US Dept of Agriculture, Soil Conservation Service, text issued May 1992
 - 29-M Bruce Preszler, January 19, 2004 re: Soil imposes limitations on development
 - 29-N Managing Lakes for Pure Drinking Water, by Anne Kitchell, Urban Lake Management, pages 1-17
- 30 Preliminary Drainage & Erosion Control Study, Nov 2000, Revised Mar 2002/Jan 2004, prepared by Moak Engineering and Revised by Sehome Engineering
- 31 Addendum to Preliminary Drainage Study, Jan 18, 2004, prepared by Sehome Engineering
- 32 Mercedes Holdings, Preliminary Long Subdivision, Supplemental Application LSS2000-0011 (original file #LSS92-0011), application dated November 27, 2000 with attachments [Exhibit #32 consists of the following Exhibits: 32-1 thru 32-11, 33 thru 38 and APL-1 thru APL-9, listed below]
- 32-1 Letter, 12/19/2000, Whatcom Co Water District No. 12 re: Permit Application Review
 - 32-2 Letter of Completeness, November 29, 2000
 - 32-3 Application Processing Track, November 29, 2000
 - 32-4 Binder of Application Materials prepared by Martin Kjelstad, November 2000, including Master Application, Supplemental Application, Mailing Labels for property owners, Deed and Supporting Documents
 - 32-5 Legal Notice of Application, December 6, 2000
 - 32-6 Letter dated March 22, 2001 from John Guenther withdrawing DNS SEP01-0007
 - 32-7 Memo, April 9, 2001 from John Guenther re: refund to Concerned Neighbors of Lake Samish after Hearing Examiner dismissed without prejudice the SEPA Appeal
 - 32-8 Email correspondence, 05/17/2001 betw staff re: receipt of new appeal of MDNS
 - 32-9 Aerial Map
 - 32-10 Vicinity Map
 - 32-11 Zoning Map
 - 32-12 Site Plan, prepared by Martin Kjelstad

- 33 Barbara Vaughn Testimony, 01/20/2004 re: Concerns as Citizen of Samish Basin Watershed
- 34 Bruce Harris written comments dated January 18, 2004 re: Staff Report
- 35 Letter dated January 14, 2004 from Richard Johnson, Dept of Fish & Wildlife re: SEPA Appeal of MDNS, Plat and In-Lake Water Withdrawal System; Lake Samish, Tributary to Friday Creek, Whatcom County
- 36 Email John Guenther to Magner, dated January 16, 2004 re: Staff Report Feb 2004 hearing
- 37 Letter dated January 27, 2004 Samish Water District, requesting copy of decision
- 38 Correspondence re: postponing hearing

SEPA Appeal

- APL-1 SEPA Appeal Application – Concerned Neighbors of Lake Samish
- APL-2 Mitigated Determination of Non-significance – Revised and Re-issued, dated 9/29/03
- APL-3 Environmental Checklist
- APL-4 Environmental Assessment prepared by ATSI, dated March 12, 2001
- APL-5 WA State Dept of Ecology letter dated September 26, 2002, re: Water Permit No. S1-26033P
- APL-6 Comment Letters, Agency Correspondence bundled together by SEPA Official
 - Upper Skagit Indian Tribe, October 6, 2003
 - Swinomish Tribal Community, October 13, 2003
 - Department of Ecology News Release – March 19, 2001
 - Washington Dept of Fish & Wildlife, email dated 6/23/03
 - Washington Dept of Fish & Wildlife, email dated 7/08/03
 - River & Stream Water Quality Monitoring Station Overview, 11/10/03
 - Washington Dept of Fish & Wildlife, email dated 7/08/03
 - WA Dept of Fish & Wildlife Region 4 Habitat Program Manager, 7/21/03
 - WA Dept of Fish & Wildlife, email dated 7/08/03
 - WA Dept of Fish & Wildlife, email dated 6/23/03
 - WA Dept of Ecology, email 6/30/03 re: Water Rights Permits
 - Tom Kunesh, email dated 7/09/03
 - Whatcom County Health Dept Comments, dated 7/9/03
 - Engineering Division Memo, dated July 3, 2003
 - Demographics charts
 - Legal Notice, dated June 11, 2003
 - County SEPA Official letter dated August 6, 2003 to John Cox
 - Dept of Fish & Wildlife letters, dated July 21, 2003 & March 5, 2001
 - Algae Alert article, dated September 2001
 - County Health Dept letter dated June 17, 2003
 - Concerned Neighbors letter dated July 9, 2003
 - WA Dept of Fish & Wildlife letters dated 01/25/99, 07/22/99, 02/28/00

Bruce Harris letter dated July 8, 2003
 Hydraulic Project Approval, July 22, 1993
 WA Dept of Fisheries letter dated May 5, 1986
 Skagit Watershed Council Working Document November 1999
 Dividing a River: Fish vs. People, by Geluso, 12/08/02
 Ecology's approach to quantifying water rights, Summer 1998
 Report Lk Samish Watershed Management Advisory Committee, survey results 2003
 Contour Map showing Sleepy Hollow pump house site
 Storm water rules flood Burlington, dated Feb 6, 2001
 Samish Watershed Vicinity Map, WA State Ecology
 WA State Ecology letter dated Sept 26, 2002 to Mercedes Holdings
 WA State Ecology Assignment of Application or Permit to Appropriate or Store
 Water, dated August 23, 2002
 Dept of Ecology letter dated Sept 27, 1996 to Stephen LeCocq
 WA State Ecology Memo dated Nov 20, 1992 re: Superseding Permit
 WA State Ecology, Superseding Permit, November 1992
 WA State Ecology, Report of Examination, August 30, 1991
 Sketch showing Lake Samish Subdivision plat map
 Whatcom County Health Memo dated July 21, 2003 to Jim Thompson
 Memo dated July 9, 2003 from Plans Examiner to Land Use Specialist
 Letter dated July 8, 2003 from Lummi Indian Business Council
 WA Dept of Ecology Application to Appropriate or Store Water, 08-23-02
 WA Dept of Ecology Permit to appropriate water, April 15, 1993
 WA Dept of Ecology Report of Examination, dated 3/10/93
 WA Dept of Ecology letter dated October 29, 1996 to Charles LeCocq

APL-7 Letters, Memoranda, Agency Comments bundled together by SEPA Official
 Letter dated October 13, 2003 from Samish Water District to John Guenther
 WA Dept of Ecology Superseding Permit and Permit
 Environmental Checklist, SEP03-00103
 Zoning Map and Plat Map
 Letter dated August 6, 2003 to John Cox from John Guenther
 WA Dept of Fish & Wildlife letter dated July 21, 2003 to Thompson & Guenther
 Letter dated July 24, 2003 from Lk Samish Watershed Committee to Bentley
 WA Dept of Fish & Wildlife letter dated March 5, 2001 to Guenther
 WA Dept of Fish & Wildlife letter dated Feb 28, 2000 to Jane Doughty
 WA Dept of Fish & Wildlife letter dated July 22, 1999 to Guenther
 Hydraulic Project Approval, dated July 22, 1993
 Chart: Friday Ck Sub-Basin – Comparison of Natural Streamflow w/ IFIM Study
 Letter dated May 5, 1986 from WA Dept of Fisheries to Roy Bishop
 Email memo dated 5/17/01 from (to) Wagner to (from) Guenther
 MDNS dated 4/20/01
 DNS dated 2/9/01 and withdrawn 3/22/01
 Letter dated March 22, 2001 to James Stanford from Guenther
 Email memo from Guenther to Wagner, Bentley dated 3/22/01
 WA Dept of Fish & Wildlife letter dated March 5, 2001 to Guenther
 WA Dept of Fish & Wildlife letter dated July 22, 1999 to Guenther rec'd 3/0601
 WA Dept of Fish & Wildlife letter dated July 22, 1999 to Guenther rec'd 7/23/99

WA Dept of Fish & Wildlife letter dated Dec 20, 2000 to Land Use Services
Letter dated Feb 14, 2001 from WA Dept of Ecology to Guenther

APL-8 Utility Layout Map, SEPA Review 11/04/03

APL-9 Sleepy Hollow SEPA Appeal Staff Report, stamped-received March 8, 2004

164 File containing Exhibits for Motion to Dismiss, Concerned Neighbors of Lake Samish, April 24, 2009
164

- 1 Concerned Neighbors' Motion to Dismiss Subdivision Application Brief, 04/24/2009, with attachments
 - 1-1 Hearing Examiner's Decision, Administrative Appeal, APL01-0007, dated July 25, 2001
 - 1-2 Cover Letter dated August 29, 2005, from Superior Court Judge Charles Snyder, with Memorandum Decision, cause No. 03-2-02445-3 attached
 - 1-3 Final Dec, Western WA Growth Management Hearings Board, Case No. 03-2-0011
- 2 Declaration of Mark Herrenkohl in Support of Motion to Dismiss, dated April 24, 2009
- 3 Declaration of Service, dated April 24, 2009
- 4 Concerned Neighbors' Statement of Supplemental Authorities in Support of Motion to Dismiss, dated June 2, 2009, with attached case law
- 5 Declaration of Service, dated June 2, 2009
- 6 Response to Motion to Dismiss Subdivision Application, dated June 5, 2009 with attached Exhibit A: Declaration of Bradley Swanson, dated June 5, 2009
Exhibit B: Declaration of Jack Swanson, dated June 5, 2009
- 7 Declaration of Service, dated June 5, 2009
- 8 Concerned Neighbors' Reply Brief, dated June 9, 2009, with attached Reply Brief Case Law
- 9 Appellant's Supplemental Brief on Post Motion Hearing Issues, dated June 16, 2009, [Case Law stapled to Brief], with attachments:
 - 9-1 Declaration of Mark Herrenkohl in Support of Motion to Dismiss
 - 9-2 Declaration of Service, dated June 16, 2009
- 10 Applicant's Supplemental Briefing for Motion to Dismiss, dated June 16, 2009, with attachments
 - 10-1 Declaration of Service, dated June 16, 2009
 - 10-2 Case Law
- 11 Appellant's Response to Applicant's Supplemental Brief, dated June 18, 2009, [Case Law provided via email], with Declaration of Service, dated June 18, 2009 [11-1]
- 12 Applicant's Response to Appellant's Supplemental Brief, dated June 19, 2009
- 13 Examiner Decision, 07/02/2009: Order Denying Concerned Neighbors' Motion to Dismiss

- 14 Concerned Neighbors of Lake Samish, Appeal Application, July 7, 2009, to Whatcom County Council, AB 2009-321
- 15 Motion to Stay Appeal, submitted by Philip Buri, on behalf of Concerned Neighbors, 08/25/2009
- 16 Letter 09/02/2009, Marina Engels, Deputy Clerk, to Philip Buri, re: Council granting request

Exhibits received after the close of the record are listed as exhibits below:

