

Final

BEFORE THE HEARING EXAMINER  
IN AND FOR THE COUNTY OF SNOHOMISH

In Re Bakerview

Nos. 10-101204 SD  
10-101204 REZO

Kings Ridge Homeowners' Association  
and The 108<sup>th</sup> Street Point Homeowners'  
Association

Appellants, Order Amending Decision

P&G East, LLC,

Applicant,

Snohomish County Planning And  
Development Services Code  
Enforcement,

Respondent,

1 The Hearing Examiner accepted the timely petition of appellants Kings Ridge Homeowners'  
2 Association and The 108<sup>th</sup> St. Point Homeowners' Association (Homeowners Associations) for  
3 reconsideration of the Hearing Examiner's decision of December 8, 2017. Having considered  
4 the petition for reconsideration and the comments of the parties related to final plat issuance  
5 raised on reconsideration, the decision will be amended as described below.<sup>1</sup> The amended  
6 decision is issued contemporaneously with this order.

7 **CONCLUSIONS OF LAW**

8 Original conclusions of law 27 et seq. are amended as follows and subsequent conclusions  
9 renumbered:

10 C.27 The Homeowners Associations contend that residences must be set back 100 feet from  
11 the closed landfill, but the drawings show lots closer than that to the edge of the landfill  
12 cover. The Homeowners Associations rely on WAC 173-350-400:

<sup>1</sup> Deletions are struck through and additions are underscored.

1 Limited purpose landfills shall be designed to provide a setback of at least one  
2 hundred feet between the active area and the property boundary.

3 WAC 173-350-400(3)(i) (2017).

4 C.28 P&GE argues that the WAC requirement of a 100 foot setback applies to the design of a  
5 new landfill, pointing out that (3)(i) is part of section (3), which begins "Limited Purpose  
6 Landfill-Design Standards": In addition, P&GE contends the design standard applies only  
7 to new, active landfills and not a properly closed landfill.

8 C.29 DoE agreed that the 100 foot setback is a design requirement, not a closure requirement,  
9 and that P&GE is closing the landfill. DOE's most recent comment cautioned that P&GE's  
10 "closure is also a design" because of the excavation and reburying of waste and new  
11 cover system, which "are not typical elements of a landfill closure." DOE then "limit[ed] our  
12 comments to the landfill closure" and pointed out that the Health District and PDS are  
13 responsible for residential development setbacks.[Fn. 239: Testimony of Plemel; Ex.  
14 Q.29a. The setback is discussed again at page 52 below.]

15 \* \* \*

16 C.35 For SEPA purposes, the responsible SEPA official accepted the Health District's position  
17 that the 100 foot buffer required relates to new or active landfills, not closed landfills of this  
18 type.[Fn. 245: Testimony of MacCready.] The responsible SEPA official has the legal right  
19 to rely on the Health District's interpretation of regulations within its jurisdiction. RCW  
20 43.21C.240(5) (2003). The Hearing Examiner also accepts and relies upon the Health  
21 District's interpretation of the buffer requirement, but does not otherwise express an  
22 opinion or legal conclusion on the propriety of the Health District's interpretation.

23 Subsection V(B) "Lot Size Averaging (SCC 30.23.210)" is amended to read:


24 The proposed subdivision complies with the lot size averaging requirements of  
25 SCC 30.23.210. The minimum lot size of the R-9,600 zone is satisfied where, as  
26 here, the sum of the area of the lots and open space divided by the number of  
27 lots meets or exceeds the minimum lot area requirement.[Fn. 268: 403,956 sq. ft.  
28 (building lots) + 145,510 sq. ft. (open space) + 1,034,866 (critical areas and  
29 buffers) = 1,438,822 total sq. ft. + 97 (lots) = 14,833 sq. ft., exceeding the  
30 minimum of 9,600 square feet per lot.] No lot is smaller than 3,000 square feet  
31 and all lots comply with minimum width and setback requirements of county  
32 code. Although the Homeowners Associations believe that the county code's  
33 setback requirement does not satisfy the minimum required setback for  
34 residences from a landfill, the Health District does not apply the 100 foot setback  
35 requirement of the design of a landfill to this situation. The Hearing Examiner  
36 relies on the Health District's view that the design adequately protects the  
37 public's health, safety, and welfare. As the jurisdictional agency, the Health  
38 District has expertise in the subject matter of landfills. The county has neither

1 jurisdiction over landfills nor expertise with landfills.[Fn. 269: See discussion of  
2 setbacks in the SEPA context at page 1 above.]

3 Conditions of approval are amended by the insertion of new condition A and renumbering  
4 subsequent conditions:

5 A. The sequence of landfill closure and land development activities is: (1) resolution of  
6 appeal from threshold SEPA determination and preliminary plat approval by Snohomish  
7 County (this decision); (2) final approval of the landfill closure plan and permit issuance  
8 by the Health District; (3) landfill closure, including land disturbing permit and activity,  
9 including rough/mass grading and rough subdivision infrastructure for closure related  
10 work as approved by PDS and Public Works for efficiency; (4) preliminary plat  
11 construction (subsequent land disturbing permit for final site and lot grading, installation  
12 of utilities and other remaining services, roads, lot grading, etc.); (5) final plat approval  
13 and recording, posting of any bonds or security devices related to the subdivision, and  
14 building permits for model homes to the extent permitted by county code; and then (6)  
15 building permit issuance and construction of houses. Snohomish County shall be the  
16 final arbiter of whether a specific construction activity belongs to which particular phase.  
17 This approval is neither stayed nor conditioned upon the resolution of any subsequent  
18 or future appeals, including any appeal from the SEPA threshold determination,  
19 preliminary plat, or landfill closure permit, if, as, and when it is issued.

20 DATED this 14<sup>th</sup> day of February, 2018.

21   
22 \_\_\_\_\_  
23 Peter B. Camp  
Snohomish County Hearing Examiner

24 **RECONSIDERATION AND APPEAL**

25 A further motion for reconsideration is prohibited. SCC 2.02.170(5) (2013).

26 No right of appeal lies from this decision.

27 Staff Distribution:

28 Snohomish County Planning and Development Services: Paul MacCready



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## **AMENDED DECISION of the SNOHOMISH COUNTY HEARING EXAMINER**

### **I. SUMMARY**

**DATE OF AMENDED**

**DECISION:** February 14, 2018

**PROJECT:** Bakerview  
4330 108<sup>th</sup> St. SE  
Everett, Washington

**OWNER  
AND APPLICANT:** P&GE, LLC  
11255 Kirkland Way, Ste. 300  
Kirkland, WA 98033

**FILE NO.:** 10-101204 SD/REZO

**TYPE OF REQUEST:**

1. Appeal of SEPA threshold determination
2. Request to rezone from Rural Conservation to R-9,600
3. Request for approval of 97 lot preliminary subdivision using lot size averaging

**DECISION  
SUMMARY:**

1. Adequacy of SEPA threshold determination is **AFFIRMED**
2. Request to rezone from Rural Conservation to R-9,600 is **APPROVED**
3. Preliminary subdivision of 97 lots using lot size averaging is **APPROVED** subject to conditions

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## II. BACKGROUND

LOCATION: 4330 108<sup>th</sup> St. SE  
Everett, Washington

ACREAGE: 40.9 acres

PLAN DESIGNATIONS: Urban Low Density Residential

ZONING: Rural Conservation (RC)

UTILITIES:

Water: Silver Lake Water and Sewer District

Sewer: Silver Lake Water and Sewer District

Electricity: Snohomish County Public Utility Dist. No. 1

SCHOOL DISTRICT: Snohomish School District No. 201

FIRE DISTRICT: Snohomish County Fire District No. 1

PDS STAFF RECOMMENDATION:

1. Deny SEPA appeal
2. Approve rezone from Rural Conservation to R-9,600
3. Approve preliminary subdivision using lot size averaging, subject to conditions.

1 **NOTE:** For a complete record, an electronic recording of the hearing in this case and the hearing log is  
2 available in the Office of Hearings Administration.

3 Based on a preponderance of the evidence of record, the following findings of fact, conclusions of law, and  
4 decision are entered.

### 5 **A. PROPOSAL**

6 P&GE, LLC requests a rezone of a 40.9 acre site from Rural Conservation to R-9,600 and approval of a  
7 preliminary subdivision of 97 lots using lot size averaging. The site is a former landfill and sand and gravel  
8 mining operation. P&GE proposes to close the landfill pursuant to Snohomish Health District requirements  
9 and then construct the subdivision.

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1 **B. REGULATORY REVIEW AND VESTING**

2 P&GE applied for a rezone from Rural Conservation to R-9,600 and subdivision of the site into 106 lots on  
3 February 17, 2010.<sup>1</sup> PDS determined the application to be complete when submitted. On June 4, 2012,  
4 P&GE revised its request to reduce the number of lots to 97.<sup>2</sup> PDS considered the 2012 submission as a  
5 revision of the 2010 and not a new application. PDS therefore considered P&GE's land development  
6 application to vest on February 17, 2010.

7 Zoning and other land use controls in effect on February 17, 2010 apply to P&GE's subdivision application.  
8 RCW 58.17.033 (1987). Its revision of the subdivision to 97 lots is neither abandonment of its original  
9 application or a new application. Varying the number of lots by less than 10% is not a material difference.

10 **C. OPEN RECORD HEARINGS**

11 Open record hearings were held on January 28, 2015, February 11-13, 2015, February 18-19, 2015, and  
12 September 12-14, 2017. The witnesses are identified in Appendix A.

13 **D. THE RECORD**

14 The exhibits described in Appendix A were entered into the record as evidence, along with the testimony of  
15 witnesses presented at the open record hearing. The entire record was considered by the Hearing Examiner  
16 in reaching this decision.

17 **E. PUBLIC NOTICE**

18 PDS provided adequate public notice of the open record hearing, SEPA threshold determination, and  
19 concurrency and traffic impact fee determinations.<sup>3</sup>

20 **F. SITE DESCRIPTION AND SURROUNDING USES**

21 The approximately 41 acre site was a former landfill but has no structures on it. It is in the city of Everett's  
22 Urban Growth Area. The parcel accesses the public road system on 108<sup>th</sup> St. SE.

23 Properties surrounding the site have residential uses and are zoned R-9,600, PRD-9,600 and Rural  
24 Conservation.

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<sup>1</sup> Exhibits A.1 and B.2.

<sup>2</sup> Ex. B.3.

<sup>3</sup> Exhibits F.1 through F.9 and Q.17-Q.28

1 **G. COMMENTS AND CONCERNS**

2 The project is controversial and drew considerable comments from the neighboring community. Their  
3 concerns are addressed *passim* below.

4 **III. SEPA**

5 **A. FINDINGS OF FACT<sup>4</sup>**

6 **1. REGULATORY ENVIRONMENT AND PROCEDURAL HISTORY**

7 F.1 Snohomish County issued a mitigated determination of no significant impact on May 7, 2017.<sup>5</sup>

8 F.2 The 108<sup>th</sup> Street Point Homeowners Association, a Washington non-profit corporation, and King's  
9 Ridge Homeowners Association (the Homeowners Associations) appealed the mitigated  
10 determination of no significant impact on May 22, 2017.<sup>6</sup>

11 F.3 Both the Snohomish Health District and Snohomish County regulate the landfill which is the  
12 subject of this proceeding. The Health District is a government agency separate from Snohomish  
13 County with jurisdiction of landfills, including closing landfills and monitoring closed landfills.<sup>7</sup> The  
14 Health District has not approved the closure of the landfill, although the owner and operator  
15 believed it had previously closed the landfill and complied with closure regulations in effect at the  
16 time.<sup>8</sup>

17 F.4 The county is the jurisdictional agency for land use and development. No one may operate a  
18 landfill in the county without obtaining a conditional use permit from the county. The conditional  
19 use permit process ensures siting the landfill in an appropriate area and establishes conditions for  
20 the operation of the landfill to minimize its impact on the use of surrounding land. In addition,  
21 P&GE's rezone and subdivision proposals must comply with county development regulations.

22 F.5 P&GE seeks to close the landfill, rezone the site, and subdivide it into residential lots. Closing the  
23 landfill requires a permit from the Health District. Rezone and subdivision of real property into  
24 separate residential lots require county approval. Landfill closing and subdivision require a SEPA  
25 threshold determination. The rezone does not require a SEPA threshold determination because

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<sup>4</sup> Headings for convenience only and should not be interpreted to limit the content. Citations are neither comprehensive nor complete. Findings are often supported by additional evidence other than that cited, but citing every scintilla of evidence for every finding would further delay the decision.

<sup>5</sup> Ex. Q.7.

<sup>6</sup> Ex. AA.1.

<sup>7</sup> See, e.g., Testimony of Calhoon.

<sup>8</sup> Testimony of Penhallegon.

- 1 SEPA analysis of the impacts of such zoning occurred as part of the environmental analysis for the  
2 comprehensive plan.
- 3 F.6 Instead of separate threshold determinations for the portions of the proposal within their  
4 respective jurisdictions, the county and the Health District agreed the county would be the lead  
5 agency for SEPA purposes.<sup>9</sup>
- 6 F.7 SHD conditionally approved a landfill closure plan in February 2012 and again in January 2014.<sup>10</sup>
- 7 F.8 The county determined the landfill closure and subdivision of the real estate would not have any  
8 significant environmental impact if P&GE takes the required steps to mitigate the impact of its  
9 project (the MDNS).<sup>11</sup>
- 10 F.9 The Homeowners Associations appealed the MDNS. After hearing evidence, the Hearing Examiner  
11 affirmed the appeal and remanded the proposal for further processing on April 14, 2015.
- 12 F.10 P&GE was required to obtain professional third-party review of its plan. Golder & Associates and  
13 Gibson Traffic Consultants were engaged.<sup>12</sup> Golder issued three reports on August 5, 2016<sup>13</sup> and  
14 Gibson issued a report. P&GE developed a new closure plan and revised subdivision that  
15 incorporated all third party reviewers' recommendations.<sup>14</sup>
- 16 F.11 The responsible SEPA official relied on P&GE's future compliance with Health District  
17 regulations.<sup>15</sup> PDS issued a new MDNS, which the Health District believes is the appropriate  
18 threshold determination.<sup>16</sup> The Homeowners Associations again appealed.

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<sup>9</sup> Testimony of MacCready. There is additional history that is not important here, such as the Health District's initial issuance of a determination of no significant impact in 2010 and its rescission. See, e.g., testimony of Calhoon and testimony of Penhallegon.

<sup>10</sup> Testimony of Penhallegon.

<sup>11</sup> Ex. Q.16. MDNS is an acronym for Mitigation Determination of Non-Significance.

<sup>12</sup> The Health District required third party review and gave P&GE a list of five engineering firms from which to choose. P&GE chose Golder because Golder had not worked for P&GE, Golder was available, and P&GE believed Golder was experienced and competent. Testimony of Penhallegon. After weighing the demeanor and substantive testimony of P&GE and Golder witnesses and the appellant's criticism of Golder's independence, the Hearing Examiner finds Golder to be independent and the testimony of Frank Shuri, P.E., credible.

<sup>13</sup> Ex. Q.6, App. M; Ex. Q.7

<sup>14</sup> Testimony of Calhoon.

<sup>15</sup> RCW 43.21C.240(5) (2003).

<sup>16</sup> Testimony of Plemel.

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1 F.12 Some closed landfill development projects in Washington State have no setback at all between  
2 the closed landfill and residences and some have residences built on top of the closed landfill,  
3 such as in Vancouver, Wenatchee, and King County.<sup>17</sup>

4 2. LANDFILL HISTORY

5 F.13 A conditional use permit was issued in 1969 to excavate sand. That conditional use permit expired  
6 on August 21, 1971.<sup>18</sup>

7 F.14 Rekoway, Inc. purchased the site on February 1, 1972.<sup>19</sup> It obtained a ten-year conditional use  
8 permit from the county on March 8, 1972 to excavate sand and gravel and to operate a landfill  
9 that could accept wood, mineral, or concrete solid waste, but not garbage or putrescibles.<sup>20</sup> Sand  
10 was excavated on the southern portion of the site.

11 F.15 The waste varies in depth, but is approximately up to 50 feet deep. It is not hundreds of feet  
12 deep.<sup>21</sup>

13 F.16 On August 21, 1974, an explosion occurred at the landfill because approximately 200 cubic yards  
14 of magnesium, phosphate, and aluminum dust from Northwest Wire and Rope in Seattle had  
15 been dumped there.<sup>22</sup>

16 F.17 The fire started on the west edge of the ravine and then spread north and moved southwest.  
17 Rekoway dug up material and spread it on the ground in the area of the sand mining operations  
18 on the southern portion of the site. A pump was placed in the pond and pond water poured on  
19 the burning material.<sup>23</sup>

20 F.18 Later that year, Rekoway sought to revise the conditional use permit to allow it to accept tires and  
21 bulk packaging material such as cardboard, pallets, large parcel wrappings, shredded paper, and  
22 warehousing waste materials.<sup>24</sup>

23 F.19 The county Zoning Adjustor issued conditional use permit C 3-75 to Rekoway on September 18,  
24 1975. This permit added to the list of types of solid waste that could be accepted at the landfill.<sup>25</sup>

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<sup>17</sup> Testimony of Plemel.

<sup>18</sup> Testimony of East; Exhibits S.1 and M.39.

<sup>19</sup> Exhibits S.1 and M.39.

<sup>20</sup> Exhibits S.1 and M.39.

<sup>21</sup> Testimony of Shurl.

<sup>22</sup> Exhibits S.21, M.27, and M.41.

<sup>23</sup> Testimony of East.

<sup>24</sup> Exhibits S.1 and M.39.

<sup>25</sup> Exhibits S.1 and M.39.

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Conditions

- 1           Rekoway then applied to the Health District for a permit to operate a wood waste landfill.<sup>26</sup> The  
2           Health District sought review of this application by the Washington State Department of Ecology  
3           (DoE), which told the Health District in June 1976 that DoE could not recommend approval.<sup>27</sup>
- 4   F.20       At the request of the Acting Fire Marshal, the Zoning Adjustor modified the conditional use permit  
5           on December 9, 1975 to require firefighting equipment and a water supply on the site.<sup>28</sup>
- 6   F.21       In November 1976, the landfill caught fire again.<sup>29</sup>
- 7   F.22       By letter of January 10, 1977, the Health District required Rekoway to extinguish the fire, cease  
8           accepting waste by July 1, 1977, and cover and reseed the site by January 1, 1978.<sup>30</sup>
- 9   F.23       The county Board of Adjustment revoked all permits on January 14, 1977.<sup>31</sup>
- 10   F.24       Either the fire continued to burn underground or a new fire started in May 1977. The Fire Marshal  
11           asked the Zoning Adjuster to require Rekoway to cease operations and extinguish the fire.<sup>32</sup> The  
12           Fire Marshal believed the fire had continued to burn since November 1976.
- 13   F.25       The fire continued to burn throughout 1977 and by October, the Fire Marshal estimated that it  
14           was 300 feet long and 100 to 150 feet wide. Rekoway was cited for violating air quality  
15           standards.<sup>33</sup>
- 16   F.26       The Health District terminated Rekoway's landfill permit on November 1, 1977.<sup>34</sup>
- 17   F.27       Go East Corporation acquired the property from Rekoway in 1979 to subdivide and develop it.<sup>35</sup>
- 18   F.28       Go East asked the county on August 17, 1979 to reopen the conditional use permit to allow it to  
19           recommence landfilling operations. Go East needed additional fill to level the site for future  
20           development. Go East said it would extinguish the existing fire and prevent future fires.<sup>36</sup>

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<sup>26</sup> Exhibits S.1 and M.39.

<sup>27</sup> Exhibits S.1 and M.39.

<sup>28</sup> Exhibits S.1 and M.39.

<sup>29</sup> Exhibits S.1 and M.31.

<sup>30</sup> Exhibits S.1 and M.39.

<sup>31</sup> Exhibits S.1 and M.39.

<sup>32</sup> Exhibits S.1 and M.29.

<sup>33</sup> Exhibits S.1 and Ex. M.31.

<sup>34</sup> Exhibits S.1 and M.30.

<sup>35</sup> Exhibits S.1 and M.39.

<sup>36</sup> Exhibits S.1 and M.39.

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- 1 F.29 The Zoning Adjustor authorized Go East to begin excavation to extinguish the fire.<sup>37</sup> The fire was  
2 subsequently extinguished.
- 3 F.30 The fire required excavation of burning material and installation of a fire suppression system. All  
4 of the burning material was brought to the surface under the supervision of the Fire Marshal. The  
5 material had to stay on the surface for weeks and could not be reburied until it was cold.<sup>38</sup>
- 6 F.31 Go East employed an individual to manage the landfill; he lived on the site in a trailer. Go East  
7 typically created 25-foot-long cells with walls of native material on which native material was  
8 placed to close the cell.<sup>39</sup>
- 9 F.32 Go East applied to the Health District for a permit to operate a wood waste landfill. The Health  
10 District issued the permit on November 2, 1979 and reissued it in 1980 and 1981.<sup>40</sup>
- 11 F.33 The landfill was inventoried under the Federal Resource Conservation and Recovery Act of 1976  
12 by DoE, but DoE did not recommend the EPA include the landfill be placed on the Open Dump  
13 Inventory because DoE found no significant non-compliance issues.<sup>41</sup> It is not a MTCA or  
14 Superfund site.<sup>42</sup>
- 15 F.34 The Health District inspected the landfill in late 1981 or early 1982 and found no problems from  
16 its perspective.<sup>43</sup> In July, the Health District re-issued the landfill permit.<sup>44</sup>
- 17 F.35 Conditional Use Permit CU 7-72 expired in September 18, 1982, but Go East continued to operate  
18 the landfill.
- 19 F.36 The Health District again inspected the landfill in late 1982 or early 1983 and found no problems  
20 under its regulations.<sup>45</sup>
- 21 F.37 The county issued a stop work order on July 19, 1983 because operations had continued after  
22 expiration of the county's conditional use permit.<sup>46</sup>

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<sup>37</sup> Exhibits S.1 and M.39.

<sup>38</sup> Testimony of East.

<sup>39</sup> Testimony of East.

<sup>40</sup> Exhibits S.1 and M.39.

<sup>41</sup> Exhibits S.1 and M.39.

<sup>42</sup> Testimony of Jenkins.

<sup>43</sup> Exhibits S.1 and M.39.

<sup>44</sup> Exhibits S.1 and M.39.

<sup>45</sup> Exhibits S.1 and M.39.

<sup>46</sup> Exhibits S.1 and M.39. Testimony of East

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- 1 F.38 All operations halted in the summer of 1983.<sup>47</sup>
- 2 F.39 In October 1983, fire became apparent at the landfill, but it was unclear whether it was a new fire  
3 or the 1979 fire smoldered underground and broke out.<sup>48</sup> It was close to the boundary line on the  
4 steep northeast slope, approximately two to three lifts from the top.<sup>49</sup> The slope was too steep  
5 for a tractor to unearth the burning material. The operator tried to push more dirt across the face  
6 of the slope to access the fire.<sup>50</sup>
- 7 F.40 Go East believed the fire burned horizontally, breaching waste cells horizontally but not  
8 vertically.<sup>51</sup>
- 9 F.41 Numerous notices of violation were issued.<sup>52</sup> Neighbors, the county, and the Health District sued.
- 10 F.42 The fire continued to burn for 3 and half years before finally appearing to burn itself out by  
11 January 1986.<sup>53</sup> The site was inspected for hot spots using infrared detection from a helicopter.<sup>54</sup>
- 12 F.43 The EPA surveyed the site. Leachate studies were performed, but showed very little leachate,  
13 even right after the fire.<sup>55</sup> The site was also monitored by the Puget Sound Air Quality Agency.<sup>56</sup>
- 14 F.44 There has been no fire since 1986. No leachate has shown levels of contaminants that would  
15 trigger action.<sup>57</sup>
- 16 F.45 The existing physical cover of the landfill does not meet current regulatory standards for landfill  
17 cover.<sup>58</sup> Although the Health District and Go East disagree whether the landfill was closed  
18 according to regulations, Go East is willing to close the landfill now pursuant to current  
19 regulations.
- 20 F.46 There has been no indication of fire for thirty years.

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<sup>47</sup> Testimony of East.

<sup>48</sup> Exhibits S.1, M.39, and M.37.

<sup>49</sup> Testimony of East.

<sup>50</sup> Testimony of East.

<sup>51</sup> Testimony of East.

<sup>52</sup> Exhibits S.1, M.39, M.32, M.33, and M.41.

<sup>53</sup> Testimony of East.

<sup>54</sup> Testimony of East.

<sup>55</sup> Testimony of East.

<sup>56</sup> Testimony of East.