- 165 Motion to Supplement Record, prepared by Philip Buri, May 4, 2012, with attachments
Attachment A: Notice of Default
Attachment B: Quit Claim Deed, January 27, 2012
Attachment C: Parcel Map
- 166 Letter dated May 4, 2012, from Tom Ehrlichman re: Mr. Buri's Motion to Supplement the Record, with attachments:
A-1: Corporations: Registration Detail for Peachwood Investments, LLC, filed 01/23/2012, with Quit Claim Deed, dated January 27, 2012
A-2: Business Licensing Service: License Query Search, information current as of 05/04/2012
A-3: Resolution No. 86-41: Hearing Examiner Rules and Business Rules
- 167 Letter dated May 4, 2012, from Bradley Swanson to Tyler Schroeder re: Subdivision Application ownership transfer
- 168 Sleepy Hollow Hearing Transcript, January 20, 2004, prepared by Corpolongo & Associates, Inc.
- 169 Email, dated May 7, 2012, from Brad Swanson to Hearing Examiner Bobbink re: Sleepy Hollow – Change in Ownership, with attachments: Letter, dated May 4, 2012, to Tyler Schroeder from Bradley Swanson and Quit Claim Deed, dated January 27, 2012, Mercedes Holdings, Inc. to Peachwood Investments, LLC
- 170 Email, dated May 7, 2012, from Tyler Schroeder to Hearing Examiner with attached letter dated May 4, 2012 from Bradley Swanson [same as Exhibit 169]
- 171 Memo, 05/17/2012, Michael Bobbink to Attorneys and SEPA Official re: Sleep Hollow Dec Update
- 172 Memo dated May 18, 2012, from Michael Bobbink to Bradley and Jack Swanson re: Sleepy Hollow Current Ownership Information
- 173 Email, 05/18/2012, Tom Ehrlichman to Examiner re: Sleepy Hollow Hearing Examiner Memo
- 174 Letter dated May 21, 2012, from Bradley Swanson to Michael Bobbink re: Sleepy Hollow Current Ownership Information – Response
- 175 Memo dated May 30, 2012, from Michael Bobbink to Bradley and Jack Swanson, Philip Buri, Tom Ehrlichman, Barbara Dykes, Royce Buckingham, Tyler Schroeder
- 176 Memo, dated June 4, 2012, from Michael Bobbink to Bradley and Jack Swanson, Philip Buri, Tom Ehrlichman, Barbara Dykes, Royce Buckingham, Tyler Schroeder

- 177 Memo, 06/04/2012, Bradley Swanson to Michael Bobbink re: Hearing Examiner Memo May 30, 2012
- 178 Memo, dated July 10, 2012, from Michael Bobbink to Bradley and Jack Swanson requesting information to be provided at July 11, 2012 hearing.
- 179 Notice of Trustee's Sale, dated May 29, 2012
- 180 Letter dated July 11, 2012 from Bradley Swanson re: list of parcel numbers for Adrik Short Plat and Sleepy Hollow Subdivision, and their respective owners
- 181 Authorization for Representation, Adrik Short Plat
- 182 Authorization for Representation, Sleepy Hollow
- 183 Email with attachments: Tyler Schroeder response, 02/21/2012 to emailed questions from Mr. Ehrlichman, dated February 7, 2012
 - 183-1 Quit Claim Deed, dated January 27, 2012, Mercedes Holdings, Inc. Grantor/borrower
 - 183-2 Corporations: Registration Detail

II.

The original application for a 47-lot subdivision on the subject property was submitted to Whatcom County Planning and Development Services, on May 29, 1992. The application and additional materials were enclosed with a letter to the head of Planning and Development Services, dated May 26, 1992. The letter was dated 'stamped received' May 29, 1992. The receipt for the total fees for the subdivision application, in the amount of \$2,407.45, was issued on May 29, 1992. Along with the Master Application, which was stamped received by the Department of Planning and Development Services on June 16, 1992, were a SEPA checklist, a legal description, a list of property owners who were entitled to receive notice, a letter showing sewer availability, and a copy of the 'map sheets.'

The original Applicant was Steven R. LeCocq and the original, proposed name for the subdivision was "Strader Place."

Even prior to the filing of this application in 1992, Whatcom County had received requests from citizens to be named as Parties of Record, to receive notices and information, and indicating opposition to the proposed development.

The original proposal included withdrawal of surface water from Lake Samish as a water source for the development. A Shoreline Substantial Development Permit Application was filed on June 15, 1992, requesting shoreline development permits for the water withdrawal infrastructures.

On February 1, 1993, Whatcom County issued a Mitigated Determination of Non-significance (MDNS) under the State Environmental Policy Act and Whatcom County Ordinances. This Determination was withdrawn on February 17, 1993, and a note on the Determination, apparently put there by Staff members, indicates concern at that time that the proposal reviewed for SEPA was not the complete proposal. Correspondence in the original file indicates that the main concern leading to

the withdrawal of the MDNS was lack of information regarding public access issues to the shoreline.

The original file contains correspondence dated September 6 and October 4, 1993, from the Applicant's Attorney, indicating that the requested information regarding shoreline access issues had been supplied and requesting re-issuing of the Determination of Non-significance. Continuing opposition from citizens residing or owning land in the area is also exhibited through correspondence in the file during this time period. These include a letter dated November 3, 1993, addressed to Whatcom County Staff and signed by an Attorney representing the "Concerned Citizens of Lake Samish." This six-page letter addressed numerous issues regarding the potential adverse environmental impacts under SEPA and requested the County to issue a Determination of Environmental Significance and require an Environmental Impact Statement for the proposal.

For reasons not clear from the record, documentation of the progress of this application ended in February 1994, and did not resume again until November 1996.

Submittals from the applicant's representatives, which specifically purport to update and supplement the original application, were submitted to the County in the summer of 1997.

After the submittal of additional information, including a copy of the Applicant's permit from Washington State Department of Ecology allowing surface water withdrawal from Lake Samish, subject to certain conditions, and additional information regarding traffic mitigation, Whatcom County re-issued a SEPA Mitigated Determination of Non-significance, on August 26, 1998. This SEPA Determination was appealed on September 21, 1998, by opponents of the project.

A public hearing before the Hearing Examiner on the proposed long subdivision, the request for a Shoreline Substantial Development Permit and a Shoreline Variance, and on the SEPA Appeal was set for May 5, 1999. Prior to the hearing, staff filed a lengthy staff report recommending approval of the proposed long plat and shoreline permits. Just prior to the public hearing on this matter, the hearing was cancelled at the request of the Applicant.

A letter from the original Applicant and owner, Steven R. LeCocq, dated July 6, 2001, indicates that the public hearing set for May 5, 1999, was cancelled by the Applicants because they decided to "... attempt some major design changes." The letter indicates that they chose to delay the project and attempt changes that would "... appease neighbors' concerns over development impacts." The letter goes on to indicate that after some work on the modifications, the LeCocq family sold the property to Mercedes Holdings (Derek Stebner, dba Mercedes Holdings). Mr. LeCocq goes on to state that, based on conversations with Whatcom County staff and with his development consultant, they informed the buyer that the development had vested rights as an on-going project.

The property transfer from LeCocq to Mercedes Holdings, Inc. took place in March and/or April 2000. The file became active again in the summer of 2000, with the then new owner, Mercedes Holdings, being represented by Stanford Consulting.

Ownership of the parcels to be subdivided into Sleepy Hollow lots was transferred from

Mercedes Holdings, Inc. to Peach Wood Investments, L.L.C. on January 27, 2012. Conveyance of the shoreline parcel from Canyon Holdings, L.L.C. to Inglewood Holdings, L.L.C. also occurred on January 27, 2012.

The Hearing Examiner became aware of the ownership transfers on May 4, 2012. The Hearing Examiner re-opened the record and held a final public hearing on July 11, 2012, to address the current ownership of the property and the implications of the January 27, 2012, change in ownership.

Derek Stebner is the sole individual owner of all four Limited Liability Companies involved in the January 27, 2012, transfers and stated the transfers were for "...estate planning purposes." In April 2012, a Notice of Default was filed on the properties that are the subject of these pending applications.

At the July 11, 2012, hearing, the Hearing Examiner denied Motions to Dismiss the Applications because of the recent Title transfers, concluded that dismissal was an inappropriate response to the undisclosed transfers of Title, and that the transfers and Notice of Default were not relevant to a Decision approving or denying the permits sought.

III.

After the purchase of the subject property by Mercedes Holdings in 2000, their development representative, James Stanford, determined that some modifications in the original proposal were appropriate to help ensure approval of the proposal by the Hearing Examiner.

Both Mr. James Stanford and Mr. Roland Middleton, Division Manager of the Land Use Division of Whatcom County Planning and Development Services, stated that there was an understanding from the initial point of involvement by Mercedes Holdings and Stanford Consulting that this Application had vested under prior land use regulations. Because Mercedes Holdings intended to propose additional modifications to the project, Planning and Development Services Staff gave them the option of paying for continuing review at \$55.00 an hour, as authorized for long plat repetitive review, or the alternative of filing for a new application with the payment of set fees. The new owners chose to file a new application, resulting in known and fixed fees, rather than pay the long plat repetitive review hourly rate. Both Mr. Stanford and Mr. Middleton believed and understood the filing of a new application would not affect the vested status of the proposed subdivision, but was instead to provide a method of continuing review in light of all of the proposed modifications. The new application for a 47-lot subdivision on the subject property, to be known as Sleepy Hollow Subdivision, was filed with Whatcom County by Mercedes Holdings on November 27, 2000. Fees totaling \$4,276.87 were paid on that date. These fees included the fees for Critical Area Review. A new number was assigned to the Application, file number LSS2000-00011. On that date, the County issued a Determination of Completeness for this new Application and proceeded to process the Application under current procedural rules, adopted by the County in 1996 to implement the requirements of the Washington State Regulatory Reform Act, which was passed and went into effect in 1995. These permit review procedures were not in effect at the time of the original

application. Additionally, Whatcom County's first Critical Areas Ordinance was adopted in July 1992. The Critical Areas Ordinance, in effect at the time of the second review of the Strader Place Application and the review of the Sleepy Hollow Application, was adopted by the Whatcom County Council on October 27, 1997. There was no Critical Areas Ordinance in effect at the time of the original Application in 1992.

After the re-filing of the amended Application on November 27, 2000, by Mercedes Holdings, Whatcom County Staff proceeded to review this Application as a new Application, using review procedures in effect at the time of its filing. As part of the review, the proposal was circulated to County agencies which may have jurisdiction. This included circulation to the Whatcom County Critical Areas Administrator. The Administrator determined that the proposal was inconsistent with the buffer requirements for streams and wetlands contained in current in Whatcom County Ordinances and put a hold on the processing of the Application. Thereafter, the Applicant's representative met with the Land Use Division Manager, Mr. Middleton, and these discussions resulted in an Administrative Determination in November 2000, that the project was vested under the Land Use Ordinances in effect on May 29, 1992, and that the subdivision proposed was not subject to the Critical Areas Ordinance in effect when the re-application was filed on November 27, 2000.

Concerned Neighbors of Lake Samish appealed the November 2000 Administrative Determination that the project was vested to Land Use Ordinances in effect on May 29, 1992.

On July 25, 2001, the Whatcom County Hearing Examiner upheld the Administrative Determination, ruling that the project had vested on May 29, 1992, and was to be reviewed under the Land Use Ordinances in effect as of that date.