<sup>57</sup> Testimony of East.

<sup>58</sup> Testimony of Shurl.

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- 1 F.47 Neighbors use the site for playing, walking dogs, etc.<sup>59</sup>
- 2 3. PROPOSAL AND SITE DESCRIPTION
- 3 F.48 The 41-acre site is undeveloped and lies within an urban growth area. It is zoned Rural  
4 Conservation. It will access the county road network on 108<sup>th</sup> St. SE.
- 5 F.49 P&GE proposes to close the landfill and to develop the site with 97 single family residences, using  
6 low impact development techniques. Development will occur only over native ground or placed  
7 and compacted fill. P&GE does not intend to create residential lots on top of the landfill.<sup>60</sup>
- 8 F.50 The original landfill site is a deep, narrow ravine.<sup>61</sup> P&GE will excavate what it believes to be the  
9 perimeter of the landfill. Excavated waste will be placed in the center of the landfill area,  
10 compacted, and covered. Waste not suitable for reburial will be processed and handled  
11 according to regulations applicable to the type of waste discovered. The landfill closure plan  
12 requires constant onsite monitoring of excavation by qualified personnel to determine whether  
13 excavated waste is hazardous.
- 14 F.51 The landfill area will become open recreational space and the site of detention ponds.
- 15 F.52 The subdivision will have a homeowners' association, which will likely be responsible for  
16 monitoring and maintenance of the closed landfill.<sup>62</sup> The extent and nature of the homeowners'  
17 association's responsibilities have not been determined. Monitoring and maintenance  
18 responsibilities will most likely be included in the conditions, covenants, and restrictions (CCRs)  
19 which are normally prepared to obtain final plat approval for a subdivision. The CCRs are not  
20 usually prepared and are not necessary for preliminary plat approval.<sup>63</sup> It is common for  
21 homeowner's associations to monitor and maintain detention ponds.<sup>64</sup>
- 22 F.53 The project needs more approvals than just approval of the preliminary plat. P&GE must submit  
23 its final engineering design for the landfill closure. The Health District will then review the final  
24 design and decide whether to issue the closure permit.<sup>65</sup>

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<sup>59</sup> Testimony of East.

<sup>60</sup> Testimony of Penhallegon; testimony of Calhoon.

<sup>61</sup> Testimony of East.

<sup>62</sup> It is also possible that P&GE or some other entity may have monitoring and maintenance responsibilities. The future homeowners association is the most likely entity to be responsible and this decision assumes that to be the case.

<sup>63</sup> Testimony of Calhoon.

<sup>64</sup> Testimony of Calhoon.

<sup>65</sup> Testimony of Spillane.

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1 F.54 In addition, P&GE will need to obtain a land disturbing activity permit from the county for the  
2 landfill closure work and then another land disturbing activity permit from the county for the  
3 roads, utilities, storm water system, and lots of the new subdivision.<sup>66</sup> P&GE will have to obtain  
4 an HPA permit to relocate the stream on the west side of the property. Finally, P&GE or  
5 homebuilders will need to obtain building permits from the county to build houses.<sup>67</sup>

6 4. CLOSURE PLAN

7 F.55 State law and the Health District set standards and requirements for landfill closure; they are  
8 performance goals. The intent of the regulations is to contain the waste reliably with a high level  
9 of confidence. The regulations seek to limit water infiltration, control gas emissions, and provide  
10 stability.<sup>68</sup>

11 F.56 Closure plans are typically high level plans that cover fatal flaw concerns. The plan at this stage  
12 must provide sufficient details to allow a reasonable analysis of environmental impacts and to  
13 determine whether the proposed subdivision is capable of complying with the county's  
14 development regulations. After that, there are successive degrees of focusing in to ensure that  
15 the plan is implemented appropriately. For example, the closure plan will outline the gas system,  
16 but the pipe sizes, valve sizes and exact placement, types of pumps, etc. come later after the  
17 higher level plan is approved. Subsequent submissions to relevant jurisdictions will include  
18 engineering drawings, construction quality assurance program details, more detailed testing  
19 protocols, and documentation regimen, etc.<sup>69</sup>

20 F.57 The closure plan calls for excavation of the presumed margins of the landfill. Some or all of the  
21 excavated material would be deposited in the center portion of the landfill area and compacted. A  
22 certified professional will be on site full time to monitor for asbestos and other hazardous  
23 materials.<sup>70</sup> Hazardous materials will be disposed of appropriately depending on the nature of the  
24 materials. Additional testing may also be required.<sup>71</sup>

25 F.58 The construction sequence will start with grading, excavation, and other activities to close the  
26 landfill. If P&GE seeks to conduct wood waste operations and recycling on the site, it would have  
27 to apply for a conditional use permit when it applied for the land disturbing activity permit for the

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<sup>66</sup> Testimony of MacCready. If P&GE desires to conduct wood waste operations and recycling on the site, it must apply for a conditional use permit when it applies for the initial land disturbing activity permit.

<sup>67</sup> Testimony of Penhallegon.

<sup>68</sup> Testimony of Shuri.

<sup>69</sup> Testimony of Shuri.

<sup>70</sup> Testimony of Penhallegon.

<sup>71</sup> Testimony of Penhallegon. Ex C.5, p. 1, para. 3. The Homeowners Associations criticize the proposed inspection regime. See discussion below beginning at page 26.

- 1 closure.<sup>72</sup> After final approval of the closure by the Health District, more grading will occur for the  
2 subdivision, roads, site utility work, etc.<sup>73</sup>
- 3 F.59 The project design seeks to balance cut and fill quantities to avoid export and import of material.<sup>74</sup>  
4 The Hearing Examiner credits that this is P&GE's intent because it is cheaper to move material  
5 around the site than to import and export material.
- 6 F.60 Any hazardous material uncovered will be exported, wood debris unearthed in the closure process  
7 will be reburied, new wood debris (e.g., trees and grubbing) exported, and any material that the  
8 Health District does not allow to be reburied will be exported.<sup>75</sup> Tree stumps and grubbing waste  
9 will not be buried in the remaining landfill area.<sup>76</sup>
- 10 F.61 The closure plan calls for covering the condensed landfill with a geomembrane and placing fill on  
11 top of the geomembrane.<sup>77</sup> The plan identified the areas to be covered as 1, 2, and 3. Cover area  
12 1<sup>78</sup> will be the condensed landfill area. Cover area 2 would be the area of the detention ponds.  
13 Cover area 3 would be the northeast slope.
- 14 F.62 Compacting the cover over the waste will minimize or prevent water intrusion into the waste and  
15 therefore prevent or minimize contamination of groundwater by contaminants leaching out of  
16 waste in contact with groundwater. Compaction is often accomplished by running a heavy,  
17 vibrating weight across the top of the cover, which consolidates the material. Another method of  
18 compaction is dynamic compaction, in which a heavy weight is dropped onto the material. P&GE  
19 proposes dynamic compaction for cover area 2 underneath the detention ponds.<sup>79</sup>
- 20 F.63 A gravel filled trench will run the perimeter of the landfill. A piping system will collect any landfill  
21 gases for monitoring and passive venting.<sup>80</sup> The geomembrane cover of the landfill will run over

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<sup>72</sup> Testimony of MacCready.

<sup>73</sup> Testimony of Penhallegon.

<sup>74</sup> Testimony of Penhallegon.

<sup>75</sup> Testimony of Penhallegon.

<sup>76</sup> Testimony of Shuri.

<sup>77</sup> Both old and new closure plans called for a geomembrane as part of the cover system. The old closure plan specified a PVC geomembrane. Third party reviewer Golder recommended LDPE instead of PVC, because it is stronger. P&GE accepted the recommendation and incorporated it into the new closure plan. See discussion below at page 35.

<sup>78</sup> Sometimes called the cover 1 system.

<sup>79</sup> Testimony of Jenkins.

<sup>80</sup> The new plan revised the pipe collection system to allow it to be converted to an active system if sufficient landfill gases are emitted.

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- 1 the top of the trench and then down the outside, capping the landfill and containing any landfill  
2 gases for collection and venting.<sup>81</sup>
- 3 F.64 P&GE proposes two additional wells to provide additional groundwater monitoring after  
4 closure.<sup>82</sup> DoE concurs with this proposal.<sup>83</sup>
- 5 F.65 P&GE will complete closure of the landfill and satisfy closure regulations, permits, and conditions  
6 before constructing the subdivision.
- 7 F.66 P&GE will file as-built drawings with the Health District when the closure is completed. Houses  
8 would not be built until the Health District finally approves the closure.<sup>84</sup> After closure, roads  
9 would be built and utilities installed. Houses would then be built. Post-closure monitoring and site  
10 observation would occur after the houses are built.<sup>85</sup>
- 11 F.67 P&GE made three major changes to its proposal on remand. First, P&GE reconfigured the  
12 preliminary plat to remove the road with culvert on the west side and include the houses there  
13 with the rest of the lots.<sup>86</sup>
- 14 F.68 Second, the northeast corner, cover area 3, will not be disturbed.<sup>87</sup> The current closure plan will  
15 not alter the northeast slope. It reduces on site activity by more than an acre, eliminates the need  
16 to import large quantities of clay material, does not disturb 30 years of vegetation, and eliminates  
17 the possibility of erosion introduced or exacerbated by clearing, grubbing, and grading the  
18 slope.<sup>88</sup>
- 19 F.69 Third, the new closure plan incorporates the recommendations of the third party reviewers.
- 20 F.70 The new closure plan more clearly addresses groundwater, methane gas collection,<sup>89</sup> and the  
21 sequence of closure activities.<sup>90</sup> The new closure plan clarified that P&GE plans to leave as much

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<sup>81</sup> The Homeowners' Associations' criticize the gravel filled trench and geomembrane cover of the trench as not constructible. See discussion starting at page 24 below.

<sup>82</sup> Ex. Q.6, App. H.; Testimony of Jenkins.

<sup>83</sup> Ex. M.29a

<sup>84</sup> Testimony of Penhallegon.

<sup>85</sup> Testimony of Penhallegon.

<sup>86</sup> Testimony of MacCready.

<sup>87</sup> Testimony of MacCready.

<sup>88</sup> Testimony of Calhoon.

<sup>89</sup> Testimony of Calhoon. New Closure Plan, sec. 1.12.

<sup>90</sup> Testimony of Calhoon. New Closure Plan, sec. 9.

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1 waste on site as possible.<sup>91</sup> Unless it must be exported for appropriate disposal, excavated waste  
2 will be replaced on the central portion of the landfill area. This will shrink the footprint of landfill  
3 to make room for residences and roads around. The Health District will require excavated  
4 material to be exported rather than reburied if required by DoE.<sup>92</sup>

5 5. HEALTH DISTRICT REVIEW

6 F.71 The Health District reviews a landfill closure application for completeness. It relies heavily on  
7 DoE's review because DoE has engineers and DoE sees closure applications more frequently. By  
8 rule, the Health District must inform DoE and give it the ability to review and comment on the  
9 permit.<sup>93</sup>

10 F.72 The Health District has not issued a closure permit because the SEPA appeal has not concluded. If,  
11 as, and when the SEPA process ends, the Health District will consider and decide whether to issue  
12 a closure permit with conditions.<sup>94</sup>

13 F.73 Both the Health District and DoE are familiar with the Homeowners Associations concerns.<sup>95</sup> The  
14 Health District met with DoE, the county, P&GE, and the Homeowners Associations. Health  
15 District staff reviewed materials from the Homeowners Associations and DoE. The Health District  
16 needed additional technical resources, requiring third party consultants who are paid by P&GE.  
17 P&GE does not control or direct the third party consultants.<sup>96</sup> Since the 2015 hearing, the Health  
18 District focused discussions with DoE to ensure its concerns are adequately addressed.<sup>97</sup>

19 F.74 The Health District does not view the current closure plan as either preliminary or final, but as an  
20 appropriate level of detail for SEPA review. From the Health District's perspective, the next step  
21 after SEPA review will be its review of a complete financial assurance plan, for which it needs  
22 DoE's help. The Health District will not issue a closure permit unless and until DoE concurs with  
23 the proposed plan.<sup>98</sup>

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<sup>91</sup> The 2015 hearing demonstrated the lack of clarity in the proposed closure plan, which at times said material would be exported for disposal and in other places said it would not. See Hearing Examiner Decision, April 14, 2015.

<sup>92</sup> Testimony of Plemel.

<sup>93</sup> Testimony of Plemel.

<sup>94</sup> Testimony of Plemel.

<sup>95</sup> Testimony of Jenkins.

<sup>96</sup> Testimony of Plemel.

<sup>97</sup> Testimony of Plemel.

<sup>98</sup> Testimony of Plemel.

- 1 F.75 Experienced professionals at DoE and the Health District reviewed the current closure plan. DoE  
2 confirmed the current closure plan addressed all outstanding issues from its perspective and does  
3 not object to the new closure plan.<sup>99</sup>
- 4 F.76 The Health District believes P&GE adequately addressed the issues that have been raised, such as  
5 on-site inspection during excavation. The Health District wants P&GE to excavate all waste  
6 beneath the lots and road and wants no waste left in those areas.<sup>100</sup> The Health District is  
7 satisfied the new closure plan is capable of complying with its requirements. The Health District  
8 believes that the provisions in place for closing, covering, monitoring, and maintaining the closure  
9 will mitigate any environmental and public safety concerns.<sup>101</sup>
- 10 F.77 If implemented as proposed, closure will move public health forward.<sup>102</sup> The landfill is neither  
11 controlled nor properly closed and the closure plan provides the Health District with far more  
12 control and mechanisms for addressing future concerns.<sup>103</sup>
- 13 F.78 The Health District generally approved the new closure plan.<sup>104</sup>
- 14 F.79 The final closure permit application must also be reviewed by DoE. The Health District gives  
15 serious consideration to DoE views. The Health District will add conditions to the final landfill  
16 closure permit, such as financial assurance obligations and monitoring of groundwater and gas  
17 migration.<sup>105</sup> If, as, and when the Health District issues a closure permit, it may be appealed to  
18 the Pollution Control Hearings Board.<sup>106</sup>

19 **6. CHARACTERIZATION AND DELINEATION OF WASTE**

- 20 F.80 The new closure plan calls for excavation of waste material from the presumed margins of the  
21 landfill and consolidating it with the waste material in the interior. The excavation of the "wedge"  
22 to the "zero fill line" is intended to provide suitable area for residential real estate development.  
23 Where and what is excavated is a subject of contention.

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<sup>99</sup> Testimony of Plemel; Ex. Q.29a.

<sup>100</sup> Testimony of Penhallegon

<sup>101</sup> Testimony of Plemel.

<sup>102</sup> The fact that closure is an improvement over existing conditions does not give the proposal a pass from a potential determination of significance under SEPA. A proposal can be a significant improvement to the environment and still probably have significant adverse environmental impacts.

<sup>103</sup> Testimony of Plemel.

<sup>104</sup> Testimony of Plemel. Ex. Q.6.

<sup>105</sup> Testimony of Plemel.

<sup>106</sup> Testimony of Plemel.

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- 1 F.81 The new closure plan needs a reasonable delineation of the horizontal and vertical extent of the  
2 waste material for at least two reasons. The delineation is needed to establish a grading plan and  
3 to provide areas for residential development clean of waste. In addition, the waste to be  
4 excavated must be characterized so that it can be disposed of appropriately. For example,  
5 asbestos cannot be reinterred in the center of the landfill and must be disposed differently  
6 because it is hazardous waste.
- 7 F.82 A total of more than 60 test pits were dug by HWA (2002) and Associated Earth Sciences  
8 (2009).<sup>107</sup> The test pits were dug to understand the current content and condition of the landfill,  
9 including where landfill ended and pre-existing grade started. The base of landfill was not reached  
10 at numerous exploration locations.<sup>108</sup>
- 11 F.83 Material found in the test pits included material that the landfill was not permitted to receive.<sup>109</sup>  
12 There was no evidence that putrescible material was dumped at the landfill.
- 13 F.84 The deepest test pit reached 27 feet, but did not reach the native material of glacial lacustrine.<sup>110</sup>
- 14 F.85 Although a test pit is not needed in every residential lot,<sup>111</sup> 63 of the 97 lots are more than 25 feet  
15 from a test pit.<sup>112</sup>
- 16 F.86 Nineteen test pits were located outside of the inferred zero foot line, or presumed perimeter of  
17 the waste. Of these 19, 15 had waste material in them such as tires, metal, carpet, plywood, burnt  
18 wood, glass, concrete, plastic bricks and tree branches.<sup>113</sup> Test pit no. 30, in the middle of a  
19 proposed residential lot, had buried wood, steel, bricks, concrete, and plastic from the surface to  
20 a depth of six feet.<sup>114</sup>
- 21 F.87 Rekoway was not meticulous in either its operation of the landfill in accordance with applicable  
22 permits and regulations, nor in keeping records, and information from Rekoway has a higher  
23 likelihood of being incomplete or erroneous than information from Go East. For example,  
24 Rekoway built coops in the south area in which exotic birds were raised and quail and pheasant  
25 eggs sold.<sup>115</sup> These are not typical landfill operations.

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<sup>107</sup> Testimony of Jenkins. Associate Earth Sciences were located by survey, but HWA's were not. Testimony of Penhallegon.

<sup>108</sup> Testimony of Calhoon.

<sup>109</sup> Testimony of Jenkins.

<sup>110</sup> Testimony of Jenkins.

<sup>111</sup> Testimony of Jenkins.

<sup>112</sup> Testimony of Jenkins.

<sup>113</sup> Testimony of Jenkins.

<sup>114</sup> Testimony of Jenkins.

<sup>115</sup> Testimony of East.

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- 1 F.88 P&GE and its consultants relied at least in part on information from Rekoway to design and  
2 perform subsurface exploration to delineate the location of buried waste and the character of the  
3 waste. While Rekoway's information may have been useful, it may not have been reliable or  
4 complete. Any reliance on Rekoway's information introduced a factor of uncertainty.
- 5 F.89 The perimeter of the landfill was delineated by HWA in 2002 based upon a combination of  
6 historical information about the operation of the site (including, presumably, information from  
7 Rekoway), the topography of the site, and the test pits. The presumed perimeter is referred to as  
8 the zero fill or zero waste line.<sup>116</sup>
- 9 F.90 The Homeowners Associations contend that historical photos<sup>117</sup> show disturbed areas outside of  
10 the presumed waste disposal boundary and worry waste may have been buried there.
- 11 F.91 Go East testified that the areas of disturbance in the historical photographs were not from  
12 burying waste but from other activities. For example, the operator before Go East accepted waste  
13 not allowed under his permit, such as car parts and wood waste. Based on its visual observations  
14 of the site at the time, Go East believes this waste was scattered on the surface and not buried.<sup>118</sup>
- 15 F.92 Similarly, extinguishing one of the fires was accomplished by excavating materials to the surface,  
16 spreading them out, and extinguishing them. The Fire Marshal had to approve before any  
17 materials could be reburied. The county required the area cleaned up before the landfill could  
18 reopen after the fire, including the removal of coops the previous operator built in the south area  
19 in which he raised exotic birds and from which he sold quail and pheasant eggs.<sup>119</sup>
- 20 F.93 Cover material is the material placed over waste and compacted to minimize water intrusion into  
21 the waste. The purpose of minimizing water intrusion is to minimize or prevent water from  
22 leaching contaminants from the waste into the groundwater. The test pits demonstrated a wide  
23 variation in the depth of cover, ranging from no cover at all to several feet. The cover material  
24 was loose and not compacted, though the solid waste rules in effect in 1983 required compaction.  
25 Similarly, the cover material did not have six inches of topsoil above the compacted two foot layer  
26 called for by the 1984 regulations.<sup>120</sup>
- 27 F.94 A test pit only reveals the materials and depth where the test pit is dug.<sup>121</sup> Even an extensive,  
28 robust test pit exploration might miss material located between test pits.

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<sup>116</sup> Testimony of Calhoon.

<sup>117</sup> Exhibits M.20-M.22. M.21a shows the area as it existed when Go East took over the property.

<sup>118</sup> Testimony of East.

<sup>119</sup> Testimony of East.

<sup>120</sup> Testimony of Jenkins.

<sup>121</sup> Testimony of Penhallegon

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1 F.95 It is not feasible to excavate the entire landfill to create a plan. Inspection of material at the time  
2 of excavation is a reasonable method of dealing with the inherent uncertainty of what material  
3 lies between the test pits.<sup>122</sup>

4 F.96 The Homeowners Associations did not prove by a preponderance of evidence that the proposed  
5 plan for dealing with the degree of uncertainty regarding the presumed zero fill or the  
6 characterization of the waste would probably cause any significant adverse environmental  
7 impacts.

8 7. POST CLOSURE FINANCIAL ASSURANCES

9 F.97 State law requires a landfill operator to provide financial assurances for operations and  
10 maintenance of a landfill after it is closed.<sup>123</sup>

11 F.98 Although P&GE provided a preliminary estimate of post-closure financial assurances, the final  
12 amount and nature<sup>124</sup> of the post-closure financial assurances will be determined later by the  
13 Health District and established as a condition of the closure permit. The Health District will rely on  
14 the expertise of DoE because the Health District does not have expertise in the area.

15 F.99 The Homeowners Associations argue that the preliminary estimate is too low because 2:1 slopes  
16 require more maintenance and require more contingency funds in case of slope failure. The  
17 Homeowners Associations contend that if the slope fails, if the post-closure financial assurances  
18 are inadequate, and if P&GE is no longer able to respond financially, then the future homeowners  
19 association may be forced to respond with its own funds and the homeowners' association may  
20 not have sufficient funds to make needed repairs causing a failure to repair which may result in  
21 significant adverse environmental impacts. This concatenation of possibilities results only in the  
22 possibility, not probability, of significant adverse environmental impact.

23 F.100 The Homeowners Associations did not prove by a preponderance of the evidence that the  
24 preliminary estimate of the post-closure financial assurance will probably cause significant  
25 adverse environmental impacts.

26 F.101 The Homeowners Associations argument is premature and not material to the SEPA threshold  
27 determination or preliminary plat approval.

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<sup>122</sup> Testimony of Shuri.

<sup>123</sup> Testimony of Calhoon.

<sup>124</sup> Bond, letter of credit, insurance policy, etc.

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1            8. FUTURE HOMEOWNERS ASSOCIATION

2 F.102    A future homeowners association will likely own the common areas, including the closed landfill  
3 portion, of the site.<sup>125</sup> The Homeowners' Association criticize the closure plan and development  
4 proposal because a homeowners' association may not have the expertise to monitor and  
5 maintain a closed landfill and may not even be sufficiently active.

6 F.103    Homeowners associations can contract with professional engineers to provide needed services,  
7 such as monitoring.<sup>126</sup>

8 F.104    P&GE demonstrated by a preponderance of evidence that a homeowners association is capable of  
9 carrying out operations and maintenance responsibilities by contracting with qualified  
10 professionals and by having access to sufficient financial resources as determined by Health  
11 District.

12 F.105    The Homeowners Associations did not prove by a preponderance of evidence that ownership of  
13 the closed landfill by a future homeowners' association will probably cause significant adverse  
14 environmental impacts.

15            9. GROUNDWATER

16 F.106    Water likely contacts waste in this landfill.<sup>127</sup> There is no cap designed to limit stormwater  
17 infiltration. Nine test pits showed seeps and wet soil.<sup>128</sup> The amount of water that contacts the  
18 buried waste after closure will be substantially less than current water contact because the  
19 closure will reduce, if not eliminate, the amount of water infiltrating to the waste.<sup>129</sup>

20 F.107    The Health District sampled seeps in two locations in 2004.<sup>130</sup> No actionable levels of  
21 contamination were found.

22 F.108    Associated Earth Sciences drilled four monitoring wells in 2009 to a depth of 31 to 75 feet.<sup>131</sup>  
23 Monitoring well no. 1 was intended to be the upgradient well that would establish the baseline of  
24 water quality before it potentially encountered any waste. No waste was encountered when it

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<sup>125</sup> Penhallegon.

<sup>126</sup> Testimony of Calhoon.

<sup>127</sup> Testimony of Jenkins.

<sup>128</sup> Testimony of Jenkins.

<sup>129</sup> Testimony of Shuri.

<sup>130</sup> In 2002, HWA sampled surface water and tested for priority pollutants and apparently found no pollutants exceeding action levels. Testimony of Jenkins.

<sup>131</sup> Testimony of Carpenter.