The Decision of the Hearing Examiner was appealed to the Whatcom County Council by Concerned Neighbors on August 2, 2001. After review, the Whatcom County Council upheld the Hearing Examiner in a Decision, dated November 6, 2001. The County Council Decision was not appealed.

The original plan for supplying water to the subdivision was a surface water withdrawal from Lake Samish. The original submissions included an Application for a Shoreline Substantial Development Permit, filed with Whatcom County on June 15, 1992. The Application filed with the County in November 2000 included a proposed modification under which the subdivision would be served with potable water by Whatcom County Water District No. 12. The Application was again revised in 2003, and a new Application for a Shoreline Substantial Development Permit, proposing to supply potable water through a water withdrawal from Lake Samish, was submitted to the County and has since been processed simultaneously with the Sleepy Hollow Preliminary Long Plat Application, and is before the Hearing Examiner at this time.

IV.

Over the twenty years this proposed subdivision has been in the Preliminary Plat Approval stage, a number of SEPA Mitigated Determinations of Non-significance have been issued and later

withdrawn. The Concern Neighbors of Lake Samish have appealed each Mitigated Determination of Non-significance issued. The last Mitigated Determination of Non-significance under SEPA was issued on May 4, 2011, and has been appealed both by Concerned Neighbors, and by the Applicants, Mercedes Holdings, Inc. and Canyon Holdings, LLC.

Currently before the Hearing Examiner is a request for Preliminary Long Plat Approval for a 45-lot subdivision on a 23.56-acre parcel, located above Lake Samish; a Shoreline Substantial Development Permit Application for the proposed surface water withdrawal system to supply potable water to the subdivision from Lake Samish; and Appeals of the MDNS issued under SEPA by both Concerned Neighbors and the Applicant.

From the November 2000 submission of a Preliminary Plat Application for a Subdivision, to be known as Sleepy Hollow, until January 2004, the proposal slowly made its way through the planning process.

On January 20, 2004 [twelve years after the original Application was submitted], the Hearing Examiner held the first open record hearing on the proposed Subdivision, Shoreline Permit, and the SEPA Appeal filed by Concerned Neighbors of Lake Samish. The Hearing on January 20, 2004, started at 11 a.m. and, ultimately, was adjourned at 4:13 p.m. At the end of the hearing, the Parties agreed to continue the hearing until February 11, at 1:30 p.m. Toward the end of the January 20, 2004, hearing, the Hearing Examiner expressed concern about the adequacy of the showing the Applicants had made in regard to supplying potable water to the proposed subdivision. Specifically, concerns were raised by the Examiner about the language on the Water Permit, which appeared to condition the water withdrawal under the permit to the maintenance of two cubic feet per second [2.0 cfs] stream flow from the lake into Friday Creek. At the Hearing Examiner's request [perhaps insistence would be a better word], the Applicant's Engineer, Pat Jones, was asked to return with some kind of proposal or plan to augment the stream flow from the Lake into Friday Creek to ensure the 2.0 cfs, required under the language of the water permit granted to the Applicants from the Department of Ecology, could be met. Additionally, the Hearing Examiner asked for information regarding the current position of the Department of Fisheries in regard to the proposed Subdivision.

Between the Hearing on January 20, 2004, and the re-scheduled hearing on February 11, 2004, Pat Jones, the Engineer for the Applicant, passed away. The February hearing was rescheduled to April 7, 2004, and then again rescheduled to June 16, 2004.

On May 19, 2004, the Applicant requested the hearing to be postponed indefinitely, to be rescheduled by the Applicant, at some point, to a date in July or August 2004. The Applicant never requested a new hearing date and there were no hearings on the matter until June 9, 2009. Thereafter, public hearings were held on February 9, September 19, 21, 30, October 3, 5, 10, and 14, 2011, and the last hearing was held on February 8, 2012. At the close of the February 8, 2012, hearing, a post-hearing briefing schedule was agreed on and the record closed on April 13, 2012. The record was re-opened for one final hearing regarding the ownership issue only, on July 11, 2012.

After the May 19, 2004, request for an indefinite continuance, the Hearing Examiner and

Concerned Neighbors, next, became aware of new activity regarding the Sleepy Hollow Subdivision sometime in 2009, approximately five years later.

On April 24, 2009, Philip Buri, as the Attorney for Concerned Neighbors, filed a Motion with the Hearing Examiner requesting Dismissal of the Sleepy Hollow Subdivision Application. The Motion was briefed and was argued at a Public Hearing on June 10, 2009. The record was left open for the submission of supplemental briefs and on July 2, 2009, the Hearing Examiner entered a written Decision, denying the Motion. The Decision stated it was a Final Decision and included the information for appealing a Final Decision of the Hearing Examiner. The Hearing Examiner's Decision was appealed by Concerned Neighbors. After filing of the Appeal, Concerned Neighbors requested the Whatcom County Council to stay the appeal until the Hearing Examiner issued a Final Decision on the Long Subdivision Application, the Shoreline Permit Application, and the SEPA Appeal. The stay was granted.

V.

When public hearings resumed on February 9, 2011, the law firm, Salish Law, L.L.C., appeared on behalf of Wendy Harris, Shane Roth, Eric Hirst, and Sue Brown, Whatcom County residents opposed to the granting of Preliminary Plat Approval for the Sleepy Hollow Subdivision. Salish Law Firm continued to participate throughout the remainder of the hearing process on behalf of their clients, hereinafter referred to as "Concerned Citizen" or "Citizens."

A request by the Applicant that the Hearing Examiner rule "Citizens" did not have standing to participate in the hearing process was ultimately denied by the Hearing Examiner and is addressed in the Conclusions of Law herein.

For the remainder of the hearings, from February 9, 2011 through the final hearing on July 11, 2012, Whatcom County Planning and Development Services, the Applicant, Concerned Neighbors, and Concerned Citizens, were represented by separate Counsel. In addition, there were written comments and testimony from numerous citizen participants.

VI.

Throughout the long history of this Application, there have been a number of SEPA Determinations issued, withdrawn, and/or revised. The Final Mitigated Determination of Non-significance was issued on May 4, 2011, and contained the following conditions:

SEPA MDNS, May 4, 2011 Conditions

1. Access for the plat shall require $\frac{3}{4}$ - frontage improvements to bring approximately 2,200 feet of Summerland Road to minimum public road standards. This improvement shall include a minimum of 2 - inches of a/c overlay measuring 22 - feet wide with gravel shoulders measuring 4 - feet wide along the frontage and 3 - feet wide on the opposite side.

2. All road design and improvements shall comply with the current County development standards. The public road rights-of-way standard is 60 – feet wide. Dedication of 30 – feet (half width) along Summerland Road and West Lake Samish Drive shall be required.
3. Frontage improvements along West Lake Samish Drive shall include approximately 1,500-feet of a gravel shoulder measuring a min. [sic] of 6-feet wide.
4. If public sewer is proposed to serve the subject plat, a developer's extension agreement from Lake Samish Water District #12 shall be submitted prior to preliminary approval¹
5. The Washington State Department of Health shall ensure that an adequate safe distance is maintained between the storm water outfall and water intake in Lake Samish.
6. Surface and storm water quality discharges from the site shall comply with the surface water quality standards provided from in WAC 173-201A (Water Quality Standards for Surface Waters).
7. To ensure surface and storm water quality compliance with applicable water quality standards, a surface and storm water quality sampling and monitoring plan shall be prepared by the Developer and approved, prior to final approval, by the Whatcom County Designated SEPA Responsible Official (SEPA Official). The Developer shall subsequently contract with a qualified consultant to implement the approved plan and a copy of the executed contract shall be submitted to Whatcom County Land Use Division permit file along with a bond assignment of savings for 125 – percent of the total cost of the sampling and monitoring plant. The plan details, including assigned responsibilities, shall be determined at the time of plan approval.
8. The surface and storm water quality and monitoring plan shall be

1 This requirement is to verify the legal ability the District has to serve the property at urban levels of service. The Whatcom County Comprehensive Plan states that Whatcom County's policy is to ensure that extension of sewer lines outside of urban growth areas does not occur unless an emergency or health hazard exists. (See Policy 2N4: "Ensure that cities or other service providers do not extend sewer or urban levels of water service to serve new areas of urban densities outside urban growth areas unless emergency or health hazards exist.") Extension of a sewer line for a new land division does not constitute an emergency or current health hazard. As such, a developer's extension agreement proposing an extension of sewer lines outside of an urban growth area and requested to a separate agency outside of Whatcom County's permitting process would not be consistent with the current comprehensive plan.

reviewed by the Whatcom County Designated SEPA Responsible Official, Whatcom County Engineering Division staff, WDFW and Ecology and approved prior to final approval by the SEPA official (sic).

9. All storm water facilities shall comply with the 2005 Department of Ecology Stormwater Management Manual for Western Washington.
10. The buffer on Lake Samish shall be 100 feet from the Ordinary High Water Mark (OHWM). The County shall review and approve a plan to mitigate for all temporary (i.e. construction) impacts and all permanent impacts within the 100 foot buffer. Mitigation must be located outside the 30' easement (unless easement language requires mitigation areas for perpetuity) and located as close to the resources as feasible. The SEPA official (sic) shall review and approve the mitigation plan, with input from Critical Area staff, prior to final approval of the subject development permits.
11. Access and Maintenance Road for water intake/outfall facility shall be constructed of an approved impervious surface. Approved impervious surface shall consist of grid/lattice systems or permeable interlocking pavers or pervious concrete or porous asphalt or other similar approved materials as approved by the SEPA official (sic).
12. The buffer on all non-fish bearing streams shall be 50 feet from the Ordinary High Water Mark (OHWM).
13. All Critical Area buffers located within the plat shall be placed in a separate tract or tracts owned in common by all lots within the subdivision or preserved through a Conservation Easement that provides the same level of permanent protection as designation of a separate tract or tracts as determined by the County SEPA official (sic). Utilities and public access trail, as shown on current site plan, shall be located within the Critical Area buffers.
14. The total allowed amount of impervious surfaces shall be 2500 square feet for each buildable lot. This 2500 square feet may be allocated differently among the lots at the developer's discretion as long as the total impervious surface allocated does not exceed 2500 square feet per lot. The allowable impervious area per lot shall be noted on the final plat mylar recorded with Whatcom County. Alternative pervious surfacing (i.e. pervious concrete, pervious asphalt, pervious pavers, etc.) may be used and shall not count against the impervious surface allocated for each lot.