- 1 was drilled.<sup>132</sup> This does not exclude the possibility that waste lies upgradient from MW1,  
2 however.<sup>133</sup>
- 3 F.109 Monitoring well no. 4 was a dry hole and no water quality data was therefore obtained.
- 4 F.110 Associated Earth Sciences sampled two springs on the northeast and southeast corners (SP1 and  
5 SP2) and did not find any measured items that exceeded permissible levels.<sup>134</sup>
- 6 F.111 Sampling point SP1 at the northeast corner of the northeast slope likely provides a typical picture  
7 of leachate. The geology of the site was glacial material over sand over clay. The sand was  
8 removed and then backfilled with waste. The clay acts as a liner which slopes to SP1. In effect, SP1  
9 is a reasonably effective downgradient monitoring well.<sup>135</sup> SP1 samples have shown minimal  
10 landfill impact and leachate.<sup>136</sup>
- 11 F.112 Two monitoring wells will be established at the toe of the northeast slope and the exact location  
12 will be agreed with DoE.<sup>137</sup>
- 13 F.113 The Homeowners' Association argue that groundwater analysis is inadequate because the down  
14 gradient well, no. 4, was dry, and therefore there are no water samples of groundwater that  
15 flowed through the site and potentially contacted waste.<sup>138</sup> They also point out that the  
16 "upgradient well", MW1, is located inside the landfill zero waste line and therefore is not  
17 upgradient from potential waste.<sup>139</sup> To be upgradient from the presumed location of waste, the  
18 Homeowners' Association says the monitoring well needs to be at lot 97 or the space between  
19 that is clearly not influenced by potential waste.<sup>140</sup>
- 20 F.114 DoE accepted MW1 as the upgradient well.<sup>141</sup>
- 21 F.115 None of the water sampling at any of the site indicated contamination requiring action. It is likely  
22 that there is little waste left to contaminate the groundwater, that whatever waste remains in the

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<sup>132</sup> Testimony of Shuri.

<sup>133</sup> Testimony of Shuri.

<sup>134</sup> Testimony of Jenkins.

<sup>135</sup> Testimony of Miller.

<sup>136</sup> Testimony of Miller.

<sup>137</sup> Penhallegon. Monitoring wells will be established whether the northeast slope is recovered or left alone. *Id.*

<sup>138</sup> Testimony of Jenkins; Testimony of Carpenter.

<sup>139</sup> Testimony of Jenkins; Testimony of Carpenter.

<sup>140</sup> Testimony of Jenkins.

<sup>141</sup> Ex. M.29a.

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1 landfill will not contaminate groundwater to action threshold levels, and that there is no chemical  
2 contamination to actionable levels.

3 F.116 The proposal will not probably cause significant adverse environmental impacts with respect to  
4 contamination of groundwater. Seeps sampled by the Health District in 2004 and Associated Earth  
5 Sciences sampling of two springs detected little, if any, leachate. While it is possible that the  
6 springs and seeps did not capture any leachate because of the hydrogeology, it is more likely than  
7 not that leachate contamination is not a problem now, a time when there is no cap preventing  
8 stormwater infiltration to the waste. Stormwater likely contacts waste now as it infiltrates  
9 through the waste layers and the seeps and springs would more likely than not express some of  
10 that infiltrated water.<sup>142</sup> Further, the installation of mostly impervious cap according to current  
11 DoE and Health District regulations will minimize, if not eliminate, stormwater contact with the  
12 buried waste.

13 F.117 The Homeowners Associations did not demonstrate by a preponderance of the evidence that the  
14 current state of the closure plan's post-closure monitoring would likely cause significant adverse  
15 environmental impacts.

16 F.118 The Homeowners Associations did not demonstrate by a preponderance of the evidence that the  
17 responsible SEPA official did not have reasonably sufficient information to determine whether the  
18 project would probably cause significant adverse environmental impacts regarding groundwater.

#### 19 10. CONTAMINATION

20 F.119 Unpermitted waste, such as metals, plastics, carpet, linoleum, demolition waste, and packaging  
21 material were found in the test pits. No chemical or hydrocarbon contamination was found, nor  
22 any potential sources of chemical or hydrocarbon contamination.

23 F.120 The Homeowners Associations argue that the discovery of unpermitted waste at the site implies  
24 the possibility that petrochemicals and PCBs were dumped there, too. No evidence of  
25 petrochemical or PCB contamination was found in the test pits or on the surface. There is  
26 insufficient evidence to find that the project will probably cause significant adverse environmental  
27 impacts from contamination due to undiscovered unpermitted waste.

28 F.121 Contaminants are chemical compounds or elements that can be potentially hazardous to human  
29 health or environment if present in sufficient quantities, i.e., above regulatory limits.<sup>143</sup>  
30 Contaminants can escape in one or more ways: waste on the surface, groundwater, surface  
31 water, or gas emissions.<sup>144</sup> The Health District prescribes the contaminants for which P&GE

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<sup>142</sup> See testimony of Carpenter that leachate could express through the spring on the northeast slope.

<sup>143</sup> Testimony of Shuri.

<sup>144</sup> Testimony of Shuri.

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1 should test.<sup>145</sup> If testing demonstrates the presence of contaminants exceeding threshold limits,  
2 additional samples and testing will occur before any further work occurs.<sup>146</sup> The proposed  
3 sampling and testing program is similar to the one used on the Newcastle landfill project.<sup>147</sup>

4 F.122 The Homeowners Associations complain that the proposed visual inspection regimen is  
5 inadequate. They say that hazardous waste cannot be visually identified, causing the closure plan  
6 to be defective, and undermining the SEPA threshold determination.<sup>148</sup>

7 F.123 Some hazardous materials cannot be visually identified, but some can. Some can be identified by  
8 odor, while some cannot. It is not feasible or reasonable to sample or test all of the landfill for all  
9 possible contaminants.

10 F.124 A reasonable sampling and testing regimen should be based upon what is known about the site  
11 from historical information and from previous investigations into the soil. Inspecting material as it  
12 is excavated is an adaptive, active management practice often used in site remediation work  
13 because lack of extensive knowledge is often the case at older sites.<sup>149</sup> A process like this must be  
14 in place to deal with what is found in a responsible manner and prevent the release of materials  
15 that should not be released.<sup>150</sup>

16 F.125 Appropriate, qualified personnel on site full time during excavation to observe excavated material  
17 is a reasonable method for protecting the public's health, safety, and welfare and preventing  
18 significant adverse environmental impacts. Qualified personnel understand the distinct visual  
19 differences between native soil, which tends to be light, tan, or yellowish, and fill, which is  
20 darker.<sup>151</sup>

21 F.126 The Homeowners Associations criticize the screening criteria because it is the same criteria for  
22 screening vector waste.<sup>152</sup> They did not demonstrate, however, that the use of this screening  
23 criteria will probably cause significant adverse environmental impacts. The proposed screening  
24 criteria are not the final screening criteria. The Health District will determine the final screening  
25 criteria in the future as a condition of the closure permit.<sup>153</sup> The Homeowners' Association

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<sup>145</sup> Testimony of Penhallegon.

<sup>146</sup> Testimony of Penhallegon.

<sup>147</sup> Testimony of Penhallegon.

<sup>148</sup> Testimony of Jenkins.

<sup>149</sup> Testimony of Shuri.

<sup>150</sup> Testimony of Shuri.

<sup>151</sup> Testimony of Shuri.

<sup>152</sup> Testimony of Bourque.

<sup>153</sup> During the Health District's review of the closure permit application, P&GE should submit a more detailed sampling and analysis plan, including a full set of laboratory protocols. Testimony of Shuri.

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1 indirectly ask the Hearing Examiner to overturn the Health District's judgment regarding  
2 appropriate screening criteria. The Hearing Examiner does not have that authority and would not  
3 exercise it based on the record even if he had the authority to do so. The Homeowners  
4 Associations did not demonstrate that the responsible SEPA official lacked reasonably adequate  
5 information to make an informed threshold determination.

6 F.127 The Homeowners Associations criticize the proposed frequency of sampling excavated material  
7 for pollutants, claiming it is more appropriate for a borrow source with homogenous material.<sup>154</sup>  
8 The Health District does not share the Homeowners Associations concerns regarding screening of  
9 excavated material. A qualified person will visually inspect the excavated soil and the Health  
10 District does not see any reason to change the sampling methodology.<sup>155</sup> The Hearing Examiner  
11 defers to the Health District's subject matter expertise as the jurisdictional agency. It is unlikely  
12 that the frequency of sampling for contaminated waste will cause significant environmental  
13 impacts. The responsible SEPA official had reasonably sufficient information to make a threshold  
14 determination with respect to probable significant adverse environmental impacts due to  
15 potential contamination.

#### 16 11. EROSION

17 F.128 Erosion will be prevented or mitigated by the installation of a geomembrane under a two foot  
18 deep cap of soil. Vegetation prevents erosion. Low slopes of two to five percent on the top of the  
19 landfill means stormwater will not be concentrated and have low velocity. Therefore, the  
20 stormwater will have low potential for erosion.<sup>156</sup>

21 F.129 If constructed as planned, erosion will be less likely than current conditions.<sup>157</sup>

#### 22 12. NORTHEAST SLOPE

23 F.130 The initial closure plan called for re-grading and covering the northeast slope of the landfill. It is  
24 rather steep at 2:1 in most places and 1.5:1 in a few locations.<sup>158</sup> The northeast slope has well  
25 established vegetation.<sup>159</sup>

26 F.131 The Homeowners Associations criticized P&GE's plan to re-grade and cover the slope, arguing that  
27 construction of the cover is infeasible, maintenance of the slope will be virtually impossible, and

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<sup>154</sup> Testimony of Bourque.

<sup>155</sup> Testimony of Plemel.

<sup>156</sup> Testimony of Shuri. Ex. Q.6, App. M, §2.2.

<sup>157</sup> Testimony of Shuri.

<sup>158</sup> Penhallegon. LCP 1.1.2.4

<sup>159</sup> Testimony of Shuri.

- 1 the cover placed on the slope will be unstable and may fail.<sup>160</sup> Failure of the northeast slope risks  
2 exposure of the waste to stormwater.<sup>161</sup>
- 3 F.132 P&GE disagreed with the Homeowners' Association. If the northeast slope were replaced as  
4 originally planned, the veneer would likely be stable because it would not be placed over an  
5 engineered, straight slope. The rills and dips would keep the veneer in place and make veneer  
6 failure unlikely.<sup>162</sup>
- 7 F.133 The seismic analysis of the slopes was based on horizontal accelerations described the US  
8 Geological Services which is updated every few years.<sup>163</sup> The seismic analysis is therefore  
9 adequate to demonstrate that slope failure in an earthquake is unlikely.
- 10 F.134 P&GE now proposes to leave the slope alone. DoE supports not disturbing the northeast  
11 corner.<sup>164</sup>
- 12 F.135 The virtues of leaving the slope alone include: less maintenance than if a cover is installed;<sup>165</sup>  
13 minimizing the risk of erosion because the mature vegetation on the slope will not be disturbed;  
14 and the slope will likely remain stable as it has for decades. The potential disadvantage is the risk  
15 of groundwater contamination due to stormwater infiltration and leaching contaminants from  
16 waste is not prevented.
- 17 F.136 The Homeowners Associations contend there is inadequate information regarding the potential  
18 for contamination of groundwater if the northeast corner is not covered.
- 19 F.137 There is no indication of groundwater contamination from the northeast slope, however.<sup>166</sup>  
20 Water has infiltrated ever since the landfill opened because it was never covered.<sup>167</sup> The spring at  
21 the northeast corner does not show signs of contamination nor is there any other indication of  
22 contamination. Leaving the northeast slope undisturbed will likely not cause groundwater  
23 contamination.

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<sup>160</sup> Testimony of Bourque.

<sup>161</sup> Testimony of Shuri.

<sup>162</sup> Testimony of Shuri.

<sup>163</sup> Testimony of Shuri.

<sup>164</sup> Testimony of Plemel. Ex. Q.29a.

<sup>165</sup> Testimony of Miller.

<sup>166</sup> See testimony of Shuri.

<sup>167</sup> Testimony of Bourque.

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- 1 F.138 Leaving the northeast slope alone will not have an adverse impact on slope stability and will resist  
2 erosion.<sup>168</sup>
- 3 F.139 Large scale massive failure of the northeast slope is unlikely, whether the cover system is installed  
4 or whether it is left alone.<sup>169</sup>
- 5 F.140 The proposed cover system for the northeast slope will require more maintenance than leaving it  
6 alone. The northeast slope has mature vegetation and no sign of slope failure. The landfill did not  
7 have highly hazardous material, a lot of consumables were burned out by the fires, and there has  
8 been stormwater infiltration for 30 years.<sup>170</sup>
- 9 F.141 Elimination of the cover system on the northeast slope and leaving the slope alone does not entail  
10 probable significant adverse environmental impacts that were not analyzed or mitigated.<sup>171</sup>
- 11 F.142 The responsible SEPA official believes that eliminating the cover system and leaving the northeast  
12 slope intact does not require withdrawal of the threshold determination because it would at most  
13 reduce the likelihood of significant adverse environmental impacts and at least not create any  
14 new or different impacts.<sup>172</sup> The potential impacts of leaving the northeast slope alone were  
15 analyzed.<sup>173</sup> The Hearing Examiner is not left with a firm and definite conviction that the  
16 responsible SEPA official was mistaken.
- 17 F.143 The proposed change to the closure plan (leaving the northeast slope alone) does not create a  
18 probable risk of significant adverse environmental impacts. The slope will be stable as it has been  
19 for decades. It will require less maintenance. It would not increase infiltration over existing  
20 conditions. It would be illogical to argue that the "do nothing" alternative for the northeast slope  
21 would probably cause significant adverse environmental impacts when there is no evidence of  
22 significant adverse environmental impacts during the last thirty years when it was uncovered. The  
23 chimney effect is neither probable nor is a fire fed by it probable and the combination of the two  
24 are less probable than either individually. The responsible SEPA official had reasonably adequate  
25 information to make the threshold determination. Based on the evidence, the elimination of the  
26 cover on the northeast slope was not sufficiently material to require the responsible SEPA official  
27 to withdraw the threshold determination.
- 28 F.144 The Homeowners Associations' final objection to eliminating the cap on the northeast slope is the  
29 "chimney effect". They argue that capping the landfill area except for the northeast slope could

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<sup>168</sup> Testimony of Shuri.

<sup>169</sup> Testimony of Shuri.

<sup>170</sup> Testimony of Miller.

<sup>171</sup> Testimony of Miller.

<sup>172</sup> Testimony of MacCready.

<sup>173</sup> Testimony of MacCready.

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1 allow air to flow through the uncapped slope into the area under the cap and exit around the  
2 periphery of the cap through the passive gas collection system.<sup>174</sup> If a fire starts under the cap,  
3 then it could be fed by this "chimney effect" of airflow from the uncapped northeast corner.<sup>175</sup>  
4 The Homeowners Associations contend a fire fed by the chimney effect would possibly have  
5 significant adverse environmental impacts. The Homeowners Associations do not assign a  
6 probability to any of these elements, however, and claim only that it is possible.<sup>176</sup>

7 F.145 The chimney effect is unlikely because there is no likely mechanism for oxygen to be driven or  
8 drawn into the landfill that will encourage combustion.<sup>177</sup> Neither changes in barometric pressure  
9 nor wind blowing across the landfill are likely to create sufficient force to draw air into the  
10 landfill.<sup>178</sup>

11 F.146 The "chimney effect" is a low probability event.<sup>179</sup> There is no evidence of a chimney effect now  
12 and the proposal is not likely to change that, whether the cover system for area 3 is built or  
13 whether the northeast slope is not covered.<sup>180</sup>

14 F.147 The Homeowners Associations concede that they do not contend a fire amplified by a chimney  
15 effect will happen, but that it is possible.<sup>181</sup> Possibility is insufficient to overturn a SEPA threshold  
16 determination.

17 F.148 No evidence was presented that the landfill is currently on fire or that the proposed closure and  
18 development activity will probably start a fire. The landfill has been quiescent for three decades.  
19 It is therefore more likely than not that a fire will not be caused by the proposed closure and  
20 development activity.

### 21 13. WETLANDS AND STREAMS

22 F.149 Two wetlands, both labelled wetland A, sit astride Stream C on the west side of the site. The  
23 Homeowners Associations contend that the wetland is insufficiently delineated in that low

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<sup>174</sup> Testimony of Bourque.

<sup>175</sup> Testimony of Bourque.

<sup>176</sup> Mr. Bourque explicitly testified that he did not say a fire would start, but that the mechanism for the chimney effect would be in place if a fire started. Testimony of Bourque.

<sup>177</sup> Testimony of Shuri.

<sup>178</sup> See testimony of Shuri.

<sup>179</sup> See testimony of Shuri.

<sup>180</sup> Testimony of Shuri.

<sup>181</sup> Testimony of Bourque.

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1 gradients between the two wetland As could mean the area adjacent to the stream is also  
2 wetland.<sup>182</sup>

3 F.150 The Hearing Examiner finds, however, that it is not likely that area is a wetland because the  
4 stream is well channeled and does not overflow its banks.<sup>183</sup>

5 F.151 Kirk Prindle, a county biologist, visited the site in December 2014. Jamie Bales, a biologist from  
6 the Washington State Department of Fish and Wildlife, visited the site in 2012.<sup>184</sup> Neither  
7 objected to the delineation or characterization of the streams or wetlands by P&GE.<sup>185</sup>

8 F.152 The project site has four streams, labelled A, B, C, and D. Stream D flows into stream E offsite.<sup>186</sup>

9 F.153 P&GE characterized streams A, B, and C as type Np<sup>187</sup> and stream D as Ns.<sup>188</sup>

10 F.154 The Homeowners' Association contend streams A, B, and D should be characterized as F because  
11 fish presence is presumed when a stream has fish habitat or if models suggest fish could be  
12 present.<sup>189</sup> The Homeowners Associations' criticism of stream characterization is not based upon  
13 data or observation. They did not present evidence that the stream characterizations were likely  
14 wrong, but argue that inadequate information supports P&GE's stream typing.

15 F.155 The Hearing Examiner is persuaded by a preponderance of the evidence that P&GE correctly  
16 identified the stream types. Mr. Brainard walked the streams and identified gradients<sup>190</sup> and  
17 impediments to fish passage that obstruct or prevent fish from coming that high and far

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<sup>182</sup> Testimony of Lepine.

<sup>183</sup> Testimony of Brainard.

<sup>184</sup> Testimony of Prindle; Testimony of Brainard. A county drainage reviewer accompanied Mr. Prindle and Mr. Brainard.  
Testimony of Prindle

<sup>185</sup> Testimony of Kirk Prindle; Testimony of Brainard.

<sup>186</sup> Testimony of Lepine.

<sup>187</sup> "N" means the stream does not bear fish (and "F" indicates the stream is fish bearing). "s" means the stream is seasonal and  
"p" means the stream is perennial. Testimony of Lepine.

<sup>188</sup> Testimony of Brainard. When Mr. Brainard visited the site during dry times of the year, he observed no water flowing in  
stream D. *Id.*

<sup>189</sup> Testimony of Lepine.

<sup>190</sup> E.g., the confluence of streams A and B. Ex. C.4. Mr. Brainard also walked stream D offsite to the northeast and followed  
stream E toward Lowell Larimer Road. The stream also has a steep gradient that impedes fish passage. Testimony of Brainard.

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1 upstream.<sup>191</sup> Mr. Prindle, the county biologist, and Ms. Jamie Bales, WDFW biologist, also visited  
2 the site and neither objected to Mr. Brainard's characterization of the streams or wetlands.<sup>192</sup>

3 F.156 The Hearing Examiner finds from a preponderance of the evidence that any overflow from  
4 stormwater detention facilities will not affect fish or fish habitat in the streams because it is  
5 unlikely there are any fish in streams A, B, C, and D.

6 14. LANDFILL GASES

7 F.157 Water and oxygen allow organic materials to decompose. Decomposing organic material emits  
8 gases. Landfill gases include methane, carbon dioxide, and carbon monoxide.<sup>193</sup> Different types of  
9 waste generate different amounts of landfill gases.<sup>194</sup>

10 F.158 Methane is a surrogate or proxy for other landfill gases that affect human health.<sup>195</sup> Methane is  
11 flammable, explosive at certain levels of concentration, and is an asphyxiant. Methane can  
12 migrate into basements or the ground floor of buildings built near or on landfills.<sup>196</sup>

13 F.159 Capping the landfill minimizes water infiltration into organic material, thus minimizing  
14 decomposition, minimizing the creation of landfill gases, and emissions.

15 F.160 This landfill does not have a history of significant landfill gases.<sup>197</sup> There have been no complaints  
16 by neighbors about odors or gas, despite the lack of a cap.

17 F.161 The current landfill environment is likely anaerobic. Excavation will introduce oxygen into the  
18 disturbed material, resulting in additional decomposition and a higher rate of landfill gas  
19 production. Gas production will likely rise and then fall again.<sup>198</sup>

20 F.162 Controlling landfill gases requires collection and conveyance of the gases.<sup>199</sup> Capping a closed  
21 landfill prevents landfill gases from escaping into the atmosphere. Gas may want to go up but it  
22 cannot because of the cap so it flows sideways.<sup>200</sup> The gases migrate sideways to the edge of the

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<sup>191</sup> Testimony of Brainard. The Marshland Flood District pump station is one such impediment.

<sup>192</sup> Testimony of Brainard; Testimony of Prindle. WDFW is not concerned with wetlands, but with streams. The county is concerned with both, but defers to WDFW regarding streams. *Id.*

<sup>193</sup> Testimony of Bourque.

<sup>194</sup> Testimony of Shuri.

<sup>195</sup> Testimony of Spillane.

<sup>196</sup> Testimony of Jenkins.

<sup>197</sup> Testimony of Penhallegon.

<sup>198</sup> Testimony of Bourque. Testimony of Spillane.

<sup>199</sup> Testimony of Spillane.

<sup>200</sup> Testimony of Shuri. See also testimony of Bourque.

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- 1 cap, where they are collected in a perimeter trench system. The gases are then passively or  
2 actively conveyed to vents.<sup>201</sup> Collecting the gases controls when and where the gases are vented  
3 to the atmosphere and also allows sampling and monitoring.
- 4 F.163 Five percent methane by volume in a perimeter trench is a threshold for action.<sup>202</sup> The standard  
5 is for a structure such as a vault or catch basin is 1.25% by volume.<sup>203</sup>
- 6 F.164 The existing landfill has no cap and is in a steady state. There is no oxygen in the center of the  
7 landfill and oxygen interacts with the periphery of the landfill.<sup>204</sup>
- 8 F.165 The age of this landfill places it in a lower risk category regarding methane gas production, which  
9 has likely peaked and is declining.
- 10 F.166 Passive collection is an effective gas control system in this situation and low cost.<sup>205</sup>
- 11 F.167 Gas sampling in 2009 by 10 gas probes did not indicate any problems or unusual issues regarding  
12 the production of gas at this landfill.<sup>206</sup> Some showed no methane, some nothing until fifteen feet  
13 deep. The number of gas probes was adequate; more probes would not provide additional useful  
14 information nor would more probes in the interior of the landfill.<sup>207</sup> The gas probes were  
15 adequately spaced and at an appropriate depth.<sup>208</sup>
- 16 F.168 The closure plan includes a passive perimeter trench system that would convey landfill gases back  
17 into the interior of the landfill, where they would be vented.
- 18 F.169 Passive venting is appropriate. Additional pipe was added to convert the system from passive to  
19 active, if needed.<sup>209</sup>
- 20 F.170 The Health District determined that the closure plan adequately mitigated any risk of  
21 contamination and landfill gas release related to the closure plan.<sup>210</sup>

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<sup>201</sup> Passive collection and venting does not use fans or blowers to pull or push the landfill gases through the system. Active collection and venting uses fans or blowers.

<sup>202</sup> Testimony of Spillane.

<sup>203</sup> Testimony of Spillane.

<sup>204</sup> Testimony of Bourque.

<sup>205</sup> An active gas control system would use fans to pull gas out

<sup>206</sup> Testimony of Spillane.

<sup>207</sup> Testimony of Spillane.

<sup>208</sup> Testimony of Spillane.

<sup>209</sup> Testimony of Spillane.

<sup>210</sup> Ex. Q.32.

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1 F.171 The Homeowners Associations argue that P&GE needs to monitor landfill gasses in all areas  
2 previously disturbed, even if outside the new landfill perimeter.<sup>211</sup> The Homeowners Associations  
3 did not, however, demonstrate by a preponderance of evidence that the monitoring plan would  
4 probably result in significant adverse environmental impacts, only that such impacts were  
5 possible. The Homeowners Associations also did not demonstrate by a preponderance of  
6 evidence that the preliminary monitoring plan and the yet to be determined conditions of the  
7 closure permit do not adequately provide for the public health, safety, and welfare regarding the  
8 preliminary plat.

9 F.172 The Homeowners Associations also argues that gas probes 15 feet deep are needed at the  
10 perimeter outside of the cover membrane and criticize the design for not indicating whether the  
11 probes will be residential property or whether the membrane will stop sufficiently short of the  
12 residential lots to allow installation of the probes.<sup>212</sup> The Homeowners' Association does not  
13 prove by a preponderance of evidence that these claimed defects will probably cause significant  
14 adverse environmental impacts. The future closure permit will be conditioned on a final landfill  
15 gas monitoring program. The Hearing Examiner will not substitute his judgment for the  
16 responsible SEPA official without a clear and definite conviction that he made a mistake. In this  
17 case, the proposal at this stage is to demonstrate the feasibility of the closure design, not to nail  
18 down the engineering and construction details. Those details will be completed as part of the  
19 closure permit issuance process.

20 F.173 The Homeowners Associations criticize the lack of contingency plans in the record regarding  
21 landfill gases, specifically the failure to identify action levels and appropriate responses if the  
22 action levels are reached. The Homeowners Associations argue it is impossible to determine  
23 whether significant adverse environmental impacts are improbable without this information.<sup>213</sup>  
24 The Hearing Examiner credits the expert judgment of Mr. Shuri and the Health District that the  
25 current closure plan has sufficient information for the responsible SEPA official to determine  
26 whether the significant adverse environmental impacts are probable.

27 F.174 The gas mitigation plan adequately protects against significant adverse environmental impacts  
28 from landfill gases.

29 A. CONSTRUCTABILITY

30 F.175 The Homeowners Associations criticize the perimeter trench system because it is shown in the  
31 current plans as being 15-foot-deep and one foot wide, which they argue is not feasible or

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<sup>211</sup> Testimony of Spillane.

<sup>212</sup> Testimony of Spillane.

<sup>213</sup> Testimony of Spillane.

1 constructible.<sup>214</sup> Detailed means and methods of construction techniques have not yet been  
2 determined, nor are they normally provided at the SEPA threshold determination and preliminary  
3 subdivision stage. Those construction details are reviewed when construction drawings are  
4 submitted and subject matter experts from the regulatory agencies review them. There are  
5 construction methods that will result in a gravel filled trench fifteen feet deep and one foot wide.

6 F.176 The purpose of the current drawings is to demonstrate the feasibility of the system, not the final  
7 engineered details.<sup>215</sup> The Homeowners Associations' criticism is both premature and misplaced.

8 F.177 The perimeter gas collection trench is constructible, contrary to the Homeowners Associations'  
9 claim. The contractor will fabricate an appropriate trench box, which is standard procedure. The  
10 contractor will choose its means and methods of construction to achieve the finished product of a  
11 one foot wide by 15 feet deep gravel trench. The contractor could choose a two foot wide or four  
12 foot wide trench box to prevent sloughing during excavation, backfill the trench with gravel and  
13 the sides with fill, and then lift the trench box out. The Hearing Examiner finds a finished gravel  
14 trench 1 foot by 15 feet deep is constructible.

15 F.178 The Homeowners Associations also claim that wrapping the geomembrane liner onto the outside  
16 of the narrow deep perimeter trench is infeasible and not constructible. It is in feasible, possible,  
17 and constructible.<sup>216</sup>

18 B. GEOMEMBRANE

19 F.179 The landfill has been settling for 30 years. The Homeowners Associations worry that closure  
20 activities will result in additional settlement. The Homeowners Associations are less concerned  
21 about settlement under the detention ponds and more concerned about areas where material is  
22 excavated, replaced, and compacted.<sup>217</sup> The Homeowners Associations point out that compacting  
23 heterogeneous waste could result in settlement. Settlement can cause the geomembrane cap to  
24 tear and allow landfill gases to escape through the tears, rather than migrating to the perimeter  
25 trench system where they are collected, monitored, and conveyed to the vents.

26 F.180 The closure plan specifies the use of 40 mil linear low density polyethylene (LDPE) material  
27 instead of the originally proposed polyvinyl chloride (PVC) material. LDPE is more inert and  
28 substantially stronger; it can elongate several hundred percent without tearing or failing. This will

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<sup>214</sup> Ex. N.20, sheet 3, detail 1; Testimony of Spillane.

<sup>215</sup> Testimony of Penhallegon.

<sup>216</sup> Testimony of Shuri.

<sup>217</sup> Testimony of Bourque.

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1 minimize the risk of membrane failure due to differential subsidence.<sup>218</sup> A significant adverse  
2 environmental impact due to membrane failure is therefore unlikely.

3 F.181 The cover system liner is flexible and appellants do not argue that settlement will pose a danger  
4 to the integrity of the cover system liner. <sup>219</sup> The Homeowners Associations are concerned that  
5 settlement could cause ponding of stormwater that will affect functioning of the stormwater  
6 system.<sup>220</sup> The Homeowners Associations argue that settlement that causes ponding will require  
7 the future homeowners' association to fill the depressions and is yet another reason why the  
8 proposal is inadequate.

9 F.182 Compaction prevents future settlement. Material will be placed in lifts with each lift compacted  
10 by a vibratory roller.<sup>221</sup> Use of appropriately sized lifts and heavy, vibratory rollers to compact the  
11 landfill site (and dynamic compaction under the detention ponds) are standard, best construction  
12 practices.<sup>222</sup> A significant adverse environmental impact due to settlement is therefore unlikely.

13 F.183 Dynamic compaction is an effective construction technique to compact the area under the  
14 detention ponds. The ponds will be accessible for repair. Using 40 mil. LDPE geomembrane and  
15 double lining the ponds reasonably protects against leaks that could contact buried waste and  
16 contaminate the groundwater.<sup>223</sup>

17 15. DUST

18 F.184 Dust control protocols will be followed to minimize dust and potential airborne contaminants.<sup>224</sup>  
19 There was insufficient evidence to demonstrate that significant adverse environmental impacts  
20 will result from dust or potential airborne contaminants.

21 16. TRAFFIC/TRUCKS

22 F.185 If the excavated material is screened visually for contamination and handling, more construction  
23 truck traffic would be the most significant impact of the closure activities.<sup>225</sup>

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<sup>218</sup> Testimony of Shuri.

<sup>219</sup> Testimony of Bourque.

<sup>220</sup> Testimony of Bourque.

<sup>221</sup> Testimony of Penhallegon.

<sup>222</sup> Testimony of Shuri.

<sup>223</sup> Testimony of Shuri.

<sup>224</sup> Testimony of Penhallegon

<sup>225</sup> Testimony of Bourque.

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1 F.186 Construction truck traffic will comply with a haul route agreement with the county. Though  
2 construction truck traffic is an annoyance to a community, it will be temporary.

3 F.187 There was insufficient evidence that anticipated construction truck traffic will probably cause  
4 significant adverse environmental impacts or that there was a lack of reasonably sufficient  
5 information upon which the responsible SEPA official could make a threshold determination.

6 17. NOISE

7 F.188 The Homeowners Associations assert that the third party review of noise issues did not take into  
8 account the distance between the source of the noise and the person hearing the noise. The  
9 Homeowners Associations believe that if distance had been taken into account, the noise levels  
10 would be four times louder than that allowed by code.<sup>226</sup>

11 F.189 Noise levels four times louder than that allowed by county code would prompt complaints and  
12 regulatory action by the county. Nothing in the threshold determination or this decision  
13 authorize violation of the noise chapter of the county code.

14 F.190 Golder's third party review of the proposal indicates that the proposal can comply with the noise  
15 code.

16 F.191 There is insufficient evidence to determine that the proposal will probably cause significant  
17 adverse environmental noise impacts. There is sufficient information for the responsible SEPA  
18 official to make a threshold determination.

19 B. CONCLUSIONS OF LAW

20 C.1 The Hearing Examiner's jurisdiction includes the SEPA appeal, rezone, and preliminary plat. With  
21 respect to the SEPA appeal, the Homeowners Associations have the burden of proving that even  
22 as mitigated, the proposal will probably cause significant adverse environmental impacts. With  
23 respect to the preliminary plat, P&GE has the burden of proving by a preponderance of the  
24 evidence that its proposal makes adequate provision for the public's health, safety, and welfare. If  
25 the preliminary plat is approved, it will be conditioned upon obtaining a landfill closure permit  
26 from the jurisdictional agency, the Health District, and complying with it. The Health District has  
27 the technical expertise to determine whether and what type of cover system would be  
28 appropriate to this site and this proposal. The Hearing Examiner must assume the Health District  
29 will perform its duty.

30 C.2 To succeed on its SEPA challenge, the Homeowners Associations must demonstrate that probable  
31 adverse environment impacts will occur even if the Health District issues a permit and the  
32 permit's conditions are satisfied. Failure to comply with a regulation is not, of itself, sufficient to

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<sup>226</sup> Testimony of Jenkins.



1 demonstrate probable adverse environmental impacts. WAC 197-11-330(3)(e)(iii) directs the  
2 responsible SEPA official to take into a number of factors when considering the significance of an  
3 impact, including whether the proposal conflicts to a significant degree with local, state, or  
4 federal laws for the protection of the environment.

5 C.3 Not all landfill closures require an environmental impact statement. Each landfill is unique.<sup>227</sup>

6 C.4 SEPA does not consider beneficial impact of a project. The fact that the proposal is better for the  
7 environment than existing conditions does not obviate the requirement for SEPA analysis because  
8 a proposal may improve the environment yet still have significant adverse impacts.

9 C.5 Generally, the Homeowners Associations object to the SEPA threshold determination because  
10 they believe PDS had insufficient information to make the threshold determination. Further, the  
11 Homeowners Associations contend that the preliminary subdivision should not be approved  
12 because of insufficient information to find that adequate provision has been made for the public's  
13 health, safety, and welfare.

14 C.6 To succeed on its preliminary plat challenge, the Homeowners Associations must demonstrate  
15 that P&GE has not carried its burden of proving that the preliminary plat made adequate  
16 provision for the public's health, safety, and welfare even if the Health District grants a landfill  
17 closure permit and it is implemented. This is an extremely high hurdle, because the Homeowners  
18 Associations must necessarily argue that successful implementation of a landfill closure permit  
19 does not adequately provide for the public health, safety, and welfare. The Hearing Examiner  
20 must assume that compliance with the conditions of the future Health District closure permit  
21 adequately provide for the health, safety, and welfare. Otherwise, the Hearing Examiner sets  
22 himself up as the arbiter of the Health District's decisions and he has no jurisdiction over such  
23 decisions.

24 C.7 Compliance with county development regulations *per se* adequately provides for the public's  
25 health, safety, and welfare. The Hearing Examiner lacks jurisdiction to consider a challenge to the  
26 county's development regulations. If the Hearing Examiner were to conclude that the proposal  
27 complies with the development regulations yet the proposal does not adequately provide for the  
28 public's health, safety, and welfare, such conclusion would necessarily imply that the  
29 development regulations do not adequately provide for the public's health, safety, and welfare.  
30 The Hearing Examiner does not have that authority and must assume that compliance with  
31 legislatively approved development regulations adequately protect the public.

32 C.8 The preliminary plat must demonstrate the proposed project is capable of complying with the  
33 county's development regulations. Details await final engineering and construction drawings  
34 which will be reviewed during the land disturbing activity permit and building permit process.

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<sup>227</sup> Testimony of Spillane.

- 1 C.9 As conditioned and mitigated, there is not a reasonable probability of more than a moderate  
2 effect on the quality of the environment as a result of the landfill closure and subsequent  
3 development of the subdivision.
- 4 C.10 The preliminary plat application vested on February 17, 2010 to zoning and other land use  
5 controls when P&GE submitted a complete application. RCW 58.17.033(1) (1987).
- 6 C.11 Pursuant to the county's 2013 General Stormwater NPDES permit, P&GE must comply with the  
7 stormwater regulations in effect on February 17, 2010. *Snohomish County v. Pollution Control*  
8 *Hearings Board*, 187 Wn.2d 346, 386 P.3d 1064 (2016) does not change the county's obligations  
9 pursuant to the 2013 General Stormwater NPDES permit. *Snohomish County v. Pollution Control*  
10 *Hearings Board* stands for the proposition that stormwater regulations are not zoning or other  
11 land use controls and therefore RCW 58.17.033(1) (1987) does not determine which stormwater  
12 regulations apply to a project. The county does not rely on the statute for application of  
13 stormwater regulations, but relies on its General Stormwater NPDES permit to determine which  
14 edition of stormwater regulations to apply.
- 15 C.12 The Hearing Examiner does not have jurisdiction to determine the adequacy or appropriateness  
16 of the closure plan. The Hearing Examiner's jurisdiction is limited to determining whether to  
17 uphold appellants' appeal of the SEPA threshold determination and whether the proposed  
18 preliminary subdivision complies with county code.
- 19 C.13 The Homeowners Associations argue that construction traffic was not adequately considered  
20 either in the SEPA threshold determination or preliminary subdivision review. More specifically,  
21 they contend construction truck traffic will degrade 108<sup>th</sup> St. SE and the slow-moving construction  
22 vehicles will affect traffic.<sup>228</sup> As to the former, wear and tear on public streets is neither a factor in  
23 SEPA threshold determinations nor in preliminary subdivision approvals. Nevertheless, P&GE will  
24 enter into a haul route agreement with Public Works, which will take into account potential  
25 extraordinary wear and tear.<sup>229</sup> Slow moving construction traffic is transient and is extremely  
26 unlikely to reduce the relevant arterial unit (which the county uses to measure concurrency) to  
27 inadequate level of service F.
- 28 C.14 The Homeowners Associations question the stability of slopes in an earthquake.<sup>230</sup> Geotechnical  
29 review demonstrate that slope failure in a seismic event is unlikely and that the slopes will be  
30 built to current building codes. There is no evidence that failure of the slope in an earthquake is

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<sup>228</sup> Testimony of Jenkins.

<sup>229</sup> "Haul route (type B4 permit) – commercial hauling activities that are likely to cause extraordinary damage or accelerated deterioration to county roads, including by way of example, construction . . ." SCC 13.40.020(4) (2012). "The [land disturbing activity] permit application shall contain the following . . . when applicable: . . . (9) Haul route agreements related to the land disturbing activity." SCC 30.63B.180(9) (2016).

<sup>230</sup> Testimony of Bourque.

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1 probable. Therefore, the Hearing Examiner must defer to the judgment of the responsible SEPA  
2 official because he has no basis for a firm and definite conviction that a mistake was made. As to  
3 the public's health, safety, and welfare regarding the preliminary plat, satisfaction of the county's  
4 development regulations adequately provides for the public's health, safety, and welfare.<sup>231</sup>

5 C.15 There are three conceptual approaches for dealing with the steep northeast slope: (1) recap it; (2)  
6 remove the buried waste; and (3) leave it alone. The Homeowners Associations argue recapping it  
7 creates more problems than it solves, because of, *inter alia*, veneer stability, erosion,  
8 constructability, and maintenance issues.<sup>232</sup> Removing the waste eliminates the possibility of  
9 groundwater contamination, but this option could still have stability issues.

10 C.16 The Homeowners Associations argue that the threshold determination did not consider the  
11 potential environmental impacts of leaving the northeast corner alone.<sup>233</sup> Potential impacts of  
12 leaving the slope alone were considered.<sup>234</sup> The Hearing Examiner does not have a firm and  
13 definite conviction that a mistake was made.

14 C.17 The responsible SEPA official consulted with and relied upon the Health District regarding the  
15 potential environmental impacts of landfill closure activities. WAC 197-11-550.

16 C.18 Post closure financial assurance falls within the Health District's jurisdiction as a condition of the  
17 closure permit. The Homeowners Associations contend that insufficient financial assurance or  
18 capacity by the responsible future homeowners association could result in a significant adverse  
19 environmental impact. This assumes, however, a series of unlikely and unfortunate events.  
20 Probabilities are multiplicative, not additive. The more required causation events, the less likely  
21 the significant adverse environmental impact. The Homeowners Associations did not demonstrate  
22 by a preponderance of evidence that the closure plan, as mitigated, will probably result in one or  
23 more significant adverse environmental impacts. The Homeowners Associations consistently  
24 argue significant adverse impacts are possible, but they do not provide sufficient evidence to  
25 demonstrate significant adverse impacts are probable.

26 C.19 The Health District's jurisdiction to determine the post-closure financial assurance adequately  
27 provides for the public's health, safety, and welfare.

28 C.20 As proposed, the landfill closure plan and the development proposal will not likely cause any  
29 significant adverse environmental impacts for groundwater or storm water. Storm water is not  
30 currently prevented from infiltrating to the waste on the site. The proposed cover system will

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<sup>231</sup> The Hearing Examiner lacks jurisdiction to consider challenges to the adequacy of county code.

<sup>232</sup> Testimony of Bourque.

<sup>233</sup> Testimony of Bourque.

<sup>234</sup> See, e.g., review by Miller.

1 minimize or eliminate infiltration of water into the waste and perimeter controls will reduce the  
2 potential for water from offsite contacting the waste.<sup>235</sup>

3 C.21 As proposed the landfill closure plan will not likely cause any significant adverse environmental  
4 impacts relating to landfill gas emissions. The landfill currently does not control gas emissions.  
5 The landfill closure plan will cover the landfill to prevent direct release and direct gas emissions to  
6 collection trenches where it will be monitored, collected, and vented—a significant improvement  
7 over existing conditions.<sup>236</sup>

8 C.22 The responsible SEPA official, the Health District, and experts on both sides had adequate  
9 information to evaluate whether leaving the northeast slope alone would likely cause any  
10 significant adverse environmental impacts. Leaving the northeast slope undisturbed while  
11 implementing the new closure plan and residential development would not likely cause any  
12 significant adverse change in environmental conditions compared to current conditions.<sup>237</sup>

13 C.23 The current closure plan is adequate for SEPA threshold determination.

14 C.24 To the extent the Homeowners Associations allege the new closure plan does not satisfy the  
15 Washington Administrative Code regulations for landfill closures, the Hearing Examiner considers  
16 those concerns solely for the purpose of deciding the appeal of the SEPA threshold determination  
17 and does not opine whether the new closure plan satisfies the regulations. Even if the closure  
18 plan does not completely satisfy all regulations, the alleged deficiencies do not demonstrate by a  
19 preponderance of the evidence that significant adverse environmental impacts are likely. For  
20 example, the closure plan does not finally establish the financial assurances element. That  
21 component will be established if, as, and when the Health District grants the closure permit. The  
22 Homeowners Associations alleged the financial assurances may not be sufficient to remedy any  
23 problems that occur after closure. The hypothetical is not probable, however. The legal test is  
24 whether significant adverse environmental impacts are **probable**, not whether they are possible.  
25 The attenuated set of circumstances required for significant adverse environmental impacts to  
26 occur because of inadequate financial assurances is improbable.

27 C.25 The draft excavation inspection and testing regimen and the Health District's final action  
28 regarding the details of such regimen adequately provide for the public's health, safety, and  
29 welfare. To hold otherwise would be to decide prematurely that the jurisdictional agency with the  
30 subject matter expertise charged with enforcing state regulations would not adequately protect  
31 the public. For SEPA, the type of waste discovered on site, the draft testing regimen, and the  
32 oversight by the Health District demonstrate the improbability of any significant adverse

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<sup>235</sup> Testimony of Shuri.

<sup>236</sup> Testimony of Shuri.

<sup>237</sup> Testimony of Shuri.

1 environmental impact. The Hearing Examiner cannot say on this record that a significant adverse  
2 environmental impact is likely despite the closure plan and the future closure permit. The  
3 possibilities identified by the Homeowners Associations do not equal probabilities and probability  
4 is required to reverse the SEPA threshold determination.

5 C.26 The Homeowners Associations object to the post-closure monitoring plan, claiming it does not  
6 adequately identify its purpose, data quality objectives, verification and qualification protocols.<sup>238</sup>  
7 This issue is not within the Hearing Examiner's jurisdiction because it relates to the adequacy of a  
8 future closure permit and its conditions. The issues before the Hearing Examiner are only whether  
9 the responsible SEPA was clearly mistaken in determining that significant adverse environmental  
10 impacts were not likely if the mitigation measures were implemented and whether the  
11 preliminary plat complies with the county's development regulations, which regulations  
12 adequately provide for the public's health, safety, and welfare.

13 C.27 The Homeowners Associations contend that residences must be set back 100 feet from the closed  
14 landfill, but the drawings show lots closer than that to the edge of the landfill cover. The  
15 Homeowners Associations rely on WAC 173-350-400:

16 Limited purpose landfills shall be designed to provide a setback of at least one hundred  
17 feet between the active area and the property boundary.

18 WAC 173-350-400(3)(i) (2017).

19 C.28 P&GE argues that the WAC requirement of a 100 foot setback applies to the design of a new  
20 landfill, pointing out that (3)(i) is part of section (3), which begins "Limited Purpose Landfill-Design  
21 Standards" In addition, P&GE contends the design standard applies only to new, active landfills  
22 and not a properly closed landfill.

23 C.29 DoE agreed that the 100 foot setback is a design requirement, not a closure requirement, and  
24 that P&GE is closing the landfill. DOE's most recent comment cautioned that P&GE's "closure is  
25 also a design" because of the excavation and reburying of waste and new cover system, which  
26 "are not typical elements of a landfill closure." DoE then "limit[ed] our comments to the landfill  
27 closure" and pointed out that the Health District and PDS are responsible for residential  
28 development setbacks.<sup>239</sup>

29 C.30 The Health District does not believe the 100 foot setback rule applies in this situation and that  
30 DoE did not require its application.<sup>240</sup>

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<sup>238</sup> Testimony of Jenkins.

<sup>239</sup> Testimony of Plemel; Ex. Q.29a. The setback is discussed again at page 52 below.

<sup>240</sup> Testimony of Plemel; Ex. Q.29a.

- 1 C.31 State regulations do not explicitly address setback requirements for closed landfills.<sup>241</sup> DoE  
 2 regulations regarding setback is for "design", which P&GE interprets as the distance to be  
 3 designed from an active landfill while the Homeowners Associations argue that the WAC contains  
 4 no such limitation or qualification.<sup>242</sup>
- 5 C.32 The Homeowners Associations point to a previous county decision regarding the *Hyde Park*  
 6 project in 1996,<sup>243</sup> in which a 48 acre parcel containing a 1.5 acre landfill was developed with 28  
 7 lots. Conceding the regulatory environment was different, the Homeowners Associations point  
 8 out that then the Hearing Examiner required structures to be set back at least 100 feet from the  
 9 inactive landfill and there were six monitoring wells.<sup>244</sup> The Homeowners Associations argue this  
 10 precedent should be followed here.
- 11 C.33 Hearing Examiner decisions are not precedential. Findings of fact and conclusions of law of  
 12 superior courts, "are not legal authority and have no precedential value." *In re Estate of Jones*,  
 13 170 Wn. App. 594, 605, 287 P.3d 610, 615 (2012); *Bauman v. Turpen*, 139 Wn.App. 78, 87, 160  
 14 P.3d 1050 (2007). If constitutionally created superior court decisions are not legal authority and  
 15 have no precedential value, then administrative law hearing officer decisions certainly cannot be  
 16 given greater dignity and held to be precedent. The lack of precedential value does not, however,  
 17 mean the reasoning of the prior decision was not sound. The reasoning of the prior decision may  
 18 be considered to the extent it is persuasive.
- 19 C.34 *Hyde Park* does not provide persuasive reasoning to apply the same setback here. The decision  
 20 does not contain sufficient detail to make a careful comparison.
- 21 C.35 For SEPA purposes, the responsible SEPA official accepted the Health District's position that the  
 22 100 foot buffer required relates to new or active landfills, not closed landfills of this type.<sup>245</sup> The  
 23 responsible SEPA official has the legal right to rely on the Health District's interpretation of  
 24 regulations within its jurisdiction. RCW 43.21C.240(5) (2003). The Hearing Examiner also accepts  
 25 and relies upon the Health District's interpretation of the buffer requirement, but does not  
 26 otherwise express an opinion or legal conclusion on the propriety of the Health District's  
 27 interpretation.
- 28 C.36 The responsible SEPA official had reasonably sufficient information to determine whether the  
 29 proposal as mitigated would probably cause significant adverse environmental impacts to air  
 30 quality and noise. The Homeowners Associations did not prove by a preponderance of evidence

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<sup>241</sup> Ex. Q.29a. DoE has standing to appeal the conditions of any permit closure issued by the Health District.

<sup>242</sup> Testimony of Jenkins.

<sup>243</sup> Ex. N.26

<sup>244</sup> Testimony of Jenkins.

<sup>245</sup> Testimony of MacCready.

1 that the proposal as mitigated would probably cause significant adverse environmental impacts to  
2 air quality and noise.