15. Land disturbance activities which expose, or plan to expose, more than 500 square feet of soil shall be permitted between October 1st and May 31st. All future development permits for such activities shall not be issued until June 1st to ensure that land disturbing activities do not occur during the seasonal restriction.
16. No more than 35% of the existing tree canopy of the parent parcel may be removed, except that existing tree canopy removed for public dedicated rights-of-way, stormwater facilities, and other plat infrastructure shall not count against this 35% limitation. Clearing activity as defined in WCC 20.97.054 (sic) may be allocated differently on a lot-by-lot basis as long as the total area cleared does not exceed 35% of the existing tree canopy area, except required clearing for infrastructure as indicated above. The pro-rated clearing shall be noted on the final plat mylar recorded with Whatcom County. No clearing activity shall occur until limits are reviewed and approved by Watersheds staff. Additional clearing greater than the 35% (or approved pro-rated amount) may be allowed, on a lot-by-lot basis, if a tree canopy replanting plan with equal or greater natural vegetation is approved by the SEPA official (sic). Replanting plan shall provide for at least a 1 to 1 replanting ratio with the same, or similar, native species planted in locations appropriate to the species' growth to the species growth, habitat, and horticultural requirements.
17. No land disturbance shall occur prior to Group A public water system approval by Washington State Department of Health (DOH) and verification of such approval by Whatcom County Health Department.

The Applicant has appealed Conditions No. 4, 14, 15, 16.

Concerned Neighbors have appealed the Mitigated Determination of Non-significance and request the Hearing Examiner require an Environmental Impact Statement be prepared before issuing a Decision on Preliminary Long Subdivision Approval and the associated Shoreline Substantial Development Permit Application. Concerned Neighbors identifies, as significant impacts not mitigated by the MDNS, additional phosphorous loading in Lake Samish, impacts to local roads [traffic impacts], and reduced flows into Friday Creek adversely impacting salmonoid stocks and habitat.

Concerned Citizens, represented by Salish Law, L.L.C., did not appeal the SEPA MDNS.

VII.

The Applicant is requesting Preliminary Approval for a Cluster Long Plat consisting of 45 lots and 3.59-acres of reserved/open space, on a 23.56-acre parcel, on land located landward and south/southwest of West Lake Samish Drive and north/northeast of Summerland Road. None of the 23.56-acre parcel borders Lake Samish or is within the 200-foot shoreline jurisdiction extending landward of the Ordinary High Water Mark of Lake Samish.

The Applicant has proposed to service the plat with water withdrawn from Lake Samish. In order to accomplish this, the Applicant has submitted a Shoreline Substantial Development Permit Application to approve construction of the water system infrastructure in the lake and within upland shoreline jurisdiction, needed to provide water to the subdivision site.

The shoreline location proposed for the water withdrawal infrastructure, stormwater outfall, and supporting maintenance road is a parcel north/northeast of West Lake Samish Road, along the southern shore of Lake Samish, directly across West Lake Samish Road from the proposed plat. This waterfront parcel is the subject of a pending Short Plat Application for a 4-lot Short Plat to be known as the Adrik Short Plat. The Adrik Short Plat parcel is currently owned by Ingelwood Holdings, L.L.C., a separate corporate entity from Peach Wood Investment, L.L.C. However, both, Peach Wood Investment, L.L.C. and the corporate entity that now owns the Adrik Short Plat parcel are owned and controlled by Derek Stebner.

Concerned Citizens and Concerned Neighbors have argued that the failure to include the Adrik Short Plat parcel and the proposed 4-lot short plat as part of this Application is an error and, further, that the result is inappropriate piece-mealing of a single project for SEPA Review. The Adrik Short Plat proposes to obtain water from the same water system that will be serving Sleepy Hollow. In addition to the proposed water intake infrastructure on the Adrik Short Plat parcel, the Applicant has proposed a stormwater outfall which will be located on this parcel near the Ordinary High Water Mark of Lake Samish. The withdrawal vault and outfall vault are to be situated near each other to minimize construction disturbance and to allow a single gravel access driveway, parking space, and turn around which can serve both structures.

The final proposed plat, in its current form, includes a playground area and proposes to access 43 of the lots through two roads entering the property from Summerland Road. Two lots will have individual driveway access onto Summerland Road.

VIII.

There are three non-fish bearing streams which cross the Sleepy Hollow parcel and ultimately feed into Lake Samish. Additionally, infrastructure and work associated with the water withdrawal and stormwater outfall systems will be partially located within a Habitat Conservation Area, identified in the MDNS, extending landward 100-feet from the Ordinary High Water Mark of Lake Samish. The MDNS also requires a minimum 50-foot buffer on each side of the streams to protect water quality. The buffers will be open space and not part of any of the lots.

The MDNS also requires a Habitat Management or Mitigation Plan to address potential impacts and mitigation for unavoidable impacts for the water intake and stormwater outfall facilities within the required 100-foot Wildlife Habitat Conservation Area, landward of the Ordinary High Water Mark of Lake Samish.

IX.

The Applicant is proposing to provide sewer service from Lake Samish Water District No. 12. The Water District has indicated sufficient capacity to serve the proposed subdivision and a willingness to enter into a Developers Extension Agreement with the Applicant if Whatcom County grants Preliminary Plat Approval.

X.

The Technical Review Committee of Whatcom County Planning and Development Services has recommended approval of the proposed Preliminary Long Plat and the granting of the requested Shoreline Substantial Development Permit, subject to conditions. The initial Technical Committee review is contained in a Staff Report dated September 5, 2003. This was updated by the Technical Committee in a Supplemental Staff Report, dated September 26, 2011 [Exhibit 81 in the Hearing Examiner's file].

During the extended hearings, either through agreement by the Applicant or as modified by the Planning Department, the Conditions of Approval contained in the Staff Reports have been changed. On February 21, 2012, Planning submitted an updated and complete list of their proposed conditions. This document is Exhibit No. 160-1 in the Hearing Examiner file. Concerned Neighbors, Concerned Citizens, and the Applicant have commented on the final list of conditions proposed by Staff and have requested modifications, if the Subdivision is approved.

XI.

Opponents of Preliminary Plat Approval for Sleepy Hollow have identified traffic concerns as an issue, supporting either a denial of Preliminary Plat Approval or the need for an Environmental Impact Statement.

Concerns about traffic raised by Concerned Neighbors and in individual comment letters and oral testimony from citizens residing in the area, identify the narrow widths of the roads, the lack of shoulders or bicycle lanes in many areas, and concerns about pedestrian and bicycle safety as issues.

As shown by exhibits submitted into the record, there are definitely areas where the roadways are narrow; where sight-distance is limited by numerous curves; and where vehicular traffic cannot safely pass bicycle traffic due to limited sight-distance. Safety requires vehicular traffic in these areas to slow and to be patient in order to safely share the roadway with bicycles and pedestrians.

Additionally, opponents have pointed out the parking issues surrounding the use of Whatcom County's Lake Samish Park. During the summer, when use of the park is particularly high, there are long rows of vehicles parked along the roadway in the vicinity of the park, which again requires vehicular traffic to move slowly and carefully to ensure safety.

The proposed SEPA Mitigation Conditions identify significant road improvement obligations for the Applicant in those areas where both Summerland Road and West Lake Samish Drive abut the property. These requirements are an appropriate way to reasonably mitigate the impacts of the proposed subdivision on roadways around Lake Samish.

The nature of the roadways in this area with or without additional development, raise the safety concerns identified. However, the record establishes a very low level of accidents, including accidents involving bikes, in the area. The Applicant has submitted traffic studies which have been reviewed and accepted by the Division of Engineering. These studies support the Division of Engineering's conclusion that the capacity of existing roads is more than adequate to handle additional traffic from the subdivision without lowering the current level of service, which is more than adequate, from a capacity viewpoint.

This Subdivision, and other potential future development around the lake, can be expected to increase the use of the County's Lake Samish Park, and exacerbate to some degree the parking problems around the park during the busy summer months. The Technical Review Committee for Whatcom County Planning and Development Services concluded that a reasonable way to address and mitigate the impacts of this development on parks is to require an onsite playground and the Applicant has proposed such a playground at the northwest end of the property in a V-shaped area, resulting from the intersection of West Lake Samish Drive and Summerland Road.

The traffic issues that have been identified exist with or without this proposed development and the creation of the plat itself will not significantly adversely impact traffic flow around Lake Samish. The requested mitigation is roughly equivalent to the anticipated impacts on parks and traffic.

XII.

The Applicant proposes to provide sewer service to the plat by hooking-up to existing sewers in Lake Samish Water District No. 12. Water District No. 12 has sufficient capacity to serve the plat. The Water District currently has existing sewer lines abutting the subject property, along both Summerland Drive and West Lake Samish Road. The proposed plat lies entirely within the District boundaries of Lake Samish Water District No. 12.

The District has acknowledged plans to extend the Lake Samish sewer collection system to serve areas within the District boundaries not currently served by the gravity sewer system and has specifically identified the Sleepy Hollow property as a candidate for sewer service extension.

The Samish Water District's current Comprehensive Plan, in Section III, Future Sewer

Service Requirements, describes a potential Sleepy Hollow Developer Extension, as follows:

1. Sleepy Hollow Developer Extension

The Sleepy Hollow Development is a 23-acre development property located entirely inside the District's boundaries which has a 58-lot development potential. Because this property is located inside the District boundaries, the District is required to provide sewer service for its development if feasible, and if County zoning and development regulations do not prevent the District from extending urban-style utilities to the property. The extension will be comprised of a branch gravity sewer line to service the new lots that will discharge into the existing Lake Samish gravity sewer collection system. At the time of development, the property owner will enter into an owner extension agreement with the District whereby the owner becomes responsible for all design, construction, and inspection costs associated with the new branch sewer line. At the time the new line goes into operation, the District will be granted ownership of, and operation and maintenance responsibilities for all new sewer facilities associated with the development.

The proposed Sleepy Hollow Development has had Will Serve Letters from the Sewer District for a number of years. In a July 9, 2009, letter, and again in a May 21, 2010, letter, the District indicated an ability and willingness to serve, but conditioned service on Whatcom County providing "... written confirmation to the Samish Water District that extension of public sewer to serve the above described parcel would comply with the Growth Management Act (RCW 36.70A) and the County's Policies, Zoning, and Regulations implementing it." The District modified that language in a letter dated May 21, 2010, when they indicated that Preliminary Plat Approval by the County would satisfy any concerns that the District had about the legality of serving the project unless the Approval was overturned on appeal. In a letter dated June 13, 2011, the District reiterated this position and confirmed that it has sewer capacity for the project.

The District is both able and willing to serve the Development Proposal, conditioned upon a Final Determination that providing such service is legal.

The SEPA Responsible Official addressed this issue by including, as a Mitigating Condition in the MDNS, a requirement that the Developer enter into a Developer Extension Agreement prior to Preliminary Plat Approval.

Both Citizens and Concerned Neighbors have taken the position that the extension of sewer service by the Samish Water District to handle the project's needs for sewage disposal is illegal and that the Subdivision should be denied because it has not met the requirement of establishing an adequate method of handling sewage and wastewater from the site.

XIII.

One of the central issues in this matter involves stormwater treatment and Lake Samish water quality. The Preliminary Plan proposed for stormwater treatment facilities underwent significant and numerous modifications during the hearing process.

Whatcom County's SEPA Responsible Official identified potential significant impacts on Lake Samish water quality related to stormwater runoff. The issued MDNS addresses stormwater runoff in Conditions 6 thru 9, and 14 thru 16. The Responsible Official, by including these Conditions as part of a Mitigated Determination of Non-Significance, concluded that application of the stormwater requirements that were in effect when the proposed plat vested in 1992 would be inadequate to mitigate significant adverse impacts from the development associated with stormwater runoff, and concluded that additional Conditions were necessary to mitigate what would otherwise be a probable significant adverse environmental impact.