3 C.37 There was insufficient evidence to demonstrate any probable significant adverse impacts related  
4 to the minimum average lot size of the proposal and the size of the existing neighborhood lots.  
5 Further, the comprehensive plan provides for zoning, including lot sizes, and any challenge to  
6 allowing lot size averaging should either have been made during the SEPA review of the  
7 comprehensive plan update or adoption of the lot size averaging ordinance.

8 C.38 There was insufficient evidence to demonstrate any probable significant adverse impacts related  
9 to wildlife and aesthetics.

#### 10 IV. REZONE

11 The county's comprehensive plan contemplates site specific rezones requested by property owners,  
12 provided that the requested zone is consistent with the comprehensive plan. "Property owners may  
13 individually request re-zones to higher urban residential densities consistent with the GPP policies and the  
14 GPP Future Land Use Map."<sup>246</sup> The Hearing Examiner may approve a rezone when the following criteria are  
15 met:

- 16 1. The proposal is consistent with the comprehensive plan;
- 17 2. The proposal bears a substantial relationship to the public health, safety, and welfare;
- 18 3. The proposal would not increase the allowed density of residential development on any site  
19 where any significant trees other than hazardous trees were removed after January 7, 2009,  
20 and within six years prior to the date of the submission of the application, pursuant to SCC  
21 30.25.016(3); and
- 22 4. Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC  
23 are met.

24 SCC 30.42A.100 (2009). Changed circumstances is a fifth, common law criterion. Some published appellate  
25 decisions require a demonstration of changed circumstances justifying the rezone and some do not.<sup>247</sup>  
26 Changed circumstances will therefore be considered as a fifth criterion. The proposed rezone satisfies all of  
27 these criteria.

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<sup>246</sup> General Policy Plan, Land Use, p. LU-84

<sup>247</sup> See note 261 below.

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1            **A. CONSISTENCY WITH COMPREHENSIVE PLAN**

2            **1. THE PROPOSED REZONE IS AN IMPLEMENTING USE FOR THE ZONE**

3            The comprehensive plan contemplates R-9,600 zoning for properties such as the one at issue here. The  
4            future land use map of the comprehensive plan designates the area of the subject property for Urban Low  
5            Density Residential (ULDR) use. The subject property lies in a single family residential zone.<sup>248</sup> The proposed  
6            zoning, R-9,600, is an authorized implementing use for the zone.<sup>249</sup> R-9,600 zoning is the least dense, least  
7            intensive use of the implementing zones authorized by the comprehensive plan.

8            **2. THE PROPOSED REZONE IS CONSISTENT WITH LAND USE POLICIES**

9            Whether the requested zone is an implementing use for the identified land use zone is not dispositive. The  
10           requested R-9,600 zone must also be consistent with the policies underlying the land use designation.

11           Urban Growth Areas (UGAs) were established to, “accommodate the majority of the county’s projected  
12           population and employment growth over the next 20 years.”<sup>250</sup> To achieve this, UGA residential densities  
13           must increase by concentrating and intensifying development in appropriate locations that have existing or  
14           planned public facility and service capabilities for such growth.<sup>251</sup> This site fronts on a constructed public  
15           road and development will be served by public water and sewer.

16           Further, residential development within a UGA should have a minimum density of four to six dwelling units  
17           per acre.<sup>252</sup> The proposed rezone achieves the desired density range.

18           The existing zoning, Rural Conservation, is no longer a primary implementing zone.<sup>253</sup> A Rural Conservation  
19           designation does not fulfill the comprehensive plan’s vision for use of the site, which is urban housing.<sup>254</sup>  
20           The site is no longer rural, but within a designated urban growth area.

21           The county’s comprehensive plan also has a policy goal of ensuring that all county residents have the  
22           opportunity to obtain safe, sanitary, and affordable housing.<sup>255</sup> To achieve this goal, the county must

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<sup>248</sup> Urban zones consist of residential, commercial, and industrial zoning classifications in the urban growth areas. SCC 30.21.025(1)(a)(ii). “Single family residential zones consist of the following: (i) Residential 7,200 sq. ft. (R-7,200); (ii) Residential 8,400 sq. ft. (R-8,400); and (iii) Residential 9,600 sq. ft. (R-9,600).” *Id.* at 1(a).

<sup>249</sup> *Id.*; GPP LU-90.

<sup>250</sup> General Policy Plan (GPP) Land Use Objective LU 1.A.

<sup>251</sup> GPP Land Use Objective LU 2.A; GPP Population and Employment Objective PE 1.A and 1.A.2.

<sup>252</sup> GPP Land Use Policies 2.A.1. *See also* Objective LU-15, Goal LU-2.

<sup>253</sup> SCC 30.21.025(4) (2013).

<sup>254</sup> BPP, LU-84, “These [urban residential] designations encompass residential lands within the unincorporated UGA and are intend to provide for urban housing opportunities.”

<sup>255</sup> GPP Housing Goal HO 1.

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1 ensure that a broad range of housing types is available in urban areas.<sup>256</sup> The policies implementing this  
2 goal and associated objectives include, “establishing a mix of densities in residentially zoned land that is  
3 served with adequate infrastructure based on the public’s housing preferences” and the encouragement of  
4 “expeditious and efficient infill development in UGAs.”<sup>257</sup> The county also has a policy of encouraging, “the  
5 integration of a variety of housing types and densities in residential neighborhoods.”<sup>258</sup>

6 The proposed rezone is consistent with the land use policies described by the comprehensive plan.

### 7 3. OTHER RELEVANT FACTORS

8 Finally, if any other relevant factors outside of the Comprehensive Plan policies are apparent from the  
9 application documents or otherwise known to PDS, they must be identified and specified whether any of  
10 these other factors relate to the rezone decision or should be considered at the project level with the  
11 specific development proposal being made.<sup>259</sup> No such factors were identified.

12 The Hearing Examiner finds the proposed rezone is consistent with the county’s Comprehensive Plan  
13 policies.

### 14 B. RELATIONSHIP TO THE PUBLIC HEALTH, SAFETY, AND WELFARE

15 The proposed rezone bears a substantial relationship the health, safety, and welfare of the public.<sup>260</sup> As  
16 noted above, an adequate supply of varied types of affordable housing is critical to the health and vitality of  
17 a community. Additionally, infilling and higher density helps the county achieve its growth management  
18 goals. Finally, new construction that complies with current building codes is safer than structures built  
19 decades ago, enhancing the safety of people residing in the dwelling units. For these reasons, the Hearing  
20 Examiner finds the proposed rezone bears a substantial relationship to the health, safety, and welfare of  
21 the public.

### 22 C. TREES

23 No significant trees, other than hazardous trees, were removed from the site after January 7, 2009 and  
24 within six years prior to the date of submission of the land use application.

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<sup>256</sup> GPP Housing Objective HO 1.B.

<sup>257</sup> GPP Housing Policy 1.D.1 and 1.D.3.

<sup>258</sup> PP Housing Policies 2.B.1 (emphasis added).

<sup>259</sup> Snohomish County Council Motion 07-447 (August 8, 2007).

<sup>260</sup> The contested issue of whether the preliminary subdivision adequately provides for the health, safety, and welfare of the public is a different issue and discussed below beginning at page 56.

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

2 The criterion does not apply.

3 E. CHANGE IN CIRCUMSTANCES

4 The Hearing Examiner finds the proposed rezone implements the comprehensive plan and changed  
5 conditions justify the rezone.<sup>261</sup> The subject site was zoned Rural Conservation, decades ago, before the  
6 Growth Management Act and before the area was designated as an urban growth area. It was added to the  
7 adjacent urban growth area sometime between 1996 and the present,<sup>262</sup> meaning that the area changed  
8 from its rural designation of .4 to 1 dwelling per acre in the 1977 subarea plan to more intensive urban  
9 residential use in order to accommodate the exploding population of Snohomish County.<sup>263</sup> A cursory  
10 review of the aerial photographs of the area demonstrate the dramatic and substantial change in the area  
11 from rural to more intense, urban residential densities.<sup>264</sup>

12 The Hearing Examiner finds that circumstances changed since the property was zoned Rural Conservation  
13 long ago and concludes that the changed circumstances justify a rezone consistent with the county's  
14 comprehensive plan. *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 847, 899 P.2d 1290, 1293 (1995); *Bassani*  
15 *v. Board of County Commissioners for Yakima County*, 70 Wn. App. 389, 853 P.2d 945 (1993).

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<sup>261</sup> Some decisions require a demonstration of changed circumstances and some do not. *Compare Phoenix Dev., Inc. v. City of Woodinville*, 171 Wn. 2d 820, 834, 256 P.3d 1150, 1156-57 (2011), *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn. 2d 861, 874-75, 947 P.2d 1208 (1997), and *Parkridge v. City of Seattle*, 89 Wn. 2d 454, 462, 573 P.2d 359 (1978) with *Save Our Rural Environment v. Snohomish County*, 99 Wn. 2d 363, 370-71, 662 P.2d 816 (1983); *Henderson v. Kittitas County*, 124 Wn. App. 747, 754, 100 P.3d 842, 845 (2004); *Ahmann-Yamane, LLC v. Tabler*, 105 Wn. App. 103, 111, 19 P.3d 436, 441 (2001) (emphasis added) (overruled in part regarding standard of review by *Henderson v. Kittitas County*, 124 Wn. App. 747); *Bjarnson v. Kitsap County*, 78 Wn. App. 840, 846, 899 P.2d 1290 (1995). See *Woods v. Kittitas County*, 162 Wn. 2d 597, 623, 174 P.3d 25, 39 (2007) (rezone may be approved if the applicant demonstrates: (a) changed circumstances; (b) need for additional property in the zone; or (c) the proposed zone is appropriate for reasonable development of the property).

<sup>262</sup> The site was added to the adjacent urban growth area between 1996 and now. See Ex. N.26 (*In Re MMS, Inc.*, 95-107424 (1996)).

<sup>263</sup> It was designated rural by a subarea plan in 1977. *Id.* The area is clearly no longer rural and it is no longer intended to have a rural density of .4 to 1 dwelling unit per acre, as it did in the late 1970's. The site was added to the abutting urban growth area between 1996 and now, although the date it was added is not easily discernible from the record. The change from rural to an area designated to accept urban growth is a change in circumstance.

<sup>264</sup> *Cf.* Exhibits M.21 (A-C), M.22 (A-D), and M.23.

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1 **V. SUBDIVISION**

2 **A. ENVIRONMENTAL**

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

4 The site contains two Category III wetlands, streams, and steep slopes. The stream on the west side will be  
5 relocated, which will require an HPA permit. No protected wildlife species requiring protection exist on the  
6 site. As discussed above, wetlands marked as A were appropriately delineated. P&GE does not propose to  
7 build on any landslide hazard area and geotechnical review of the steep slopes showed they are stable.  
8 Eighty foot wide high-intensity buffers are required to protect the wetlands and streams. Approval will be  
9 conditioned on P&GE quantifying mitigation impacts based on the 80 foot wide high-intensity buffer. Any  
10 needed increase in the size of the buffer will be added on site in the area labeled as "Non-CAPA for possible  
11 future development." Approval will also be conditioned on obtaining mitigation credits for unavoidable  
12 wetland buffer loss due to the 80 foot wide high-intensity buffer. P&GE shall submit a final mitigation plan  
13 for PDS' approval, which plan shall contain construction level plan documents, a planting plan with detailed  
14 planting schedule, quantification of impacts based on 80 foot wide high-intensity buffers, and a  
15 demonstration that on-site mitigation and mitigation credits satisfy the mitigation ratios of chap. 30.62A  
16 SCC. Proof of purchase of mitigation credits shall be a condition precedent to PDS' approval of the  
17 mitigation Plan.

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

19 Drainage and grading were extensively discussed in the SEPA analysis above.<sup>265</sup> Approximately 7.2 acres of  
20 new impervious surface (driveways, roofs, sidewalks, trails, and road) are proposed.<sup>266</sup> A stormwater  
21 detention facility will be built in the landfill area which will discharge to the piped conveyance system on  
22 the north side of the property. Water quality treatment will be provided by dead storage in the new  
23 detention pond. The proposed project vested to the 1992 drainage manual.<sup>267</sup>

24 **B. LOT SIZE AVERAGING (SCC 30.23.210)**

25 The proposed subdivision complies with the lot size averaging requirements of SCC 30.23.210. The  
26 minimum lot size of the R-9,600 zone is satisfied where, as here, the sum of the area of the lots and open  
27 space divided by the number of lots meets or exceeds the minimum lot area requirement.<sup>268</sup> No lot is  
28 smaller than 3,000 square feet and all lots comply with minimum width and setback requirements of

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<sup>265</sup> See pages 13 to 24

<sup>266</sup> Exhibits Q.3 and Q.6.

<sup>267</sup> See page 38 *supra*.

<sup>268</sup> 403,956 sq. ft. (building lots) + 145,510 sq. ft. (open space) + 1,034,866 (critical areas and buffers) = 1,438,822 total sq. ft. ÷ 97 (lots) = 14,833 sq. ft., exceeding the minimum of 9,600 square feet per lot.

1 county code. Although the Homeowners Associations believe that the county code's setback requirement  
2 does not satisfy the minimum required setback for residences from a landfill, the Health District does not  
3 apply the 100 foot setback requirement of the design of a landfill to this situation. The Hearing Examiner  
4 relies on the Health District's view that the design adequately protects the public's health, safety, and  
5 welfare. As the jurisdictional agency, the Health District has expertise in the subject matter of landfills. The  
6 county has neither jurisdiction over landfills nor expertise with landfills.<sup>269</sup>

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

8 **1. AREA TRANSPORTATION**

9 **A. CONCURRENCY DETERMINATION (SCC 30.66B.120)**

10 County ordinances prescribe the measures and tests which a development must meet in order to proceed,  
11 and this project meets those measures and tests. The project must be approved if it does not affect a  
12 county arterial unit in arrears or cause a county arterial to go into arrears.<sup>270</sup>

13 The level of service of arterial unit 202 in TSA D was in arrears as of February 17, 2010. Peak-hour trip  
14 distribution analysis indicates that the proposed development will not add three or more directional peak-  
15 hour trips to arterial unit 202.

16 The proposed development is expected to generate fifty or more peak hour trips.<sup>271</sup> Therefore, the project  
17 was analyzed to determine whether forecasted levels of service will cause any arterial unit to go into  
18 arrears, which would prohibit a finding of concurrency. Forecasts of levels of service that included this  
19 proposed project and other proposed projects in the pipeline did not identify any arterial unit that would  
20 go into arrears or an arterial unit that would be affected by three or more directional trips from this  
21 development. The County Engineer determined the project was concurrent as of April 28, 2010.

22 The County Engineer's concurrency determination expired six years later on April 28, 2016 -- after the  
23 proposal remanded, but before rehearing after remand. The Hearing Examiner found no evidence in the  
24 record of a new concurrency determination. Therefore, a condition of approval will be a full reinvestigation  
25 of the traffic impacts of the proposed project before any building permit is issued.<sup>272</sup>

26 **B. INADEQUATE ROAD CONDITIONS (IRC) (SCC 30.66B.210)**

27 Irrespective of the existing level of service, a development which adds at least three evening peak hour  
28 trips to a place in the road system that has an Inadequate Road Condition (IRC) must eliminate the IRC in

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<sup>269</sup> See discussion of setbacks in the SEPA context at page 46 above.

<sup>270</sup> SCC 30.66B.120(1) (2003). The proposed development is deemed concurrent as of April 28, 2010.

<sup>271</sup> 72.75 AM peak-hour trips and 97.97 PM peak-hour trips.

<sup>272</sup> SCC 30.66B.055(2) (2016).

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1 order to be approved. The development will not affect any IRCs in TSA D with three or more evening peak  
2 hour trips, nor will it create an IRC. Therefore, it is expected that mitigation will not be required with  
3 respect to IRC and no restrictions to building permit issuance or certificate of occupancy/final inspection  
4 will be imposed under this section of chapter 30.66B SCC.

5 C. IMPACT FEES

6 *i. County*

7 The proposed development must mitigate its impact upon the future capacity of the Snohomish County  
8 road system by paying a road system impact fee. The road system impact fee will be the product of the  
9 average daily trips (ADT)<sup>273</sup> resulting from multiplication of average daily trips (ADT) generated by the  
10 development by the per trip amount for TSA D.

**Road System Impact Fee Calculation**

1. Average Daily Trips (97 SFRs <sup>274</sup> x 9.57 ADT/SFR)	928.29
2. TSA D amount per ADT:	\$267
<hr/>	
3. Road system impact fee for this development (Line 1 x Line 2):	\$247,853.43
Impact Fee per unit: (Line 5 divided by 112 dwellings)	\$2,555.19

11 *ii. Other Jurisdictions*

12 *a. State Highway Impacts (former SCC 30.66B.710)*

13 When a development's road system affects identified projects for a state highway, mitigation requirements  
14 will be established using the County's SEPA authority consistent with the terms of the interlocal agreement  
15 between the County and the Washington State Department of Transportation (WSDOT). This is consistent  
16 with the County's SEPA policy<sup>275</sup> through which the county designates and adopts by reference the formally  
17 designated SEPA policies of other affected agencies for the exercise of the County's SEPA authority. P&GE  
18 must pay \$33,418.44 (\$344.52/lot) for the impact of this project on state highways.<sup>276</sup>

<sup>273</sup> ADT is calculated using the 9th edition of the Institute of Traffic Engineers' Trip Generation Report.

<sup>274</sup> Single Family Residence (SFR).

<sup>275</sup> SCC 30.61.230(9) (2012).

<sup>276</sup> \$36.00/ADT x 97 lots x 9.57 ADT/lot = \$33,418.44.

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1 *b. Cities (former SCC 30.66B.720)*

2 Traffic mitigation fees to cities will not be required because traffic from the development will not affect any  
3 city that has an interlocal agreement with the county.

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

5 Transportation demand management (TDM) is a strategy for reducing vehicular travel demand, especially  
6 by single occupant vehicles during commuter peak hours. TDM offers a means of increasing the ability of  
7 transportation facilities and services to accommodate greater travel demand without making expensive  
8 capital improvements. New developments like this within an urban growth area must comply with county  
9 code's TDM requirements. P&GE must either incorporate features into its design that have the potential for  
10 removing five percent of the development's evening peak hour trips from the road system or pay a fee.<sup>277</sup>  
11 P&GE offered to pay \$31,840.25,<sup>278</sup> which is acceptable. P&GE will therefore receive a 5% credit toward the  
12 ADT calculated to be generated from this project. Approval will be conditioned on payment.

13 2. PROJECT SITE

14 A. RIGHT OF WAY

15 108<sup>th</sup> St. SE is not an arterial and requires 30 feet of right of way on each side of the center line. Thirty feet  
16 or more currently exist on the project side of the center line. The preliminary plat adequately shows this.  
17 P&GE will not need to dedicate any additional right of way.

18 B. ROAD SYSTEM, ACCESS, AND CIRCULATION

19 P&GE will access the public road system by 108<sup>th</sup> St. SE. P&GE will construct a new public road which will  
20 provide access to all lots either directly, from a new private road, or from two shared private driveways.

21 C. DEVIATION

22 EDDS §3.01(B)(5) calls for subdivisions that generate at least 250 average daily vehicle trips to have two  
23 connections to the county road system. P&GE requested a deviation from this standard to allow one  
24 connection. Pursuant to his authority and the criteria in EDDS §1-05, the County Engineer granted the  
25 deviation on March 31, 2010.<sup>279</sup>

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<sup>277</sup> SCC 30.66B.625(1) (2010).

<sup>278</sup> 5% x 97.97 new PM peak hour trips x \$6,500 = \$31,840.25 (\$328.25/lot).

<sup>279</sup> Ex. G.2.

1 D. FRONTAGE IMPROVEMENTS (SCC 30.66B.410)

2 Full urban frontage improvements are required where the project fronts on 108<sup>th</sup> St. SE.<sup>280</sup> Frontage  
3 improvements currently exist on both sides of 108<sup>th</sup> St. SE. Approval will be conditioned upon P&GE's  
4 construction of frontage improvements that join to and are consistent with adjacent frontage  
5 improvements. P&GE shall not receive credit against the transportation impact fee for these improvements  
6 because 108<sup>th</sup> St. SE is not in the impact fee cast basis.<sup>281</sup>

7 E. BICYCLE

8 Bicycle facilities will not be required because the project does not front on any part of the bicycle system  
9 described by the county's Bicycle Facility System Map.

10 D. MITIGATION

11 1. PARK AND RECREATION IMPACT MITIGATION (CHAPTER 30.66A SCC)

12 Prior to building permit issuance for each unit, P&GE must pay \$1,244.49 for each new single family  
13 residential unit as acceptable mitigation for park and recreation impacts.<sup>282</sup>

14 2. SCHOOL IMPACT MITIGATION (CHAPTER 30.66C SCC)

15 Approval of the development will be conditioned upon the payment of school impact fees.<sup>283</sup> The amount  
16 will be determined according to the Base Fee Schedule in effect for the Snohomish School District at the  
17 time of building permit application and collected at the time of building permit issuance for the proposed  
18 new units. Credit shall be given for Lot 1.

19 E. PUBLIC SAFETY AND HEALTH

20 1. FIRE

21 The Fire Marshal's Office reviewed the proposed development. With the suggested conditions, the  
22 proposed development can comply with the requirements of chap. SCC 30.53.

23 Approval of the preliminary subdivision will be conditioned on the following:

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<sup>280</sup> Snohomish County Department of Public Works Rule 4222.020(1). *N.B.* The Hearing Examiner does not have jurisdiction over decisions to approve deviations from EDDS. EDDS §1-05.

<sup>281</sup> Transportation Needs Report, App. D.

<sup>282</sup> SCC 30.66A.020 (2010). The project site lies in the Nakeeta Beach park service area. SCC 30.66A.040(1) (2005).

<sup>283</sup> SCC 30.66C.100 (2013).

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- 1 A. Fire flow and fire hydrants shall be provided in accordance with SCC 30.53A.514 through 30.53A. 520.  
2 Fire hydrants serving single family dwellings shall have a maximum lateral spacing of 600 feet with no  
3 lot or parcel in excess of 300 feet from a hydrant. Hydrant locations shall be depicted on the face of  
4 the plat, and locations for new hydrants shall be approved by the Fire Marshal. The following  
5 requirements shall apply to the installation of any required hydrant:
- 6 1. Four (4) inch Storz type steamer port fittings shall be provided on new hydrants.
  - 7 2. The top(s) of the hydrant(s) shall be colored green.
  - 8 3. Install blue street reflector(s) on the hydrant side of centerline to indicate hydrant location(s).
- 9 B. The minimum required fire flow for this project has been determined to be 1,000 GPM at 20 psi for a  
10 1-hour duration. Prior to final plat approval, in order to assure consistency with the applicable  
11 provisions of Snohomish County Code 30.53A.520 (16), P&GE shall provide the required fire hydrants  
12 and written confirmation from Silver Lake Water District that the minimum required fire flow of 1,000  
13 gpm at 20 psi for a 1-hour duration can be provided. If the required fire flow cannot be provided the  
14 new dwellings shall be provided with NFPA 13-D fire suppression systems. It shall be noted as a  
15 restriction in the recording of the final plat that the required fire flow shall be determined using  
16 Appendix B of the 2009 edition of the International Fire Code if there are dwellings that exceed 3,600  
17 square feet.
- 18 C. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as  
19 to be plainly visible and legible from the street or road fronting the property. Street signage shall be in  
20 place prior to occupancy. Numbers shall contrast with their background §505.1 IFC.
- 21 D. Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. P&GE  
22 shall provide signage or pavement striping on both sides of the access road if it is less than 28 feet in  
23 width or on one side of the road if it is 28 feet wide but less than 36 feet wide stating "NO PARKING –  
24 FIRE LANE" to ensure access availability. If pavement striping is used the curbs shall be painted yellow  
25 with black lettering.

## 26 2. PEDESTRIAN FACILITIES AND SCHOOLCHILDREN (RCW 58.17.110 AND 58.17.060)

27 Students will be picked up by bus in the development. Pedestrian facilities required by EDDS satisfy the  
28 requirement for adequate pedestrian facilities for the students.

## 29 3. UTILITIES

30 Adequate provisions have been made for utilities. Water and sanitary sewer service will be supplied by  
31 Silver Lake Water and Sewer District. Snohomish County PUD No. 1 will supply electricity. Approval will be  
32 conditioned on underground installation of distribution and service lines for utilities. The Snohomish Health  
33 District does not object to approval of the subdivision, conditioned upon closure of the landfill as required  
34 by law, permits, and regulations.

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1 **F. SUBDIVISIONS (CHAPTER 30.41A SCC)**

2 As robust as the delineation and characterization of prior explorations of the waste have been, the public  
3 and Ms. Jenkins criticize the fact that previous explorations were not performed for the purpose of assuring  
4 the public and future homeowners their house and yard are not atop waste. The Hearing Examiner finds  
5 this criticism appropriate and shares the concern.

6 Prior explorations sought to define the character and horizontal and vertical limits of the waste, based on  
7 the history and understanding of the operation of the site. A combination of more perfect knowledge and a  
8 site that was more rigorously controlled and supervised might lend assurance that the prior exploration  
9 programs completely captured the limits of the waste. The Hearing Examiner is not satisfied that the prior  
10 exploration program adequately demonstrates that no waste lies under the residential lots. Information  
11 regarding the history and operation of the site is imperfect. Metal debris that should never have been  
12 deposited at the site was dumped there and it caught fire. The ignition source of the second fire was never  
13 satisfactorily determined. While it is likely that the second fire extinguished itself, it does not necessarily  
14 follow that it consumed all the waste on the site. In other words, the previous exploration programs did not  
15 delineate the boundaries of the waste or determine its character enough to protect the public health,  
16 welfare, and safety by assuring that residences will not be built on top of waste.

17 Previously explorations were intended to determine the limits and character of the landfill. A robust  
18 exploration program to determine what lies underneath the proposed lots has not been performed. An  
19 exploration program designed to determine the character and limits of waste under the lots is not  
20 coextensive with an exploration program to ascertain the character and limits of waste of the landfill.  
21 Exploration programs with different purposes may overlap, but there will also be gaps. The gaps should be  
22 eliminated. Public health, safety, and welfare require that future homeowners have more assurance that  
23 they do not live on top of waste than the present state of subsurface exploration gives. Approval will be  
24 conditioned on the creation and implementation of a robust subsurface exploration program of the  
25 residential lots that is vetted by PDS and an independent expert to assure that homes will not be built on  
26 top of waste.<sup>284</sup>

27 P&GE planned to grade and cover the northeast slope, leading to criticism from the community regarding  
28 issues of slope stability and erosion. P&GE now intends not to grade the northeast slope and essentially  
29 leave it alone. P&GE was then criticized for doing that which the community asked. Mr. Bourque testified  
30 that leaving the northeast slope intact could create a chimney effect and intensify a subsurface fire. The  
31 Hearing Examiner is not persuaded by a preponderance of the evidence that the public health, safety, and  
32 welfare will be impaired by not leaving the slope undisturbed. The possibility of new landfill fire after  
33 completion of the project is remote and intensification of unlikely fire from leaving the northeast slope  
34 alone is even more remote. Disturbing the northeast slope is much more likely to have negative

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<sup>284</sup> Testimony of Shuri.

1 consequences than leaving it alone. Public health, safety, and welfare will be better served by not grading  
2 the northeast slope.

3 Having considered all relevant facts, including the physical characteristics of the site, sidewalks and other  
4 planning features regarding walking conditions for students who walk to and from school and with  
5 fulfillment of the conditions imposed below, the Hearing Examiner finds the proposed subdivision will serve  
6 the public interest and it makes appropriate provision for the public health, safety, and general welfare, for  
7 open spaces, drainage ways, streets, alleys, other public ways, transit stops, potable water supplies,  
8 sanitary wastes, parks and recreation, playgrounds, sites for schools and school grounds, fire protection  
9 and other public facilities.<sup>285</sup> As conditioned, the proposed subdivision meets the general requirements of  
10 SCC 30.41A.100 (2006) with respect to health, safety and general welfare of the community. The proposed  
11 lots will not be subject to flood, inundation or swamp conditions. The proposed subdivision conforms to  
12 applicable zoning codes and the comprehensive plan. Provisions for adequate drainage have been made.  
13 Local utilities confirmed the availability of water, sewer, and electrical service to the project.

## 14 VI. DECISION

15 Based on the foregoing, the Hearing Examiner hereby issues the following decision, which is the final  
16 decision of the county with respect to the SEPA appeal:

- 17 1. Any finding of fact in this decision which should be deemed a conclusion of law is hereby adopted as a  
18 conclusion of law.
- 19 2. Any conclusion of law in this decision which should be deemed a finding of fact is hereby adopted as a  
20 finding of fact.

### 21 SEPA

- 22 3. The Hearing Examiner has jurisdiction of the Homeowners Associations' appeals from the SEPA  
23 threshold determination. SCC 30.61.300(4) (2010); SCC 30. 61.310(1) (2003).
- 24 4. Having considered the entire record and according substantial weight to the determination of the  
25 responsible SEPA Official:
  - 26 (a) The Examiner does not have a firm and definite conviction that PDS made a mistake in determining  
27 that the proposal would probably not have a significant, adverse impact on the environment if the  
28 mitigation conditions are fulfilled.
  - 29 (b) PDS did not lack reasonably sufficient information.

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<sup>285</sup> SCC 30.41A.100 (2006).

1 (c) PDS did not fail to consider probable significant adverse environmental consequences.

2 (d) PDS considered the environmental consequences identified by the appellants, conducted a  
3 reasonable investigation, and recommended conditions to reduce potentially significant adverse  
4 environmental consequences either to the point where they are not likely to occur or are not  
5 significant. The Mitigated Determination of Non-Significance is a reasonably thorough discussion of  
6 probable significant adverse environmental consequences of the proposal.

7 5. The appeals of the Homeowners Associations are denied and the Mitigated Determination of Non-  
8 Significance affirmed.

9 **REZONE**

10 6. The Hearing Examiner has jurisdiction of requests for rezones from property owners. SCC 30.72.020(2).  
11 (2015); SCC 30.72.025 (2012).

12 7. P&GE proved by a preponderance of evidence that SCC 30.21A.100 (2009) is satisfied and that  
13 circumstances changed since the property was zoned Rural Conservation. P&GE's request for a site  
14 specific rezone from Rural Conservation to R-9,600 is APPROVED.

15 **PRELIMINARY SUBDIVISION**

16 8. The Hearing Examiner has jurisdiction of requests for approval of preliminary subdivisions. SCC  
17 30.72.020(5) (2015); SCC 30.72.025 (2012).

18 9. The preliminary subdivision is approved subject to the following conditions.

19 **CONDITIONS**

20 **GENERAL<sup>286</sup>**

21 A. The sequence of landfill closure and land development activities is: (1) resolution of appeal from  
22 threshold SEPA determination and preliminary plat approval by Snohomish County (this decision); (2)  
23 final approval of the landfill closure plan and permit issuance by the Health District; (3) landfill closure,  
24 including land disturbing permit and activity, including rough/mass grading and rough subdivision  
25 infrastructure for closure related work as approved by PDS and Public Works for efficiency; (4)  
26 preliminary plat construction (subsequent land disturbing permit for final site and lot grading,  
27 installation of utilities and other remaining services, roads, lot grading, etc.); (5) final plat approval and  
28 recording, posting of any bonds or security devices related to the subdivision, and building permits for  
29 model homes to the extent permitted by county code; and then (6) building permit issuance and  
30 construction of houses. Snohomish County shall be the final arbiter of whether a specific construction

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<sup>286</sup> Headings are for formatting convenience only.

1 activity belongs to which particular phase. This approval is neither stayed nor conditioned upon the  
2 resolution of any subsequent or future appeals, including any appeal from the SEPA threshold  
3 determination, preliminary plat, or landfill closure permit, if, as, and when it is issued.

4 B. P&GE shall comply with the requirements of the revised Go East Landfill Closure Plan dated August 8,  
5 2016 (Landfill Closure Plan).

6 C. All mitigation measures specified in the Mitigated Determination of Nonsignificance (MDNS) issued on  
7 May 17, 2017 shall be fulfilled. The mitigation measures are incorporated herein by reference as  
8 conditions of approval.

9 D. The revised preliminary plat received by PDS on March 3, 2017 (Exhibit Q.2) shall be the approved plat  
10 configuration. Changes to the approved plat are governed by SCC 30.41A.330.

11 E. All recommended mitigation measures described in the following third party review technical  
12 memoranda are incorporated herein as conditions of approval and shall be implemented throughout  
13 the preparation, construction, and final closure of the Go East Landfill and completion of the  
14 Bakerview subdivision site development:

15 1. Air quality fugitive dust impact analysis third party review technical memorandum by Golder  
16 Associates dated August 5, 2016;

17 2. Noise impact analysis third party review technical memorandum by Golder Associates dated August  
18 5, 2016;

19 3. Construction traffic analysis by Gibson Traffic Consultants, Inc., dated August 3, 2016; and

20 4. Drainage analysis third party review technical memorandum by Golder Associates, dated August 5,  
21 2016.

22 F. Fire flow and fire hydrants shall be provided in accordance with SCC 30.53A.514 through 30.53A.520.  
23 Fire hydrants serving single family dwellings shall have a maximum lateral spacing of 600 feet with no  
24 lot or parcel in excess of 300 feet from a hydrant. The following requirements shall apply to the  
25 installation of any required hydrant:

26 1. Four (4) inch Storz type steamer port fittings shall be provided on new hydrants.

27 2. The tops of all hydrants shall be colored green.

28 3. Install a blue street reflector on the hydrant side of center line to indicate each hydrant location.

29 G. Fire apparatus access shall not be obstructed in any manner including the parking of vehicles. P&GE  
30 shall provide signage or pavement striping on both sides of the access road if it is less than 28 feet in  
31 width or on one side of the road if it is 28 feet wide but less than 36 feet wide stating "NO PARKING –

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1 FIRE LANE" to ensure access availability. If pavement striping is used the curbs shall be painted yellow  
2 with black lettering.

3 H. These conditions do not supplant or exclude any other conditions that may be required by the  
4 Snohomish Health District or any other government agency, federal or state, with respect to the  
5 closure of the landfill or development of the site.

6 I. Nothing in this decision excuses P&GE, an owner, lessee, agent, successor, or assigns from compliance  
7 with any other federal, state or local statutes, ordinances, or regulations applicable to this project.

8 J. Preliminary plats which are approved by the county are valid for five (5) years from their effective date  
9 and shall be recorded within that time period unless an extension has been properly requested and  
10 granted pursuant to SCC 30.41A.300.

11 LANDFILL CLOSURE

12 K. Prior to beginning any landfill closure activities on site, P&GE must:

13 1. Record the Landfill Closure Plan;

14 2. Obtain any permits from the Snohomish Health District needed to implement the Landfill Closure  
15 Plan; and

16 3. Obtain a land disturbing activity (LDA) permit from PDS for work related to the landfill closure.

17 a. The LDA application shall be consistent with the Landfill Closure Plan and any conditions  
18 of any permit issued by the Snohomish Health District.

19 b. P&GE shall include all recommendations of the third party technical review by  
20 GeoEngineers in its LDA permit application for landfill closure, which recommendations  
21 shall be incorporated in to the LDA permit as conditions.

22 4. P&GE shall apply for, execute, and comply with a haul route agreement with the county department  
23 of Public Works in accordance with EDDS 9-01(B). The haul route agreement shall remain in effect  
24 during the landfill closure and construction of the subdivision.

25 L. After completion of all requirements specified in the Landfill Closure Plan to the satisfaction of the  
26 Snohomish Health District, P&GE shall record the Go East Landfill maps and statement of fact as  
27 provided for under WAC 173-350-400(6)(g) with the Snohomish County Auditor's Office, including  
28 evidence that P&GE's post-closure financial obligations have been satisfied.

29 M. P&GE shall maintain the landfill cover according to the Landfill Closure Plan.

30 N. P&GE shall submit a test pit sampling program for PDS' and third party expert approval. The purpose of  
31 the sampling program will be to determine whether any waste lies under any of the residential lots.

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1 The sampling program should be of such depth and frequency to assure future residents that waste  
2 does not lie under their houses and yards. The results of the sampling program shall be filed with  
3 PDS<sup>287</sup> and promptly provided to the Homeowners Associations. If waste is found under residential lots  
4 where it was not expected to be found based on prior explorations, additional exploration shall occur  
5 to determine the horizontal and vertical limits of the waste so discovered. All waste found under  
6 residential lots shall be excavated, removed, and handled according to the Landfill Closure Plan as if it  
7 had been found in an expected location.<sup>288</sup> The appropriateness and reasonableness of the exploration  
8 program requires engineering judgment that should be applied not only by P&GE, but also by PDS, the  
9 Health District, and by a third party expert.

10 PRELIMINARY PLAT

11 O. Prior to beginning construction activity of the preliminary plat, P&GE shall:

- 12 1. Apply for and obtain an LDA permit for the construction of the preliminary plat. P&GE shall include  
13 all recommendations of the third party technical review by GeoEngineers in the LDA permit  
14 application, which recommendations shall be incorporated in the LDA permit as conditions.
- 15 2. Using temporary markers in the field and methods and materials acceptable to the county, P&GE  
16 shall mark the boundary of all Critical Area Protection Areas (CAPAs) as required by chapter 30.62  
17 SCC and the limits of the proposed site disturbance outside of the CAPAs.
- 18 3. A final mitigation plan shall submitted for approval by PDS, including construction-level plan  
19 documents and a planting plan with detailed planting schedule. The final mitigation plan shall  
20 quantify impacts to wetlands and buffers (based on 80-ft wide high-intensity buffers) and  
21 demonstrate how on-site mitigation and purchase of mitigation credits (at the Snohomish Basin  
22 Mitigation Bank) in combination are consistent with mitigation ratios required per Table 3 of SCC  
23 30.62A.320 and Table 4 of SCC 30.62A.340. Final approval of the mitigation plan shall not be granted  
24 until a receipt for purchase of mitigation credits is received by PDS.
- 25 4. P&GE shall submit and obtain PDS' approval of a full drainage plan that complies with the 1992  
26 Stormwater Management Manual for the Puget Sound Basin and the versions of chap. 30.63A SCC  
27 and chap. 30.63B that were in effect on September 30, 2010.

28 P. P&GE shall maintain the detention pond according to the landfill closure permit, post closure plan,  
29 associated financial requirements, and Landfill Closure Plan. P&GE shall insure that all detention pond

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<sup>287</sup> Filing with PDS will allow future purchasers to obtain the test pit findings, which will be public records.

<sup>288</sup> As an example only, test pits located every 20 feet along each side of the new streets should find virtually every waste cell that might lie under the property if the waste cells were 25. Similarly, varying the location of the test pits in the perpendicular axis to the center line of the street may be appropriate.

1 monitoring required by the Landfill Closure Plan is performed by a professional engineer licensed in the  
2 State of Washington, including facility inspection, methane sampling, and water quality testing.

3 Q. The property owner(s) or homeowner's association shall maintain preliminary plat elements as  
4 required by this decision.

5 R. The development shall comply with all Snohomish County rules and regulations effective at such date  
6 as of September 10, 2010, when a complete subdivision application was submitted.

7 S. All site development work shall comply with the requirements of the plans and permits approved  
8 pursuant to conditions A, B, C, and D above.

9 T. Prior to the issuance of any building permits, P&GE shall submit and obtain approval from PDS of an  
10 administrative site plan that complies with Urban Residential Design Standards (chap. 30.23A SCC) and  
11 landscaping design standards (chap. 30.25 SCC).

12 FINAL PLAT

13 U. Prior to final plat approval:

14 1. P&GE shall install the required fire hydrants.

15 2. P&GE shall provide to PDS written confirmation from Silver Lake Water District that it can provide  
16 the minimum required fire flow of 1,000 gpm at 20 psi for a 1-hour duration. New dwellings shall  
17 be provided with NFPA 13-D fire suppression systems if the required fire flow cannot be provided.

18 3. P&GE shall provide a final plat covenant consistent with the language contained in the Landfill  
19 Closure Plan, Appendix H, page F-1.<sup>289</sup>

20 V. The face of the final plat shall show or depict:

21 1. Hydrant locations as approved by the Fire Marshal.

22 2. All critical areas as Critical Area Protection Areas (CAPA) or Native Growth Protection Areas (NGPA)  
23 (unless otherwise otherwise agreed with PDS).

24 W. The following shall be written on the face of the final plat:<sup>290</sup>

25 1. "The dwelling units within this development are subject to park impact fees for the Nakeeta Beach  
26 park district in the amount of \$1,244.49 per newly approved dwelling unit pursuant to Chapter  
27 30.66A SCC. Payment of these mitigation fees is required prior to building permit issuance; provided

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<sup>289</sup> Ex. Q.6

<sup>290</sup> Numbering is for convenient reference only.

1 that the building permit has been issued within five years after the application is deemed complete.  
2 After five years, park impact fees shall be based upon the rate in effect at the time of building permit  
3 issuance."

4 2. "Chapter 30.66B SCC requires the new lot mitigation payments in the amounts shown below for  
5 each single family residential building permit:

6 a. \$2,555.19 per lot for mitigation of impacts on County roads paid to the County in  
7 accordance with the payment timing provisions of Chapter 30.66B SCC (Transaction Code  
8 5210). Credit for certain expenditures may be allowed against said payments to the extent  
9 authorized by County code. Any reduction of the "per lot" amount shall be documented in  
10 the Records of Developer Obligations Form.

11 b. \$328.25 per lot for Transportation Demand Management paid to the County (Transaction  
12 Code 5310).

13 c. \$344.52 per lot for mitigation of impacts on state highways paid to the County (Transaction  
14 Code 5426).

15 d. Payment of these fees is due prior to or at the time of building permit issuance for each  
16 single family residence. Notice of these mitigation payments shall be contained in any  
17 deeds involving this subdivision or the lots therein."

18 3. "The lots within this subdivision will be subject to school impact mitigation fees for the Snohomish  
19 School District to be determined by the certified amount within the Base Fee Schedule in effect at  
20 the time of building permit application, and to be collected prior to building permit issuance, in  
21 accordance with the provisions of SCC 30.66C.010. Credit shall be given for one existing parcel. Lot  
22 1 shall receive credit."

23 4. "All Critical Area Protection Areas or Native Growth Protection Areas shall be left permanently  
24 undisturbed in a substantially natural state. No clearing, grading, filling, building construction or  
25 placement, or road construction of any kind shall occur, except removal of hazardous trees. The  
26 activities as set forth in SCC 30.91N.010 are allowed when approved by the County."

27 5. "If there are dwellings that exceed 3,600 square feet, the required fire flow shall be determined  
28 using Appendix B of the 2009 edition of the International Fire Code."

29 6. "Membership in a homeowners association and payment of dues or other assessments for  
30 maintenance purposes shall be a requirement of lot ownership and shall remain appurtenant to,  
31 and inseparable from, each lot."

32 7. "All open space shall be protected as open space in perpetuity. Use of the open space tracts within  
33 this subdivision is restricted to those approved uses, such as open play areas, picnic areas,

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1 recreation trail system, viewing platform, drainage facilities, benches, and required landscape  
2 improvements as shown on the approved site plan and the approved landscape plan. Covenants,  
3 conditions, and restrictions as recorded with the plat, and as may be amended in the future, shall  
4 include provisions for the continuing preservation and maintenance of the uses, facilities, and  
5 landscaping in the open space as approved and constructed.”

6 8. “Required fire flow shall be determined using Appendix B of the 2009 edition of the International  
7 Fire Code if there are dwellings that exceed 3,600 square feet.”

8 X. Before recording of the final plat, P&GE shall have:

9 1. Constructed urban frontage improvements along the parcel’s frontage on 108th St. SE to the  
10 satisfaction of the county.

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

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

21 4. Implemented the final mitigation plan.

22 Y. All water, sewer, electrical and communication distribution and service lines shall be underground. SCC  
23 30.23A.110 (2009).

24 PRIOR TO BUILDING PERMIT ISSUANCE

25 Z. Prior to the issuance of any building permit:

26 1. The County Engineer shall have fully reinvestigated the traffic impacts of the proposed development  
27 as required by SCC 30.66B.055(2) (2016).<sup>291</sup>

28 2. P&GE shall have paid the new lot mitigation fees required by chap. 30.66B SCC.


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<sup>291</sup> See discussion at page 35 above.

1 PRIOR TO BUILDING OCCUPANCY OR FINAL INSPECTION

- 2 AA. Prior to issuance of a certificate of occupancy or final approval of a building permit, installation of all  
3 required landscaping shall be complete. A qualified landscape designer shall certify to the department  
4 that the installation complies with the code and the approved plans. SCC 30.25.043(1) (2009).
- 5 BB. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as  
6 to be plainly visible and legible from the street or road fronting the property. Street signage shall be in  
7 place prior to occupancy. Numbers shall contrast with their background §505.1 IFC.

Amended Decision issued this 14<sup>th</sup> day of February, 2018.

  
\_\_\_\_\_  
Peter B. Camp  
Hearing Examiner

8 **VII. EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES**

9 The decision of the Hearing Examiner is final and conclusive with rights of appeal as described below.  
10 However, reconsideration by the Examiner may also be sought by one or more parties of record. The  
11 following paragraphs summarize the reconsideration and appeal processes. For more information about  
12 reconsideration and appeal procedures, please see chapter 30.72 SCC and the respective Examiner and  
13 Council Rules of Procedure.

14 **A. RECONSIDERATION**

15 A further motion for reconsideration is prohibited. SCC 2.02.170(5) (2013).

16 **B. APPEALS**

17 **1. APPEAL OF SEPA DECISION**

18 The decision on the appeal of the SEPA threshold determination is a final decision of the Hearing Examiner,  
19 but may be appealed by filing a land use petition in the Snohomish County Superior Court. If no party of  
20 record requests reconsideration, the petition to the Superior Court **must** be filed with the Superior Court  
21 Clerk no later than **21 days after a final decision is issued by Snohomish County**. The date of issuance is  
22 calculated by RCW 36.70C.040(4). If a request for reconsideration is filed by any party of record, the  
23 Superior Court action **must** be filed no later than twenty-one days after the reconsideration decision is

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1 issued. The date of issuance of any reconsideration decision is calculated by RCW 36.70C.040(4). For more  
2 information about appeals to Superior Court, including, but not limited to, required steps that must be  
3 taken to appeal this decision, please see the Revised Code of Washington, Snohomish County Code, and  
4 applicable court rules.

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

9 2. APPEAL OF PRELIMINARY SUBDIVISION DECISION

10 A. DEADLINE

11 Any party of record may appeal the decision on the preliminary subdivision approval to the County Council  
12 by filing an appeal **on or before February 28, 2018**. A party of record does not have to ask for  
13 reconsideration before appealing to the County Council. If someone requested reconsideration pursuant to  
14 SCC 30.72.065, no appeal may be filed until the reconsideration petition has been decided by the Hearing  
15 Examiner. If someone requests reconsideration, the party seeking reconsideration can only raise issues on  
16 appeal that were identified in the petition for reconsideration.

17 B. HOW TO APPEAL

18 Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the  
19 Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000  
20 Rockefeller Avenue, Everett, Washington (Mailing address: 3000 Rockefeller Avenue M/S 604, Everett, WA  
21 98201), and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each  
22 appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee shall  
23 be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC  
24 30.72.075.

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

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

- 33 (a) The decision exceeded the Hearing Examiner's jurisdiction;
- 34 (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;

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- 1 (c) The Hearing Examiner committed an error of law; or  
2 (d) The Hearing Examiner's findings, conclusions or conditions are not supported by substantial  
3 evidence in the record. SCC 30.72.080

4 Appeals will be processed and considered by the County Council pursuant to the provisions of chapter  
5 30.72 SCC. Please include the County file number in any correspondence regarding the case.