The Applicant did not object to Conditions 6 thru 9. These Conditions would require compliance with current surface water quality standards as found in WAC 173-201A; development of a Surface and Stormwater Quality Sampling and Monitoring Plan, designed to ensure stormwater quality compliance, to be approved by the SEPA Responsible Official prior to Final Plat Approval; review of the Surface and Stormwater Quality Plan by the SEPA Responsible Official of Whatcom County, Whatcom County Engineering Division Staff, Washington Department of Fish and Wildlife, and the State of Washington Department of Ecology, prior to final approval by the SEPA Official; and a requirement that all stormwater facilities comply with the 2005 Department of Ecology Stormwater Management Manual for Western Washington.

The Applicant did object to Conditions 14, 15, and 16 of the SEPA MDNS. These Conditions limit the amount of impervious surface allowed on the site; limit the periods of time during the year when soil disturbance activities were allowed; and limit removal of the existing tree canopy to 35%. These conditions reflect currently applicable rules for development in the Lake Samish Watershed as set forth in WCC 20.71, Water Resource Protection Overlay District, and WCC 20.80, Supplementary Requirements. These rules were not in effect when the application vested in 1992.

The main lake water quality concern is about cumulative adverse impacts from the introduction of additional phosphorous into Lake Samish as a result of ongoing residential development in the Lake Samish Watershed. It has been known for decades that the rapid development of lake shores and lake basins has resulted in widespread lake water quality deterioration. [See Exhibit 118, 1983]. The Lake Samish Watershed has been identified as a Water Resource Special Management Area by Whatcom County and is currently regulated as such, pursuant to WCC 20.80.735. The types of restrictions set forth in the MDNS SEPA Conditions relating to stormwater, and the current regulations adopted by the Whatcom County Council for watershed protection reflect the growing understanding of the negative impact of residential development within a lake's watershed on lake water quality.

The major reason for rapid water quality deterioration in lakes, and particularly in Lake

Samish, is the increased nutrient loading/phosphorous levels associated with lake shore and watershed development. Strict limitations on phosphorous input into a lake are the main way that lake water quality can be maintained and the process of the lake eutrophication minimized.

In regard to phosphorous and water quality impacts on Lake Samish from this development, the Hearing Examiner finds, as follows:

1. Due to the shallow nature of most of Lake Samish, the lake is especially vulnerable to rapid eutrophication.
2. Lake Samish is already showing evidence of significant phosphorous/nutrient overloading [in the form of large algae blooms and oxygen depleted areas within the lake] which is speeding up the process of eutrophication in the lake.
3. There are two sources of nutrient increases in Lake Samish. The first is the external loading of nutrients, mainly phosphorous, introduced into the lake from stormwater runoff. The second is internal nutrient loading resulting from increased external nutrient loading and the fact that Lake Samish is a predominantly shallow, mesotrophic lake that favors the growth of aquatic plants, making it especially susceptible to internal phosphorous loading from the release of phosphorous from lake bed sediments. This internal phosphorous loading is due to low oxygen concentrations and to the decomposition of organic materials deposited into the sediments from plant growth such as algae blooms. The combination of external phosphorous loading and ongoing internal phosphorous loading makes Lake Samish especially vulnerable to the damaging process of eutrophication.
4. The Lake Samish basin currently has a population of around 1,300 residents and approximately 95% of these rely upon the lake as the primary source of drinking water. There is no public water utility and no municipal treatment of water before its use by the residents. Eutrophication leads to a reduction in water quality and ultimately could result in the lake not being useable as a potable water supply without extensive treatment. Subjecting algae rich water withdrawn from the lake to a chlorination treatment process can result in the production of health-threatening chemicals in the water, including some that are recognized carcinogens.

Currently, there are approximately 487 dwelling units in the watershed. This Subdivision would add 45 more dwelling units. There is also a potential maximum of 380 new residential units under current zoning [including eleven from this site]. It is reasonable to conclude that this high density Subdivision, combined with future development, could increase the number of residential units in the watershed by about 60% or more. The highest density zoning in the watershed is closest to the lake, increasing the likelihood of adverse impacts to the lake from stormwater runoff leading to increased external phosphorous loading.

The cumulative impacts of increased external phosphorous, even applying current stormwater quality standards, has a reasonable probability of causing increasingly serious water quality problems in Lake Samish before full development levels, under current zoning, are reached.

5. The water quality degradation risks involved with the eutrophication process in Lake Samish are well documented in the record. [See the Lake Samish Water Monitoring Project Reports of Dr. Robin A. Matthews (see tab H, Exhibit 56-1), and work on Lake Samish Comprehensive Stormwater Plan by Wilson Engineering (see tabs C, D, E, and F in Exhibit 56-1)].
6. Eutrophication of Lake Samish results in loss of fish habitat in the lake due to an increase in areas that have depleted oxygen levels, impacting resident fish populations, including possible impacts on wild steelhead, a threatened species under the Endangered Species Act.
7. Since eutrophication is a process that can feed on itself; since the lake, due to its shallow depth and mesotrophic characteristics, is especially vulnerable to eutrophication; since a number of experts are in agreement that the eutrophication process in the lake is well underway; and since there is an unknown tipping point where the eutrophication process goes beyond reversal by reasonable means; increased external nutrient loading from this Subdivision and/or future development allowed in the lake watershed, under current zoning, could cross that tipping point at any time. A "no net increase" in phosphorous loading resulting from new development is appropriate in order to avoid probable significant adverse environmental impacts.
8. Increased external phosphorous loading can result from impervious surfaces and land disturbance associated with new development. Residential development can also increase nutrient loading through pet waste, use of nutrient or phosphorous rich fertilizers, and, potentially, from the use of onsite septic sewage disposal systems, if sewer hook-ups are not allowed.

It is possible, at reasonable cost, to reduce additional external phosphorous loading as a result of this Subdivision by requiring use of Best Management Practices, including low-impact development measures, combined with treatment in bio-retention swales and/or sand filters. The MDNS Conditions as written would accomplish a significant reduction of external phosphorous loading when compared to the reduction realized from the stormwater management standards in effect in 1992. The Applicant recognizes this and has, during the hearing process, proposed significant changes in the Preliminary Stormwater Plan to reduce external phosphorous loading attributable to this development proposal.

Additional nutrient loading from this site, in and of itself, if developed as proposed, cannot be completely eliminated. To have a "no net increase" in external nutrient loading, the Applicant will have to minimize phosphorous and nutrient runoff from the development site and, in addition, reduce

external nutrient loading by treatment of offsite stormwater runoff.

The Conditions in the Mitigated Determination of Non-significance are appropriate as measures to help minimize the increase in external nutrient loading as a result of this development.

In order to reasonably ensure that this development does not exacerbate an already precarious situation regarding the water quality of Lake Samish, the Final Stormwater Management Plan should be designed to reduce nutrient loading so that the post development external nutrient loading will not exceed the level that would come from the site in a natural forested condition. Meeting this standard will require reduction in external nutrient loading from offsite properties to offset the increase external nutrient loading from the proposed development, and requires changes to the conditions regarding stormwater found in the MDNS.

The Applicant has already agreed to mitigate stormwater impacts by treating stormwater from offsite properties and has prepared preliminary stormwater plans that include treating runoff from other properties. However, the Applicant has set as a goal "no net increase" in nutrient loading as compared to the current condition of the site. The site, however, has been logged relatively recently and the Hearing Examiner concludes that a "no net increase standard" should use the runoff from the site in a natural forested condition, not its current condition, as a base standard.

XIV.

The Applicant proposes to provide potable water to the proposed 45-lot subdivision by withdrawing water from Lake Samish. The Applicant has a permit, originally issued by the State of Washington Department of Ecology on January 16, 1991, titled, Permit to Appropriate Public Waters of the State of Washington [Exhibit 148]. This original DOE Permit indicated that the project was to be completed by October 30, 1993, and that water appropriated to be put to full use by October 30, 1994. The Provisions Section of the Water Permit included conditions to be met before water could be appropriated and put to use. The main Provision conditions the permit on the development of a flow augmentation program for Friday Creek. This Section reads as follows:

PROVISIONS

The permit shall issue subject to the development of a flow augmentation program for Friday Creek. Friday Creek's flow must be supplemented with Lake Samish water to ensure a flow of 2.0 cfs as measured downstream from the Nulle Road bridge. Flow augmentation must start when the flow measured downstream from the Nulle Road bridge drops below 2.0 cfs, as determined by the Department of Ecology.

An augmentation program must be in place to augment Friday Creek low flows for the 1992 low flow season. A permanent augmentation program must be in operation within three years of permit issuance, or this permit is null and void. The augmentation program must be developed with the

consultation and approval of the Washington State Departments of Fisheries and Wildlife. The Department of Ecology may issue an extension of time to this augmentation provision if the augmentation program is not implemented, but substantive progress, as determined by the Department of Ecology, is being made for the development of a permanent augmentation program.

The 1991 Water Permit has been extended a number of times. In 2006, the Applicant requested another extension of the Water Right Permit. The request, dated July 14, 2006, set forth the basis for the request and stated the Permit Holder (Applicant herein) had diligently proceeded toward the beginning of construction and the ultimate perfection of the Water Right Permit. This extension request referred to a previous extension granted September 26, 2002. Based on the request of July 14, 2006, and the justification set forth, the Department of Ecology renewed the subject Water Permits on August 1, 2006. The Department of Ecology did not comment on the fact that this development has been pending since 1991 and extended the time for beginning construction to July 1, 2011. On June 24, 2011, the Permit Holder (Applicants herein) again requested an extension of the time to begin construction on this project and again the Department of Ecology granted an extension with the deadline to submit the new construction notice being July 1, 2016, approximately twenty-five years after the issuance of the original, conditional Water Permit. The August 1, 2006, extension, somewhat ironically, states, "By statute, projects under permit must be pursued with due diligence and be completed in a reasonable timeframe."

In both the 2006 and 2011 requests for extension of the Water Right, the Applicant justified the request by stating the delays were caused by either Whatcom County Planning or by opponents of the development.

While Planning Department issues and Opposition to the proposed development may be part of the reason for delays over the last 20 years, it is also somewhat disingenuous for the Applicant to not take any responsibility for the eleven plus years of delay since obtaining ownership of the properties and development proposals.

For example, as set forth in the detailed history of the project, in Finding of Fact II, above, this Hearing Examiner conducted a public hearing on this proposal in early 2004. In January 2004, the Hearing Examiner raised a single issue regarding the Applicant's proposal to supply potable water through withdrawal from the lake. The Hearing Examiner was concerned about the provision in the Water Permit requiring at least 2.0 cfs of water flow into Friday Creek. The Applicant's Engineer was requested to return with a proposal that would ensure that the required in-stream flow of 2.0 cfs [cubic feet per second] could be met. After a discussion, the Hearing was continued three weeks. The Applicant's Engineer assured the Hearing Examiner that this was sufficient time to address the Water Permit, in-stream flow, issue. Unfortunately, the day after the January 20, 2004, hearing, the Applicant's Engineer passed away. For that reason, the February hearing was rescheduled to April 7, 2004, and then again to June 16, 2004. Thereafter, the Applicant requested an indefinite postponement indicating the hearing would be scheduled for a date in July or August 2004.

As of January 20, 2004, the record was complete with the exception of two Hearing Examiner requests. The first was for a proposal or plan to ensure augmentation of the in-stream flow from the lake into Friday Creek, to meet the 2.0 cfs required to validate the Water Permit. The second was a request by the Hearing Examiner for the current position of the Washington State Department of Fisheries on the project. The Applicant's explanation to the Department of Ecology for the ongoing delay in commencing construction and perfecting the water permit failed to address the simple fact that public hearings had been held and the record was complete with only two exceptions: that the continuances in 2004, from February 9 on, were requested by the Applicant; and that there was no request from the Applicant to reschedule the hearing or move forward on the Application for a period of five years. The Applicant still has not addressed the Hearing Examiner's concerns about the requirement for an augmentation program to ensure flow of 2.0 cfs in Friday Creek, and without such a program the Water Permit stated it was "null and void."

XV.

In 1978, there was a proposed 94-lot subdivision [Scenic Heights], between Summerland Road and West Lake Samish Drive, a moderate distance to the south of this proposed Subdivision. Whatcom County required an Environmental Impact Statement for the Scenic Heights development proposal.

The record herein contains a letter dated June 23, 1978 [Exhibit 116], from the State of Washington Department of Fisheries to a member of the Whatcom County Planning Department. This letter expresses concern about the cumulative impacts of water withdrawal from Lake Samish for residential development and indicates that reduced flows in Friday Creek could have a major impact on fish production. This is the earliest comment from the Department of Fisheries [now the Department of Fish and Wildlife] in this record, expressing concern about the connection between water appropriations from Lake Samish and decreased flows in Friday Creek. Exhibit 116, also, contains a letter dated May 5, 1986, from William R. Wilkerson, Director of the Department of Fisheries, to Mr. Roy C. Bishop, Washington Department of Ecology, discussing a DOE request that the Department of Fisheries "... consider approving the release of eight applications (Water Right Applications) ..." for water withdrawal from Lake Samish. The Director of the Department of Fisheries stated as follows:

Because of the severity of water quantity and quality problems in Friday Creek, the direct relationship between Lake Samish outflow and Friday Creek discharges, and the significant value of the anadromous fish runs (natural and hatchery) in the drainage, WDF must insist that Lake Samish and all tributaries to Lake Samish and to Friday Creek be closed to all summer-fall appropriations, including domestic supply. A substantial public resource will be at risk if cumulative impacts of additional small withdrawals are allowed to continue.

..... It is safe to assume that any withdrawal has some level of impact

on outflow. Considering the serious problems currently experienced in Friday Creek, WDF feels that any further degradation, regardless of degree, is unacceptable.

Additional examples of the ongoing opposition of the Washington State Department of Fish and Wildlife to proposed Lake Samish water withdrawal for development are contained throughout the Hearing Examiner's file, including a number of additional ones in Exhibit 116. This opposition is at least thirty-four years old.

According to a memorandum [Exhibit 13-2] to John Guenther, SEPA Administrator, from Chris Brueske, P.E./Engineering Manager-Special Projects, dated January 23, 2004, DOE, having deferred to the technical judgment of the Department of Fisheries regarding water withdrawal from Lake Samish, had threatened to issue regulatory "cease and desist orders" to anyone taking water from Lake Samish without a Water Right. This threat was at about the same time the Department of Ecology started making Lake Samish water withdrawal permits conditioned on an augmentation program that would ensure a minimum of 2.0 cubic feet per second flow rate be maintained in the Friday Creek channel. In response to this threat from the Department of Ecology, volunteer efforts from residents around Lake Samish led to the creation of Whatcom County Lake Management District No. 1 [LMD No. 1], by Ordinance on January 28, 1992. The stated purpose of the Ordinance was to ensure meeting the DOE requirement for 2.0 cfs flow in Friday Creek. In September 1994, work began upstream of the Nulle Road bridge and the Friday Creek channel was cleared of logs and debris from Nulle Road to Lake Samish. In January 1995, the life of LMD No. 1 was extended an additional seven years. In May 1995, a dam/weir structure was installed for the first time in an attempt to provide flows at 2.0 cfs into the creek through the summer months. The practice of installing the dam in the late Spring and removing it in the early Fall has continued since 1995.

On July 10, 2001, the life of LMD No. 1 was extended for ten more years.

Since 1995, the dam and weir structure has been used to increase the water flow in Friday Creek during the summer months. Ongoing work with the purpose of removing beaver dams has continued and the flow augmentation program is authorized by a Hydraulic Project Approval Permit issued by WDFW.

The required 2.0 cfs stream flow in Friday Creek during the summer months has not been regularly achieved over at least the last decade. Often there are fairly lengthy periods of time in the summer season where the dam and weir structure does not allow or ensure maintenance of the 2.0 cfs of stream flow. There are a couple of potential ways of correcting this in the future. One would require raising the dam structure to allow impoundment of additional water. A second requires the removal of sediments in the vicinity of the weir structure to enable lowering of the structure to a sufficient depth to allow increased release of water from the lake into Friday Creek during the dry season. Some combination of these may be required to maintain on a regular basis a 2.0 cfs stream flow in Friday Creek.

Both the raising of the dam and the dredging and removal of sediment from the creek around

the dam structure have potential adverse impacts which have not yet been analyzed. Raising the lake level to impound additional water for dry month stream flow and dredging or cleaning of the channel around the weir structure, will require Shoreline Permits from Whatcom County and DOE, and Hydraulic Project Approval from the Department of Fish and Wildlife. Because of the potential adverse impacts, including impacts on fish, it is not clear if or when such permit approval could be obtained even if there was a willing entity with both the funding and the legal right to undertake the project.

In any case, there is no short-term immediate fix for the stream flow deficiencies. The problem was recognized thirty-four years ago and has still not been resolved. It is reasonable to conclude that it will be years before an adequate augmentation program, which will permanently ensure the 2.0 cfs flow into Friday Creek required by the Applicant's Water Permit.

XVI.

In June 2006, the Samish Watershed Subzone was authorized by the Whatcom County Council sitting as the Whatcom County Flood Control District Board of Supervisors. This action provided a tax assessment to raise annual revenue to maintain and operate the Friday Creek dam and provide for removal of debris from the Lake Samish outlet channel in order to maintain stream flows in Friday Creek at a minimum of 2.0 cfs. This funding has not resulted in maintaining a 2.0 cfs stream flow in Friday Creek during the dry months. Since this funding was approved, there have been significant periods of time in most, if not all, years where the weir and dam structure have failed to maintain the 2.0 cfs stream flow in Friday Creek.

XVII.

In a letter from Bob Montgomery of Montgomery Water Group, Inc., the Applicant's Engineer, to the Applicant's Attorney, dated February 14, 2005 [Exhibit 13], Mr. Montgomery suggested a couple of actions that the project proponent could take to address concerns about the operation of the weir/dam structure on Friday Creek in order to maintain the 2.0 cfs minimum flow. One action suggested was the installation of a stream gauge below the structure to verify the actual flow. Mr. Montgomery indicated that the installation of the gauge would be simple and would cost about \$5,000. Ongoing data collection would cost about \$3,000 per year. The second action suggested was the creation of a fund for the maintenance and operation of the dam/weir structure, funded by the Sleepy Hollow Homeowners. The project proponent has not pursued or proposed any potential way to address the 2.0 cfs stream flow issue, including those suggested by his Engineer.

The Hearing Examiner's concerns expressed at the January 20, 2004, public hearing have not been addressed and there is not an adequate stream flow augmentation program in place to satisfy the Water Permit requirement of 2.0 cfs permanent stream flow from the Lake into Friday Creek. Even though the Examiner stated in January 2004 that he believed the Water Permit indicated that the holder of the permit does not have a Water Right unless and until a permanent augmentation program that results in 2.0 cubic feet per second of water in Friday Creek has been established [See Exhibit 168, page 158, in the written transcript of the January 20, 2004, public hearing.], no proposals to

address stream flow have been made by the Applicant.

Eight years later, the Applicant is in front of the Hearing Examiner without addressing the fact that the 2.0 cubic feet per second flow into Friday Creek has not been regularly achieved and without proposing any method to insure the required stream flow in Friday Creek, upon which his Water Right depends, will be met.

XVIII.

In a letter dated, February 8, 2011, the Department of Ecology responded to an inquiry from the Samish Water District, asking about the possibility of the Samish Water District obtaining a permit to withdraw water from Lake Samish for the purpose of serving development within the District with potable water. The permit, if granted, would reduce or eliminate the individual surface withdrawals from the lake. The Department of Ecology response supported the Water District's efforts to provide a unified potable water service within the District but pointed out that Lake Management District No. 1 has not been able to maintain the minimum required 2.0 cubic feet per second water flow in Friday Creek and that the Department of Ecology, for that reason, was not processing new Water Right Applications.

A letter dated, April 14, 2011, from the State of Washington Department of Fish and Wildlife [Exhibit 123] to the Whatcom County Hearing Examiner reiterated the Department's ongoing opposition to the Sleepy Hollow Subdivision water withdrawal proposal because of adverse impacts on both the quality and quantity of water in Lake Samish and Friday Creek and the resulting adverse impacts on fish habitat and fish populations.

XIX.

The proposed development, if not properly mitigated, could result in significant adverse impacts to fish habitat, both within Lake Samish itself, within Friday Creek, and within waters downstream of Friday Creek, mainly the Samish River.

The record indicates that steelhead, a threatened species under the Endangered Species Act, enters the lake via Friday Creek, and spawns in small tributaries feeding into the lake.

The lake contains a healthy kokanee population. Friday Creek and the Samish River provide habitat for salmon runs for three species of salmon, Chinook, Coho, and Chum. Sea Run Cutthroat also use the Samish River and Friday Creek.

This wide range of fish habitat in this system is the reason the Department of Fisheries has for decades been concerned about the water quality of Lake Samish and the stream flow from the lake into Friday Creek and downstream.

The Department of Fisheries maintains a Chinook hatchery on Friday Creek. There is some evidence that native Chinook also use the Samish River and Friday Creek. While it is not clear from

the record, it appears that any native Chinook using the Samish River or its tributaries would be on the Endangered Species List.

It is also not clear from the record, but there are indications, that Bull Trout can or do use Friday Creek. Bull Trout are also a listed species under the Endangered Species Act.

Fisheries has identified and steadfastly maintained that the absolute minimum flow in Friday Creek to protect fish populations is 2.0 cfs. Stream flow not only affects the water level in Friday Creek and downstream, but reduced stream flow also leads to higher temperatures in Friday Creek and downstream. Higher temperatures in these waters adversely impact salmon and trout populations.

XX.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

CONCLUSIONS OF LAW

I.