6 Staff Distribution:

7 Department of Planning and Development Services: Paul MacCready

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

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1 **Appendix A – Record**

2 **EXHIBITS**

3 **A. APPLICATION**

- 4 1. Master Permit Application filed 2/17/10  
5 2. Plat Name Reservation Certificate, expired 1/15/11  
6 3. Request for Temporary Suspension of Review dated 6/10/10

7 **B. PLANS**

- 8 1. REVISED plans received 9/24/13, 2 Sheets  
9 2. SUPERSEDED plans received 2/17/10, 2 Sheets  
10 3. SUPERSEDED plans received 6/4/12, 2 Sheets  
11 4. Targeted Drainage Plan; Overall Site Plan received 9/24/13, 9 Sheets  
12 5. Grading and Drainage Plan received 3/10/14, 3 Sheets

13 **C. REPORTS**

- 14 1. Traffic Impact Analysis prepared by Gibson Traffic Consultants dated 2/2010  
15 2. Subsurface Exploration, Geologic Hazard, and Geotechnical Engineering Report prepared by  
16 Associated Earth Sciences, Inc. dated 10/21/09  
17 3a. Third Party Technical Review prepared by GeoEngineers dated 7/1/13  
18 3b. Supplement to Third Party Technical Review dated 3/5/14  
19 4. Critical Area Study prepared by Wetland Resources, Inc. dated 12/27/13  
20 5. Go East Landfill Closure Plan prepared by PACE Engineering revised 2/8/12  
21 6. Preliminary Drainage Report for Targeted Drainage Plan - revised February 2013

22 **D. PROPERTY**

- 23 1. Vicinity Map  
24 2. Ownership – Zoning Map  
25 3. Aerial Map – Sec 21 Twp 28 Rge 5  
26 4. Verification of Legal Description

27 **E. ENVIRONMENTAL**

- 28 1. Environmental Checklist received 6/4/12  
29 2. Environmental Checklist, Snohomish Health District, received 9/1/10 (SUPERSEDED)  
30 3. Mitigated Determination of Nonsignificance dated 8/29/14

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1                    F. NOTICE AND ROUTING DOCUMENTS

- 2    1.    Affidavit of Mailing – Notice of Open Record Hearing, Threshold Determination, and Concurrency  
3            and Traffic Impact Fee Determinations  
4    2.    Affidavit of Notification (publication) – Notice of Open Record Hearing, Threshold Determination,  
5            and Concurrency and Traffic Impact Fee Determinations  
6    3.    Posting Verification – Notice of Open Record Hearing, Threshold Determination, and Concurrency  
7            and Traffic Impact Fee Determinations  
8    4.    Affidavit of Mailing – Notice of Cancellation of Open Record Hearing  
9    5.    Affidavit of Notification (publication) – Notice of Cancellation of Open Record Hearing  
10   6.    Posting Verification – Notice of Cancellation of Open Record Hearing  
11   7.    Affidavit of Mailing – Notice of Rescheduled Open Record Hearing, Appealed Threshold  
12            Determination, Concurrency and Traffic Impact Fee Determinations  
13   8.    Affidavit of Notification (publication) – Notice of Rescheduled Open Record Hearing, Appealed  
14            Threshold Determination, Concurrency and Traffic Impact Fee Determinations  
15   9.    Posting Verification – Notice of Rescheduled Open Record Hearing, Appealed Threshold  
16            Determination, Concurrency and Traffic Impact Fee Determinations

17                    G. OTHER SUBMITTAL ITEMS

- 18    1.    EDDS Deviation Request, Section 3-01(B)(5) dated 2/16/10  
19    2.    EDDS Deviation Request response letter dated 3/31/10  
20    3.    Summary of review performed by Herrera Environmental Consultants dated 7/9/12

21                    H. CITY / AGENCY COMMENTS

- 22    1.    Email, memorandum, and review comments from Kim Mason-Hatt and Scott Smith, City of Mill  
23            Creek dated 6/28/12, 6/18/12, and 6/14/12  
24    2.    Email to Bob Pemberton, PDS from Scott Rodman, Washington State Department of Transportation  
25            sent 3/17/10  
26    3.    Letter to Mike Young, Snohomish Health District from Madeline Wall and Sally Safioles, Washington  
27            State Department of Ecology dated 8/16/11  
28    4.    Letter to Pemberton, PDS from Boyd Norton, Washington State Department of Natural Resources  
29            dated 2/23/10  
30    5.    Letter to Pemberton, PDS from Dean Saksena, Snohomish County PUD No. 1 dated 3/8/10  
31    6.    Letter to Pemberton, PDS from Matthew J. Baerwalde, Snoqualmie Tribe dated 3/17/10  
32    7.    Letter to Pemberton, PDS from Victoria Yeager, Stillaguamish Tribe of Indians dated 3/1/10  
33    8.    Email and review comments to Pemberton, PDS from John Westfall and Steven Sherman, Fire  
34            District One sent 6/29/12 and 3/12/10  
35    9.    Email and review comments to Pemberton, PDS from Richard Gilmore with attached Preliminary  
36            Certificate of Water Availability and Preliminary Certificate of Sewer Availability dated 4/26/10 and  
37            4/26/10

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- 1 10. Review comment from Harold Beumel, Everett School District dated 7/2/12
- 2 11. Review comments from Veronica Schmidt, Snohomish School District dated 7/13/12 and 3/15/10
- 3 12. Letter to the Hearing Examiner from Peter Christiansen, Department of Ecology, dated 12/12/14
- 4 with attached letter to Mike Young, Snohomish Health District, dated 11/23/11

5 I. PUBLIC COMMENTS

- 6 1. Emails to Pemberton, PDS from Tom Croissant, President, The 108th Street Point Homeowners
- 7 Association dated 7/8/12, 3/15/10, 3/16/10, 3/19/10 3/16/10, 3/15/10 and 2/11/15
- 8 2. Form letters to Pemberton, PDS from Gil Aiken 6/21/12, 6/18/12 and 7/5/12
- 9 3. Letter to Pemberton, PDS from William and Jayne Bentler dated 7/8/12
- 10 4. Email and letter to Pemberton, PDS from Robin and Mike Bevis dated 7/3/12 and 7/3/12
- 11 5. Email to Pemberton, PDS from Steven Bodenstab sent 7/13/12
- 12 6. Email to Pemberton, PDS from Annika Carniglia sent 2/25/10
- 13 7. Letter and email to Pemberton, PDS from Julie Chittenden, Kings Ridge Homeowners Association
- 14 with attached petition dated 7/5/12, 4/1/10 and 2/11/15
- 15 8. Letter to Pemberton, PDS from Patricia Collins dated 6/25/12 and 2/9/15
- 16 9. Email to Pemberton, PDS from Michael Colvin sent 7/5/12 and 2/10/15
- 17 10. Letter to Pemberton, PDS from Verna Lee Curry dated 5/29/10
- 18 11. Email to Pemberton, PDS from Nick Dean sent 2/23/10
- 19 12. Email to Pemberton, PDS from Tim DeBolt sent 7/9/12
- 20 13. Emails to Pemberton, PDS from Mark Engelberg sent 6/24/12 and 10/21/10
- 21 14. Email and letter to Paul MacCready, PDS from Mark Ewbank, Herrera dated 5/20/13 and 5/20/13
- 22 15. Letters to Pemberton, PDS from Kristi Favard, Anderson Hunter Law Firm dated 9/29/10, 5/7/10
- 23 and 5/7/10
- 24 16. Letter to Pemberton, PDS from Kenneth Fowler dated 7/8/12
- 25 17. Letters and emails to Pemberton, PDS from Mark Funke dated 6/23/10, 5/31/10, 5/26/10, and
- 26 5/25/10
- 27 18. Letters to Pemberton, PDS from Kenneth and Judith Grotle dated 6/27/12 and 2/28/10
- 28 19. Email to MacCready, PDS from Noah Haglund, The Daily Herald sent 8/7/14
- 29 20. Letter to Pemberton, PDS from Stephen Hamilton and Debbie St. Marie dated 7/3/12
- 30 21. Letter to Pemberton, PDS from Kent and Poppy Hanson dated 10/8/10
- 31 22. Letter to Pemberton, PDS from Bradey Honsinger dated 7/9/12 and 7/10/12
- 32 23. Emails and letter to Pemberton, PDS from Steven and Margaret Hurd dated 7/9/12, 7/9/12,
- 33 3/10/11, 3/9/11, 3/17/10, 3/17/10, 3/12/10 and 2/25/15
- 34 24. Email to MacCready, PDS from Pam Jenkins, Herrera sent 8/21/14
- 35 25. Email and letter to Pemberton, PDS from Roy and Geri Johnson dated 7/9/12 and 3/16/10
- 36 26. Email to Pemberton, PDS from Mr. and Mrs. Lynn Langum dated 7/8/12
- 37 27. Letter to Gary Handa, Snohomish Health District from Lee Leskela dated 10/8/10
- 38 28. Email and letter to Pemberton, PDS from Mike and Kerri Mallams dated 7/9/12 and 7/8/12
- 39 29. Email to Pemberton, PDS from Harjit Mangat sent 3/17/10

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- 1 30. Email to Pemberton, PDS from Navik Mangat sent 3/17/10
- 2 31. Emails to Pemberton, PDS from Nancy Manning sent 7/7/12, 3/9/10 and 2/5/15
- 3 32. Letter to Pemberton, PDS from Dennis R. Martin dated 7/8/12 with Email to Paul MacCready, PDS
- 4 dated 1/24/15 and Letter to Gary Hanada, SHD dated 10/26/10
- 5 33. Email to Pemberton, PDS from Mike McCallister sent 7/9/12
- 6 34. Letter to Pemberton, PDS from Nancy McCallister dated 3/14/10 and 2/7/15
- 7 35. Email to Pemberton, PDS from Joyce McNeely sent 7/2/12
- 8 36. Emails to Pemberton, PDS from Billy and Ann Miracle sent 7/9/12, 3/15/10, and 3/14/10
- 9 37. Letter to Pemberton, PDS from Glen Mixdorf dated 7/6/12 and to MacCready, PDS dated 1/22/15
- 10 with attached letter to Gary Hanada, Snohomish Health District, dated 10/26/10
- 11 38. Letter to Pemberton, PDS from Stephen Moll dated 6/29/12 and 2/23/15
- 12 39. Email to Pemberton, PDS from Leif and Ashley Nelson sent 7/6/12
- 13 40. Letter to Pemberton, PDS from Bill and Pat Nettle dated 3/15/10
- 14 41. Email to Pemberton, PDS from Beau and Josette Pierre-Antoine sent 3/17/10
- 15 42. Emails to Pemberton, PDS from David Salsman sent 7/26/12, 3/16/10, and 4/7/10
- 16 43. Letter to Pemberton, PDS from Tabitha Sexton dated 7/6/12
- 17 44. Email to Pemberton, PDS from Harold L. Smith sent 7/6/12
- 18 45. Emails to Pemberton, PDS from Gerald and Barbara Sundquist sent 6/28/12, 3/15/10, 2/9/15 and
- 19 2/25/15
- 20 46. Email and letter to Pemberton, PDS from Philip and Linda Swayzee sent 6/25/12 and 6/25/12
- 21 47. Letter to Pemberton, PDS from Nancy and Leonard Tschida dated 7/5/12
- 22 48. Email to Pemberton, PDS from Cheryl Weibel sent 7/8/12
- 23 49. Email and letter to Pemberton, PDS from Larry Whatley received 7/8/12 and 3/15/10
- 24 50. Form letters to Pemberton, PDS
- 25 51. Email from Mike and Barb Courtney, dated 2/9/15
- 26 52. Letter from Todd and Maryann Richard, dated 2/9/15
- 27 53. Email from Jessica Suarez, dated 2/10/15
- 28 54. Letter to the Hearing Examiner from Myrna McCleary, dated 2/10/15
- 29 55. Letter to the Hearing Examiner from Marcy Leskela, dated 2/9/15
- 30 56. Letter to the Hearing Examiner from Brent Keck, dated 2/11/15
- 31 57. Letter from Connie Klagge received 2/11/15
- 32 58. Letter from Marianne Giffard received 2/11/15
- 33 59. Email to the Hearing Examiner from Steve Chittenden, dated 2/12/15
- 34 60. Email to Paul MacCready, PDS, from Jesse Rehr, dated 2/17/15

35 J. RESPONSE TO PUBLIC COMMENTS

- 36 1. Applicant Response to Consultant's comments (Go East Landfill Closure Proposal) dated 2/22/11
- 37 2. Responses to Individual Comments received during SEPA Review
- 38 3. Letters to Gary Hanada, Snohomish Health from Steve Calhoon, Pace Engineers, Inc. dated 12/21/11
- 39 and 2/11/11 District

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1            K. STAFF RECOMMENDATION

2            LA. SUBMITTED ON SEPA APPEAL

- 3 1. Notice of Appeal from Claudia Newman, Bricklin Newman, LLP on behalf of appellants King Ridge  
4 Homeowners Association and the 108th Street Point Homeowners Association
- 5 1a. Letter to Clay White and Paul MacCready, PDS, from Claudia Newman, re: comments on MDNS for  
6 Bakerview, dated 9/15/14
- 7 2. Notice to Applicant / Permittee of Receipt of an Appeal issued 9/16/14
- 8 3. Affidavit of Mailing for Exhibit A.2
- 9 4. Notice of Prehearing Conference issued 9/17/14
- 10 5. Affidavit of Mailing for Exhibit A.4
- 11 6. Notice of Appearance from Duana Kolouskova, Attorney for Applicant, dated 9/19/14
- 12 7. Appellants' Declaration Pursuant to SCC 30.61.305 signed by Peggy Hurd, dated 9/21/14
- 13 8. Appellants' Motion for Continuance from Claudia Newman, dated 10/15/14
- 14 9. Declaration of Claudia M. Newman, dated 10/15/14
- 15 9a. Mitigated Determination of Nonsignificance (MDNS) for Bakerview
- 16 9b. Letter to Robert Pemberton, PDS, from Steve Calhoon, PACE Engineers, Inc., re: Bakerview Plat,  
17 dated 2/17/10
- 18 9c. Determination of Non Significance for the Proposed Go East Landfill Closure, dated 9/24/10
- 19 9d. Withdrawal of Determination of Non-significance (DNS) for Go East Landfill Closure, dated 12/21/10
- 20 9e. Email correspondence between Claudia Newman and Steve Calhoon, dated 5/9/11
- 21 9f. Letter to Steve Calhoon, PACE Engineers, from Mike Young, Snohomish Health District, re:  
22 Conditional Approval of the Go East Landfill Closure Plan, dated 2/17/12
- 23 9g. Letter to Bob Pemberton, PDS, from Mike Young, Snohomish Health District, re: Go East Landfill  
24 Requirements for Closure, dated 5/3/13
- 25 9h. Letter to Marty Panhallegon, PACE Engineers, from Mike Young, Snohomish Health District, re:  
26 Conditionally Approved Revised Plans for Go East Landfill Closure, dated 1/14/14
- 27 10. Pre-Hearing Order issued 10/21/14
- 28 11. Snohomish County's Response to Appellant's Motion for Continuance from Justin Kasting,  
29 Prosecutor's Office, dated 11/3/14
- 30 12. Response to Appellants' Motion for Continuance from Duana Kolouskova and Trisna Tanus,  
31 Attorneys for Applicant, dated 10/31/14
- 32 13. Notice – Cancellation of Hearing, until further notice, signed 10/31/14
- 33 14. Appellants' Reply on Motion for Continuance from Claudia Newman, dated 11/10/14 with attached  
34 Declaration of Service
- 35 15. Order Denying Appellants' Motion for Stay issued 11/14/15
- 36 16. Snohomish County's Planning and Development Services Witness and Exhibit List submitted by  
37 Justin Kasting, Deputy Prosecuting Attorney, dated 11/18/14

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1                    M. EXHIBITS SUBMITTED BY APPELLANT

- 2    A.     Appellants' Opening Brief on SEPA Issues from Claudia Newman, dated 12/1/14  
3    B.     Appellants' Witness and Exhibit List  
4    1.     Curriculum Vitae of Tom Bourque  
5    2.     Curriculum Vitae of Bruce Carpenter  
6    3.     Curriculum Vitae of Pam Jenkins  
7    4.     Curriculum Vitae of Mark Ewbank  
8    5.     Curriculum Vitae of Michael Spillane  
9    6.     Curriculum Vitae of Kris Lepine  
10  7.     Email from Tom Rowe, PDS, to Howard Knight, Darryl Eastin and Bob Pemberton, dated 6/22/12  
11  8.     Email thread – Knight, Kruger, Parks, Clarke, Martin from 2-23-12 to 3-1-12  
12  9.     Email thread – Rowe, Parks, Kruger, Clarke, Martin, Somers from 2-23-12 to 3-5-12  
13  10.    Memorandum to Steve Uberti from Gary Hanada re: Go East Landfill, dated 3/17/11  
14  11.    Memorandum to Gary Hanada from Steve Calhoon re: SEPA Requirements for Go East final landfill  
15        closure, dated 2/22/11  
16  12.    Go East Landfill, Regulatory Requirements for Closure, by Madeline Wall, Department of Ecology  
17        (DOE), dated 1/26/11  
18  13.    Letter to Mike Young, Snohomish Health District, from Madeline Wall and Sally Safioles, DOE, dated  
19        11/23/11 with annotations  
20  14.    Memorandum from Philip Coughlan, Herrera, re: Go East Landfill Closure Plan and Development,  
21        dated 7/9/12  
22  15.    Letter to Gary Hanada, Environmental Health Division, from PDS, dated 6/15/12  
23  16.    Photograph dated 11/24/14  
24  17.    Geologic Cross-Sections and Ground Water Flow Maps for Go East Landfill  
25  18.    GIS overlay of 1978 aerial photograph with AESI & HWA data  
26  19.    GIS overlay of 1978 aerial photograph with AESI & SWA data and Preliminary Plat  
27  19A.   GIS overlay of 1978 aerial photograph (different version of Exhibit 19), submitted 1/28/15  
28  20.    GIS overlay of 1978 aerial photograph with groundwater flow  
29  21a-b. (2) 1976 aerial photographs  
30  22a-e. (5) GIS overlays of aerial photographs (1969, 1976, 1978, 1983 and 1987)  
31  23.    Google Earth aerial, 2014  
32  24.    Email to Bob Pemberton, PDS, from Mark Funke, attorney at law, dated 5/15/10 with attachments  
33  25.    Map of Single Point Access for Bakerview Proposal with handwritten annotations  
34  26.    Excerpt from document regarding expansion of existing Conditional Use Permit CU-7-72, dated  
35        8/27/1975  
36  27.    Seattle Post-Intelligencer article by Steve Johnston – Dumped Scrap Metal Explodes at Landfill Near  
37        Silver Lake  
38  28.    Letter to Cloris Hyatt, Snohomish Health District, from Daniel Cote, The Point Homeowner's  
39        Association, dated 11/21/1983

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- 1 29. Letter to Dave Thompson, Snohomish County Zoning Adjuster, from L.E. Cyrus, Fire Marshal, re:  
2 Rekoway Inc., dated 5/5/1977
- 3 30. Letter to Leroy Linson, Rekoway, Inc., from Richard Brunner, Snohomish Health District, dated  
4 11/1/1977
- 5 31. Letter to Dave Thompson from L.E. Cyrus re: Rekoway, Inc., dated 10/25/1977
- 6 32. Notice of Violation and Notice to Abate Immediate Hazard to Go East Corporation dated  
7 11/18/1983
- 8 33. Letter to Gary East, Go East Corporation, from Claris Hyatt, Snohomish Health District, dated  
9 11/22/1983
- 10 34. Letter to Gary Reiersgard and John Schmidt, Office of Community Development, and Snohomish  
11 Health District, from Gary East, dated 8/11/1983
- 12 35. Letter to D.L. Thompson, Snohomish County Zoning Adjustor, from L.E. Cyrus, Acting Fire Marshal,  
13 dated 11/5/1975
- 14 36. Herald article by Gary Nelson – Landfill still smolders and neighbors are still burned, dated  
15 11/3/1983
- 16 37. Herald article by Gary Nelson – Smoldering Silver Lake landfill heats up to a blaze, dated 10/28/1983
- 17 38. Implementation Guidance for the Ground Water Quality Standards, DOE, Publication #96-02,  
18 revised October 2005
- 19 39. Memo to Steve Uberti from Claris Hyatt, Snohomish Health District, re: Request for legal action Go  
20 East Landfill, dated 12/12/1983
- 21 40. Potential Hazardous Waste Site Preliminary Assessment Summary Memorandum for Rekoway (Go  
22 East) Landfill, dated 12/4/1984
- 23 41. Site Inspection Report for Reckoway Landfill, Merwin, Washington by Ecology and Environment, Inc.  
24 dated 6/30/1987
- 25 42. Black and white aerial photo
- 26 43. Email from Claudia Newman re: Hearing Examiner site visit, dated 12/5/14 with attached  
27 documents
- 28 44. Appellants' Supplemental Witness List from Claudia Newman, dated 12/9/14 with attached  
29 Declaration of Service
- 30 45. Letter to Marty Penhallegon, PACE Engineers, from David Baumgarten and Jon Sondergaard,  
31 Associated Earth Sciences, re: Hydrogeology, Ground Water, and Surface Water Quality Report,  
32 dated 12/15/09
- 33 46. Letter to Gary Hanada, Snohomish Health District, from Steve Calhoon, PACE Engineering, re:  
34 Response to DoE / SHD August 16, 2011 Letter, dated 10/28/11
- 35 47. Letter to Steve Calhoon from Geoffrey Crofoot, Snohomish Health District, re: Comments Regarding  
36 the Revised Plan July 1, 2010, Go East Landfill Closure Plan, dated 8/19/10
- 37 48. Letter to Steve Calhoon from Geoffrey Crofoot, dated 8/25/10
- 38 49. Letter to Gary Hanada from Glen Mixdorf, Attorney at Law, re: Revised Closure Plan and DNS for  
39 Proposed Go East Landfill Closure, dated 10/26/10
- 40 50. Review Comments Go East Landfill Closure by Herrera Environmental Consultants, dated 10/8/10

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- 1 51. Revised or Amended Plan Review Application for Solid Waste Handling Permits – Go East Landfill,  
2 dated 12/5/13
- 3 52. Letter to Geoffrey Crofoot from Steve Calhoon, re: Response to Comments: Regarding the Revised  
4 Plan July 26, 2010, Go East Landfill Closure Plan, dated 8/4/10
- 5 53. Notice of Application for Bakerview Subdivision, posted 6/16/12
- 6 54. Guidance for Groundwater Monitoring at Landfills by Department of Ecology, dated December 2012
- 7 55. Comment letter for the Bakerview Preliminary Plat/Rezone Applications from Claudia Newman,  
8 dated 2/10/15
- 9 55A. Use of Old Landfills in Florida – W.L. Martin, R.B. Tedder (2002)
- 10 55B. Letter to Mike Young from Steve Calhoon, re: PACE Snohomish Health District December Response,  
11 dated 12/20/13
- 12 55C. Preliminary Subdivision Submittal Checklist
- 13 55D. Targeted Drainage Plan Submittal Checklist (for Projects Vested Prior to 9/30/10)
- 14 55E. Landscape Plan Submittal Checklist
- 15 55F. Letter to Steve Calhoon from Ed Caine, PDS, re: Administrative Site Plan and Landscape Plans, dated  
16 8/2/10
- 17 55G. Bakerview Preliminary Plat, dated 2/16/10
- 18 55H. Review Completion Meeting, dated 4/7/10
- 19 55I. Email between Claudia Newman and Duana Kolouskova re: site visit, dated 12/8/14

20 N. EXHIBITS SUBMITTED BY APPLICANT

- 21 A. Applicant P&GE's Witness and Exhibit List from Duana Kolouskova and Trisna Tanus, Attorneys for  
22 Applicant, dated 12/12/14
- 23 1. Curriculum Vitae of Marty Penhallegon
- 24 2. Curriculum Vitae of Steve Calhoon
- 25 3. Curriculum Vitae of Phil Cheesman
- 26 4. Curriculum Vitae of Scott Brainard
- 27 5. Curriculum Vitae of Edward Koltonowski
- 28 6. Curriculum Vitae of Bradly Lincoln
- 29 7. Curriculum Vitae of Jon Sondergaard
- 30 8. Curriculum Vitae of Curtis Koger
- 31 9. Curriculum Vitae of Aaron McMichael
- 32 10. Curriculum Vitae of James Miller
- 33 11. Bakerview Preliminary Plat (undated)
- 34 12. Comment Response Listing, dated December 2014
- 35 13. Applicant Responses to Individual Comments received during SEPA Review
- 36 14. Letter to Gary Hanada, Snohomish Health District, from Steve Calhoon, PACE Engineers, Inc., re: Go  
37 East Landfill, Regulatory Requirements for Closure, Herrera – Applicant Response Comments, dated  
38 2/22/11
- 39 15. Applicant's responses (in red) to 7/9/12 Herrera comments

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- 1 16. Applicant's responses to Individual Comments, dated 3/20/13
- 2 17. Letter to Paul MacCready, PDS, from Marty Penhallegon and Steve Calhoon, PACE Engineers, Inc.,
- 3 dated 3/1/13 with attached Responses (in bold italics) to Review Completion Letter dated January
- 4 2013
- 5 18. Color photographs (15) of subject site
- 6 19. Letter to Mary Penhallegon, PACE Engineers, Inc., from Jon Sondergaard, Associated Earth Sciences,
- 7 re: Response to Snohomish County Comment Bakerview, dated 5/22/14
- 8 20. Updated Grading & Drainage Plan, Cross Section and Details for Landfill Closure, dated 3/3/14 to
- 9 replace the same in Appendix D of the Landfill Closure Plan dated 2/8/12 of County Exhibit C.5
- 10 21. Memorandum of Snohomish Health District's Monitoring and Inspection of Go East Landfill from
- 11 Gary East, dated 12/11/14
- 12 21-1. Letter to Gary East from Arthur Willey, Snohomish Health District, dated 1/24/1983
- 13 21-2. Snohomish Health District Inspection Reports dated 10/15/1984, 1/7/1985, 6/30/1986 and
- 14 4/24/1987
- 15 21-3. Snohomish Health District Solid Waste Landfill Site Evaluations dated 4/6/1989, 10/16/1989,
- 16 10/24/1990, 10/9/1995, 10/14/1998 and 10/24/2000
- 17 22. Potential Hazardous Waste Site Preliminary Assessment Summary Memorandum, Department of
- 18 Ecology Environmental Protection Agency – Exemplars, various dates
- 19 23. Memorandum to P&G East, LLC from Brad Lincoln, Gibson Traffic Consultants, dated 10/10/14
- 20 24. AIG Specialty Insurance Company Pollution Legal Liability Select Policy - Specimen, undated
- 21 25. Deviation from Standards, Engineering Design and Development Standards 2012
- 22 26. Decision of the Deputy Hearing Examiner – MMS, Inc., Brummett Plat (Hyde Park) dated 6/7/1996
- 23 27. Brummett Preliminary Plat, dated 12/10/1996
- 24 28. SEPA Checklist (pages 3-13)
- 25 29. Special Report article – Residential Developments on Closed Landfills by David I. Mayes, P.G., and
- 26 Michael W. McLaughlin, P.E.
- 27 30. Department of Ecology State of Washington – Newcastle Coal Creek Landfill, printed 12/3/14
- 28 31. Department of Ecology State of Washington, Site Register – Formal Cleanups, dated 12/31/09

29 O. EXHIBITS SUBMITTED DURING OPEN RECORD HEARING EXHIBITS

30 JANUARY 28, 2015 OPEN RECORD HEARING

- 31 1. Letter to Steve Calhoon, PACE Engineering, from Mike Young, Snohomish Health District, dated
- 32 1/12/15
- 33 2. Letter to Mike Young, Snohomish Health District, from Steve Calhoon, PACE Engineering, dated
- 34 12/20/13
- 35 3. Large aerial map of subject area referred to during testimony

36 FEBRUARY 11, 2015 OPEN RECORD HEARING

- 37 4. Written testimony of Stephen Moll with attached form letters

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- 1 5. Snohomish County "Right to Farm" Disclosure Statement re: Refling / Stephen C. & Ann E. Moll,  
2 undated  
3 6. Written comments from David Salsman with attached photographs  
4 7. Letter and attachments submitted by Dennis Martin  
5 8. Curriculum Vitae of Mike McCallister

6 FEBRUARY 12, 2015 OPEN RECORD HEARING

- 7 9. Email thread between Pam Jenkins, Peggy Hurd and Dawn Maurer, Department of Ecology, re:  
8 Excavation of material from a landfill, dated 2/12/15  
9 10. Topographic Survey Map

10 FEBRUARY 13, 2015 OPEN RECORD HEARING

- 11 11. Computer screen shot of PACE Engineering website – Our History  
12 12. Computer screen shot of PACE Engineering website – Services list

13 FEBRUARY 18, 2015 OPEN RECORD HEARING

- 14 13. Aerial map - Geology and Ground Water Elevations, dated 2/15  
15 14. Aerial map – Geology, dated 2/15  
16 15. Group Water Flow Map (Duplicate of Exhibit M.17, enlarged with arrows added)  
17 16. Aerial map – Site and Explorations, dated 2/15 (admitted into the record 2/19/15)

18 FEBRUARY 19, 2015 OPEN RECORD HEARING

- 19 17. SCC Chapter 30.51A – Development in Seismic Hazard Areas and Chapter 30.52A – Building Code  
20 18. Guidance on Choosing a Sampling Design for Environmental Data Collection  
21 19. Compilation of data from log pits included in Mr. Sondergaard's report  
22 20. Test Pit sketch by David Bricklin used during Jon Sondergaard testimony

23 FEBRUARY 27, 2015 OPEN RECORD HEARING

- 24 21. Letter to Examiner from Duana Kolouskova, applicant's attorney, re: response to public comments,  
25 dated 2/26/15  
26 22. Letter to Examiner from Justin Kasting, Deputy Prosecuting Attorney, re: Response to Appellants'  
27 comments, dated 2/27/15  
28 23. Survey map – Outline of Land Fill Area  
29 24. Letter to Geoffrey Crofoot, Snohomish Health District, from Steve Calhoon, PACE Engineers, dated  
30 3/3/10  
31 25. Excerpt – 3. Private Residential Detention  
32 26. Private Stormwater Facility Operation & Maintenance Options to Achieve NPDES Compliance  
33 27. Private Stormwater Facility Inspection & Maintenance White Paper 6/18/08

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- 1 28. Letter to Duana Kolouskova from Steve Calhoon, PACE Engineering, re: Response to Question from  
2 Hearing Examiner dated 2/26/15  
3 29. Email to Duana Kolouskova and Curtis Koger from Jon Sondergaard re: Examiner's Question #7,  
4 dated 2/26/15

5 **AFTER REMAND:**

6 **P. PRE-HEARING PLEADINGS**

- 7 1. Notice of Appeal from Claudia Newman, Bricklin & Newman, filed 5/22/17 with attached Mitigated  
8 Determination of Nonsignificance (MDNS)  
9 2. Notice to Applicant / Permittee of Receipt of an Appeal issued 5/23/17 (emailed)  
10 3. Notice of Prehearing Conference issued 5/23/17  
11 4. Appellants' Declaration Pursuant to SCC 30.61.305 from Peggy Hurd, dated 5/26/17  
12 5. Scheduling Order issued 6/8/17  
13 6. Snohomish County Planning and Development Services' Amended Final Witness and Exhibit List  
14 submitted by Justin Kasting, Deputy Prosecuting Attorney, dated 8/22/17

15 **Q. PRE-HEARING EXHIBITS**

- 16 1. Revised Preliminary Plat, received 3/13/17  
17 2. Revised Targeted Drainage Plan; Overall Site Plan received 3/13/17  
18 3. Revised Wetland Mitigation Plan, received 3/13/17  
19 4. Revised Proposed Plat map (in color), dated 12/2/15 - SUPERSEDED  
20 4a. New Revised Proposed Plat map (in color), dated 3/28/17  
21 5. Revised Preliminary Drainage Report for Targeted Drainage Plan revised 3/17  
22 6. Complete Go East Landfill Closure Plan revised 8/8/16, received 10/7/16  
23 7. Supplement to Go East Landfill Closure (3rd Party Reviews) dated revised 8/8/16, received 10/7/16.  
24 8. Letter to Kevin Plemel, Snohomish Health District, from Marty Penhallegon, dated 8/10/16  
25 9. Letter to Marty Penhallegon from Jerald Gregory, Department of the Army, dated 3/28/17  
26 10. Letter to Marty Penhallegon from Rebekah Padgett, Department of Ecology, dated 4/20/17  
27 11. Letter to Kevin Plemel from Marty Penhallegon, dated 11/10/16 with attachments  
28 12. Letter to Marty Penhallegon from Jon Sondergaard, Sondergaard Geoscience, dated 6/15/17 with  
29 attachments  
30 12a. Marty Penhallegon, Pace Engineers Inc. & Jeff Ketchel, Snohomish Health District, from Paul  
31 MacCready, PDS, dated 6/14/16  
32 13. Letter to Kevin Plemel from Marty Penhallegon, dated 6/15/17  
33 14. Letter to Paul MacCready, PDS, from Marty Penhallegon with attachments from Department of  
34 Ecology, dated 6/16/17  
35 15. Environmental Checklist received 10/7/16  
36 16. Mitigated Determination of Nonsignificance (MDNS) issued 5/7/17  
37 17. Signed Posting Verification – Re-Notice of Application, signed 10/5/16

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- 1 18. Affidavit of Mailing - Notice of Open Record Hearing et al., 5/4/17
- 2 19. Affidavit of Notification of Notice of Open Record Hearing et al., 5/8/17
- 3 20. Affidavit of Publication received 7/10/17
- 4 21. Notice Posting Photos, dated 8/9/17
- 5 22. Signed Posting Verification – Notice of Open Record Hearing et al., date signed 5/9/17
- 6 23. Affidavit of Mailing - Cancellation of Open Record Hearing et al., 5/25/2017
- 7 24. Affidavit of Notification - Cancellation of Open Record Hearing et al., 6/6/17
- 8 25. Signed Posting Verification - Cancellation of Open Record Hearing et al., signed 5/26/17
- 9 26. Affidavit of Mailing - Notice of Rescheduled Open Record Hearing et al, 8/9/17
- 10 27. Affidavit of Notification – Rescheduled Open Record Hearing et al., 8/14/17
- 11 28. Signed Posting Verification – Rescheduled Open Record Hearing et al, dated 8/8/17
- 12 29. Letter to Paul MacCready, PDS, from Peter Christiansen, Department of Ecology 5/2/17
- 13 29a Letter to Kevin Plemel, Snohomish Health District, from Peter Christiansen, DOE, re: Go East Landfill
- 14 Closure Plan, dated 8/17/17
- 15 29b. Email correspondence between Peter Christiansen, DOE, and Marty Penhallegon and forwarded to
- 16 Paul MacCready, sent 9/6/17
- 17 30. Email to Paul MacCready, PDS, from John Pavitt, US EPA Region 10, Alaska Operations Office
- 18 4/20/16
- 19 31. Memorandum to Paul MacCready, PDS, from Jim Miller, GeoEngineers, dated 7/10/17
- 20 32. Letters to Marty Penhallegon and Paul MacCready, from Kevin Plemel, Snohomish Health District,
- 21 both dated 8/9/17
- 22 33. Letters to Paul MacCready, PDS from Pam Jenkins, dated 3/3/16, 3/8/16, 3/15/16, 3/18/16, and
- 23 12/16/16
- 24 34. Letter to Jeff Ketchel, Snohomish Health District from Peggy Hurd, The Point HOA, and Julie
- 25 Chittenden, Kings Ridge HOA, dated 4/24/16
- 26 35. Letter to Paul MacCready PDS from Sharman Burnam, dated 6/2/17
- 27 36. Email to Paul MacCready PDS from Annika Carniglia, sent 5/22/17
- 28 37. Email to Paul MacCready PDS from Julie Chittenden, sent 5/22/17
- 29 38. Email to Paul MacCready PDS from Mark Engelberg, sent 3/7/17
- 30 39. Letter to Paul MacCready PDS from Dennis Martin, dated 5/19/17 with attachments
- 31 40. Email to Paul MacCready PDS from Jesse Rehr, sent 5/19/17
- 32 41. Email to Paul MacCready PDS from David Salsman, sent 3/15/16
- 33 41a. Email to Paul MacCready PDS from Gerald & Barbara Sundquist, sent 3/22/16
- 34 41b. Letter from Phil Thebert, received 9/6/17
- 35 41c. Email from Julie Stepenski, sent 9/8/17
- 36 41d. Email from Steve Chittenden, sent 9/11/17
- 37 41e. Email from Dennis Martin, sent 9/11/17 with attachments
- 38 41f. Email from Stephen Moll, sent 9/11/17
- 39 41g. Letter from Janice Stecher, dated 9/11/17
- 40 41h. Email from Julie Chittenden, sent 9/12/17

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- 1 41i. Email from Stephen Brown, sent 9/13/17 with attachments
- 2 42. Letter to MacCready, PDS from Martin Penhallegon, dated 3/2/17
- 3 43. Applicant's Responses dated 6/16/17 with attached discussions
- 4 44. Updated Staff Recommendation after Remand, dated 8/23/17
- 5 45. Snohomish County's Response to Appellant's Opening Statement on Remand on SEPA Issues, from
- 6 Justin Kasting and Brian Dorsey, dated 8/31/17
- 7 46. Verbatim Report of Proceedings Before the Snohomish County Hearing Examiner – Certification of
- 8 Transcriber Shirley Fisher, dated 8/24/17
- 9 47. Partial Verbatim Transcript from the 1/28/15 hearing
- 10 48. Partial Verbatim Transcript from the 2/11/15 hearing
- 11 49. Partial Verbatim Transcript from the 2/11/15 hearing
- 12 50. Partial Verbatim Transcript from the 2/13/15 hearing
- 13 51. Verbatim Transcript from the 2/18/15 hearing
- 14 52. Verbatim Transcript from the 2/19/15 hearing
- 15 53. Partial Verbatim Transcript from the 2/27/15 hearing

16 R. APPLICANT'S PRE-HEARING EXHIBITS

- 17 1. Updated draft letter to Paul MacCready from Kevin Plemel, Snohomish County Health Department,
- 18 regarding June 14, 2016 letter from Paul MacCready
- 19 2. Letter to Kevin Plemel from Martin Penhallegon, PAC Engineering, regarding Go-East Landfill
- 20 Closure Plan, dated 11/10/16
- 21 2a. Email string from Julie Chittenden to Marty Penhallegon regarding Water Easement to Silver Lake
- 22 Water & Sewer District, dated 5/13/10
- 23 2b. Email string from Richard Gilmore to Marty Penhallegon regarding Bakerview (Go East) project,
- 24 dated 3/18/10
- 25 2c. Email string from Kai Hunt to Marty Penhallegon regarding Your Neighbor to the South – Go East
- 26 site, dated 1/5/10
- 27 2d. Email string from Richard Gilmore to Marty Penhallegon regarding your Neighbor to the South – Go
- 28 East site, dated 1/5/10
- 29 3. Email response to Paul MacCready from Marty Penhallegon regarding 3rd Party Review Comments
- 30 and Responses
- 31 3a. Letter to Paul MacCready from Pam Jenkins, Practical Environmental Solutions, regarding
- 32 Comments on Third Party Review Requests, dated 12/16/16
- 33 3b. Comments regarding Third Party Review Scope of Work from Pam Jenkins, dated 12/16/16, with
- 34 Applicant responses in red text, dated 3/10/17
- 35 3c. Comments regarding Environmental Aspects Review from Pam Jenkins, dated 12/16/16, with
- 36 Applicant responses in red text, dated 3/10/17
- 37 3d. Comments regarding Air Quality Fugitive Dust Impact Analysis from Pam Jenkins dated 12/16/16,
- 38 with Applicant responses in red text, dated 3/10/17
- 39 3e. Bakerview Proposed Plat map

**In Re Bakerview**

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- 1 3f. Comments regarding Noise Impact Analysis from Pam Jenkins, dated 12/16/16, with Applicant  
2 responses in red text, dated 3/10/17
- 3 3g. Comments regarding Construction Traffic Analysis from Pam Jenkins, dated 12/16/16, with  
4 Applicant responses in red text, dated 3/10/17
- 5 4. Letter to Marty Penhallegon from Jerald Gregory, Department of the Army, regarding Application  
6 No. NWS-2014-552, dated 3/28/17
- 7 4a. Figure 1: Existing conditions aerial, dated 12/23/16
- 8 4b. Figure 2: Proposed Conditions drawing, dated 12/23/16
- 9 4c. Figure 3.2: Mitigation Stream Profile, dated 12/23/16
- 10 4d. Nationwide Permit 29 Terms and Conditions, dated 3/19/17
- 11 4e. Preliminary Jurisdictional Determination Form, dated 5/13/14
- 12 4f. Certificate of Compliance with Department of the Army
- 13 5. Letter to Marty Penhallegon from Rebekah Padgett, Department of Ecology, regarding U.S. Army  
14 Corps of Engineers Reference #NWS-2014-552, dated 4/20/17
- 15 6. Letter to Kevin Plemel from Marty Penhallegon regarding Go-East Landfill, Landfill Closure Plan, and  
16 Treatment of the NE Slope, dated 6/15/17
- 17 6a. Letter to Marty Penhallegon from Jon Sondergaard, Sondergaard Geoscience, regarding Targeted  
18 Drainage Plan Sheet 2 of 8, dated 6/15/17
- 19 6b. Letter to Marty Penhallegon from James Miller, GeoEngineers, re: Regrading of Northeast Slop  
20 Area, dated 6/12/17
- 21 6c. Targeted Drainage Plan 2 of 8, dated 6/12/17
- 22 7. Updated Curriculum Vitae of Jon Sondergaard
- 23 8. Cover letter to Paul MacCready from Marty Penhallegon, regarding Applicant's Responses to  
24 Comments contained in Ecology's letter from Peter Christiansen, dated 6/16/17
- 25 8a. Letter to Paul MacCready from Peter Christiansen, regarding Go East Landfill Closure Plan, dated  
26 5/2/17, with Applicant's responses in red text, dated 5/17/17
- 27 9. Memorandum to Paul MacCready from Jim Miller, regarding Geotechnical Review Comments,  
28 Bakerview Development and Landfill Closure Plan, dated 7/10/17
- 29 10. Applicant P&GE's Opening Statement on Remand from Duana Kolouskova, dated 8/31/17 with  
30 attachments
- 31 11. Letter to the Hearing Examiner from Duana Kolouskova re: Applicant's response to Appellant  
32 comments, dated 9/11/17

33 S. APPELLANT'S PRE-HEARING EXHIBITS

- 34 1. Go East Landfill Site History, dated 3/16/16
- 35 2. Letter to Paul MacCready & Kevin Plemel from Pam Jenkins re: Go East Landfill Site History, dated  
36 3/18/16
- 37 3. Letter to Jeff Ketchel from Peggy Hurd & Julie Chittenden re: Proposed Go East Landfill Closure,  
38 dated 4/24/16

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Amended Decision Affirming SEPA Threshold Determination, Approving Rezone, and Approving Preliminary Subdivision with Conditions

- 1 4. Letter to Paul MacCready from Pam Jenkins re: Firms with Landfill Closure Design Expertise, dated
- 2 5/18/16
- 3 5. Letter to Jeff Ketchel from Pam Jenkins re: Go East Landfill Closure Plan, Third Party Review Scope
- 4 of Work, dated 8/1/16
- 5 6. Letter to Jeff Ketchel, dated 4/24/16 with HOA's replies and Applicant's responses
- 6 7. Letter to Paul MacCready & Jeff Ketchel from Pam Jenkins re: Go East Landfill/Bakerview
- 7 Development – Comments on Third Party Review Reports, dated 12/16/16
- 8 8. Email from Peter Christiansen, Department of Ecology, to Paul MacCready re: Mitigated
- 9 Determination of Nonsignificance, dated 5/22/17
- 10 9. Letter to Kevin Plemel from Peter Christiansen re: Go East Landfill Closure Plan, dated 10/8/15
- 11 10. Letter to Tom Rowe, PDS, from Pam Jenkins re: Go East Landfill/Bakerview Development – SEPA
- 12 Considerations, dated 3/15/16
- 13 11. Agreement for Subconsultant Services, dated 7/11/16
- 14 12. Draft letter to Marty Penhallegon from Paul MacCready, dated 4/29/16
- 15 13. Letter to Marty Penhallegon from Paul MacCready, dated 2/7/17
- 16 14. LiDar Base with Applicant's Sampling Points and Plat, dated 2/27/15
- 17 15. LiDar Base with Applicant's Sampling Points and 2017 Preliminary Plat
- 18 16. LiDar Base with Applicant's Sampling Points
- 19 17. Memorandum to Paul MacCready from Kirk Prindle, PDS re: Bio Approval Memo, dated 11/20/14;
- 20 updated 3/28/17
- 21 18. Updated Curriculum Vitae of Pam Jenkins
- 22 19. Appellants' Witness and Exhibit List
- 23 20. Appellants' Opening Statement on Remand on SEPA Issues from Claudia Newman, dated 5/22/17
- 24 with attachments
- 25 21. Letter to the Hearing Examiner from Claudia Newman re: Bakerview Subdivision/Rezone on
- 26 Remand, dated 8/31/17

27 T. SEPTEMBER 12, 2017 OPEN RECORD HEARING EXHIBITS

- 28 1. Written comments from Steve Calhoon, P&G East, LLC, submitted 9/12/17

29 U. RECORD LEFT OPEN FOR SUBMITTAL OF THE FOLLOWING

- 30 1. Supplemental Memorandum from Paul MacCready, PDS, re: Correction to recommended condition,
- 31 dated 9/18/17
- 32 2. Applicant's Proposed Findings of Fact and Conclusions of Law from Duana Kolouskova, dated
- 33 9/20/17
- 34 3. Proposed Findings and Conclusions from Justin Kasting and Brian Dorsey, dated 9/20/17
- 35 4. Appellants Kings Ridge Homeowners Association and The 108th Street Point Homeowners
- 36 Associations Proposed Findings of Facts and Conclusions, dated 9/20/17

**In Re Bakerview**

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Amended Decision Affirming SEPA Threshold Determination, Approving Rezone, and Approving Preliminary Subdivision with Conditions

1 COUNSEL AND WITNESSES

2 1/28/15

3 Duana Kolouskova, applicant's attorney  
4 Claudia Newman & David Bricklin, appellants' attorneys  
5 Justin Kasting, Deputy Prosecuting Attorney  
6 Paul MacCready & Kirk Prindle, PDS  
7 Marty Penhallegon Gary East Steve Calhoon Kris Lepine  
8 Scott Brainard Julie Chittenden Peggy Hurd

9 2/11/15

10 Duana Kolouskova, applicant's attorney  
11 Claudia Newman & David Bricklin, appellants' attorneys  
12 Justin Kasting, Deputy Prosecuting Attorney  
13 Pam Jenkins Bruce Carpenter Michael Spillane Stephen Moll  
14 David Salsman William Bentler Dennis Martin Connie Klagge  
15 Mark Engelberg Tom Croissant Marianne Gifford Julie Chittenden  
16 Mike McCallister Dave Tucheck Steve Hurd  
17

18 2/12/15

19 Duana Kolouskova, applicant's attorney  
20 David Bricklin, appellants' attorneys  
21 Justin Kasting and Brian Dorsey, Prosecutors Office  
22 Michael Spillane Tom Bourque Marty Penhallegon

23 2/13/15

24 Duana Kolouskova, applicant's attorney  
25 David Bricklin, appellants' attorney  
26 Justin Kasting and Brian Dorsey, Prosecutors Office  
27 Paul MacCready, PDS  
28 Marty Penhallegon Mike Young

29 2/18/15

30 Duana Kolouskova, applicant's attorney  
31 David Bricklin, appellants' attorney  
32 Justin Kasting, Deputy Prosecuting Attorney  
33 Ken Crossman, PDS  
34 Curtis Koger Mark Ewbank Phil Cheesman Jon Sondergaard  
35

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Amended Decision Affirming SEPA Threshold Determination, Approving Rezone, and Approving Preliminary Subdivision with Conditions

1

2/19/15

2 Duana Kolouskova, applicant's attorney  
 3 David Bricklin, appellants' attorney  
 4 Justin Kasting & Brian Dorsey, Prosecutors Office  
 5 Mark Brown and Paul MacCready, PDS  
 6 Jon Sondergaard James (Jim) Miller

7

2/27/15

8 Duana Kolouskova, applicant's attorney  
 9 David Bricklin, appellants' attorney  
 10 Justin Kasting, Deputy Prosecuting Attorney  
 11 Gary East Tom Bourque

12

9/12/17

13 Paul MacCready, PDS  
 14 Claudia Newman, Bricklin Newman  
 15 Duana Kolouskova, JMMK  
 16 Justin Kasting, Snohomish County Prosecutors  
 17 Steve Calhoon, P&G East Kevin Plemel, Snohomish Health District  
 18 Pam Jenkins, Practical Environmental Solutions Tom Bourque Frank Shuri

19

9/13/17

20 Claudia Newman, Bricklin Newman  
 21 Duana Kolouskova, JMMK  
 22 Justin Kasting & Brian Dorsey, Snohomish County Prosecutors  
 23 Frank Shuri Gary East Marty Penhallegon Jim Miller Paul MacCready, PDS

24

9/14/17

25 Paul MacCready, PDS  
 26 Claudia Newman, Bricklin Newman  
 27 Duana Kolouskova, JMMK  
 28 Brian Dorsey, Snohomish County Prosecutor  
 29 Pam Jenkins, Practical Environmental Solutions Tom Bourque

**In Re Bakerview**

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Amended Decision Affirming SEPA Threshold Determination, Approving Rezone, and Approving Preliminary Subdivision with Conditions

PARTY OF RECORDS REGISTER  
10-101204-SD/10-101204-REZO  
BAKERVIEW  
HEARING: SEPT 12, 2017  
TIME: 10:00 A.M.

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SNO CO DEPT OF PUBLIC WORKS  
COUNTY ENGINEER  
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SNO CO PROSECUTORS OFFICE  
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