The proposed use of the existing Lake Samish Water District No. 12 sewer system to handle sanitary waste from Sleepy Hollow raises legal issues. Not all of these issues can be resolved by the Hearing Examiner.

As a starting point, the applicable Subdivision Ordinance under which this Application is vested requires the Hearing Examiner to "... determine if appropriate provision is made in the subdivision for ... sanitary waste" Current law restricts the extension of sewer service to new developments outside of Urban Growth Areas. Samish Water District No. 12 has a service area which is entirely outside of Urban Growth Areas.

The Whatcom County Planning Department believes that under current rules, the Samish Water District cannot provide sewer service to new subdivisions unless consistent with WAC 173-240-020(13), that reads as follows:

WAC 173-240-020 (13)

"Sewer line extension" means any pipe added or connected to an existing sewerage system, together with any pump stations: Provided, That the term does not include gravity side sewers that connect individual building or dwelling units to the sewer system when these side sewers are less than one hundred fifty feet in length and not over six inches in diameter.

The Samish Water District's initial letter of service availability for this development

contained a condition, which reads as follows:

- (4) This letter is subject to compliance with the Growth Management Act and the County must provide written confirmation to Samish Water District that extension of public sewer to serve the above described parcel would comply with the Growth Management Act (RCW 36.70a) and the County's Policies, Zoning, and Regulations implementing it.

The Responsible Official under SEPA recognized the conditional nature of the sewer service availability letter and responded by including, as one of the Mitigating Conditions attached to the MDNS under SEPA, a requirement that the Applicant provide a Developer's Extension Agreement from Lake Samish Water District No. 12 prior to Preliminary Approval. This requirement indicates Planning's belief that Lake Samish Sewer District No. 12 must determine for itself whether or not it can legally provide sewer service to the Sleepy Hollow Subdivision.

Samish Water District No. 12 later modified the condition set forth above and indicated their willingness to enter into a Developer's Extension Agreement and to provide sewer service to this subdivision if Whatcom County granted Preliminary Long Plat Approval and the County's Plat Approval is not overturned on appeal.

The Opponents argue that the Developer has not made appropriate provisions for the handling of sanitary waste and that Preliminary Approval should be denied on this ground.

The Applicant has pointed out that it would cost around \$162,000 to do the work necessary to have a Developer's Extension Agreement in place. The Applicant proposes that the MDNS requirement be modified so that a Developer's Extension Agreement is required prior to any land disturbance associated with the proposed subdivision. The Applicant, correctly, points out that it has been a longstanding administrative practice in Whatcom County that a Developer's Extension Agreement was required prior to Final Plat Approval and not prior to Preliminary Plat Approval. The Applicant argues that requiring an expenditure of \$162,000 prior to obtaining Preliminary Plat Approval would be unfair since the expenditure would be lost if the Preliminary Plat was denied.

The applicable Whatcom County Subdivision Code (in effect in 1992) requires the Hearing Examiner to determine if "appropriate provision" is made for the handling of sanitary waste. No more specificity is provided. The Hearing Examiner concludes that a requirement for a Developer's Extension Agreement be in place prior to any land disturbance is adequate to protect the public from potential adverse impacts from granting preliminary subdivision (unnecessary land disturbance) should it be determined that Samish Water District No. 12 cannot, for whatever reason, provide the needed sewer service.

The Hearing Examiner notes that it was legal for Samish Water District No. 12 to provide sewer service under existing Whatcom County Zoning and Land Use regulations, Subdivision Ordinance, and the Comprehensive Plan in effect when this subdivision vested on May 29, 1992.

However, the Hearing Examiner does not have jurisdiction to determine the current legality of Samish Water District No. 12 entering into a formal Developer's Extension Agreement with this Applicant to provide sewer service to the Sleepy Hollow Subdivision.

The Applicant argues that the Hearing Examiner has already decided this issue in an Appeal, APL2008-0023, filed by the City of Bellingham [a copy of this Hearing Examiner's Decision is attached to Exhibit No. 48 in the Hearing Examiner's file], regarding the Lake Whatcom Sewer District providing sewer service to a 28-lot development known as North Shore Estates. The North Shore Estates Decision is distinguishable from this situation for a number of reasons. These reasons include: (1) the subdivision in the North Shore Estates Case had already received Preliminary Approval; (2) the Lake Whatcom Sewer District Comprehensive Plan specifically stated that the District would be providing sewer service to North Shore Estates and this Comprehensive Plan was ultimately approved under the Growth Management Act (the Samish Water District Comprehensive Sewer Plan only indicates a potential service to the Sleepy Hollow Subdivision if it is legally possible to do so considering the applicable County Zoning and Development Regulations); and (3) the Lake Whatcom Water and Sewer District had already entered into a Developer's Extension Agreement for North Shore Estates.

Samish Water District No. 12 has the capacity and is willing to provide sewer service to the Sleepy Hollow Subdivision. Whatcom County is not in a position to decide if the sewer extension proposed is legal. The Developer has agreed that no land disturbance activities will take place prior to obtaining a Developer's Extension Agreement and prior to the resolution of any legal appeals arising out of the District's decision to provide sewer service. That is sufficient to allow the Hearing Examiner to find that "appropriate" provision for sanitary services for a Preliminary Long Subdivision Approval has been made. MDNS Condition No. 4 should be modified to read as follows:

MDNS Condition No. 4

4. Public Sewer is proposed. A Developer's Extension Agreement with Lake Samish Water District No. 12, which is not the subject of legal action, shall be submitted prior to any land disturbance activities, other than soil testing.

II.

Preliminary Approval Requirements for Subdivisions at the date that this Application vested in May 1992 required the Hearing Examiner to:

WCC 21.20.090

"... determine if appropriate provision is made in the subdivision for, but not limited to, drainage ways, roads, alleys, other public ways,

water supplies, sanitary waste, parks, playgrounds, and sites for schools. The decision of the Hearing Examiner shall evaluate the proposed subdivision conformance with any applicable zoning ordinance or other land use controls which may exist, and all decisions shall be based on a written finding of fact and conclusions which include promotion of the public health, safety, and general welfare.”

This requirement is basically a reiteration of the same requirement in RCW 58.17.

The Applicant must establish appropriate provisions for a water source or supply to serve the proposed 45-lot subdivision are in place prior to Preliminary Approval. The Burden of Proof is on the Applicants.

The Applicant has failed to establish an “appropriate” source of water for the Subdivision. Under the plain language of the Applicant’s permit authorizing withdrawal of water from Lake Samish, the right to withdraw the water only exists when a permanent mechanism to ensure a minimum of 2.0 cfs of water from the lake into Friday Creek has been established. Without this required stream flow, as stated on the Water Permit, the permit is “null and void.” [See Finding of Fact No. 5 and Exhibit No. 40].

It is possible that at some point the required stream flow will be obtained, thereby perfecting the Applicant’s water right. However, for this Subdivision proposal, which is 20 years old and which is being processed under regulations in effect in 1992, it is inappropriate to further extend the Applications’ existence for an unknown length of time into the future to determine if water becomes available. The Applicant’s failure to show that “appropriate provisions have been made for ... water ... ,” after 20 years, makes approval inimical to the public interest.

While land use vesting rights are important rights, they are designed for a limited purpose. The purpose is to protect a property owner from having the land use regulations affecting his property changed after the owner has submitted a complete application for a proposal.

However, Washington’s Supreme Court and Court of Appeals have recognized that vesting rights are not unlimited and must be balanced with the fact that approving a development, based on “vested” rights, creates a nonconforming use, and that nonconforming uses are, by definition, not in the public interest. The Washington State Supreme Court has, while acknowledging that the Vested Rights Doctrine is, both, on a Constitutional basis and as set forth in RCW 58.17.030, designed to recognize and protect development rights, pointed out its application can also subvert the public interests. In *Erickson and Assocs., Inc. v. McLerran*, 123 Wash.2d 864, 870, 872 P.2d 1090 (1994), stated as follows:

Development interests and due process rights protected by the vested rights doctrine come at a cost to the public interest. The practical effect of recognizing a vested right is to sanction the creation of a new nonconforming use. A proposed development which does not conform

to newly adopted laws is, by definition, inimical to the public interest embodied in those laws. If a vested right is too easily granted, the public interest is subverted.

The Erickson Case was cited by Division 1 of the Washington Court of Appeals who stated in *Graham Neighborhood Association v. F.G. Associates*, 162 Wash.App.98, 252 P.3d 898 (2011), as follows:

The purpose of the vesting doctrine is to allow property owners to proceed with their planned projects with certitude. The purpose is not to facilitate permit speculation. Extended project delay is antithetical to the principles underlying the vesting doctrine. (at page 116).

As noted in the Findings of Fact, the Hearing Examiner specifically informed this property owner on January 20, 2004, over eight years ago, that the Hearing Examiner believed the conditional Water Right Permit, submitted by the Applicant to show appropriate provisions had been made for a water supply for the subdivision, was inadequate without showing the 2.0 cfs stream flow into Friday Creek was ensured. [See Exhibit No. 168, Record of the Proceedings January 20, 2004, pages 141 thru 164].

The Applicant has been protected from legislative land use changes since May 1992. The Applicant has not yet established the availability of an appropriate source of water to serve the Subdivision. This failure to establish, after 20 years, appropriate provisions for potable water for the Subdivision requires that the Preliminary Subdivision Approval Application be denied by the Hearing Examiner.

With the single exception of establishing appropriate provision for water, the record is adequate, subject to appropriate conditions, to find the proposed Subdivision meets the requirements of WCC 20.21.090.

III.

Pursuant to RCW 58.17.033, the Applicant was vested under the subdivision rules in place when a complete application was filed.

During the processing of this Application, the Hearing Examiner made a Final Decision after an Open Record Hearing on an Administrative Appeal, APL2001-0007, and established that the vesting date for this Subdivision was May 29, 1992. Opponents of the Subdivision appealed this Decision to the Whatcom County Council. The Whatcom County Council upheld the Hearing Examiner's Decision. No further appeals were taken.

The Hearing Examiner concludes that the vesting date established in the Appeal, APL2001-0007, is the law of the case in this matter. The request of Concerned Citizens to re-open the vesting issue, based on the grounds that they were not Parties at the time the Decision was made on the

Appeal, APL2001-0007, must be denied. Proper notice of this Subdivision proposal has been made at all necessary points. Proper notice was given for the Administrative Appeal of the vesting date determined by Whatcom County Planning and Development Services. The fact that Concerned Citizens did not take part in these proceedings is not an adequate legal reason to re-open the vesting issue.

IV.

The Subdivision Ordinance in effect on May 29, 1992, provided in WCC 21.16.060, that a Subdivision, when accompanied by a Shoreline Substantial Development Permit, was to be heard by the Hearing Examiner, who would thereafter make a Recommendation and forward the matter to the Whatcom County Council for Decision.

The current process for a Long Subdivision Application, with or without an accompanying Shoreline Permit, is that Preliminary Approval be granted or denied by the Hearing Examiner, and that the Hearing Examiner Decision is appealable to the Whatcom County Council.

The procedural aspects of an Ordinance relating to a Subdivision Application are not subject to the Vesting Doctrine. A Procedural Provision, regarding processing of a Preliminary Subdivision Application "... exercises neither a restraining nor a directing influence over land use projects; ..." and, therefore, is not subject to vesting rules. [See *Westside Buss Park, LLC v. Pierce County*, 100 Wash.App 590, 606-607, 5 P 3rd 713 (2000)]

V.

The Applicant's Appeal of the inclusion of Conditions 14 thru 16 in the MDNS issued by Whatcom County on May 4, 2011, should be denied. The Conditions imposed are necessary to mitigate a probable significant adverse environmental impact on the water quality of Lake Samish. The fact that these Conditions mirror what is currently required by Whatcom County Ordinances relating to development in the Lake Samish Watershed is irrelevant, except insofar as it establishes support for a conclusion that the requirements are necessary to address environmental impacts.

The imposition of substantive conditions or denial of a project under Washington's SEPA Statute, RCW 43.21C, is specifically exempted from the Vesting Provisions of RCW 58.17.030. The Hearing Examiner finds that Conditions 14 thru 16 are necessary to mitigate a probable significant adverse environmental impact on Lake Samish water quality.

VI.

Concerned Neighbors requests the Hearing Examiner to find that the SEPA Mitigated Determination of Non-significance is inadequate and to require an Environmental Impact Statement.

As noted in the Findings of Fact, the Hearing Examiner has determined that the MDNS Conditions relating to stormwater treatment, subject to modifications by the Hearing Examiner,

would be adequate to mitigate probable significant adverse environmental impacts to the water quality of Lake Samish that result from stormwater runoff and increased phosphorus/nutrients entering the lake.

In this regard, the Hearing Examiner will modify the language of Condition No. 8 to read as follows:

Modified MDNS Condition 8:

8. The surface and storm water quality and monitoring plan shall be reviewed by the Whatcom County Designated SEPA Responsible Official, Whatcom County Engineering Division staff, WDFW and Ecology and approved prior to final approval by the SEPA official. The plan approved shall provide reasonable assurance that the post-development phosphorous reaching Lake Samish does not exceed the level that would occur from runoff from the site if it were in a mature forested natural condition.

[New wording underlined]

This modification is necessary to address probable adverse environmental impacts to the water quality of Lake Samish resulting from external phosphorous loading from this Development.

The Hearing Examiner is aware that issues regarding the adequacy of the MDNS are moot if the Hearing Examiner's denial of Preliminary Approval on the grounds the Applicant has failed to provide for an appropriate water source for the Subdivision becomes a Final Decision. If this Decision denying Preliminary Approval is overturned, the Hearing Examiner concludes that Condition No. 8 of the MDNS should read as set forth above.

VII.

If the Hearing Examiner's denial of the Preliminary Plat, based on inability to establish an appropriate source of potable water for the Subdivision is overturned, the Hearing Examiner concludes that a limited or scoped Environmental Impact Statement addressing potential impacts on fish populations using Friday Creek and downstream fresh waters is required.

VIII.

Concerned Citizens and Concerned Neighbors, both, assert that the environmental review should have included the proposed Adrik Short Plat. The property in the Adrik Short Plat is owned and controlled by the entities that also own and control the proposed Subdivision property. Citizens and Neighbors argue that the four lot short plat is part of a larger proposal, which includes the proposed Sleepy Hollow Subdivision because of common ownership and control, and because both the long subdivision and the short plat intend to share potable water and stormwater infrastructure, which would be located on the same property as the proposed Adrik Short Plat.

The Hearing Examiner concludes that, for purposes of complying with Whatcom County Subdivision Regulations, the two applications can be handled separately since the properties are divided by a road and are owned by different legal entities.

For purposes of SEPA, the Hearing Examiner concludes that the SEPA Responsible Official's action in defining what the proposal is, pursuant to WAC 197-11-060, for the purpose of making a threshold determination, is an intermediate step in the SEPA process and is not appealable to the Hearing Examiner under WAC 197-11-680(3)(a)(ii and iii), which reads as follows:

WAC 197-11-680 Appeals.

(3) *Agency administrative appeal procedures.*

(a) Agencies may provide for an administrative appeal of determinations relating to SEPA in their agency SEPA procedures. If so, the procedures must comply with the following:

...

(ii) Appeal of the intermediate steps under SEPA (e.g., lead agency determination, scoping, draft EIS adequacy) shall not be allowed.

(iii) Appeals on SEPA procedures shall be limited to review of a final threshold determination ...

IX.

The Applicants objected to the participation of Concerned Citizens, four Whatcom County citizens, represented by Salish Law Firm, on the grounds they did not have Standing.

The Concerned Citizens consist of four citizens living in Bellingham, Washington. Concerned Citizens has not appealed the SEPA Mitigated Determination of Non-significance and is not a Party in that matter.

Concerned Citizens has presented evidence and examined witnesses.

There is no Standing requirement for members of the public to be heard at a public hearing on a Preliminary Long Subdivision Application before the Hearing Examiner. There is also no Standing requirement for citizens to be heard on Shoreline Substantial Development Permit Applications.

The Standing Rules cited by the Applicants apply to bringing actions in Superior Court for review of Land Use Decisions, pursuant to Chapter 36.70.C RCW.

The case cited by the Applicants in regard to Concerned Citizens' right to be heard on the Shoreline Substantial Development Permit is an unpublished opinion and therefore not precedential. This Opinion, attached to Exhibit 107, deals with Standing of a Party to appeal a Shoreline Determination to the State of Washington Shoreline Hearings Board. It is not applicable to an Open Record Hearing before the Whatcom County Hearing Examiner.

The issue of Standing to appeal a Hearing Examiner's Final Decision to the Whatcom County Council is not within the jurisdiction of the Hearing Examiner, but instead must be decided on by the County Council, if such an appeal takes place.

Citizens have the right to be heard at an Open Record Hearing before the Whatcom County Hearing Examiner on Applications for Shoreline Permits, and on Preliminary Long Subdivision Applications.

The Hearing Examiner can find no limitations in the Whatcom County Code as to who is allowed to testify at an Open Record Hearing on a subdivision proposal. Under the Subdivision Ordinance in effect at the time this Application vested, public hearings on subdivisions were covered by WCC 21.20.080 Public Hearings, which reads in relevant part as follows:

21.20.080 Public Hearings

All public hearings shall be open to the public. The Hearing Examiner shall conduct a hearing and prepare the record thereof by providing an opportunity for all interested persons to speak and submit exhibits.

The Hearing Examiner concludes that there is no Standing requirement to participate in Open Record Hearings before the Hearing Examiner on a permit application, including Subdivision and Shoreline Permit Applications.

X.

The Applicant appealed the inclusion of Conditions 14, 15, and 16 in the Mitigated Determination of Non-significance [Exhibit 40]. The Applicant argues that these Conditions are merely an attempt to apply current regulations to the Application and thereby violate rights that vested under RCW 58.17.033.

The Hearing Examiner concludes that the Conditions 14 thru 16 are an appropriate use of substantive SEPA authority to mitigate probable significant adverse environmental impacts. Vesting rights do not limit conditions imposed under SEPA. RCW 58.17.033 (3)

XI.

The Applicant has requested that the amount of impervious surface allowed on each lot be increased from 2,500 square feet to 3,000 square feet to take into account proposed improvements for treating stormwater runoff from the site after development.

The Hearing Examiner has modified the stormwater treatment conditions to require treatment of both onsite and offsite stormwater sufficient to reduce external phosphorous loading into Samish

Lake after development to the approximate level that would exist in runoff from the site if it were in a mature forested natural condition. So long as the calculations used by the Applicant take into account the extra impervious surface resulting from 3,000 square feet of impervious surface per buildable lot, the modification of Condition 14 to increase the impervious surfaces for each buildable lot from 2,500 square feet to 3,000 square feet is acceptable should Preliminary Subdivision Approval be granted.

XII.

The language in Condition 15 in the MDNS indicates that land disturbance activities exposing more than 500 square feet of soil, "shall be permitted between October 1 and May 31," this clearly is an unintended typographical error and the language should be "shall not be permitted" instead of "shall be permitted."

XIII.

Subject to the above described changes, the Conditions contained in the Mitigated Determination of Non-significance, are adequate to mitigate probable significant adverse environmental impacts with one exception. That exception is the potential for significant impacts on fish stocks and fish habitat as a result of using Lake Samish as a source of water for the Subdivision.

Should it be determined that the Applicant has a legal right to the water withdrawal provided in the Water Permit issued by DOE without ensuring a minimum flow from the lake into Friday Creek of 2.0 cfs, and the Hearing Examiner Decision denying Preliminary Subdivision Approval is overturned, preparation of an Environmental Impact Statement limited to addressing impacts on fish populations and fish habitat from the proposal to withdraw water from Lake Samish to supply potable water to the proposed Subdivision, is required.

XIV.

The requested Shoreline Substantial Development Permit is made moot by the Hearing Examiner's denial of the Preliminary Plat Approval. However, the Hearing Examiner does conclude that, subject to conditions, based on the current record, the requested Shoreline Permit can be approved and that remand to the Hearing Examiner for determining proper conditions, based on the existing record, would be appropriate, if the Denial is overturned.

XV.

Concerned Citizens raised issues regarding the application of the Endangered Species Act [ESA] to the proposed subdivision. ESA issues are appropriately addressed by the Condition of Approval requiring full compliance with applicable State and Federal laws. These laws would include obtaining a permit should any of the development activities involve a "take" of an endangered species under Federal law, and Hydraulic Project Approval by the Washington State Department of Fish and Wildlife.

ESA issues would also be addressed in the limited EIS required by this Decision.

XVI.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

DECISION

Preliminary Long Subdivision Approval is denied based on the Applicant's failing to establish appropriate provisions have been made to provide potable water for the Subdivision. No Shoreline Permit is granted at this time. A Shoreline Permit would be moot considering the denial of Preliminary Long Subdivision Approval. However, should the Decision denying Preliminary Long subdivision Approval be overturned, the Hearing Examiner has concluded that, subject to appropriate conditions based on the current record, the requested Shoreline Permit can be approved.

Because of the potential the Hearing Examiner's Decision denying the permit based on failing to establish that appropriate provisions have been made for potable water for the proposed Subdivision, the Hearing Examiner has ruled on the SEPA Appeals.

The SEPA Appeal of Concerned Neighbors is upheld in part. Conditions of the Mitigated Determination of Non-significance have been modified, as set forth in the Conclusions of Law above, and an Environmental Impact Statement required regarding issues related to fish habitat and stream-flow resulting from potential water withdrawals to serve the proposed Subdivision.

The SEPA Appeal of the Applicants of certain of the conditions in the MDNS is denied.

Additionally, the Hearing Examiner has ruled on numerous other issues raised during the processing of the permits and appeals. These rulings are set forth in the Conclusions of Law and are incorporated into this Decision by this reference.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF
THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any party of record, or any County department.

Appeal to County Council. Within ten calendar days of the date of the decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office.

After an appeal has been filed and the Council office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 20th day of July 2012.



Michael Bobbink, Hearing Examiner